

Decision No. 24423

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

-000-

PIONEER EXPRESS COMPANY, a corporation;
VALLEY MOTOR LINES, INC., a corporation;
UNITED MOTOR TRANSPORT LINES, INC., a
corporation; and CALIFORNIA INTERURBAN
MOTOR TRANSPORTATION ASSOCIATION, an
association,

Complainants,

vs.

PACIFIC MOTOR TRANSPORT COMPANY, a cor-
poration, SOUTHERN PACIFIC COMPANY, a
corporation, and PACIFIC ELECTRIC RAILWAY
COMPANY, a corporation.

Defendants.

ORIGINAL

Case No. 2964

Sanborn, Roehl & Brookman, by A. B. Roehl;
Thelen & Marrin, by Paul Marrin, and W. H.
Kessler, for complainants.

W. F. Williamson, Wallace & Vaughan, by Reginald L.
Vaughan, for Pacific Freight Lines and its subsidiary
and affiliated corporations, as complainants.

Frank Karr, C. W. Cornell and W. S. Johnson, for
defendant Pacific Motor Transport Company.
A. A. Jones and E. J. Foulds for Southern Pacific Company.
Frank Karr, C. W. Cornell, for Pacific Electric Railway Co.
E. J. Bischoff, for Motor Service Express.
Harry N. Blair, for Keystone Express, complainant.
E. R. Brashear, for Los Angeles Chamber of Commerce.
Phil Jacobson, for Rex Transfer Company.

Edwin G. Wilcox, for Oakland Chamber of Commerce.

Hal Remington, for San Francisco Chamber of Commerce.

W. G. Stone, for Sacramento Wholesalers and Manufacturers
Association.

C. S. Booth, for Los Angeles Steamship Company.

WEITSELL, Commissioner:

O P I N I O N

Complainants in this proceeding, with the exception of California Interurban Motor Transportation Association, are common carriers by auto truck operating over the public highways of this state between fixed termini and over regular routes under and pursuant to authority of this Commission contained in certificates of public convenience and necessity heretofore granted to them or their predecessors in interest by this Commission; or are conducting such operations by virtue of operative rights acquired through operations conducted in good faith prior to May 1, 1917. Complainant California Interurban Motor Transportation Association is an association of such common carriers. All of the complainants are operating under the jurisdiction of this Commission pursuant to tariffs and schedules on file with the Commission.

By their amended complaint, filed December 8, 1930, complainants allege that defendant Pacific Motor Transport Company, a California corporation, hereinafter referred to as Transport Company, was organized in October 1928 by defendant Pacific Electric Railway Company, hereinafter referred to as Pacific Electric, for the purpose of enabling the latter to drive out of business and cripple complainants and other certificated carriers by auto truck.

The amended complaint further alleges that all of the stock of the Transport Company is owned by Pacific Electric, which in turn is owned by Southern Pacific Company, a Kentucky corporation, hereinafter referred to as Southern Pacific. It also al-

leges that the Transport Company has executed certain contracts with Pacific Electric and Southern Pacific by which contracts said companies transport freight between their depots at rates which are less than the published rates of said companies, and that said tariffs and supplements thereto and the rates therein shown are unjust, unreasonable, discriminatory and unlawful and violate the provisions of the Public Utilities Act and of the Constitution of the State of California.

The amended complaint further alleges that defendant Transport Company has filed with the Commission certain so-called express tariffs naming rates between points located on the lines of the Southern Pacific and Pacific Electric, but including in addition to the rail haul either a pick-up or delivery by auto truck or both a pick-up at point of origin and a delivery at point of destination by auto truck. It alleges that said tariffs of defendant Transport Company offer to the public a service whereby said defendant holds itself out to render to the public a transportation service by auto truck over the public highways of the State of California over routes and between fixed termini in violation of Chapter 213, Statutes 1917, as amended.

The amended complaint further alleges that while the said tariffs of defendant Transport Company purport to name rates for the transportation of express, that said defendant does not, in fact, render an express service and that shipments are not transported by said defendant, but are transported by the local freight service of Pacific Electric or Southern Pacific, and that the only service rendered by defendant Transport Company, in connection with the shipments, is a pick-up or delivery service or both at the terminals by auto truck under contract with local draymen.

The amended complaint further alleges that in numerous instances the tariffs of defendant Transport Company contain rates which are not compensatory, and unreasonably low, and for that reason unlawful and in violation of the Public Utilities Act. The amended complaint requests that the Commission make its order requiring defendants to cease and desist said unlawful operations and further requests that the Commission enter upon an investigation into the rates, practices, rules and regulations of defendant Transport Company, as set forth in its tariffs on file with the Commission, and that the Commission issue its further order granting to complainants such further relief as the Commission may consider appropriate.

