

ORIGINALDecision No. 54437

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into)
 the rates, rules, regulations, charges,)
 allowances and practices of all common)
 carriers, highway carriers and city) Case No. 5783
 carriers relating to the transportation)
 of property for non-profit shipper)
 associations as defined in Section 220)
 of the Public Utilities Code.)

(For appearances see Appendix A.)

INTERIM OPINION

This investigation was instituted upon the Commission's own motion for the purpose of inquiring into the lawfulness of the rates, rules, regulations, charges, allowances and practices of for-hire carriers of property engaged in performing transportation services for groups or associations of shippers engaged in freight forwarding operations.

A public hearing of the matter was held before Commissioner Matthew Dooley and Examiner John Power on September 5 and 6, 1956 ✓ at San Francisco. The only evidence introduced was offered by staff members of the Commission's Transportation Division. However, interested parties assisted in the development of the record through examination of the witnesses.

Freight forwarders, as defined in Section 220 of the Public Utilities Code, are subject to regulation as common carriers.¹ However, Section 220 also provides, among other things, that it is not applicable to the operations of a shipper, or a group or

¹The definition reads: "Freight forwarder means any corporation or person who for compensation undertakes the collection and shipment of property of others, and as consignor or otherwise ships or arranges to ship the property via the line of any common carrier at the tariff rates of such carrier, or who receives such property as consignee thereof."

association of shippers, in consolidating or distributing freight for themselves or for the members thereof, on a nonprofit basis, for the purpose of securing the benefits of carload, truckload or other volume rates. It is the transportation of property performed for such exempted shipper groups or associations by for-hire carriers that is under investigation in this proceeding.

Exhibits were submitted by the staff witnesses describing the operations and practices of various common and permitted carriers who handled the movement of freight for six different shipper associations. The witnesses testified that the exhibits portrayed patterns of carrier activities which they considered were not in compliance with statutory provisions, common carrier tariffs or the minimum rates, rules and regulations established by the Commission for the transportation of property. The record shows that the information on the practices in question was developed through field investigations of actual carrier activities in connection with the traffic of shipper associations and were reasonably representative of similar arrangements reviewed in the past.

The record discloses that noncompliance with tariff rules and regulations by some carriers resulted in charges on shipper association traffic lower in volume or effect than those properly applicable. In other instances, carrier premises, facilities or personnel were used in conducting shipper association business with either nominal charges or no charges at all being made therefor. The record shows also that at times the activities of the carrier and the shipper association were so interwoven that it was difficult to determine whether the carrier was dealing with the individual shippers or the association in which they held membership.

The most frequent rate violation encountered by the staff witnesses occurred in the handling of split pickup or split delivery

shipments.² Specified conditions must be met to obtain the benefits of the lower rates authorized for the aggregate weights of composite shipments as compared with forwarding the component parts as separate shipments. The evidence of record shows that such lower rates were accorded to split shipments not entitled thereto in that (1) both split pickup and split delivery services were performed on the same shipment, (2) written instructions showing a description of each component part together with forwarding directions were not furnished the carrier at the time of or prior to the tender of the shipment in accordance with tariff requirements, and (3) to obtain volume rates, single shipping documents were made out to include, contrary to tariff regulations, lots of freight moved over a period of from two to four days. Other practices which deviated from tariff rules involved unauthorized consolidation of separate movements into single shipments and assessment of charges based on such combined weight and also the failure of carriers to collect freight charges

² The Commission's Minimum Rate Tariff No. 2, applicable to radial highway common, highway contract and household goods carriers, defines the two types of split shipments in Item No. 11 series as follows:

"(1) SPLIT PICKUP SHIPMENT means a shipment consisting of several component parts, tendered at one time and received during one day and transported under one shipping document from (a) one consignor at more than one point of origin, or (b) more than one consignor at one or more points of origin, the composite shipment weighing (or transportation charges computed upon a weight of) not less than 4,000 pounds, said shipment being consigned and delivered to one consignee at one point of destination and charges thereon being paid by the consignee when there is more than one consignor.

