C-4933 SJ

Decision No. 42343

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| Commission Investigation into the practice of common carriers extending pickup and delivery limits in purported conformity with the provisions of Section 50-3/4 (c) of the Public Utilities Act of the State of California. | ) | Case No. 4933 |

Appearances

Douglas Brookman, R. E. Wedekind, J. E. Hennessy, J. M. Souby, Jr., Edward M. Berol, Aaron H. Glickman, Lloyd Swayne, E. J. McSweeney, James E. Harris, Arlo D. Poe, Ray James and Hugh McGlynn, for various respondents.

O P I N I O N

This proceeding is an investigation on the Commission's own motion into the practices of common carriers in establishing and maintaining, in purported conformity with the provisions of Section 50-3/4 (c) of the Public Utilities Act, pickup and delivery limits extending beyond the areas specifically covered by their operative authority.

A public hearing was had at San Francisco before Examiner Mulgrew. Briefs were filed.

Section 50-3/4 (c) of the Act provides that no highway common carrier may begin to operate or extend its operations without first obtaining a certificate of public convenience and necessity from the Commission. As amended by Chapter 1175, Statutes of 1945, it also provides that a highway common carrier does not require a certificate "for the performance of pickup, delivery, or transfer services by such carrier within such carrier's lawfully published

pickup and delivery zones in so far as such pickup and delivery limits do not include territory in excess of three miles from the corporate limits of any incorporated city or town or three miles from the post office of any unincorporated point."

Relying on the above-quoted amendment, several highway common carriers, operating between San Francisco and East Bay points and not theretofore serving Albany, El Cerrito, Richmond and San Leandro, published pickup and delivery rates applicable between those East Bay cities and San Francisco. These rates were published to become effective January 8, 1943. Transbay highway common carriers holding specific operative authority to serve the East Bay points involved urged that the tariff filings be suspended. It was concluded that the tariffs should not be suspended but that this investigation should be instituted.

It is not disputed, and the record shows, that the areas to which pickup and delivery rates were extended are within three miles of the limits of incorporated cities where the carriers publishing these rates enjoy specific operative rights. The issues are thus narrowed to the question of whether or not the operations involved constitute pickup and delivery service within the carriers' lawfully published pickup and delivery zones.

The carriers which filed the assailed rates insist that Section 50-3/4 (c), as amended, is a "blanket" provision, with no exception of any kind, permitting a carrier to publish and file a pickup and delivery zone covering a territory extended not to exceed three miles from the corporate limits of any incorporated city or three miles from the post office of any unincorporated point. It follows, they contend, that there is no impropriety or illegality in providing pickup and delivery service in a zone so extended even though it includes another incorporated community or a portion thereof.

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They claim, therefore, that their tariff publications cover only pickup and delivery service within lawfully established zones.

On the other hand, the carriers opposing the foregoing view of the statutory provisions in question contend that the extensions involved are extensions of line-haul operations or of termini, not extensions of pickup and delivery service or zones. They claim that pickup and delivery service is a terminal service and that its extension to a contiguous community or area containing "substantial traffic potential" without first obtaining appropriate authorization from the Commission is not the performance of pickup and delivery service within a lawfully established zone. The East Bay extensions involved here, they point out, are to areas described as separate zones and for which rates differing from the rates within the communities from which the extensions were made have been established. They argue that a pickup and delivery zone is a terminal area throughout which the same rates are applied; that this position is supported by Decision No. 31606, 41 C.R.C. 671 (1938), as amended, in which pickup and delivery zones were established and uniform minimum rates made applicable thereto; and that extensions beyond the limits of the zones so established are not lawfully published unless and until authorized by the Commission.

Section 50-3/4 (c), as amended, permits highway common carriers, as an exception to the requirement that they obtain certificates for new operations, to perform pickup and delivery service within lawfully published zones, provided the zones conform with the statutory three-mile limitation on extensions of such service to areas beyond the scope of the carriers' specific operative authority. Extensions of this character are limited to additional pickup and delivery service provided in connection with authorized highway common carrier operations. Thus, no additional local service may be performed within pickup and delivery zones as a result of their

extension under Section 50-3/4 (c) provisions. The extensions under consideration are within the mileage limitation. They are not applicable in connection with local service within the zones. The determinations to be made are, therefore, whether the service is pickup and delivery service and whether the zones are lawfully published zones.

The distinguishing characteristic of pickup and delivery service is the carrier's receipt and delivery of the freight at the establishments of the consignor and the consignee. The nature of this service is not affected by the operating methods used in providing it. The rates in question here are applicable to such service. In transporting shipments under these rates the carriers are performing pickup and delivery service.

With respect to the zones, Decision No. 31606, supra, as amended, prescribed pickup and delivery zones. However, these zones are required to be observed only in connection with the state-wide minimum rates on general commodities established by that decision and amendatory orders. The publication of different zoning arrangements and rates in the tariffs of common carriers is not prohibited so long as the resulting rates are not lower than the established minimum rates. The tariff rates under investigation are not below the prescribed minimum levels. Rate uniformity throughout each pickup and delivery zone is not required by statute or by rules and regulations promulgated by the Commission. It is not contended, nor does the record show, that in other respects the zones and rates in issue were unlawfully published.

In view of the foregoing conclusions, it is not necessary to discuss the arguments relative to construction and legislative intent which apply in situations where the meaning of the statute is not evident.

We are of the opinion and accordingly find that the East Bay pickup and delivery limits under investigation here have been published in conformity with the statutory requirements involved. The investigation will be discontinued.

O R D E R

Based on the evidence of record and the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the above-entitled investigation be and it is hereby discontinued.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 21st day of December, 1948.

R. E. Mitchell
Justus F. Craemer
Ira E. Hanley
Harold P. Huls
Everett C. Patterson
Commissioners