

ORIGINAL

Decision No. 19759.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

J. B. PECKHAM COMPANY,)

a corporation, for an order confirming)
and defining operative rights.)

Application No. 12519.

In the Matter of the Investigation on)
the Railroad Commission's own motion)
into the operation, rates, practices,)
and service of J. B. PECKHAM COMPANY,)
a corporation, by motor vehicle for com-)
pensation over the highways of this)
State between fixed termini or over)
regular routes.)

Case No. 2338.

Kirkbride & Gordon, by Joseph B. Gordon and
Devlin & Brookman, by Douglas Brookman, for
Applicants in App. No. 12519, and for
Respondents in Case No. 2338.

Gwyn E. Baker, for Highway Transport Company,
Pioneer Gibson Express and Bekins Van
Lines, Inc., Protestants in App. No. 12519,
and Intervenors in Case No. 2338.

LOUTTIT, Commissioner:

O P I N I O N

On February 11, 1926, J. B. Peckham Company, a corporation, filed with this Commission an application requesting an order confirming and defining operative rights alleged to have been created prior to the effective date of the Auto Stage and Truck Transportation Act, or on May 1, 1917. The application was set for hearing before Examiner Austin on October 4, 1926, at which time protestants, Highway Transport Company, a corporation, and Pioneer Gibson Express, a corporation, appeared and filed a Motion to Dismiss this application upon the ground that the Commission was without jurisdiction to render a de-

claratory judgment defining or confirming such rights. This motion was taken under advisement and because of a doubt as to the question involved, this Commission instituted Case No. 2338, being an investigation upon its own motion into the operations, rates, practices and service of this corporation. A hearing was held before me, at which time Highway Transport Company and Pioneer Gibson Express appeared and took the position that owing to the failure of the J. B. Peckham Company to file its tariffs on May 1, 1917, or within a reasonable time thereafter, it thereby forfeited its operative right created by and under the Auto Stage and Truck Transportation Act (Stats. 1917, Chap. 213, p. 330, as amended). After the filing of briefs the matter was duly submitted and is now ready for decision.

From the record it appears that prior to May 1, 1917, and continuously until now, J. B. Peckham Company has been operating as a common carrier between the City and County of San Francisco and Palo Alto and intermediate points over the public highways of this state. In 1888 J. B. Peckham commenced the above described operations by the use of horse-drawn vehicles. In 1907 his business was transferred to the J. B. Peckham Company, which company has been engaged in said described business up to the present time. With the advent of the automobile, which was prior to May 1, 1917, the corporation substituted automobiles for horse-drawn vehicles as the mode of carriage. On May 1, 1917, four automobile trucks were being used by the company in its business of transportation as a common carrier over the public highways of this state between San Francisco and San Mateo and intermediate points.

It further appears from the record that the company has never filed rates, tariffs, rules or regulations with this Com-

mission. The reason for this failure to so file, as explained by one of the company's witnesses, was that it had theretofore never deemed itself a common carrier, and was not, therefore, under the jurisdiction of the Commission so as to be required to make such filings.

The questions for our determination are:

1. Whether or not the J. B. Peckham Company, a corporation, was operating in good faith as a common carrier at the time of the effective date of the Auto Stage and Truck Transportation Act, or on May 1, 1917, between fixed termini or over a regular route or routes.
2. If so, whether such operative right was created has been legally abandoned or forfeited by failure of the J. B. Peckham Company to file rates, tariffs, rules and regulations or in other respects to assert or perfect such operative right either on or within a reasonable time after the effective date of the Auto Stage and Truck Transportation Act.

As to the first question, it seems clear to me that on May 1, 1917, the effective date of the Auto Stage and Truck Transportation Act (Chap. 213, Stats. 1917, p.330, as amended), J. B. Peckham Company, a corporation, was operating in good faith as a common carrier between the termini of San Francisco and Palo Alto and intermediate points over the routes of Mission Highway, Bay Point Highway, the Great State Highway, and the Middle Field Road, said operation also covering service to points approximately one mile on either side of the main highways traversed. The Company had therefore obtained a right to continue such operations after the effective date of the act without certification from this Commission, as is provided by and under said act.

With respect to the second question, it is my opinion that the J. B. Peckham Company has not forfeited or abandoned this right, for the reason that its failure to file its tariffs, rules and regulations within a reasonable time after the effective date of the Auto Stage and Truck Transportation Act is disclosed by the record herein to have resulted directly from a letter sent to this operator by this Commission under date of April 16, 1917, in which letter the operator was advised that it would not be called upon to file a tariff to cover the operations in question, and further that if anything should in the future be required, the operator would be duly notified. We believe that under these circumstances it cannot be held that this operator forfeited its right merely because it did not file its tariffs.

I recommend the following form of order:

O R D E R

An investigation having been instituted upon the Commission's own motion into the rates, rules, practices, contracts, classifications, etc. of the J. B. Peckham Company, a corporation; a public hearing having been held thereon; the matter having been duly submitted after the filing of briefs, and being now ready for decision,

IT IS HEREBY FOUND AS A FACT that on May 1, 1917, J.B. Peckham Company, a corporation, was operating in good faith as a common carrier of property by automotive truck between the termini of San Francisco and Palo Alto and intermediate points over the routes of Mission Highway, Bay Point Highway, the Great State Highway, and the Middle Field Road, serving also points approximately one mile on either side of the main highways traversed, and

IT IS HEREBY ORDERED that within ten (10) days from the date of this order, J. B. Peckham Company, a corporation, be, and it is hereby directed to file its rates, tolls, rentals, charges and

classifications and time schedules covering said service, said tariff of rates, rules and regulations to show geographical points served by said J. B. Peckham Company prior to and on May 1, 1917, and to be a tariff of rates and rules and time schedule satisfactory in form and substance to the Railroad Commission.

IT IS HEREBY FURTHER ORDERED that J. B. Peckham Company, a corporation, be, and it is hereby ordered to cease and desist from operating as a common carrier by automotive vehicle between fixed termini or over regular routes except between the termini of the City and County of San Francisco and the City of Palo Alto and intermediate points over the routes as described in the order herein.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of December, 1927.

Ernest C. ...
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Leon ...
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 COMMISSIONERS.