

Decision No. 25887.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the Commission's own motion into the rates, rules, regulations, charges, classifications, contracts, practices and operations, or any of them, of Alameda Transportation Company, a corporation; W. J. Albach, an individual; Carl Anderson, an individual; Andersen Transportation Company, D. O. Donoghue, Secretary; Bay Cities Transportation Company, a corporation; Bay Shore Freight Lines, a copartnership; Bay Transport Company, a corporation; Berkeley Transportation Company, J. M. Atthowe, proprietor; Frank S. Brown, an individual; The California Transportation Company, a corporation; Channel Lighterage Company, a corporation; Peter Christensen, an individual; Colberg Motor Boats, Wm. C. Colberg, proprietor; Crowley Launch and Tugboat Company, a corporation; Delta Transportation Company, Capt. Benj. Walters, owner; Empire Barge Company, Wm. A. McCauley, owner; Erikson Navigation Company, a corporation; Fay Transportation Company, a copartnership; S. Frederickson, an individual; Ellen J. Freethy, an individual; Peter Hansen, an individual; The Harbor Tug and Barge Company, a corporation; Heringer and Scott, a copartnership; Higgins Transportation Company, a corporation; Hunt, Hatch Transportation Company, a corporation; Island Oil Transportation Company, Capt. Benjamin Walters, owner; Island Transportation Company, Capt. Benjamin Walters, owner; Chris Johansen, an individual; Johnson Launch Company, Charles S. Love and Arthur O. St. Clair, executors of estate of Harry Johnson, deceased; A. F. Johnston, an individual; Juhl Bros., a copartnership; M. Lange Launch Company, M. Lange, owner; Larkin Transportation Company, a corporation; Martinez, Benicia Ferry and Transportation Company, a corporation; John W. Myer Transportation Company, John W. Myer, owner; Miller Launch Company, E. W. Miller and Gassie I. Miller, owners; Napa Transportation and Navigation Company, R. E. Anderson and A. Nystrom, owners; Nickols Transportation Company, John Nickols; Oakley and Allen Boat Company, Egbert Allen and Frank Oakley, owners; Fred Olsen, an individual; Osborn and Bornholdt, a copartnership; Remco Steamship Company, a corporation; The Richmond and San Rafael Ferry and Transportation Company, a corporation; Richmond Navigation and Improvement Company, a copartnership; E. V. Rideout Company, E. V.

ORIGINAL

Case No. 3458.

Rideout, owner; Rio Vista Lighterage Company, Inc., a corporation; The California Transportation Company, Fay Transportation Company, Hunt, Hatch Transportation Company and Sacramento Navigation Company, doing business under the fictitious name of The River Lines; Sacramento Navigation Company, a corporation; San Rafael Freight and Transfer Company, Inc., a corporation; Martin Schmidt, an individual; Silveira Transportation Company, J. C. Silveira, owner; Southern Pacific Golden Gate Ferries, Ltd., a corporation; Stockton Transportation Company, a copartnership; Success Towage and Transportation Company, Jas. P. Peterson, owner; Thieman and Johnston, a copartnership; H. A. Troberg, an individual; Vehmeyer Transportation Company, R. H. Vehmeyer, owner; George Wallenrod Company, a copartnership; Weyl-Zuckerman and Company, a corporation; Jim Wilder, an individual; P. F. Wood and R. W. Seitz, a copartnership; F. E. Booth Company, Inc., a corporation; E. V. Rideout, operating under the fictitious name of Enterprise Barge Company; Pioneer Line, Freethy Company; John Doe Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Jane Doe Nos. 1, 2, 3 and 4; Doe and Doe, copartners, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, The Doe Corporation, Nos. 1, 2, 3, 4 and 5, engaged in operating common carrier transportation service between points on San Francisco, San Pablo and Suisun Bays, and on the San Joaquin, Sacramento and Napa Rivers and Petaluma Creek and their tributaries.

