JLA

Decision No. 24014.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Suspension by the Commission on its own motion of San Francisco Warehouse Company Local Freight Forwarding Truck Tariff No. 1, C.R.C. No. 6.

Case No. 2945.

ORIGINAL

Bacigalupi, Elkus & Salinger, by Frank B. Austin and Oliver Dibble, for San Francisco Warehouse Company.

Hal Remington, for San Francisco Chamber of Commerce.

Reginald L. Vaughan, for Pacific Freight Lines, Pioneer Express Company, Southern Pacific Company and American Railway Express Agency.

BY THE COMMISSION:

O P I N I O N

By Local Freight Forwarding Truck Tariff C.R.C. No. 1, filed with the Commission October 1, 1930, to become effective November 1, 1930, respondent proposed to inaugurate a freight forwarding truck service from its public warehouses in San Francisco to Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont. The rates named in the tariff were published to apply only on the commodities stored in respondent's warehouses and were to be transported only upon the order of the depositor or storer of the goods.

Respondent filed its tariff without first having obtained a certificate of public convenience and necessity from the Commission as generally required of common carriers by auto

truck under the provisions of the Auto Stage and Truck Transportation Act (Statutes 1917, Chapter 213, as amended). Upon the Commission's own motion the tariff was suspended until September 15, 1931, pending a hearing to determine whether or not the proposed service was lawful.

A public hearing was held before Examiner Geary at San Francisco and the matter submitted on briefs.

Respondent operates four public utility warehouses in San Francisco. These warehouses were formerly conducted as so-called "bulk warehouses" where basic commodities were stored in considerable quantities for long periods of time. However, due to changed merchandising methods and faster modes of transportation they have now become "distributing warehouses" where goods are stored for short periods of time to be distributed in small lots to the storers' customers. The record shows there is a demand on the part of the storers that respondent not only warehouse the goods but subsequently distribute them to the East Bay cities as well.

Respondent asserts that in order to effectively render the new type of warehousing it is essential that it operate its own trucks for the distribution of small lots of merchandise. The transportation service, as disclosed by the tariff, will be performed on commodities stored in respondent's warehouses to fixed termini. The record shows that the trucks will be operated over the regular routes ordinarily traversed in reaching the East Bay area. With certain minor exceptions respondent will perform a transportation service similar to the common carrier truck lines now operating between San Francisco and the East Bay territory. The rates, rules and regulations shown in respondent's tariff relate to transportation charges only. A separate tariff

is on file with the Commission covering the rates and charges for the warehouse operations.

Respondent contends that it is not proposing to operate a common carrier transportation service but is simply extending the scope of its operations as a public utility warehouse; and that since an enlargement in services of this nature is not prohibited by Section 50½ of the Public Utilities Act no certificate of public convenience and necessity is required from the Commission before beginning the truck operations. Moreover respondent claims that the provisions of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes 1917) are not here applicable, for under the doctrine of Frost vs. Railroad Commission, 271 U.S. 583, and Forsyth vs. San Joaquin Light and Power Corporation, 208 Cal. 397, the jurisdiction of the Railroad Commission of California over transportation companies operating auto trucks is confined to those engaged in the transportation of freight as common carriers.

Although respondent asserts that it is proposing the transportation service as part of, and incidental to, its warehouse business there is nothing in the record to show that this is in fact true. On the contrary the evidence clearly indicates that respondent is simply endeavoring to comply with the demand of some of its warehouse patrons that it directly distribute their goods to the East Bay points without the necessity of obtaining the services of the common carriers now engaged in this business. As explained by respondent the proposed service would permit of a more flexible operation as many of the incidental services in preparing a shipment for transportation via a common carrier truck could be eliminated. Rather than being a part of respondent's warehouse business the proposed transportation

service is supplementary thereto and is to be substituted for the service now being performed by common carriers.

Respondent serves the public generally in its capacity as a warehouseman and now proposes in addition thereto to perform a transportation service for that portion of the public which utilizes its warehouses. The fact that the transportation service is limited to its warehouse patrons does not alter the public character of respondent's undertaking. Even though respondent does not hold itself out to transport the goods of all who may offer them, it does offer to transport the goods of a defined portion of the public. To this extent we believe respondent is proposing a common carrier service by auto truck. Before beginning auto truck operations this respondent must first obtain a certificate of public convenience and necessity as required by Section 5 of the Auto Stage and Truck Transportation Act (Chapter 213, Statutes 1917).

Upon consideration of all the facts of record we are of the opinion and so find that respondent should be ordered to cancel its Local Freight Forwarding Truck Tariff No. 1, C.R.C. No. 6, on or before September 15, 1931, and thereafter to abstain from applying, demanding or collecting the rates shown therein unless and until it first obtains a certificate of public convenience and necessity to begin the service therein proposed.

O R D E R

This proceeding having been duly heard and submitted, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that respondent, San Francisco Warehouse Company, be and it is hereby ordered to cancel its Local Freight Forwarding Truck Tariff No. 1, C.R.C. No. 6, on or before September 15, 1931, and thereafter to abstain from applying, demanding or collecting the rates shown therein unless and until it first obtains a certificate of public convenience and necessity to begin the service therein proposed.

Dated at San Francisco, California, this 8th day of September, 1931.

Commissioners.