

Decision No. 30012

ORIGINAL

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) Case No. 4231
operations, or any of them, of)
J. C. HORNALL, doing business under)
the name and style of ARBUCKLE)
WAREHOUSE and DE PUE WAREHOUSE)
COMPANY, a corporation.)

CHARLES S. WHEELER, Jr., and REGINALD L. VAUGHAN,
for DE PUE WAREHOUSE COMPANY,
Respondent;

HUDSON FORD, for J. C. Hornall, Respondent;

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

BY THE COMMISSION:

SUPPLEMENTAL OPINION

This proceeding originally was initiated by the Commission, on its own motion, to inquire into the rates, rules, regulations, charges, contracts, practices, and operations of both J. C. Hornall, the owner and operator of the Arbuckle Warehouse, at Arbuckle, and De Pue Warehouse Company, a corporation, in respect to its warehouse at College City.

Following a public hearing at Williams, on July 12, 1937, the Commission, on August 9, 1937, rendered its Decision No. 30012,

requiring respondent DePue Warehouse Company 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 that order, a rate, applicable at College City, of \$1.25 per ton for season storage of whole grain in bags, in lieu of the rate then existing of \$1.00 per ton for such storage, and also requiring said respondent to publish a rate or rates for the storage of rice at this warehouse. Subsequently, DePue Warehouse Company published and filed the rates prescribed by the order.

At the first hearing, the evidence indicated that each of the respondents, DePue Warehouse Company and J. C. Hornall, had failed in many respects to observe the requirements of the Public Utilities Act relating to the publication of rates and the collection of proper charges. In its previous opinion the Commission thus summarized the testimony bearing upon this situation:

"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. "

Desiring to avoid the imposition of penalties, respondent DePue Warehouse Company has since brought to the Commission's attention certain facts which, it asserts, tend to excuse its violation of the law. In order that it might be fully possessed of all the facts and that no injustice should result, the Commission, by its order dated December 17, 1937, reopened this proceeding,

vacated its previous decision, and set the matter for public hearing before Examiner Austin at San Francisco on December 21, 1937.

At the time appointed, DePue Warehouse Company appeared through counsel, and introduced further evidence in explanation of its failure to file a tariff before embarking upon the operation of the warehouse at College City.

Since it now appears from the further showing made by said respondent that this was due, if not to oversight, then, at the utmost, to excusable neglect on the part of Mr. Osgood, its Vice-President and General Manager, rather than to any deliberate design to disregard the provisions of the statute, the Commission is disposed, in the light of the present state of the record, to view, with greater equanimity than before, the actions of this respondent. No shipper has suffered any discrimination, and this respondent has gained no profit because of its failure to publish the rates. Moreover, the rate situation which prompted the initiation of this proceeding has been fully adjusted and corrected, thus insuring continued stabilization of the rates; and respondent J. C. Hornall, pursuant to Decision No. 30140 on Applications Nos. 21451 and 21455, dated September 20, 1937, has acquired from respondent, DePue Warehouse Company, the latter's warehouse at College City. Therefore, the direction that a penalty suit be instituted will be withdrawn.

O R D E R

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

IT IS HEREBY ORDERED that that portion of Decision No. 30012, dated August 9, 1937, made and rendered in the above entitled proceeding, consisting of the following language appearing on page 6 of the opinion therein, viz.:

"Because of these derelictions in duty the Commission's attorneys will be directed to institute proceedings against this respondent [i.e., DePue Warehouse Company] to recover appropriate penalties,"

be and it is hereby stricken from said decision.

IT IS HEREBY FURTHER ORDERED that the direction to the Commission's attorneys, contained in said decision, requiring them to institute proceedings against respondent DePue Warehouse Company to recover appropriate penalties, be and it is hereby withdrawn and rescinded.

IT IS HEREBY FURTHER ORDERED that in all other respects said Decision No. 30012 be and it is hereby reinstated and re-adopted, and that, as so modified, it shall be and remain in full force and effect.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this 2nd day of

March, 1938.

William H. Hays
Frank E. Hays
Frank E. Hays
Frank E. Hays
Frank E. Hays
COMMISSIONERS.