

points in Southern California. (1) Those rates, amended in
(2) 1937, were superseded by other rates on May 31, 1942. (3)

Archie D. Ames, a highway carrier, on August 2, 1943, filed a petition in which he alleged that during the period September 12, 1941 through March 9, 1942 he had hauled cement and sacks for Monolith Portland Cement Company. (4) Ames alleged that the 1935 and 1937 decisions had fixed a minimum rate on cement of 6-1/2 cents per 100 pounds, plus an unloading charge of one-half cent per 100 pounds, and for the transportation of empty sacks returning a minimum rate of 7 cents per 100 pounds; and that Monolith had paid Ames 5 cents plus one-half cent on the cement, and 5-1/2 cents on the empty sacks. Ames alleged that Monolith took the position that the Commission had not prescribed any minimum rate on the commodities in question between the points involved.

According to the petition, Ames had filed an action to recover undercharges in the Los Angeles Municipal Court on January 30, 1943. Ames asserted that other carriers had performed like hauling, urged that there should be uniformity in the application of rate orders, and asserted the possibility of a diversity of decisions by different courts unless the Commission specifically determined whether or not it had fixed minimum rates for the transportation involved.

1. Re L.A. & S.L.-R. Co., etc., 39 C.R.C. 498 (Decision 28334 in Cases 3981 and 4071); as amended by Decision 28425 in the same proceedings;

2. Decision 30074 in Cases 3981 and 4071.

3. Decision 35211 of March 31, 1942.

4. The petition alleges the transportation of "131 loads of portland building cement from Monolith, California, to off-rail facility destinations within two and one-half miles of the station of Muroc, California, aggregating 4,978,000 pounds, and four loads of empty cement sacks returning from off-rail facility points within two and one-half miles of the station of Muroc, California, to Monolith of an aggregate weight of 48,853 pounds; ***."

Ames requested that a hearing be had and an order issued determining whether minimum rates had been fixed for the period and transportation indicated, and, if so, the volume of rates so fixed. An alternative request was that an investigation be instituted to determine the amount of undercharges, if any, which highway carriers in the area should be ordered to collect from Monolith for such hauling as they may have performed for that company.

The Commission issued an order reopening Cases 3981 and 4071 "for hearing on said petition," and such hearing was had on September 2 and 3, 1943. Also set for hearing at the same time was Monolith v. Ames, Case No. 4679, wherein Monolith sought an order determining that minimum rates had not been fixed, or that Ames be ordered to pay reparations equal to the difference between a reasonable rate and that collected.⁵

At the opening of the hearing Monolith filed a demurrer, answer and motion to strike in response to the Ames' petition in Cases 3981 and 4071, seeking a vacation of the reopening order and dismissal of the petition. Monolith also moved for a continuance of Case No. 4679. The motions were denied by the presiding commissioner whereupon Monolith filed a dismissal without prejudice.⁶ in the reparation proceeding.

⁵ Monolith alleged that during the period September 12, 1941 - March 9, 1942 Ames had transported 106 loads of cement and empty sacks between Monolith and Muroc, had demanded and received a rate of 5-1/2 cents per 100 pounds, and had instituted court action upon the basis that a 6-1/2-cent rate had been prescribed. Monolith further alleged that both rates were exorbitant and unreasonable, and that if the 6-1/2-cent rate applied the result was a deprivation of Monolith's constitutional right of contract.

⁶ Later, on December 5, 1944, the Commission issued an order dismissing Case 4679 without prejudice. (Decision 37535)

Monolith's demurrer raised the jurisdictional objection that the Commission is without power to determine the judicial question as to whether it had exercised its legislative duties in prescribing rates, or whether or not a previous order was applicable to the particular freight in question. Monolith took the position that the Ames petition did not require the determination of any administrative or regulatory problem, as reasonableness of rates was not questioned and rates for the future were not involved. The sole issue being whether the former rates fixed by the earlier decisions had been applicable on particular hauling, Monolith urged that such legal question was one for court determination, and presented no issue within the jurisdiction of the Commission.

Decision No. 37534, issued in December of 1944, did not discuss the jurisdictional objection, but made declaratory findings to the effect that specified minimum rates had been established and were applicable on the particular shipments which had moved in 1941 and the early part of 1942. It was also found that such minimum rates had been superseded on May 31, 1942, that rates for the future were not in issue, and that the matter did not involve the reasonableness of any rate. The opinion concluded as follows:

"Since these proceedings were reopened only for the purpose of determining whether or not the Commission prescribed minimum rates for the transportation herein considered, and the volume of any rates so established, no order is necessary other than an order discontinuing the proceedings."