Defendants Transport Company and Pacific Electric filed a joint answer and the Southern Pacific Company filed a separate answer. Defendants admit the ownership of the Transport Company by Pacific Electric and the Pacific Electric by the Southern Pacific. Defendants in their answer deny that the organization of the Transport Company was a device for the purpose of eliminating motor truck competition and deny that there is anything unlawful connected with such operations.

Hearings in the above matter were held in Los Angeles on May 21 and 22, and in San Francisco on August 4, 5, 6 and 7, 1931. In all 86 exhibits were received in evidence. Briefs have been filed on behalf of complainants and defendants and the matter is now ready for decision.

Of the several issues presented by the pleadings, two are outstanding. First, are the operations of Pacific Motor Transport Company such as to give it the status of an express company under the terms of the Public Utilities Act, and secondly, whether defendants Pacific Electric and Southern Pacific, in

the performance of an express service through the medium of Pacific Motor Transport Company, are in any manner conducting an unlawful operation. In order that these questions may be answered, a review of the pertinent facts is in order.

The record shows that the entire operations of the Transport Company, except such as are conducted under authority of certificates of public convenience and necessity from this Commission, are performed pursuant to certain contracts introduced in evidence. These contracts fall within one of three classes, viz: contracts between the Transport Company and the parent companies, (Southern Pacific and Pacific Electric) contracts between Transport Company and railroads, other than its parent companies, contracts between Transport Company and drayage concerns in various cities and towns throughout the state.

Exhibits 29 and 30 are examples of the first type of contract. Under these contracts the Transport Company retains "to cover contingencies and other unassignable expenses" an amount equal to ten per cent of its expenses and an amount equalling eight per cent on its investment. The ten per cent is retained, according to the contract, to enable Transport Company to meet contingencies and unassignable expenses, and cannot be properly considered as profits on its operations. The profit which it is allowed on its operations is an amount equal to eight per cent on its investment. The investment employed in the so-called express business is seven hundred dollars. The profit retained by it, therefore, is fifty-six dollars, regardless of the extent of its operations as long as its investment in this business does not change. The receipts of Transport Company, less the amounts noted, go to the parent companies to compensate them for services rendered.

While the method of payment provided in the contracts of the Railway Express Agency are somewhat similar to that provided in the contracts between Transport Company and the railroads, the Railway Express Agency contract is essentially different from the contracts with the Transport Company in that it requires the Railway Express Agency to maintain rates higher than the railroads over which it operates. In these contracts there is no provision for expedited or custodian service as there is in Railway Express Agency's contracts.

Exhibits Nos. 2 and 3 are contracts between Transport Company and independent railroad companies. Under these agreements the rail carrier receives a so-called "allowance" and if Transport Company publishes other and different rates the allowance to the rail carrier is to be determined by mutual agreement. Like the contracts above mentioned, these agreements contemplate carriage of the shipments of the Transport Company in local freight service without messenger or custodian.

Exhibits Nos. 4 to 22, inclusive, are contracts between Transport Company and draymen in various cities and towns. Under these contracts the draymen, as agents of the Transport Company, pick up and/or deliver to and/or from shippers' or consignees' store doors the shipments routed by Transport Company. The public are concerned only with the Transport Company and the draymen deal only with that company. The goods are shipped under Transport Company bills of lading. These contracts with the draymen generally provide for pick up by auto truck at store door of shipper at point of origin and drayage to the depot of Transport Company, which the record shows, in all except one or two instances, to be the depot of Southern Pacific Company or Pacific Electric Company. The contracts also provide similarly a delivery service by auto truck from depot of Transport Company to the store door of the

consignees at point of destination.

Regarding the physical handling of Transport Company's shipments, the record shows that, when an order is received from a shipper for pick up, a truck is dispatched by a truck dispatcher of the drayage concern at point of origin who receives the truck order from the Pacific Motor Transport Company. The driver picks up the shipment at the store door of shipper, signs the bill of lading as agent for the Transport Company and brings it to the Transport Company's depot. The shipment is then unloaded from the truck either by the truck driver alone or by the truck driver with the assistance of the station platform employees of the Transport Company. These employees are designated as joint employees of the rail carrier and the Transport Company. The station employees then truck the shipments across the platform to the car and in certain instances are assisted by the truck driver. The platform employees, although considered by the Transport Company and its parent company as joint employees, are on the payroll of the parent company. The shipments are loaded in ordinary freight cars of Southern Pacific Company or Pacific Electric Company along with the l.c.l. freight of Southern Pacific Company and Pacific Electric Company. Between certain stations, for instance between San Francisco and San Jose where the traffic is sufficiently great in volume to require it, an entire car may be devoted to shipments moving under Transport Company bill of lading, but in any case the shipments of Transport Company move in the same trains and are accorded the same service as the traffic moving in local freight service of the parent companies. During transit between depots there is no employee of the Transport Company in charge of Transport Company's shipments and all transportation service between depots

is performed exclusively by the rail carriers.

