

ORIGINAL

Decision No. 70831

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nickols Transportation Co., Inc.,
 Complainant,
 vs.
 Floyd Hardwick, dba Crest Con-
 tracting Co.,
 Defendant.

Case No. 8309

Application of FLOYD HARDWICK,
 dba Crest Contracting Company to
 operate a tugboat within the con-
 fines of San Francisco Bay and
 its tributaries under authority
 of "FOR HIRE VESSELS ACT."

Application No. 47871

Kenneth G. McGilvray, for Floyd Hardwick,
 applicant in Application No. 47871 and
 defendant in Case No. 8309.

Bruce J. Christenson, for Nickols Trans-
 portation Co., Inc., protestant in
 Application No. 47871 and complainant
 in Case No. 8309.

Vaughan, Paul & Lyons, by John G. Lyons,
 for Harbor Carriers, Inc. and Bay
 Cities Transportation Company; J. H.
 Anderson, for The River Lines, Inc.,
 protestants in Application No. 47871
 and interested parties in Case No. 8309.

O P I N I O N

A duly noticed public hearing was held (on a consolidated record) in San Francisco on these matters before Examiner Power on February 23, 1966 and the matters were submitted.

Hardwick filed Application No. 47871 in September 1965, seeking a for-hire vessel permit throughout the Bays of San Francisco, San Pablo, Suisun and the Delta areas of the Sacramento and San Joaquin Rivers. He requested permission to tow "pile drivers,

barges, dredges and such other commodities as may be available..." He proposed a rate of \$20 per hour for tugboat hire.

Because the season of possible high waters on the rivers was impending a temporary permit for 180 days was granted to applicant on September 28, 1965, by Decision No. 69728 in Application No. 47871. This permit authorized the towage of pile drivers, barges and dredges only. It was restricted to towing service only and to contract carriage.

Because the application had been protested a hearing was deemed necessary before a permanent permit could be granted.

While the temporary permit was in effect Nickols commenced Case No. 8309. Nickols alleged that Hardwick had exceeded his permit in certain respects. First, he had entered into a conspiracy with other persons for the illegal hauling of common carrier general cargo. Second, he had violated the first restriction in his permit in that he had leased a barge to haul general cargo. Third, he had solicited freight from persons not included in the category of confederates in the first allegation. Fourth, he had not filed copies or memoranda of his contracts as required by ordering paragraph 3 of Decision No. 69728.

At the hearing none of these charges were proven.

Hardwick testified that he proposed to increase the scope of his operations to extend beyond towage. Hardwick may file an application for a broader service for the consideration of the Commission. This hearing was to determine if Hardwick's temporary permit should be made permanent and to dispose of the protests.

Four protestants sent witnesses to testify. All are common carriers. They indicated that they had much available capacity.

The only cargo that Hardwick has hauled so far is houses. Of the protestants only Nickols Transportation Company has hauled houses to any substantial extent. The other protestants did state that they had substantial capacity to haul houses and could use the business.

Protestants also objected to the modesty of Hardwick's straight towing hourly rate. An observation may be made in connection with this rate. Hardwick proposed it in his application. Section 4571 of the Public Utilities Code provides that applicants shall file rates "... which shall conform to the rates which were filed with the application, unless otherwise changed by the commission." The straight towing rate will apply only when the tow is owned or controlled by someone else.

The argument of protestants that there is ample equipment available from existing carriers appears to be irrelevant.

The For Hire Vessel Act was passed in 1933. A number of cases arose under it and the Commission construed it in (1934) Bay Shore Freight Lines, Inc., 39 CRC 229. After analyzing the Act (now Sections 4501-4669 of the Public Utilities Code) the Commission stated:

"It is clear that permits can be issued only to private carriers as distinguished from common carriers and that a permit must be issued to (1) any private carrier whose application (2) complies with the requirements of the act, (3) who proposes to operate on the inland water vessels of the type provided by the Act and (4) whose proposed operation shall not be over the whole or any part of a route operated by it as a common carrier." (39 CRC 231.)

There is no question that Hardwick fully meets requirements Nos. (1), (3) and (4). Also his application, at the time it was filed, complied with Section 4533.

Nickols alleged that Hardwick had not filed contracts as required by Decision No. 69728. No proof was offered to sustain this allegation. On November 23, 1965, the Commission received a memorandum of an oral contract with A & L Enterprises of Alameda. There is no evidence in this record that Hardwick hauled for anyone else.

The Commission finds that:

1. Floyd Hardwick is a "private carrier."
2. Hardwick's application (No. 47871) complies with Section 4533 of the Public Utilities Code.
3. Hardwick proposes to operate on the described inland waters in this State a vessel of the type described in Section 4507 of the Public Utilities Code.
4. Hardwick has no common carrier routes.

The Commission concludes that the interim permit should be made permanent and Case No. 8309 be dismissed.

O R D E R

IT IS ORDERED that:

1. The temporary for-hire vessel permit heretofore issued to Floyd Hardwick is made permanent, authorizing him to transport by towing houses, building materials, rubble from building or wrecking jobs, pile drivers, dredges, derrick barges, property of all kinds belonging to persons or firms engaged in the construction or wrecking industries, and property consigned to or from construction and wrecking job sites between points within the confines of San Francisco Bay, San Pablo Bay, Suisun Bay, Sacramento River, San Joaquin River, the tributaries of each and all of these and all sloughs and channels carrying water derived from any of them.

2. In providing service pursuant to the permit herein granted, applicant shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the permit herein granted.
- b. Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs in triplicate, in the Commission's office.
- c. The tariff filings shall be made effective not earlier than two days after the effective date of this order on not less than two days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- d. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117.

3. Applicant shall provide no public utility service other than towing service.

4. Concurrently with the effective date of tariff filings required by paragraph 2(b) hereof, the temporary for-hire vessel permit issued by Decision No. 69728 in Application No. 47871 and amended order extending time dated March 29, 1966, are revoked and, in place and stead thereof, a for-hire vessel permit is issued to Floyd Hardwick authorizing him to transport by towing property specified in ordering paragraph 1 of this decision between points within the confines of San Francisco Bay, San Pablo Bay, Suisun Bay, Sacramento River, San Joaquin River, the tributaries of each and all of these and all sloughs and channels carrying water derived from any of them.

5. Case No. 8309 is hereby dismissed.

The effective date of this order shall be ten days after the date hereof.

Dated at San Francisco, California, this 9th day of June, 1966.

Peter E. Mitchell President
William G. Burnett
Augusta
Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.