

ORIGINAL

Decision No. 35157

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
G. W. THOMAS DRAYAGE AND RIGGING)
COMPANY for a certificate relative)
to exemption, under Section 204(a))
(4a), Part II of the Interstate Com-)
merce Act, of its operations as a)
motor carrier engaged in transporta-)
tion of interstate or foreign commerce)
solely within the State of California)
from compliance of provisions of said)
Act.)

Application No. 24791

DOUGLAS A. NYE and CLAIR MacLEOD, for G. W. Thomas
Drayage & Rigging Company, Respondent.

REGINALD L. VAUGHAN, for Lewis L. Fittinghoff,
Interested Party urging rescision.

BEROL & HANDLER by Marvin Handler, for R. N. B.
Converse, doing business as Converse Truck-
ing Service, and for Welles, Inc., Interested
Parties, urging rescision.

DOUGLAS BROOKMAN, for Bigge Drayage Company and for
Farnsworth & Ruggles, Interested Parties
urging rescision.

JOHN E. HENNESSY, for Pacific Southwest Railroad
Association, Interested Party urging rescision.

MARTIN COLVIN, for Pacific Crane & Rigging, Inc.,
and for B. W. Belyea, doing business as
Belyea Truck Company, Interested Parties.

BY THE COMMISSION:

O P I N I O N

This proceeding, instituted by the Commission upon its
own motion, is an inquiry concerning interstate motor vehicle
transportation performed by the G. W. Thomas Drayage & Rigging

Company, a corporation, hereinafter called respondent, to determine whether the certificate of opinion,⁽¹⁾ heretofore issued by this Commission to respondent under the provisions of Section 204(a) (4a) of Part II of the Interstate Commerce Act, should be rescinded, altered or amended.

Public hearings were had at San Francisco before Examiner Loughran on March 3 and 6, 1942, when evidence was offered, the matter submitted, and it is now ready for decision.

Respondent is principally engaged in the business of transporting intrastate shipments⁽²⁾ consisting of large heavy objects⁽³⁾ on special trucking equipment, including heavy duty low bed trucks and heavy duty trailers. In connection with such transportation it is necessary to remove such objects from difficult points of origin, load and unload the same onto and off of equipment and then deliver them to points of destination which are sometimes located in high buildings many floors above the street level. In performing this feature of its service, which it characterizes as rigging, respondent employs special hoisting equipment consisting of rigging wenchers and truck cranes. Respondent contends that 95 per cent of its annual income is derived from its rigging service and 5 per cent from its transportation service.

(1) This certificate is in the form of a Commission Resolution. Resolution No. 2600, dated December 16, 1941.

(2) Respondent's intrastate service is performed under authority of city carrier, radial highway common carrier and contract carrier permits issued by the California Railroad Commission.

(3) Transformers, generators, heavy electrical equipment, wire cable, safes, vaults, tanks, and similar objects.

In the course of its business, respondent performs some interstate transportation and this Commission in its said certificate stated that, in its opinion, this traffic should be exempted from regulation under the provisions of Section 204(a) (4a), Part II of the Interstate Commerce Act. The said certificate was issued ex parte upon affidavits filed with respondent's application. Additional evidence concerning the nature, character and quantity of respondent's interstate business was taken in this proceeding which, in our opinion, requires that said certificate be rescinded.

Respondent's traffic manager testified that interstate transportation comprises a very small portion of respondent's business, and that prior to 1941 the company had not transported more than ten interstate shipments in a single year. He stated that in 1941 the interstate traffic had increased to approximately 100 shipments. He attributed this to the existence of an unusually large movement of heavy machinery from eastern points to defense industries located near San Francisco. He pointed out that without an exemption or other authority from the Interstate Commerce Commission respondent could not lawfully handle such traffic, and, when it did so, it exposed itself and its shippers to possible prosecution for violation of the provisions of Part II of the Interstate Commerce Act. This traffic, he said, could be handled by respondent without fear of prosecution if it were exempted from regulation under the provisions of Section 204(a) (4a) of the Interstate Commerce Act.