"(m) SPLIT DELIVERY SHIPMENT means a shipment consisting of several component parts delivered to (a) one consignee at more than one point of destination, or (b) more than one consignee at one or more points of destination, the composite shipment weighing (or transportation charges computed upon a weight of) not less than 4,000 pounds, said shipment being shipped by one consignor at one point of origin and charges thereon being paid by the consignor when there is more than one consignee."

Common carriers maintain like definitions in their tariffs under outstanding minimum rate orders requiring them to observe rates, rules and regulations no lower in volume or effect than provided in Tariff No. 2.

within the credit period specified in the tariffs.

Evidence also was introduced relative to various operating arrangements entered into by carriers and shipper associations and the activities conducted in connection therewith. According to the evidence, a number of associations established headquarters at carrier terminals and used office space and terminal facilities in conducting their operations. Some of the arrangements were covered by leases; others were not. Use of the facilities was allowed by the carriers at nominal rentals in some cases and without charge in others.

The carriers in question also leased truck equipment to the associations for use in performing pickup or delivery service on their traffic. The record discloses various instances in the actual operations where the vehicles were not under the complete control of the lessee. Often, vehicles other than those specified in the leases were substituted.

In addition, the services of the carriers and associations, as disclosed by the record, were so interwoven as to render the operations of the associations under the leases indistinguishable in some instances. For example, pickup requests of association members were received by the carriers' dispatchers or terminal managers, who sent either carrier trucks or the association's leased vehicles to perform the service. Billing prepared by carrier employees was used by the associations for collecting charges from the members, with the collections being made by the carriers' drivers. Teletype billing service was provided by a carrier for one of the associations. No charges were assessed by the carriers for these services. The record indicates that the operating arrangements between carriers and associations were ignored at times, with the carrier performing the pickup or delivery service

and billing the association's members direct.

One of the more aggravated situations, as described in the record, developed from a complex arrangement involving (1) a common carrier who transported the shipments of a shippers association, (2) the common carrier's subsidiary (also a common carrier) engaged in rendering pickup and delivery service for the parent company under contract, (3) the association, and (4) the latter's general manager who held permits to operate as a permitted carrier. The latter owns a few vehicles which he rents to the association for use in performing pickup service for its members. The general manager, as a permitted carrier, entered into a contract with the common carrier's subsidiary to haul the association's freight as a subcontractor from the platform to the common carrier's terminal in lieu of the subsidiary doing so. This movement, however, was actually handled in equipment operated by association employees. Under agreement with the common carrier subsidiary, the general manager (permitted carrier) rented from two to fifteen semi-trailers per week which he turned over to the association for use without charge.

According to the record, these operations became interwoven to a considerable extent as a result of failure to observe the agreements and contracts. For example, although the subsidiary sometimes moved the loaded vans from the association's platform to the common carrier's terminal, the general manager was paid for the movement just as though he had actually handled it under his contract with the subsidiary. The record indicates also that both split pickup and split delivery services were accorded on the same shipments and that consolidations of shipments were made, contrary to applicable regulations.

Other evidence shows that at least one shipper association handled freight for nonmembers and that shipments billed to an

association at one point were delivered to consignees at various points in other areas.

Conclusions

It is clear from the evidence of record in this proceeding that, in handling the freight of shipper associations, some of the respondent carriers observed practices not authorized by applicable tariff regulations, which resulted in the assessment of rates and charges less than those properly applicable. Common carriers, as defined in the Public Utilities Code, are under legal obligation to observe the provisions of their tariffs strictly and without deviation therefrom and to maintain rates, rules and regulations free of unlawful discrimination, preference or prejudice. Similarly, highway permit carriers and city carriers, as defined in the Code, are under legal obligation to observe rates, rules and regulations no lower in volume or effect than those established as minima by the Commission.

