

Decision No. 26883.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation on
the Commission's own Motion into the
rates, rules, charges, regulations,
contracts, practices and operations,
or any of them, of O. C. BUTLER and
H. A. GRUNDY, doing business under the
fictitious firm name of PACIFIC TRANS-
PORTATION COMPANY, engaged in opera-
ting a public utility warehouse in the
City of Los Angeles.

Case No. 3789.

Phil Jacobson, for respondents.

Charles G. Munson, for Los Angeles Warehousemen's
Association.

CARR, Commissioner:

O P I N I O N

This is an investigation instituted by the Commission on its own motion for the purpose of determining whether or not O. C. Butler and H. A. Grundy, copartners operating a public utility warehouse in the City of Los Angeles under the fictitious name of Pacific Transportation Company, are in any manner operating illegally.

The matter was submitted at a public hearing held at Los Angeles March 13, 1934.

Respondents hold a certificate of public convenience and necessity issued by the Commission on December 2, 1929 (Decision 21252 on Application 15535), authorizing them to store a limited

number of commodities. Pursuant thereto they filed and made effective January 1, 1930, their Warehouse Tariff No. 1, C.R.C. No.

1. ¹ It developed, however, in subsequent proceedings of which this investigation is an outgrowth, that the storage they performed was not confined to the commodities embraced in their certificate or included in their lawfully filed tariff.²

The record in this proceeding shows that on January 19, 1934, in addition to commodities covered by their limited certificate and provided for in their lawfully filed tariff, respondents had in their warehouse lots of cotton, kapok, nails, rugs and/or carpeting, paraffine, thermometers, wine and yarn.³ Storage charges were regularly assessed on the nails, yarn, thermometers and paraffine, but not, in so far as the record shows, on any of the other commodities the storage of which is unauthorized.

¹ This tariff is still in effect. It names rates on automobile tires, beverages, chemicals, canned fruits, green coffee, coffee urns, insulators, machinery, oils, grease, pipe, soap powder, radios, steel dump bodies, and toys.

² Decision 25986 of May 29, 1933, In the Matter of the Application of Pacific Transportation Co. for authority to warehouse additional commodities, 38 C.R.C. 779, recites that applicant, Pacific Transportation Co., the respondent here, admitted that it stored articles for which it held no certificate. It admonishes the Pacific Transportation Co. that unless the practice is discontinued immediately the Commission will take such further action as the circumstances justify. Decision 26181 of July 24, 1933, In Re Investigation of Allen Bros. et al., 38 C.R.C. 883, states that Pacific Transportation Co. stored for compensation numerous articles for which it had no tariff provision. The order directs "that respondents O.C. Butler-E.A. Grundy, copartners, operating under the fictitious name of Pacific Transportation Co., immediately cease and desist and thereafter abstain from storing for compensation any article (other than second-hand household goods or fixtures and other than merchandise sold but retained in the custody of the vendor) not authorized by their certificate of convenience and necessity or provided for in their lawfully filed tariff."

³ Between January 19, 1934, and March 9, 1934, the cotton, kapok, nails, rugs and/or carpeting, and wine were removed.

Respondents testified that they did not solicit or hold themselves out to store any commodities not embraced in their certificate. The cotton, kapok, rugs and/or carpeting and wine, they stated, were held in the warehouse for but a very short time and were there incidental to a trucking service performed by a corporation in which they are interested. The nails, thermometers and yarn have been in the warehouse for approximately two years. They were previously hauled by the trucking company and are said to have been in storage through the activities of a former partner with whom respondents have been in litigation and whose actions they attempt to repudiate. In each instance their removal has been directed. The paraffine is held under a lease arrangement extending to the lessee the use of 240 square feet of floor space at a monthly rental of \$24.00. Negotiable receipts are not issued on any of the articles stored.

Respondents' warehouse operations are definitely circumscribed by their certificate of convenience and necessity and are separate and distinct from the trucking operations heretofore referred to. There is no reason why the warehouse company should hold either for or without compensation articles for which the trucking company has no immediate disposition. Unless the identity of each activity is maintained in such a manner that there can be no doubt as to whether a shipment is in storage or in transit, respondents should be denied the right to conduct these businesses from the same address. Nor does the contractual arrangement covering paraffine justify its storage. The space it occupies is not enclosed and the commodity is in no way kept apart from the other merchandise in the warehouse, excepting that it is separately piled. The contract is so worded that the lessee can break it at any time and the lessor upon ten days' notice. It seems clear from this record that this

is a device whereby it is hoped to circumvent the limitations of respondents' certificate.

Respondents on two different occasions have been admonished against storing unlawfully, and the Commission would undoubtedly be fully justified in revoking their operating right. Their business however is small and has been beset with numerous hardships. They have made some effort to have the merchandise in question removed from storage, and it is not shown that since the Commission's admonition they have accepted any articles other than the paraffine, not covered by their certificate. Under the circumstances the revocation of their operating right may be somewhat harsh. The Commission should give them one more opportunity to clear their warehouse of commodities not covered by their certificate, and should attach to its order such requirements as may be necessary to assure strict enforcement thereof. Upon proof of any further violation their certificate should be revoked forthwith.

The following form of order is recommended:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that respondents O. C. Butler and H. A. Grundy, doing business under the fictitious firm name of Pacific Transportation Company, be and they are hereby required and directed:

1. On or before the effective date of this order, to cease and desist and thereafter abstain from warehousing directly, or indirectly, by any method or device, articles not covered by its certificate of public convenience and necessity (other than second-

hand household goods or fixtures and other than merchandise sold but retained in the custody of the vendor, for which a certificate is not necessary);

2. On or before May 1, 1934, and every three months thereafter for a period of one year to furnish the Commission, under oath, a complete report of all storage performed during the previous quarter, specifying therein the nature and quantity of the commodities and the rates and charges assessed and collected thereon.

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

The effective date of this order shall be thirty (30) 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 ^{19th} ~~24th~~ day of March, 1934.

C. Henry
Leon A. Henry
A. V. A. C. C.
M. B. Harris
W. H. H. H.
Commissioners.