

Decision No. 32114

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation by)
the Commission upon its own motion into)
the rates, rules, regulations, charges,)
allowances, contracts, practices and)
operations of all common carriers as)
defined in the Public Utilities Act of)
the State of California, as amended, and)
highway carriers as defined in Chapter)
223, Statutes of 1935 of the State of)
California, as amended, relating to the)
pickup and delivery of property incident)
to line haul transportation.)

Case No. 4403

ORIGINAL

CRAEMER, Commissioner:

SECOND INTERIM OPINION AND ORDER

By interim order dated June 27, 1939 (Decision No. 32114) in the above entitled proceeding, common carriers were directed to file with the Commission copies of contracts executed by them with contract or city carriers for the performance of pickup or delivery services, and of subcontracts executed by said contract or city carriers with other carriers for the same services. The requirement was made that these copies of contracts and subcontracts show (1) the permit number of the carrier with which the contract was executed, (2) a detailed description of the service agreed to be performed thereunder, and (3) the rate of compensation to be paid. Common carriers were also directed to cancel all contracts for the performance of pickup or delivery services executed with persons or corporations acting as shippers or shippers' agents, which provided for rates of compensation different from those paid shippers generally for the same services.

The operation of the foregoing interim order was stayed by the filing by Southern Pacific Company and its affiliates of a petition for rehearing. In this petition it was alleged (1) that

the interim order would prejudice common carriers in competing with radial highway common carriers and highway contract carriers, (2) that common carriers did not have the custody of the subcontracts and, hence, could not file copies of them, (3) that the order could not be complied with in instances where contracts already in effect did not contain the information specified, (4) that the requirement that contracts be filed not less than one day prior to their effective date would prevent common carriers from making emergency arrangements for the performance of pickup or delivery services, (5) that the order was unlawful to the extent that it required cancellation of certain existing contracts prior to their expiration dates, and (6) that the order was too far-reaching to the extent it required cancellation of contracts executed with persons or corporations who act as shippers' agents only occasionally.

At an adjourned hearing held in this proceeding in Los Angeles on September 14, 1939, Southern Pacific Company, in behalf of itself and its affiliates, proposed certain modifications of the interim order which, it agreed, would remove the objections set forth in the petition for rehearing. It suggested that the requirement for the filing of contracts and subcontracts be directed against radial highway common and highway contract carriers as well as common carriers; that common and highway carriers be directed to amend their principal contracts in such a manner as would insure the filing of subcontracts by the principal contractors; that permission be given to file memoranda containing the specified information in lieu of copies of the contracts; that the time within which new contracts are to be filed be extended to five days from the date of their execution; that contracts executed with shippers or shippers' agents in their capacity as such be declared cancelled by the

Commission; and, lastly, that draymen be required to certify that in transporting property from and to common carriers' depots they were not acting for the shipper or his agent. Counsel for certain warehouse interests asked that it be made clear that draymen affiliated with warehouses were not to be considered as acting in a capacity of shipper or shipper's agent where the revenue received from common carriers was retained by the drayman without direct or indirect allowance or rebate to the shipper. Otherwise, no objection to the proposed modifications was made.

A representative of California Van & Storage Association requested that contracts for the picking up or delivering of uncrated used household goods be exempted from the requirements of the interim order. He asserted that this transportation was specialized in nature and contended that the carriers' operating practices in connection therewith should be considered separately in Cases Nos. 4086 and 4099, which embrace household goods transportation exclusively.

A representative of Los Angeles Warehousemen's Association objected to the provision of the interim order that the contracts would not be open to public inspection. He contended that they should be open to inspection by carriers in the territory engaged in competitive transportation.

Upon consideration of the allegations of the petition for rehearing and of the further evidence received at the adjourned hearing in this proceeding, I am of the opinion that the petition for rehearing should be denied but that the interim order heretofore issued should be vacated and set aside and a second interim order issued incorporating in substance the proposed modification. I am not of the opinion, however, that for the present the contracts should be made subject to inspection by competing carriers,

Therefore, good cause appearing,

IT IS HEREBY ORDERED

1. That the petition for rehearing hereinbefore referred to be and it is hereby denied but that Decision No. 32114 of June 27, 1939, in this proceeding be and it is hereby vacated and set aside.