Reginald L. Vaughan, for Regulated Carriers, Inc.
 McCutchen, Olney, Mannon & Greene, by Allen P. Matthew and
 John O. Moran, for The River Lines.
 Benjamin Walters, for Island Transportation Company,
 F. J. Larkin, for Larkin Transportation Company.
 Fred Christensen, for Rio Vista Lighterage Company.
 T. C. Marx, for San Rafael Freight and Transfer Company.
 J. C. Forkner and William T. Doyle, for Remco Steamship.
 J. P. Peterson, for Success Towage Transportation Company.
 E. M. Gormser, for Stockton Transportation Company.
 John Nichols, for Nichols Transportation Company.
 F. H. Young, for Crowley Launch and Tugboat Company.
 Gwyn E. Baker, for Harbor Tug and Barge Company, Richmond
 Navigation Company, and E. V. Rideout.
 Edwin G. Wilcox, for Oakland Chamber of Commerce.
 L. A. Feeny, for Bay Shore Freight Lines.
 P. F. Wood, for Wood and Seitz.
 L. L. Higgins, for Higgins Transportation Company.
 Albert C. Woodress, for Martinez-Benicia Ferry Company.
 R. H. Vehmeyer, for Vehmeyer Transportation Company.

A. F. Johnson, for transportation under his name.
Wallace Sheehan, for Bay Transport Company.
F. A. McCauley, for Empire Barge Company.
William Colberg, for Colberg Motor Boats.
A. B. Wellington, for Erikson Navigation Company.
A. Oakley, for Oakley & Allen Boat Company.
E. J. Coles and R. S. Myers, for Southern Pacific-Golden Gate Ferries, Limited, and Petaluma and Santa Rosa Railroad Company; also appearing for Southern Pacific Company and Northwestern Pacific Railroad Company, interested parties.
J. Myers, for J. Myers Transportation Company.
W. J. Albach, for Albach Freight Line.
H. J. Thieman, for Thieman & Johnson.
O. J. Olsen, Jr., for Richmond-San Rafael Ferry.
Chris Johansen.
Mr. Miller, for Miller Launch Company.
Carl Anderson.
S. Frederickson.
Charles Crandall.
Peter Hansen.
M. Schmidt.
L. D. Kennedy, for Peter Christensen.
A. G. Wellington, for Bay Cities Transportation Company.
Douglas E. Matthey, as John Doe 1.
Charles D. Crandall, as John Doe 2.

HARRIS, Commissioner:

PRELIMINARY OPINION AND ORDER

The above entitled proceeding was instituted by the Commission on its own motion to determine the lawfulness of the rates, rules, regulations, charges, classifications, contracts, practices and operations, or any of them, of respondents.

Hearings were had on March 14 and 15 and April 12, 13 and 14, 1933. The record thus far developed makes it advisable, for the reasons hereafter stated, to issue at this time a preliminary opinion and order.

This investigation was instituted by the Commission upon its own motion following the disclosure of illegal practices indulged in by the inland water carriers, which unless they are

curbed, will inevitably lead to a breakdown of an essential part of our transportation system. (In Re Investigation on the Commission's own Motion of Various Transportation Systems, Case 3154, Decision 25243.) The record has disclosed a demoralized rate structure. Shippers are being charged different rates for identical service. Secret rebating, illegal discrimination, preference and prejudice, and undue extensions of credit are widespread. Some of these practices have been indulged in directly. In other cases the carriers have attempted to transmute themselves into private contract carriers for the obvious purpose of defeating the rates on file with this Commission. (In Re Investigation on the Commission's own Motion of E. V. Rideout Company, Case No. 3429, Decision No. 25654.)

Practically all carriers maintain two sets of rates. One schedule is on file with the Commission and is ostensibly applied on purely intrastate traffic. The other schedule of rates, referred to as the export rates, apply on interstate or foreign commerce. The export rates are also applied by some carriers upon intrastate traffic, they apparently feeling that because of the difficulty in determining the essential character of the traffic, violations of their tariffs are impossible to detect. Many of the carriers openly violate their tariffs on intrastate traffic or haul between points where no rates are filed in the tariffs. On the whole the tariffs are ambiguous, insufficient and badly in need of revision.

