C.5201-5202-AS

Decision No. 45481

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, rates, and practices of R. A. Neville, doing business as California Lading Company.	)	Case No. 5201
Investigation into the operations, rates, and practices of M. W. Neville, doing business as California Lading Company.	)	Case No. 5202

Appearances

R. A. Neville and M. W. Neville, in propria persona.

Harold J. McCarthy, for Field Division of the California Public Utilities Commission.

O P I N I O N

These proceedings are investigations instituted on the Commission's own motion into the operations and practices of R. A. Neville and M. W. Neville, hereinafter called respondents. Respondents are husband and wife doing business as California Lading Company. They are engaged in transporting property between points in the Sacramento area as a for-hire carrier and in providing certain car loading and car unloading services for compensation. These proceedings relate to respondents' car services. Their transportation operations, which are performed under permits issued to M. W. Neville authorizing her to operate as a radial highway common carrier and as a city carrier, are not involved. The purposes of these investigations are:

1. To determine whether either respondent is or has been a common carrier engaged in car loading, within the meaning of Section 2(1) of the Public Utilities Act.

2. To determine whether either respondent is or has been a public utility within the meaning of Section 2(dd) of the Public Utilities Act.

3. To determine whether either respondent is engaged or has engaged in rendering car loading service without previously having filed with this Commission and published his or her schedules of rates, charges, and classifications for such service, in violation of Sections 17(a) and 14(a) of the Public Utilities Act.

4. To determine whether either respondent is granting or has granted any preference or advantage to any corporation or person, or subjected any corporation or person to prejudice or disadvantage in rendering such service, in violation of Section 19 of the Public Utilities Act.

5. To determine whether either respondent should be ordered to cease and desist from rendering car loading service unless and until his or her schedules of rates, charges, and classifications for the rendering of such service shall have been filed with this Commission and published in accordance with the provisions of Section 14(a) of the Public Utilities Act.

6. To determine whether either respondent shall be ordered to cease and desist from granting any preference or advantage to any corporation or person, or subjecting any corporation or person to prejudice or disadvantage, in rendering car loading service.

Public hearing of the matters was had upon a consolidated record before Examiner Abernathy at Sacramento on December 12, 1950.

An employee of the Commission's field division presented evidence concerning results of an inspection of respondents' records and of interviews with their patrons. According to an exhibit which he submitted as depicting respondents' car loading and unloading operations from October 8, 1948 to June 10, 1950, in excess of 175 cars were loaded or unloaded during the period. Loading service alone was performed for two shippers. Unloading service alone was performed for five shippers, and unloading and transportation service combined was performed for 20 shippers. The transportation services were performed principally between railheads and destinations in Sacramento and from railheads outside of North

Sacramento to destinations in North Sacramento. Lumber accounted for approximately 80 percent of the carloads handled. Other commodities which were involved were automobiles, filing cabinets, conduit, plaster-board, roofing, insulation, welding rods, fresh fruit and various unclassified articles. Respondents' total charges, plus applicable federal transportation taxes, for handling the shipments involved amounted to $17,700. Charges per shipment were various. As examples of the per shipment charges the witness cited amounts of $1.80 and $2.00 per thousand board feet and $2.25 per ton for unloading and delivering lumber; $2.50 per ton for unloading and delivering conduit; and $11.00, plus gasoline costs, for unloading and delivering an automobile. A member of the Commission's rate staff testified that there is no record in the Commission's files of any tariffs covering the operations involved herein.

Respondents, testifying in their own behalf, stated that practically all of their car services and their transportation services are linked together. Only a small fraction of their total operations involves transportation only. They own and operate one truck and on occasions have rented others. They set their own rates. Differences in charges amongst their customers were explained to be a result of differences in the distances involved in making the various deliveries. Respondents asserted that on various occasions they had discussed their services with employees of the Commission and had been given to understand that tariff filings to cover their operations were not necessary.

Under the provisions of the Public Utilities Act, "car loading and every other car corporation or person" are designated to be common carriers (Section 2(1)). Whenever any common carrier performs a service for the public or any portion thereof for

which any compensation or payment whatsoever is received, such common carrier is declared to be a public utility subject to the jurisdiction, control and regulation of the Commission and the provisions of the Act (Section 2(ee)). The term "public utility" includes every common carrier (Section 2(dd)).

It is evident from the foregoing review of the definitive provisions of the Public Utilities Act, insofar as they apply to car loading operations, that a person or corporation is engaged in public utility car loading service within the meaning of the Act (a) when he performs car loading and/or car unloading services (b) for compensation (c) for the public or any portion thereof.[1] There is no doubt on this record that respondents are performing car loading and unloading for compensation. The primary question to be resolved in determining whether their operations have been or are those of a common carrier public utility is whether respondents have undertaken to serve the public or any portion thereof. On this point the evidence impels the conclusion that they have in fact undertaken a public service. The number of individual shippers or patrons which were served during the period analyzed by the employee of the Commission's field division indicates a widespread solicitation of business. This number is not in itself conclusive as to respondents' holding out but it is indicative of a willingness to serve the public generally. Respondents in their testimony did not argue that their service had not

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[1] The term "car loading" as it is employed in the Public Utilities Act is and has been construed to include both car loading and car unloading. See In re Investigation of American-Hawaiian Steamship Company et al., Decision No. 25679, 38 C.R.C. 499, 500, 503(1933).

been made available to the public. It is significant that in undertaking to provide transportation service along with their car loading operations, respondents sought and procured authority to serve the public as a radial highway common carrier. Upon careful consideration of these several facts and circumstances the Commission is of the opinion and finds that respondents' car loading and unloading services have been those of a public utility and of a common carrier as designated in the Public Utilities Act.

In accordance with provisions of the Public Utilities Act, schedules of the rates and charges of public utilities are required to be filed with the Commission and also to be kept open to public inspection (Section 14(a)). Common carriers subject to the Act are prohibited from engaging in or participating in the transportation of property until their schedules are so filed (Section 17(a)). The evidence shows that respondents have engaged in public utility operations as a common carrier without filing their schedules as required. An order will be entered directing them to cease and desist from further providing common carrier car loading and/or unloading services until they have filed schedules of their rates, charges and classifications in compliance with the statutory requirements.

As stated hereinbefore, one of the purposes of these proceedings is to determine whether respondents, in providing car loading and unloading services, are granting or have granted to any person or corporation any preference or advantage or are subjecting or have subjected any corporation or person to prejudice or disadvantage, in violation of Section 19 of the Public Utilities Act.

Although the evidence shows that respondents' charges as among their patrons have not been uniform, it appears that the differences were due to differences in the amounts of service performed. On this record it does not appear that respondents' operations have contravened the provisions of Section 19 of the Act.

O R D E R

Public hearing having been had in the above-entitled proceedings, evidence having been received and duly considered, the Commission now being advised and basing its order upon the findings and conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that R. A. Neville and M. W. Neville, doing business as the California Lading Company, be and they are each hereby directed to cease and desist from providing a car loading and/or car unloading service for the public until they have filed individually or jointly with the Commission and have made available to public inspection in conformity with the provisions of Sections 14(a) and 17(a) of the Public Utilities Act, their rates, charges and classifications for said car loading and/or car unloading services.

The Secretary is hereby directed to cause a certified copy of this decision to be served personally or by registered mail upon R. A. Neville and M. W. Neville, individually.

The effective date of this order shall be forty (40) days after the date of service as herein specified.

Dated at San Francisco, California, this 20th day of March, 1951.

Commissioners