It is difficult for the Commission to accept the views expressed by some of the parties participating in the hearing that the failures of carriers to comply with the tariffs were inadvertences. Although the carriers were not specifically identified, the record indicates that a number of the larger, well-established common carriers having many years of experience in intrastate transportation of property in California, were involved. For at least twenty years, such carriers have conducted operations under tariff rules the same as or similar to those in question and are thoroughly familiar with the requirements thereof. This is also true of a great many permitted carriers.

Upon careful consideration of all of the evidence of record, the Commission is of the opinion and finds as follows:

(1) That in handling traffic for shipper associations, certain common and permitted carrier respondents accorded

unauthorized services and improperly assessed charges on split pickup or split delivery shipments, improperly consolidated shipments and assessed charges on the combined weight, or failed to collect charges within the established credit period, all in violation of governing provisions of common carrier tariffs or the minimum rates, rules and regulations established by the Commission, as the case may be.

(2) That certain common carrier respondents leased or rented to shipper associations facilities or equipment necessary or useful in the performance of their duties to the public without first having obtained the Commission's authority, in violation of Section 851 of the Public Utilities Code.

(3) That certain common carrier respondents provided shipper associations with terminal facilities, office space, telephones, billing service and the service of carrier employees in collecting charges from the associations' members, either at a nominal charge or no charge at all, in violation of Section 494 of the Public Utilities Code.

(4) That the granting of the privileges and services specified in finding (3) without charge or at only nominal charges tends to reduce the net transportation charge below minimum levels and is in violation of the requirement in the Commission's outstanding minimum rate orders that respondents observe rates, rules and regulations no lower in volume or effect than those established as minima.

(5) That the commingling of the operations of carriers and shipper associations as shown by the record has resulted in practices which are violative of established regulations, is repugnant to the appropriate discharge of carrier obligations and is not in the public interest.

(6) That respondents who failed to observe their filed

tariffs or the established minimum rates, rules and regulations, as the case may be, should be required to collect the undercharges.

(7) That respondents who leased, rented or otherwise permitted shipper associations to use their terminals or facilities or furnished billing or other services to the associations should be required to review their records and to assess and collect appropriate charges therefor when less than a reasonable and proper charge has been made.

(8) That respondents should be required to maintain their operations and services separately from and without any commingling with the operations of shipper associations.

In other respects, evidence of record relative to some of the leasing and other arrangements between carriers and shipper associations is insufficient to enable the Commission to pass upon the lawfulness thereof. It is evident, however, that there should be further investigation of all phases of the carriers' services in connection with the handling of traffic for shipper associations. This proceeding will be continued and further hearings will be scheduled.

The record made in this proceeding suggests that some shipper associations may be operating as common carrier freight forwarders without certificates of public convenience and necessity rather than as nonprofit shipper groups not subject to regulation under the exemption set forth in Section 220 of the Public Utilities Code. An investigation into all such operations is warranted. A separate order instituting investigation into such matters is desirable and will be issued.

I N T E R I M O R D E R

A public hearing having been held in the above-entitled proceeding, the Commission now being fully informed and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

1. That all respondent carriers are directed to review their records pursuant to the conclusions and findings herein relative to the transportation of property for shipper associations and to collect from such associations any deficiency between the charges assessed and collected and the charges properly applicable under the filed tariffs of common carriers, or under outstanding minimum rate orders, as the case may be.

2. That all respondent carriers who leased, rented or furnished to shipper associations facilities or equipment, or provided any services, at a nominal charge or without charge, are directed to collect from such associations not less than the reasonable value thereof.

3. That respondents who paid shipper associations or carriers for the performance of services on the traffic of shipper associations but which were actually performed by respondents are directed to recover the sums involved in such payments.

4. That all respondent carriers handling property for shipper associations are directed to conduct their operations separately and without commingling them with those of such associations.

5. That collection of the charges directed by ordering paragraphs one and two shall be commenced within sixty days after the date hereof and pursued diligently until concluded.

6. That all respondent carriers are directed to cease and desist from the unlawful practices set forth in the findings

in the preceding opinion.