The widespread and unwarranted extension of credit, sometimes extending over an indefinite period, has resulted in granting an undue preference to some shippers and subjecting other shippers to undue prejudice. The practice has also been used as a device by which preferred shippers are given rebates.

The large majority of the carriers on the bay and rivers are approaching financial collapse. Indeed, the testimony of the witnesses so far heard indicated strongly that unless conditions are stabilized they will be forced to discontinue operations. The facts thus far developed are such that it would take no stretch of the imagination to visualize a breakdown of transportation service on the inland waterways. This would be disastrous to this section of the state and particularly that portion of the San Joaquin and Sacramento Valleys lying adjacent to the rivers, which rely entirely upon water transportation, not being served by rail or truck.

While this proceeding was originally commenced as an investigation on the Commission's own motion, it has developed into an effort on the part of the carriers to have the Commission take such action as may be possible under the existing laws, no matter how drastic, to save them from their own folly and inevitable ruin. The carriers want rigid regulation. Within their own ranks they have repeatedly tried to control the situation but each time they have failed, largely due to their distrust of each other. Now they ask for a stronger hand to guide them.

One of the main causes for the existing conditions is the so-called export rates. Jurisdiction over these rates has not been exercised by the Commission. But in my opinion we have such jurisdiction. Regulation of the rates assessed by these carriers, whose physical operations are confined exclusively to points within the state, is largely a local problem. Congress has not asserted jurisdiction, as no Federal authority is vested with the power to regulate the rates of the inland carriers. And until Congress acts, primary jurisdiction rests with the state. When a

local regulation not in conflict with a Federal regulation is reasonable, it is not invalid because it may incidentally affect interstate commerce. In the Minnesota Rate Cases (Simpson v. Shepard) (1913), 230 U.S. 352, the Court said:

" * * * * The states may act within their respective jurisdictions until Congress sees fit to act; and when Congress does act the exercise of its authority overrides all conflicting state legislation."

* * * * *

"Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such relation to interstate commerce as to be within the reach of the Federal power."

The illegal practices disclosed by this record are astounding. Whether respondents are to escape prosecution under the penal provision of the statutes rests with them. The suggestion has been advanced by some of the carriers, and concurred in by others, that they organize a bureau to be supported by themselves for the purpose of adequately policing its members and securing compliance with the laws. A great deal of assistance could be given the Commission by such a bureau, and its organization is recommended.

I recommend that the Commission at this time find:

1. That the Commission has jurisdiction over all rates of respondents.
2. That respondents be ordered to incorporate within sixty

¹ See also Cooley v. Board of Wardens (1851), 12 How. 299, 319. Covington and Cinn. Bridge Co. v. Kentucky (1894), 154 U.S. 204, 212. Sligh v. Kirkwood (1915), 237 U.S. 52, 58. Missouri K. & T. Ry. v. Haber (1898), 169 U.S. 613, 633. Savage v. Jones (1912), 225 U.S. 501, 533. A.T. & S.F. Ry. v. Railroad Commission (1931), 283 U.S. 380. Wilmington Transportation Co. v. California Railroad Commission, 236 U.S. 151.

(60) days from the date hereof, on not less than ten (10) days' notice to the Commission and the public, reasonable rules or regulations governing the collection of freight charges, such rules or regulations to provide a maximum limit of four (4) days for the collection of freight charges after the weight of the shipments is determined, unless otherwise ordered by the Commission.