2. That all common carriers as defined in the Public Utilities Act and all highway carriers as defined in the Highway Carriers' Act be and they are hereby ordered and directed to file with the Commission within thirty (30) days after the effective date of this order two (2) copies of all existing written contracts for the performance of pickup and delivery or pickup or delivery services incidental to a line-haul movement (exclusive of contracts relating to the picking up or delivering of uncrated used household goods or uncrated property as defined in Decision No. 32325 in Case No. 4086) or two (2) copies of a verified written statement showing the salient features thereof, such copies of contracts or statements to show the permit number of the carrier with which the contract was executed, a detailed statement of the services to be performed by the contractor thereunder and the rate of compensation to be paid.

3. That all common carriers and highway carriers shall reduce to writing and file with the Commission in like manner and within like time all existing oral contracts for the services described in Ordering Paragraph No. 2 hereof.

4. That all future revisions, amendments or cancellations of contracts so filed and all new contracts for services described in Ordering Paragraph No. 2 hereof shall be executed in writing and two (2) copies thereof filed with the Commission within five (5) days after their execution.

5. That all common carriers and highway carriers shall require the carriers with whom they contract (hereinafter referred to as principal contractor) to file with the Commission within thirty (30) days after the effective date of this order, in like manner as the principal contracts are required to be filed by common carriers, two (2) copies of each written subcontract executed between such principal contractor and other carriers, which provide for the rendition of services covered by such principal contract; that where such subcontract is oral such common carriers and highway carriers shall require that it be reduced to writing and copies thereof filed with the Commission in like manner and within like time as principal contracts are required to be filed by common carriers; and that in the event of the failure of the parties to such subcontract to comply with such requirement the common carrier or highway carrier shall take immediate steps to cancel or amend such principal contract so as to effectuate the filing of such written subcontracts with the Commission as herein provided.

6. That all principal contracts or subcontracts of such common carriers and highway carriers (exclusive of contracts relating to the picking up or delivering of uncrated used household goods or uncrated property as defined in Decision No. 32325 in Case No. 4086) with other carriers, providing for the payments of compensation for the performance of pickup and delivery or pickup or delivery services incidental to line-haul movements, are hereby declared unlawful and are hereby terminated, cancelled and annulled, to the extent that they apply to the handling of shipments as to which the principal contractor or the carrier with whom it subcontracts is acting as shipper or shipper's agent; that no common or highway carrier shall hereafter enter into any contract for such services with respect to shipments as to which the contractor is acting as the shipper or agent of the shipper; and that all future contracts which common and

highway carriers may execute for pickup or delivery services expressly shall be made inapplicable to shipments handled by the contractor or subcontractor while acting in the capacity of shipper or shipper's agent.

7. That a carrier owned and operated by or affiliated or connected with a bailee for-hire or a public utility warehouseman is not to be considered as acting as shipper or shipper's agent in performing pickup and delivery or pickup or delivery services when the carrier renders such service under a contract or subcontract with or for common carriers or highway carriers and the revenue for these services is retained by said contracting carrier without direct or indirect allowance or rebate to the shipper.

8. That every common carrier or highway carrier as a condition precedent to the payment to a principal contractor of any compensation for services as described in Ordering Paragraph No. 2 hereof, different in amount from that paid shippers or consignees generally, for similar services, shall require from the principal contractor a certificate upon all statements rendered for services under such principal contract to the effect that, in handling each of the shipments represented by items on such statement, such principal contractor or the carriers with which it subcontracted did not handle the respective shipments in the capacity of shipper or shipper's agent and that the shipper has no interest in the compensation which the principal contractor or subcontractor claims for such services; and that for the handling of any item with respect to which the principal contractor cannot so certify such common carrier or highway carrier shall limit the compensation to its published tariff rate or other rate authorized to be paid shippers or consignees generally for similar services.

9. That no copy of any contract, subcontract or verified written

statement filed with the Commission pursuant to the terms of this order shall be subject to public inspection unless the Commission shall so order.

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 Los Angeles, California, this 26th day of September, 1939.

Ray DeWahne

Ray R. Rice

W. Baker

Justus J. Casner
Commissioners