When shipments arrive at destination they are unloaded from the cars of Southern Pacific Company or Pacific Electric Company by station employees of Southern Pacific Company or Pacific Electric Company who may be designated as joint employees. In instances where shipments are unloaded direct from car to truck without being taken across the platform, the truck driver may assist the station employees. These joint station employees are under the jurisdiction of the station agent who is an employee of the rail carrier who may also be designated as a joint employee of the railroads and Transport Company, but such agent in all cases reports to superior officials in the exclusive employ of the rail carriers.

It appears from the record that the General Manager of the Transport Company reports to the executive committee of the Transport Company and is responsible in matters of management and policy to that committee. The membership of the committee consists of Mr. Pontius, President of Pacific Electric Company, and W. A. Worthington, Vice-President of the Southern Pacific Company. These gentlemen have as alternates Mr. A. T. Mercier, Vice-President and General Manager of the Pacific Electric Company, and Mr. C. J. McDonald, assistant to Mr. Worthington of the Southern Pacific Company. None of the members of the executive committee hold any office with the Transport Company other than as members of the executive committee.

In addition to store door service, the Motor Transport Company offers a terminal or depot to store door service and a service from store door point of origin to depot at destination. The physical handling of shipments in the latter cases does not differ from the handling of shipments moving from store door to store door except that only one pick-up or delivery service

is rendered by Transport Company. Although the rates of Transport Company contemplate a store door to store door service, a store door to terminal service, or a terminal to store door service, it appears that the Transport Company renders in addition to these types of service a depot to depot service. A shipper may properly bring a shipment to a depot of either of the parent companies, which depot is also the terminal of Transport Company, and ship to a consignee at any depot where Transport Company service is rendered. In such case the Transport Company would technically deliver, that is, surrender possession at the rail depot, the same being within the delivery zone of the Transport Company.

The record shows that the Transport Company was organized by defendant railroads to be used and is now actually used as an instrument by which they would perform and do perform store door and pick-up delivery service in addition to their freight service. The railroads not only elect the directors of Transport Company but they, without reference to its directors, control and manage its affairs. The directors of Transport Company are C. W. Cornell, Attorney for Pacific Electric, H. G. McDonald, Chief Clerk to the President of Pacific Electric, A. E. Noorbcn, Assistant Freight Traffic Manager of Pacific Electric, F. C. Weeks, General Agent, Freight Traffic Department of Pacific Electric, and L. B. Young, Manager of Transport Company, who holds no position with Pacific Electric or Southern Pacific.

The invested capital of Transport Company, aside from the property of Union Terminal Warehouse Company, which is really not part of its transportation business here being considered, is the sum of seven hundred dollars. It has five

shares of stock outstanding according to the annual report of Pacific Motor Transport Company for 1930. It has no stockholders other than Pacific Electric. Any losses which it sustains must necessarily ultimately be borne by the parent companies and any profit which it makes will ultimately go to the parent companies.

It is at once apparent that the Board of Directors of Transport Company is railroad elected and controlled. The Board of Directors apparently has nothing to do with the operations of Transport Company or with the formulation of its policies. The real authority, as above pointed out, is exercised by the so-called executive committee which is made up entirely of representatives of Pacific Electric and Southern Pacific. It is their orders and directions which Mr. Young, Manager, is required to follow and not those of the Board of Directors.

With reference to the rates charged by Motor Transport Company, the record shows that said company publishes four express tariffs, No. 1 Series applying generally between Los Angeles and points in southern California, No. 2 Series applying generally between San Francisco and other points in northern California, and No. 3 Series applying between Los Angeles and Owenyo Branch. The Transport Company also publishes an express tariff No. 6 Series, C. R. C. No. 8, applying between San Francisco and Los Angeles. These tariffs cover the entire express operations of the company. Tariffs Nos. 1, 2 and 3 Series are governed by Monroe's "SHIP BY TRUCK" freight classification. Tariff No. 6 Series is governed by the Consolidated Freight Classification which, as above noted, is a freight classification in general use over the railroads in western territory. Monroe's classification, as the record shows, is substantially the same as the Consolidated Freight Classification of the rail carriers

of the country with the carload ratings omitted and with certain changes in the rules and regulations made to conform to highway transportation.