3. That respondents be ordered to cease and desist from demanding, collecting or receiving any less or different rates on local and off-shore traffic than the rates shown in their respective tariffs on file with the Commission or applying rules or regulations different than the rules or regulations contained in said tariffs.
4. That within sixty (60) days from the date hereof respondents revise their tariffs to remove any and all ambiguities therefrom and to provide rates which shall be reasonable and adequate and to apply between the points which they now serve under certificates of public convenience and necessity or prior rights.
5. That respondents be required to file under oath a monthly statement showing the individual shipments handled, and in connection therewith the date of receipt, date of delivery, weight of shipment, point of origin, point of destination, rate assessed, charges collected, and the date such charges were collected.
6. That respondents be placed upon notice that future violations of the rates, rules and regulations will not only

jeopardize their rights to continue their operations but will also subject them and their shippers to prosecution under the penal provisions of the statutes.

7. That this proceeding be held open for such supplementary order or orders as may be necessary.

An order of this Commission finding an operation to be unlawful and directing that it be discontinued is in its effect not unlike an injunction issued by a court. A violation of such order constitutes a contempt of the Commission. The California Constitution and the Public Utilities Act vest the Commission with power and authority to punish for contempt in the same manner and to the same extent as courts of record. In the event a party is adjudged guilty of contempt, a fine may be imposed in the amount of \$500.00, or he may be imprisoned for five (5) days, or both. C.C.P. Sec. 1218; Motor Freight Terminal Co. vs. Bray, 37 C.R.C. 224; re Ball and Hayes, 37 C.R.C. 407; Vermath vs. Stamper, 36 C.R.C. 458; Pioneer Express Company vs. Keller, 33 C.R.C. 571.

The following form of order is recommended:

O R D E R

Public hearings having been held in the foregoing matters and basing this order on the findings of fact contained in the opinion which precedes this order, which findings are hereby affirmed,

IT IS HEREBY ORDERED that respondents immediately cease and desist from demanding, collecting or receiving any less or

different rates on local, coastwise, intercoastal, gulf and off-shore traffic than the rates shown in their respective tariffs on file with this Commission or applying rules or regulations different than the rules or regulations contained in said tariffs.

IT IS HEREBY FURTHER ORDERED that within sixty (60) days from the date hereof respondents revise their tariffs to remove any and all ambiguities therefrom and to provide rates which shall be reasonable and adequate and to apply between the points which they now serve under certificates of public convenience and necessity or prior rights.

IT IS HEREBY FURTHER ORDERED that within sixty (60) days from the date hereof, on not less than ten (10) days' notice to this Commission and the public, respondents establish reasonable rules or regulations governing the collection of freight charges, such rules or regulations to provide a maximum limit of four (4) days for the collection of freight charges after the weight of the shipments is determined, unless otherwise ordered by the Commission.

IT IS HEREBY FURTHER ORDERED that beginning with the month of May 1933, and continuing monthly thereafter until further ordered, respondents file with the Commission under oath a monthly statement showing the individual shipments handled and in connection therewith the date of receipt, date of delivery, the commodity, weight of shipment, point of origin, point of destination, rate assessed, charges collected, and the date such charges were collected.

IT IS HEREBY FURTHER ORDERED that respondents be and they are hereby placed upon notice that future violations of the rates, rules and regulations will not only jeopardize their rights

to continue their operations but will also subject them and their shippers to prosecution under the penal provisions of the statutes.

IT IS HEREBY FURTHER ORDERED that the Secretary of this Commission shall cause a certified copy of this decision to be served upon each of said respondents herein; that he cause certified copies thereof to be mailed to the District Attorneys of San Francisco, Alameda, San Mateo, Santa Clara, Contra Costa, San Joaquin, Sacramento, Sutter, Yolo, Solano, Napa, Marin, Placer, Yuba, Colusa, Butte and Glenn Counties and he shall cause certified copies thereof to be mailed to shippers of record in the course of this proceeding and to other shippers who are known to be using the services and facilities of respondents.

IT IS HEREBY FURTHER ORDERED that this proceeding be held open for such supplementary order or orders as may be necessary.

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 24th day of April, 1933.

Cl. Seavey
Leon Whitwell
W. J. Carr
M. B. Harris
Robertson
Commissioners.