

Decision No. 34645**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on
 the Commission's own motion into the
 vessel common carrier operations,
 rates, charges, contracts, and practices
 of JOHN W. MYER, an individual, doing
 business as JOHN W. MYER TRANSPORTATION
 COMPANY.

Case No. 4588

CRAEMER, COMMISSIONER:

OPINION AND ORDER

By Decision No. 28,283, dated October 14, 1935, in Case No. 3824, as supplemented by Decision No. 29778, dated May 24, 1937, in Cases Nos. 3824 and 4012, respondent was found to possess an operative right as a common carrier by vessel for the transportation of potatoes and onions from Delta ⁽¹⁾ points to Stockton, California, and was directed by the latter decision to reissue or amend his tariffs so as to conform to the operative right as restricted and described therein.

This proceeding was instituted by the Commission on its own motion for the purpose of determining whether or not

(1)

See footnote No. 6, Decision No. 28283, in Case No. 3824, reported in 39 C.R.C. Reports, page 429, at page 435, for description of the term "Delta" points.

respondent's operative right had been abandoned by reason of his failure since on or about July 28, 1938, to conduct service thereunder, and if so, whether or not the right should be revoked and annulled and his tariffs ordered cancelled, pursuant to Section 50(d) of the Public Utilities Act (Stats. 1915, Ch. 91, as amended).

A public hearing was held at Stockton on September 6, 1941. The record shows that while both the Order Instituting Investigation and notice of the hearing were duly served upon respondent, he did not appear.

From the evidence of record it appears that prior to the month of December, 1937, respondent operated a tug, tow-boat, and barge in the transportation of potatoes and onions between the points aforementioned; that in the latter part of 1937 he sold the tow-boat and tug to one Micheletti, and that on or about December 8, 1937, his barge caught fire and became a total loss. Testimony adduced from Elmer Gormsen, an employee of the Colberg Boat Works of Stockton, and who has known respondent for the past twenty years, together with evidence elicited from Inspector B. J. Cabhart of the Commission's staff, conclusively established the fact that respondent has not rendered service of any kind since the transfer and loss of his equipment, and, furthermore, that he does not intend to resume service. The evidence further shows that although several times requested by the Commission to amend his tariff to conform to his operative right, he has steadfastly refused to do so.

Upon consideration of all of the evidence of record I am of the opinion and find that John W. Myer, doing business as

John W. Myer Transportation Company, has abandoned the business of a common carrier by vessel between the points and with respect to the commodities covered by his said operative right, and that consequently such operative right should be revoked and all tariffs on file with the Commission in connection therewith cancelled.

O R D E R

Based upon the evidence received at the public hearing had in the above-entitled proceeding and upon the conclusion and findings contained in the preceding opinion,

IT IS HEREBY ORDERED that the operative right heretofore held by John W. Myer, doing business as John W. Myer Transportation Company, as described and restricted in and by Decision No. 28283, dated October 14, 1935, in Case No. 3824, as supplemented by Decision No. 29778, dated May 24, 1937, in Cases Nos. 3824 and 4012, be and the same is hereby revoked and annulled, and that all tariffs on file with the Commission in connection therewith are hereby cancelled.

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.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, October 7th 1941.

[Handwritten signatures of three commissioners]

Commissioners.