There are only certain points on the lines of Southern Pacific and Pacific Electric where the Transport Company offers a so-called express service. For example, at points intermediate to Los Angeles and Imperial Valley no service is offered between San Bernardino and Niland. The Transport Company serves only such points as are listed in its list of offices.

A series of exhibits was prepared and offered by complainants showing various comparisons between the rates of Transport Company and its parent companies for the purpose of showing that for the same service between depots the rates published by the parent companies in the name of Transport Company for such service, or for such service plus in addition thereto a pick-up and/or delivery service, are less or different from the rates published and maintained by Southern Pacific and Pacific Electric between the same points. In this connection Exhibits Nos. 34-58, inclusive, contain compilations taken from the tariffs of carriers on file with this Commission of rates in effect on the lines of the respective carriers between representative points in California. Exhibit No. 54 shows the classification of principal commodities carried under the Western classification, which governs the railroad rates, and Monroe's classification, which governs the Transport Company's rates. The record shows that through the instrumentality of Transport Company the Southern Pacific and Pacific Electric are in effect cutting their own rates and maintaining two different and inconsistent sets of rates for the same service on the same articles between the same points, except that through the Transport Company they are

offering a greater service at a lower rate. In so far as the shipping public is concerned, the freight service between any two points served by the railroad defendants is identical with the service of Transport Company between any two points served by it, except that the latter gives an additional service consisting of a pick-up and delivery service. The rate published by the rail carriers is in many instances greater for their terminal to terminal service between two points than the rate published by the Transport Company for the same terminal to terminal service on the same articles between the same points, plus a pick-up and/or delivery service.

Complainants' Exhibit No. 34 contains a comparison of the rates of Southern Pacific and Transport Company between San Francisco and San Jose on certain representative commodities and shows that Transport Company rates are less than Southern Pacific rates. In the following compilation the first column shows the commodities; the second, the Transport Company rate on any quantity; the third, the Transport Company rate on 4,000 pounds or over; and the fourth, the Southern Pacific rate on the same article for any quantity. All rates are in cents per 100 pounds. The rates of Pacific Motor Transport Company are with either a pick-up or delivery, but not both.

1 COMMODITY	2 P.M.T. CO. ANY QUANTITY	3 P.M.T.CO. 4000 POUNDS MINIMUM	4 S. P. CO.
Beverage Preparations	17	15	25
Butter	17	15	21
Candy	17	15	21
Cheese	17	15	21
Food Preparations			
N.O.S.	17	15	25
Fruit Juice	17	15	21
Honey	17	15	21
Meat, other than			
fresh	17	15	21
Oil, cooking	17	15	25
Seeds	17	15	25
Yeast	17	15	25

The foregoing compilation is representative and illustrates the fact that the parent companies, Southern Pacific and Pacific Electric, maintain, through the medium of Transport Company, rates for the same or a greater service which are in many instances less than the freight rates between the same points maintained by said parent companies. We are of the opinion that this practice is in violation of Section 21, Article XII, of the California Constitution and Sections 17 and 19 of the Public Utilities Act.

That the device created by the railroads unquestionably results in discrimination is readily appreciated when it is borne in mind that an agent of Southern Pacific would not, in answer to an inquiry regarding freight rates of that railroad, quote "express rates" of the Transport Company. The prospective shipper making the inquiry would therefore be charged railroad freight rates for a desired station to station shipment, whereas he might have availed himself of precisely the same service through demanding the so-called express service of Transport Company. Should the shipper have desired delivery service at the point of destination, he would then have received a greater service at a lesser rate than maintained by the railroads. The device which Southern Pacific and Pacific Electric has established whereby they handle freight under two different sets of tariffs leads inevitably to discrimination and is obviously illegal under the Constitution and the Public Utilities Act of this state. The parent companies, Southern Pacific and Pacific Electric, should comply with the provisions of law above noted by revising their own tariffs or those of the Transport Company so that none of the Transport Company rates applying between

the same points would be less than those maintained directly by the rail carriers. In other words, the rail carriers should not maintain indirectly through the Transport Company schedules which offer the same or a greater service at rates less than those maintained by Southern Pacific and Pacific Electric.

Unquestionably Transport Company is an express company under the broad definition of an express company found in Section 2(k) of the Public Utilities Act:

"The term 'express corporation,' when used in this act, includes every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise or other property for compensation on the line of any common carrier or stage or auto stage line within this state."

