

Decision No. 30012

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,
contracts, practices and operations,
or any of them, of J. C.
HORNALL, doing business under the
name and style of ARBUCKLE WAREHOUSE
and DEPUE WAREHOUSE COMPANY, a corporation.

ORIGINAL

Case No. 4231.

George R. Freeman, for DePue Warehouse Company,
Respondent.

Hudson Ford, for J. C. Hornall, Respondent.

L. A. Bailey, for California Warehousemen's
Association, Intervener.

William Dwyer, for Sacramento River Warehouse
Company, Intervener.

BY THE COMMISSION:

O P I N I O N

This proceeding was instituted upon the Commission's own motion for the purpose of inquiring into the rates, rules, regulations, charges, contracts, practices and operations of J. C. Hornall, owning and operating the Arbuckle Warehouse at Arbuckle, and DePue Warehouse Company, a corporation, in connection with the operation of its warehouse at College City.

A public hearing was had before Examiner Austin at Williams on July 12th, 1937, when evidence was introduced, the matter submitted, and it is now ready for decision. Respondents appeared, Mr. Hornall personally, and DePue Warehouse Company through its officers, both being represented by counsel. Sacramento River Warehouse Company, engaged as a public utility in operating warehouses at various points in the Sacramento Valley, intervened in the

proceeding and participated in the hearing. The California Warehousemen's Association also appeared as an intervener.

The evidence presented at the hearing may thus be summarized:

Respondent, DePue Warehouse Company, completed the College City Warehouse during the latter part of 1936 and in October of that year commenced operations by receiving and storing therein for compensation some 23,000 bags of rice, a service for which this respondent then had provided no rate in the tariffs it had filed with this Commission. Through its agents, it solicited the grain storage business of farmers whose farms were in the vicinity of College City at a quoted rate of \$1.25 per ton for the storage season. Failing to obtain the share of the business or a promise thereof, in the quantity to which it felt it was entitled by reason of its proximity to the grain fields, this respondent, in an attempt to attract business, established at the College City Warehouse on one day's notice a grain rate of \$1.00 per ton which it published in its tariff filed with this Commission, effective June 24, 1937, as the initial rate applicable to the storage of grain in the College City Warehouse.

The principal competitor of the College City Warehouse for grain and rice storage is the Arbuckle Warehouse conducted by respondent Hornall, which has been in operation for many years. The Arbuckle Warehouse, which is about three miles from College City, obtains much of the grain stored therein from the area surrounding College City.

The DePue Warehouse Company operates a number of other warehouses in the Sacramento Valley. The rate on grain at all of these warehouses is at least \$1.25 per ton and in some instances is as high as \$1.40 per ton. Other warehouses in the Sacramento

Valley, including those operated by intervener Sacramento River Warehouse Company, have a rate for the storage of grain of at least \$1.25 per ton. The Arbuckle Warehouse grain rate is \$1.25 per ton, but respondent Hornall has applied to the Commission for permission to publish on less than statutory notice a rate of \$1.00 per ton on grain to meet the rate of the College City Warehouse. Action on this application was withheld at Hornall's request pending the outcome of this proceeding. Hornall asserted that competition justified the proposed rate, although, in his judgment, it would not be compensatory.

J. W. Osgood, Vice-President and General Manager of the DePue Warehouse Company, testified that the operating conditions and the services offered and rendered were almost identical at all of the DePue warehouses. He conceded that the grain rate of \$1.00 per ton charged for storage at College City was not compensatory. This rate, however, was inaugurated in an effort to get business at any cost, in the belief that it was better to have a full warehouse at \$1.00 per ton than a comparatively empty warehouse at \$1.25 per ton. He stated that in his opinion discriminatory or preferential practices were pursued by respondent Hornall, because notwithstanding the longer distance from the grain fields around College City to Arbuckle than to the College City Warehouse, and the higher storage rate in effect at Arbuckle, Hornall was still able to secure the business. Mr. Osgood testified that the rate of \$1.25 per ton on grain in effect at many of the DePue warehouses was not too high, but that it was sufficient under present operating conditions. However, he stated it seemed probable the cost of operation would be increased because of the likelihood of wage adjustments and greater expense for necessary materials.

The evidence showed that the transportation charges assessed by contract carriers against the farmers for transporting grain from their fields was the same whether it was hauled to College City or

to Arbuckle, regardless of the difference in distance.

The record shows it was the practice of both respondents to sell bags to the farmers who stored grain in their respective warehouses at College City and Arbuckle at a lower price than to farmers who did not store grain with them. Generally, bags were not sold at less than cost.

Mr. Hornall admitted that several years ago he charged one farmer less than his published tariff rate for storing grain, but said he had not done so since and would not do it again. The evidence showed this respondent had lent money to some farmers in the vicinity, but he denied he had done so in order to obtain storage business. Although Hornall is engaged in various business enterprises, he neglected to include non-utility business in his annual report to this Commission because, so he stated, he did not know it was necessary.

