

ORIGINAL

Decision No. 38470

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on the)
 Commission's Own Motion into the Matter of :
 Requiring Class I Highway Contract Carriers) Case No. 4800
 and Class I Radial Highway Common Carriers :
 to file Annual Reports and Regarding Such)
 Reports to be a Public Record. :
 -----)

BEROL & HANDLER AND ROY B. THOMPSON, by MARVIN HANDLER,
for Truck Owners' Association of California.

AARON H. GLICKMAN, for Motor Carriers' Traffic Bureau.

R. E. WEDEKIND, for Pacific Motor Trucking Company.

PRESTON W. DAVIS, for United Parcel Service Bay District
and Red Arrow Bonded Messenger Corporation.

CRAEMER, COMMISSIONER:

O P I N I O N

On September 12, 1945, the Railroad Commission, on its own motion, made and entered its Order Instituting Investigation wherein it ordered that Class I highway contract carriers and Class I radial highway common carriers, (1) as defined in the Highway Carriers Act, be given the opportunity to show cause why the Commission should not require them to file annual reports beginning with the year 1945 and why such reports, if they are required to be filed, should not be regarded as matters of public record.

(1) Class I carriers are those having average gross operating revenues (including interstate and intrastate) of \$100,000 or more annually, from motor carrier operations.

The Commission's order of September 12 was mailed to all those carriers whose quarterly returns to the Commission indicate that they would have gross annual revenues of \$100,000 or more. In all, 254 carriers were so notified. Thereafter, on October 24, 1945, a public hearing in the matter was held in San Francisco.

Scope of Investigation

The Commission for many years has required highway common carriers, as that term is defined in the Public Utilities Act, to keep their accounts in accordance with the terms of uniform systems of accounts it has prescribed and adopted, and to file annual reports, which reports it has ordered open for public inspection.

It did not, however, until 1944 prescribe a system of accounts for highway contract carriers and radial highway common carriers, as those classes of carriers are defined in the Highway Carriers Act.⁽²⁾ It never has required these classes to file annual reports.

The scope of the present investigation, then, extends only to those highway contract carriers and radial highway common carriers, as defined in the Highway Carriers Act, who have

(2)

By Decision No. 37429, dated October 24, 1944, in Case No. 4713, the Commission, among other things, ordered and directed that the uniform system of accounts for Class I common and contract motor carriers of property, as amended, prescribed by the Interstate Commerce Commission, be adopted and prescribed, effective on and after January 1, 1945, by the Railroad Commission for all highway common carriers, highway contract carriers and radial highway common carriers who have average gross operating revenues (including intrastate and interstate) of \$100,000 or more annually from motor carrier operations.

average annual operating revenues of \$100,000 or more from motor carrier operations under permits granted them pursuant to the provisions of the Highway Carriers Act and who do not file reports as highway common carriers. This proceeding does not involve the so-called city carriers operating under permits granted under the provisions of the City Carriers Act nor the revenues received by carriers from city carrier operations.

Appearances

Four appearances on behalf of carriers were entered at the hearing. Their positions may be set forth briefly as follows:

The position of the Truck Owners' Association of California is that of a protestant. On this point its counsel, Mr. Handler, stated:

"It is the position of the Truck Owners Association of California that there is no need or necessity for the filing of annual reports by contract and radial carriers; that the filing of such reports will not give any benefit to the Commission, commensurate, at least, with the effort in compiling and filing it. That certainly such information should not be open to public inspection; that if, at any time, the filing of such reports can be justified this is not that time. * * *

There is a grave question also, which apparently has not been given any consideration by the Commission, as to the legality of requiring the filing of such reports and also as to the legality, even if that were all right under the law, as to opening them to public inspection."

No witnesses were called to testify on behalf of the association.

Mr. Aaron H. Glickman, counsel for Motor Carriers' Traffic Bureau, stated that his position in the proceeding is that of an interested party. He called no witnesses to testify.

The position of Pacific Motor Transport Company, as indicated by Mr. R. E. Wedekind, its counsel, is not that of an objector to a requirement for the filing of annual reports nor of making such reports open to public inspection. This carrier does object to any requirement calling for the apportionment of operating expenses among the several classes of operations it conducts, that is, certificated operations, contract carrier operations, radial highway common carrier operations and city carrier operations, or for the filing of a separate report for its contract carrier operations and radial highway common carrier operations.

United Parcel Service Bay District and Red Arrow Bonded Messenger Corporation object to the filing of annual reports and to the making of such reports, if they are filed, matters of public record. These corporations have filed petitions for exemption from the requirements of the Commission, should such action be taken, on the following grounds:

"(1) That the great proportion of petitioner's revenue is derived from intra-city operations and it is not proposed in this proceeding that annual reports be filed by city carriers;

(2) That by reason of the unique and non-competitive type of service performed by petitioner, the filing of an annual report is not reasonably necessary to carry out the policies or purposes of the Highway Carriers' Act or the Commission's regulatory program; and,

(3) That the filing of the elaborate type of annual report required of Class I carriers would constitute an undue and unjustified burden on petitioner's operation without producing a compensatory benefit to the Commission or to the public."