However, in view of the facts above set forth with reference to the control and management of Transport Company and its operations and in view of the unlawful practice of the rail carriers in maintaining between particular points lesser rates for the same or a greater service via Transport Company than are maintained by the parent companies, we are justified in disregarding the corporate entity and in considering Transport Company operations as Southern Pacific and Pacific Electric operations. If the unlawful practice is eliminated by the alternative of maintaining Transport Company rates at not less than Southern Pacific or Pacific Electric freight rates between particular points, operations of Transport Company as developed of record would not be unlawful. This is subject to the qualification that with reference to the Transport Company's operations by truck between El Centro and Holtville; Santa Barbara and Montecito, and Los Angeles and Vernon; the same should be discontinued until and when the company has first obtained a certificate of public convenience and

necessity from this Commission authorizing such operations or until the person or corporation with whom Motor Transport Company has contracted for such service, has obtained the required certificate. Except in these three instances the record does not bear out the allegations of the complaint to the effect that Transport Company is operating as a transportation company within the purview of Chapter 213, Statutes 1917, as amended, without the necessary authority first obtained from this Commission.

In view of the fact that our order herein will direct Southern Pacific and Pacific Electric to maintain Transport Company rates at a level at least equal to the level of their respective rail rates and to charge no less via Transport Company for the same or a greater service between points, it will be unnecessary to pass upon the other allegations of the complaint.

ORDER

This cause being at issue upon complaint and answers on file, the same having been duly heard and submitted, proper investigation of the matters involved having been made,

IT IS HEREBY FOUND AS A FACT that the maintenance of lower rates via Pacific Motor Transport Company for the same or a greater service between particular points in California than are maintained by Southern Pacific and Pacific Electric respectively between the same points and on like commodities is discriminatory and prejudicial and unlawful, and particularly, in violation of Sections 17 and 19 of the Public Utilities Act of California and of Section 21 of Article XII of the California Constitution.

Basing its order on the above findings of fact and upon such other facts and conclusions as are contained in the opinion preceding this order, which opinion is hereby made a part

hereof;

IT IS HEREBY ORDERED that defendants Southern Pacific Company and Pacific Electric Railway Company, and each of them, shall within forty (40) days from the effective date of this order cease and desist and thereafter abstain from applying, demanding or collecting for the transportation of freight between points on their lines rates in excess of those contemporaneously maintained by the Pacific Motor Transport Company on like traffic for the same or a greater service, and

IT IS HEREBY FURTHER ORDERED that Pacific Motor Transport Company operations by truck between El Centro and Holtville; Santa Barbara and Montecito, and Los Angeles and Vernon, shall be discontinued until and when the said company has first obtained from this Commission a certificate of public convenience and necessity authorizing such operations, or until the person or corporation with whom Pacific Motor Transport Company has contracted for such service has obtained such certificate.

IT IS HEREBY FURTHER ORDERED that the Secretary of the Commission cause a true copy of this Opinion and Order to be served upon Pacific Motor Transport Company, Southern Pacific Company, and Pacific Electric Railway Company.

The effective date of this order shall be twenty (20) days from the date hereof.

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 25th day of January, 1932.

C. S. Sawyer
Leon Whitely

W. B. Harris
Fred G. Cleveland,
Commissioners

I cannot concur in the opinion and order.

"Piercing the corporate veil" by disregarding separate corporate entities is a devastating weapon recognized to exist but rarely employed, and then only to prevent fraud or wrong. Thus, in the last six decisions of the Supreme Court recognizing its existence it was brought into play in but two of them. Minifie v. Rowley, 187 Cal. 481; Erkenbrecker v. Grant, 187 Cal. 7; Wenban Estate v. Hewlett, 193 Cal. 697; Continental Securities Co. v. Rawson, 208 Cal. 228; Pioneer Express Co. v. Riley, 208 Cal. 677; Woods Estate Co. v. Chanslor, 209 Cal. 241.

I do not think it should be brought forth here to destroy Pacific Motor Transport Company.

Radical changes have been and are taking place in transportation. Rail carriers are hard pressed to maintain themselves in the field where once they enjoyed a monopoly. While a separate corporation like Pacific Motor Transport Company, with a certain flexibility in constructing rates, may not be the ideal or best plan whereby railroads may meet present day conditions, it does represent an earnest and, I believe, good faith effort by a major railroad to cope with new conditions in transportation and to satisfy new demands by shippers. It has been a convenience and advantage to shippers. They will not be benefitted by its destruction. Competitors alone will gain.



Commissioner.