(4)

Operative rights covering the same general territory in

(4) During the course of the hearing herein respondent requested that the certificate of opinion, which is state-wide, be amended so as to cover only those shipments transported between points within this State north of a line drawn from the Pacific Ocean in an easterly direction through Monterey, Salinas, Mendota, Fresno and Independence to the Nevada State Line.

which respondent seeks to be exempt from regulation have heretofore been granted by the Interstate Commerce Commission to other carriers⁽⁵⁾ by which they are authorized to engage in business as interstate common carriers of heavy machinery and like commodities by motor vehicle. These carriers have tariffs on file with the Interstate Commerce Commission specifying rates and charges for such services. In addition, they are required to comply with the insurance and safety regulations prescribed by said Commission relative to operations of this character.

Respondent only seeks exemption for transportation which involves rigging, and it contends that in performing such service it will not be competing with the regulated carriers. This is contradicted by the record. R. N. B. Converse, who operates a heavy hauling service in Stockton and San Francisco under authority granted to him by the Interstate Commerce Commission, testified that he was required to render rigging service in connection with such transportation. He stated, in effect, that carriers engaged in this business compete with one another for business requiring rendition of both rigging and transportation service, and that both services are usually involved in heavy hauling jobs.

Respondent, by its application herein, indicated that exemption was sought primarily for the purpose of protecting itself and its shippers in the event that it should unknowingly transport interstate shipments. The evidence in this proceeding establishes that respondent does not seek the exemption for this purpose alone, but also because it desires to transport all interstate business tendered to it. Its traffic manager testified that if the exemption were granted he would consider that the company then had the right to transport any profitable interstate

(5) R. N. B. Converse; Welles, Inc.; Farnsworth & Ruggles; E. W. Bigge; and Lewis L. Fittinghoff.

shipment of the kind covered by the exemption. This attitude, of course, places respondent in direct competition with the interstate carriers lawfully operating in this field under authority granted to them by the Interstate Commerce Commission.

From the record in this proceeding it now appears that respondent intends, on authority of an exemption under said Section 204(a) (4a), to engage in the interstate transportation of heavy commodities in competition with carriers already in this field operating under the regulations prescribed by the Interstate Commerce Act. The Commission's said certificate of opinion could procure such an exemption for respondent prior to any action by the Interstate Commerce Commission. ⁽⁶⁾ This exemption should not, in our opinion, become effective until the Interstate Commerce Commission has fully considered the matter and, for this reason, said certificate should be rescinded.

After a full consideration of all the facts of record we are of the opinion and find that the certificate of opinion heretofore issued to respondent by Commission Resolution No. 2600, dated December 16, 1941, should be rescinded.

(6) Section 204(a) (4a) of Part II of the Interstate Commerce Act provides in part:

"Where an application is made in good faith for the exemption of a motor carrier under this subparagraph, accompanied by a certificate of a State board of the State in which the operations of such carrier are carried on stating that in the opinion of such board such carrier is entitled to a certificate of exemption under this subparagraph, such carrier shall be exempt from the provisions of this part beginning with the sixtieth day following the making of such application to the Commission unless prior to such time the Commission shall have by order denied such application, and such exemption shall be effective until such time as the Commission, after such sixtieth day, may by order deny such application or may by order revoke all or any part thereof as hereinbefore authorized."

O R D E R

A public hearing having been had in the above-entitled proceeding, evidence having been received, the matter having been duly submitted and the Commission now being fully advised in the premises:

IT IS HEREBY ORDERED that the certificate of opinion under the provisions of Section 204(a) (4a) of Part II of the Interstate Commerce Commission Act, heretofore issued to respondent by Commission Resolution No. 2600, dated December 16, 1941, be and the same is hereby rescinded.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 24th day of March, 1942.

Justin F. Cramer
Ray H. Riley
T. H. Baker
Francis D. Havens
Richard R. Baker
COMMISSIONERS