From the record in this case, it appears that if the rate of \$1.00 per ton for the storage of grain at the College City Warehouse were permitted to continue in effect, then the competition between Arbuckle and College City might justify the institution of a \$1.00 rate on grain at Arbuckle. If the \$1.00 rate on grain were established at Arbuckle, competition would probably be urged as sufficient justification for a similar reduction at the County Line Warehouse and at the Berlin Warehouse of the DePue Company. This process could and it is reasonable to suppose would continue throughout the Sacramento Valley, thereby resulting in a disastrous rate war which would unsettle the whole warehousing business. Mr. Osgood testified that if the \$1.00 rate were established in all of the DePue warehouses, that company would ultimately become bankrupt.

It is obvious that the warehouses perform a valuable and necessary service for the farmers, which should not be destroyed. Hence, their rates, which are required by the statute to be just,

reasonable and sufficient (Public Utilities Act, Section 32), should be at least compensatory.

The rate of \$1.00 per ton for the storage of grain at the College City Warehouse is admittedly noncompensatory. The uncontradicted evidence shows that the operating conditions are practically identical with those of other Sacramento Valley warehouses. The prevailing rate of such other warehouses is \$1.25 per ton and in a few instances slightly higher. The evidence indicates that on grain the rate of \$1.25 per ton is a minimum reasonable rate under present operating conditions.

The evidence adduced at the hearing indicates that both the DePue Warehouse Company and Mr. Hornall have been lax in certain respects in conducting their respective warehouses. Over a period of several months, respondent DePue Warehouse Company engaged in the storage of property at its College City Warehouse without first having published and filed with the Commission rates applicable to this business. This applies particularly to the storage of rice for which no rate was ever filed. Because of these derelictions in duty the Commission's attorneys will be directed to institute proceedings against this respondent to recover appropriate penalties.

In the instant proceeding the Commission is concerned primarily with protecting the public, the respondents, and other warehouse companies engaged in business in the Sacramento Valley from the consequences of a destructive rate war. Coupled with this, however, is the necessity for compelling the observance by these utilities of their legal obligations.

As we have stated, respondent DePue Warehouse Company published with the Commission, as its initial rate applicable at the College City Warehouse, a grain rate of \$1.00 per ton. This respondent, however, had previously accepted rice for storage at that warehouse

under rates which were not shown in its published tariffs; in fact, no rate on that commodity had been published at the date of the hearing. Therefore, the storage of grain to which the filed rate of \$1.00 per ton applied did not actually constitute the initial storage in which it had engaged. Had the rate on rice been published as it should have been, respondent could not lawfully have filed the grain rate except upon thirty days' notice, as provided by Section 15, Public Utilities Act, and it was not justified in filing this grain rate upon one day's notice, as it undertook to do. This rate will therefore be cancelled. We shall require this respondent to publish and file immediately a new tariff cancelling its existing tariff and establishing therein a season rate of not less than \$1.25 per ton on grain in bags.

Based upon the evidence offered at the hearing of this matter the Railroad Commission of the State of California hereby finds as facts that the rate of \$1.00 per ton on grain published in the tariff of respondent DePue Warehouse Company applicable to its College City Warehouse is insufficient, unreasonably low and noncompensatory; that a minimum reasonable and sufficient rate therefor is \$1.25 per ton on grain; that DePue Warehouse Company should be directed to establish immediately a rate of this volume; that between October, 1936, and July 12, 1937, respondent DePue Warehouse Company was engaged, as a warehouseman, as defined in Section 2 $\frac{1}{2}$, Public Utilities Act, in conducting a warehouse at College City for the storage of rice for the public generally for compensation without first having published and filed with this Commission any schedule or schedules showing the rates, tolls, rentals, charges and classifications charged and collected or to be charged or collected for such storage or service; that said respondent DePue Warehouse Company failed and neglected during said period to file with the Railroad Commission any

tariff or tariffs providing rates for the storage of rice in its warehouse at College City and it should be required to do so at once.

It further appears that respondent Hornall in the operation of his warehouse at Arbuckle has been careless in at least one instance in failing to assess his correct tariff rate for the storage of grain. He will be expected to comply strictly with his filed tariff rates in the future, but since the obligation to observe the tariff rates is founded upon the provisions of the Public Utilities Act, it is not necessary nor desirable that the order herein contain any direction to this effect.

The Commission will maintain a close watch on the operation of these two warehouses to assure full compliance by respondents with the terms of this decision and of the provisions of the Public Utilities Act.

O R D E R

A public hearing herein having been held, evidence received and the matter duly submitted, and the Commission now being fully advises in the premises:

IT IS HEREBY ORDERED that respondent DePue Warehouse Company, a corporation, be and it is hereby ordered and directed to publish and file on not less than one (1) day's notice to the Commission and to the public and not later than ten (10) days from the effective date of this order in a reissue of its Country Warehouse Tariff No. 9, C.R.C. No. 9, applicable at College City, a rate of \$1.25 per ton for season storage of whole grain in bags in lieu of the existing rate of \$1.00 per ton for said season storage, and a rate or rates for the storage of rice.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this 9th day of

August, 1937.

Frederick R. Allen
Robert W. Allen
7. Wm. L. Wiley
Commissioners.