7 Monolith also urged that under the Highway Carriers' Act undercharges may not be collected from a shipper. While recent court decisions have sustained the right to collect undercharges under that statute (Gardner v. Rich Mfg. Co. (April 14, 1945), 68 A.C.A. 861; Butler v. Bell Oil & Refining Co. (Sept. 7, 1945), 70 A.C.A. 897), collection of asserted undercharges is not involved in this reopened proceeding.

A petition for a rehearing of the 1944 decision was filed by Monolith and rehearing was granted.

The basic question, as already indicated, is whether the Commission may make declaratory findings, unaccompanied by any regulatory order, determining what minimum rates, if any, applied to particular shipments hauled some years ago. May the Commission now construe earlier decisions which are no longer effective, for the sole purpose of finding whether specific minimum rates had been established, effective, and applicable on particular shipments made over a six-month period beginning in October of 1941?

Declaratory relief "has its origin in statutory enactment; the nonstatutory law does not recognize the remedy which thus is accorded." (5 Cal. Jur. Supp., 1944 revision, 116.) Authority to administer declaratory relief was conferred upon the Superior Court in 1921. (C.C.P., secs. 1060-1062.) The Supreme Court has no jurisdiction over original applications for declaratory relief. (Walsh v. Railroad Commission, 16 Cal. (2d) 691.) Such relief extends to a determination of questions as to the construction and operation of statutes, ordinances, city charters, etc. (Monahan v. Dept. of Water and Power, 48 Cal. App. (2d) 746; Hoyt v. Civil Service Com'rs., 21 Cal. (2d) 399)

The Public Utilities Act does not specifically authorize the Commission to accord declaratory relief. For example, that statute does not empower the Commission to make general adjudications as to utility status. No proceeding is authorized for the mere purpose of determining that question. The Commission may inquire into any act done by a public utility, "and to make such order" as may be necessary to compel such utility to comply with the law, but the statute "does not authorize a proceeding for the sole purpose of inquiring and

determining whether a particular person or corporation is carrying on a public utility, or is engaged in a private enterprise." (Holabird v. Railroad Commission, 171 Cal. 691, 696.) The Commission may make whatever order may be necessary in the exercise of its jurisdiction. (Motor Transit Co. v. Railroad Commission, 189 Cal. 573, 582.) And where jurisdiction to make the order depends upon the existence of certain facts, such as whether one is operating as a public utility, the Commission has "power to determine the facts upon the existence of which it was authorized to make the order." (Producers Transportation Co. v. Railroad Commission, 176 Cal. 499, 506.)

In Re Peckham Company, 30 C.B.C. 851, applicant requested an order confirming and defining operative rights alleged to have been created before the requirement of certification in 1917. Certain protestants moved to dismiss the application upon the ground that the Commission was without jurisdiction to render a declaratory judgment defining or confirming such rights. Thereupon, the Commission instituted its own investigation into the operations of the applicant corporation. In such investigation proceeding the corporation was ordered to desist common carrier operations except as to certain points between which it was found that the corporation had been operating in good faith before 1917.

Again, in authorizing a utility corporation to lease property and to discontinue utility business, the Commission has stated that it did not believe that we have sufficient authority to enter an order declaring that the corporation is no longer a public utility." (Re Loomis, 34 C.R.C. 137, 138; see also concurring opinion of Commissioner Carr re declaratory judgments in Arizona Edison Co. v. So. Sierras Power Co., 31 C.R.C. 609, 613.)

Petitioner Ames relies on Entremont v. Whitsell, 13 Cal. 2d 290, as decisive of the jurisdictional question. That case

affirmed a Commission decision which found that Entremont, a private carrier, had charged the Department of Public Works less than the applicable minimum rates theretofore fixed by the Commission, and ordered Entremont to collect the amount of the undercharge and to abstain from charging less than the established minimum rate. No question of declaratory relief was involved in the Entremont case.

It is often necessary for the Commission to construe statutes, tariffs, and decisions in determining the appropriate order to be entered in a particular proceeding. Under such circumstances, the power to exercise the judicial function of construction is essential to the exercise of regulatory authority. But the regulatory statutes do not confer upon the Commission the power to accord declaratory relief by the issuance of an advisory opinion which merely construes a tariff which is no longer in effect, and which opinion is not accompanied by any regulatory order.

ORDER ON REHEARING

Rehearing of Decision No. 37534 having been had, and the Commission being of the opinion that it is without jurisdiction to accord the declaratory relief sought by petitioner Archie D. Ames,

IT IS ORDERED that Decision No. 37534 be and it is hereby vacated and set aside, and the reopened proceedings herein discontinued.

The Secretary is directed to cause a copy of this order to be served upon Archie D. Ames and upon Monolith Portland Cement Company.

This order shall become effective on the twentieth day after date.

Dated at San Francisco, California, this 21st day of November, 1946.

Harold P. Kells

Justice F. Coe
James D. ...

James D. ...

A. J. ...
Commissioners