

Decision No. 37796

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investigation, on) the Commission's own motion, into the) operations, rates, charges, contracts) and practices, or any thereof, of LYON) VAN & STORAGE COMPANY, a corporation.)

Case No. 4296

C. P. VON HERZEN, attorney for respondent.

BY THE COMMISSION:

OPINION AND ORDER ON REHEARING

On February 21, 1938, the Commission, on its own motion, issued an order instituting an investigation into the operations of Lyon Van & Storage Company, a corporation, respondent herein, for the purpose of determining whether said operations were in violation of Section 50-3/4 of the Public Utilities Act, and, more specifically, whether or not said respondent had been engaged in the transportation of property as a highway common carrier between San Diego, Coronado, La Mesa, and National City, on the one hand, and Los Angeles Pasadena, Long Beach, Glendale, Alhambra, and Hollywood, on the other hand, without having secured from the Railroad Commission a certificate of public convenience and necessity. The order further directed that respondent show cause why it should not be required to cease and desist from conducting such operations unless and until it shall have secured from the Commission a certificate of public convenience and necessity therefor.

Hearings were held in Los Angeles and San Diego, evidence was received, briefs filed, and the matter duly submitted.

On July 9, 1940, the Commission issued its Decision No. 33316, finding that respondent was operating in violation of Section 50-3/4 of the Public Utilities Act in that it was operating as a highway common carrier between the points hereinabove mentioned without first having secured a certificate of public convenience and necessity or without prior right authorizing such operation. The order in said decision required respondent to cease and desist from such operation until it shall have secured a certificate of public convenience and necessity.

On July 19, 1940, respondent filed a petition for rehearing, which had the effect of staying the Commission's order. On April 9, 1941, respondent filed a petition for dismissal of the entire proceeding on the ground that the issues in controversy had become moot since the operation complained of had been discontinued. Under these circumstances the Commission made its order of March 13, 1945, setting the matter down for rehearing before Examiner Gannon at Los Angeles on April 5, 1945.

No one appeared at the rehearing except the attorney for respondent and the General Traffic Manager of respondent company, who is also Vice President of Lyon Van Lines, Inc. The attorney stated that Lyon Van Lines, Inc., a wholly owned subsidiary of respondent, had been granted a certificate between Los Angeles and San Diego and intermediate points (Decision No. 33392); and that respondent itself had ceased the operation in question on August 22, 1938. The traffic manager testified that Lyon Van Lines, Inc., had, in accordance with its certificate, operated regularly between Los Angeles and San Diego since 1938 but there had been no operation by respondent between said points and intermediates.

In the light of these circumstances respondent renewed its request at the hearing that the Commission make its order dismissing the instant proceeding.

The fact of compliance with a desist order does not appear to justify a revocation of such order or a dismissal of the proceedings giving rise to such an order. The order rested upon an evidentiary showing, the validity of which was not challenged at the rehearing.

Good cause appearing,

IT IS ORDERED that Decision No. 33316 be and it hereby is affirmed, and the petition for a dismissal of Case No. 4296 is hereby denied.

Dated at San Francisco, California, this 17th day of April, 1945.

Harold Anderson
Justice J. Cravener
Richard Kibbe
Francis J. ...
James Lawrence
 COMMISSIONERS