Following the hearing a communication was received by the Commission from Mr. Arlo D. Poe, attorney for The Motor Truck Association of Southern California, in which he outlined the position of the association as follows:

"Any requirement for the filing of reports should be predicated upon a convincing showing of a useful purpose to be served. No such purpose is apparent in the case of annual reports of contract carriers limited to those having annual revenues of more than \$100,000. Such carriers do not render a public service and their financial condition is of no substantial concern to the Commission except as it may relate to transportation rates. Annual reports of contract carriers would be of no value whatsoever in the study of the rate situation because the rates of such carriers are not fixed and will vary greatly between carriers. Furthermore, reports from only Class I contract carriers would not give the Commission any useful information concerning the general financial condition of permitted carriers because of the innumerable smaller carriers and the mixed operations of many carriers performing contract, radial common, and city carrier service.

Obviously, the requirement of filing annual reports would constitute an added burden on the carriers. With the ever-increasing number of statistical, recording and reporting requirements that are being placed upon operators, it seems unwise to add another unless it would promote some real beneficial purpose. In this instance, it is believed that the proposal under investigation would do nothing except to add to the Commission's files a mass of documents furnishing no information that would be of value for constructive regulatory purposes."

The Evidence

Testimony in the proceeding was given by a member of the Commission's staff; by representatives of Pacific Motor Transport Company; and of United Parcel Service Bay District and Red Arrow Bonded Messenger Corporation. A copy of the 1944 annual report form prescribed by the Interstate Commerce Commission for Class I motor carriers was placed in the record as Exhibit 1.

The Commission's witness testified that the Railroad Commission has adopted, as of January 1, 1945, for Class I carriers, including common carriers, contract carriers and radial carriers, the system of accounts prescribed by the Interstate Commerce Commission; that the Interstate Commerce Commission requires the filing of annual reports by contract carriers under its jurisdiction; that approximately one hundred and fifty

highway contract carriers and radial highway common carriers operating in California already file reports with the Interstate Commerce Commission; and that in his opinion, in the interests of uniformity and to avoid the preparation of two different forms of reports, any annual report form which might be prescribed by the Railroad Commission should be predicated on the system of accounts adopted by it and should be in substantially the same form as that prescribed by the Interstate Commerce Commission. He testified further that annual reports, if filed by contract and radial carriers, would be informative to the Commission in that they would show the trend of business and the financial position and responsibility of the carriers and that they would assist the Commission and its staff in considering rate matters and in the general regulation of the industry. His testimony indicates that although the Commission would have to make an investigation of carrier records in any rate case involving a specific commodity, still the annual reports would be helpful in carrying forward a rate study and would serve as a lead to the extent of the carriers' operations, and that in the past the members of the Commission's staff had felt that certain information was lacking and that annual reports should be on file with the Commission. The witness was of the opinion that the practices of the contract carriers affect, and are affected by, the operations and revenues of the certificated carriers, that is, of the highway common carriers whose operations are subject to the supervision of the Commission, and that the reports of contract carriers would be of use in giving information to the Commission.

Pacific Motor Transport Company

The testimony of witnesses for Pacific Motor Transport Company shows that it is engaged in business as a highway common carrier, a highway contract carrier, a radial highway common carrier and a city carrier; that it now files annual reports with the Railroad Commission and with the Interstate Commerce Commission; and that in such reports it segregates its revenues among the several classes of service, but not its expenses.

In the proposed form of report filed as Exhibit 1, there is no requirement for the carriers to segregate expenses among the classes of operations. The company's officer in charge of its accounts testified that it would be impossible to make such a segregation except by use of arbitrary apportionments. In response to a question concerning the value of a report which calls for the separation of revenues but not expenses, the witness indicated that such a report would be serviceable to show a comparison of the revenues and to show the over-all picture of the operations of the company so that the Commission could judge its financial position.

United Parcel Service Bay District
Red Arrow Bonded Messenger Corporation

The testimony of United Parcel Service Bay District is to the effect that the company's business, which is that of delivering packages under contracts with stores and shops, is unique and that therefore the filing of an annual report would serve no purpose in the Commission's general rate regulation program as it would not be representative of any other carrier and would put the company to some expense and work. It appears that the company keeps the uniform system of accounts prescribed

by the Commission but that it does not file annual reports with the Railroad Commission or with the Interstate Commerce Commission.

As to Red Arrow Bonded Messenger Corporation, the record shows that its revenues from its highway contract carrier and its radial highway common carrier operations are less than \$100,000 annually.

Conclusions

A thorough review of this matter indicates that Class I highway contract carriers and Class I radial highway common carriers should be required to file annual reports with this Commission.

At present the Commission has before it the annual reports of highway common carriers showing, among other things, their financial condition, revenues, expenses and volume of business. Some of these carriers also are engaged in business under permits granted under the Highway Carriers Act and from such carriers the Commission has some record of their highway contract carrier and radial highway common carrier revenues. However, it has but little information concerning the transactions and financial condition of those carriers engaged solely in contract and radial carrier operations.⁽³⁾ In other words, the Commission has but an incomplete record of the activity of

(3) Under the terms of the Transportation Rate Fund Act carriers engaged in the transportation of property for hire upon the public highways under the jurisdiction of the Railroad Commission are required to file quarterly reports showing their gross operating revenues. The revenues are not segregated to the different classes of operation.

the transportation companies under its jurisdiction and it is clear that in order to perform properly the duties imposed upon it by the Highway Carriers Act, and by the Public Utilities Act, for the purposes and aims of those acts, it should have more complete information than it has at present. With reports received from Class I carriers as proposed in this proceeding, the Commission will have a more definite picture of the volume and trend of the transportation industry in this state and of the relationship between contract and radial carrier operations on the one hand and other forms of motor carrier operations on the other hand. This may be particularly important at this time when we are entering the transition period from war-time to peace time.

The reports, if filed, would give the Commission information, which it does not now have, of the financial condition and experience of the carriers operating under its permits. The form of report filed as Exhibit 1, among other things, calls for the furnishing of information concerning the organization and control, investment, assets and liabilities, details of capitalization, financial requirements and other matters which the Commission has found, in its experience with other carriers and utilities, to be of value in considering rates, return and earnings and in studying the effect of its orders and decisions on those subjects. There is no reason why similar value should not be attached to similar reports from carriers coming within the scope of this inquiry. It therefore appears to be in the public interest to require the filing of the annual reports.

It is realized, of course, that this investigation does not go to all contract and radial carriers. However, the systems

of accounts prescribed for the smaller of these types of carriers do not go into effect until January 1, 1946, and it therefore does not seem feasible to prescribe a form of report for them at this time. The Commission will, however, if reports are required from Class I carriers, have information from all the large operators.

As to the authority of the Commission to require the filing of annual reports by highway contract carriers and radial highway common carriers, Section 20 $\frac{1}{2}$ (a) of the Highway Carriers Act reads as follows:

"Sec. 20 $\frac{1}{2}$ (a) The commission may require annual, periodical or special reports to be filed by all highway carriers other than highway common carriers, prescribe the manner and form in which said reports shall be made and require from such carriers specific answers to all questions upon which the commission may deem information to be necessary. Such reports shall be under oath whenever the commission so requires. The commission may also require any such highway carrier to file with it a true copy of each or any contract, agreement or arrangement between such carrier and any other carrier in relation to any traffic affected by the provisions of this act, to which such carrier may be a party."

Considering the positions of the individual carriers who were represented at the hearing, it appears that neither Pacific Motor Trucking Company nor Red Arrow Bonded Messenger Corporation comes within the scope of this proceeding. The petition for exemption filed by the latter company accordingly should be dismissed.

Pacific Motor Trucking Company is required to file an annual report as a highway common carrier and does file such a report. It will not by this order be required to file a separate report of its contract and radial operations. The uniform system of accounts prescribed for Class I carriers calls for a segregation of revenues but does not require an apportionment of expenses and other accounts among the several classes of service.

A form of annual report naturally should follow the form of the system of accounts. It is not proposed in this or in any proceeding now pending before the Commission to modify the system of accounts currently in effect for Class I carriers.

As to United Parcel Service Bay District, the record shows that it is operating in part under permits issued by this Commission as a highway contract carrier. Because one of the reasons for requiring the filing of annual reports is to obtain for the Commission a statement of the activity and experience of all the carriers operating under Highway Carrier Act permits, it should not be exempt from filing annual reports.

The order herein will require Class I highway contract carriers and Class I radial highway common carriers to file annual reports, but such reports will not now be declared to be a public record. For 1945 the form of report will be substantially the same as that filed in this proceeding as Exhibit 1. For subsequent years the Commission may, if it deems it advisable, change the form of report.

The following form of order is submitted.

ORDER

The Railroad Commission having made its Order Instituting Investigation into the matter of requiring Class I highway contract carriers and Class I radial highway common carriers to file annual reports and regarding such reports to be a public record, due notice having been given, a public hearing having been held and the Commission having considered the matter,

IT IS HEREBY ORDERED that Class I highway contract carriers and Class I radial highway common carriers who have

average annual operating revenues of \$100,000 or more from motor carrier operations under permits granted pursuant to the provisions of the Highway Carriers Act and who do not file annual reports as highway common carriers be, and they hereby are, ordered and directed, for the year 1945 and subsequent years, to file with the Commission annual reports in such form and at such times as the Commission will hereafter specify.

IT IS HEREBY FURTHER ORDERED that the petition of Red Arrow Bonded Messenger Corporation for exemption be, and it hereby is, dismissed.

IT IS HEREBY FURTHER ORDERED that the petition of United Parcel Service Bay District for exemption be, and it hereby is, denied.

IT IS HEREBY FURTHER ORDERED that this order is effective from and after twenty (20) days from the date hereof.

The Commission in this order does not order and direct that such annual reports are a public record.

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 San Francisco, Calif., this 27th day of November, 1945.

Charles E. Anderson
Justin J. Carver
Francis J. ...
Irving K. ...
Harold P. ...
 Commissioners