7. That this investigation is hereby continued for the receipt of evidence relating to the same or other matters within the scope of the order instituting investigation herein, said hearing to be held at a time and place hereafter to be set.

8. That the motions of counsel made at the conclusion of the hearings be and each of them is denied.

This order shall become effective twenty days after the date hereof.

Dated at Los Angeles, California,
this 29th day of January, 1957.

Robert E. Mitchell
President

Raymond L. Winter

Wm. H. Hall

P. Harjo

E. Lynn Fox
Commissioners

APPENDIX A

LIST OF APPEARANCES

Respondents: C. A. Millen, for Kings County Truck Lines; John MacDonald Smith, for Southern Pacific Co., Northwestern Pacific Railroad Co. and Pacific Motor Trucking Co.; William J. Keane, for United Transfer Co. and Carley & Hamilton, Inc.; Willard S. Johnson, for J. Christenson Co. and J. A. Nevis Trucking, Inc.; Charles C. Wilson, for Fred C. Wilson & Sons Trucking; Adrian Stiff, for Fred C. Wilson & Sons; Lloyd Swayne, Jr., for San Francisco Warehouse Co.; Wm. J. Davis, for California Motor Express, Ltd.; A. H. Gritsch, for Oregon-Nevada-California Fast Freight, Inc.; Hyland Hinman, for Haslett Warehouse Co.; and B. E. Rowland, for Willig Freight Lines, respondents.

Interested Parties: Russell Bevans, for Draymen's Association of San Francisco, Inc.; Edward M. Berol, for Draymen's Association of San Francisco and California Warehousemen's Association; Maurice A. Owens, for Draymen's Association of Alameda County; William Russell Walker, for The Electric Autolite Co.; Bert Buzzini and Joseph O. Joynt, for California Farm Bureau Federation; Chas. C. Miller, for San Francisco Chamber of Commerce; Ben H. Stebben, for Industrial Shippers' Association; Allen K. Penttila, for The Sherwin Williams Co.; J. X. Quintrall, for Western Motor Tariff Bureau; J. C. Kaspar and Arlo D. Poe, for California Trucking Associations; Eugene A. Read, for Oakland Chamber of Commerce; Jack L. Dawson, for California Warehousemen's Association; Robert N. Lowry of Brobeck, Phleger & Harrison, for California Retailers' Association; R. C. Fels, for Furniture Manufacturers' Association; Omar E. Pullen, for Retail Furniture Association; E. Nicholas Ferretta, A.T.M., Bethlehem Pacific Coast Steel Corp., for Bethlehem Pacific Coast Steel Corp.; F. S. Kohles, for Valley Express Co. and Valley Motor Lines, Inc.; L. E. Osborne, for California Manufacturers Association; W. M. Cheatham, for Western Traffic Conference, Inc.; Aaron H. Glickman, for himself; H. L. Mathewson, for Pacific States Motor Tariff Bureau and Tank Truck Operators Tariff Bureau; Norman R. Moon, for himself; W. G. Stone, for Sacramento Yolo Port District; Clifford J. Van Duker, for Sunny Vale Shippers Assn.; Al Winner, for Allied Pool; W. A. Hanen, for Shippers Association, Inc.; Milton A. Walker, for Fibreboard Products, Inc.; Harold A. Lincoln, for Fibreboard Paper Products Corp., and Frank Loughran, for San Francisco Movers, Inc., interested parties.

Other Appearances: William C. Bricca, for the Commission staff.

IT IS HEREBY FURTHER ORDERED that the Secretary be and he is hereby directed to cause a copy of this order to be served forthwith upon said respondents, and, when the proceeding is set for public hearing, to cause service of notice of hearing upon said respondents not less than ten (10) days prior to the hearing.

IT IS HEREBY FURTHER ORDERED that a present or future carrier not now included among those described in the first ordering paragraph hereof shall, upon becoming a carrier as so described, thereby become a respondent to this proceeding, and the Secretary be and he is hereby directed, at that time, to cause service of this order and notice of the next hearing to be made upon such respondent.

Dated at San Francisco, California, this 12th day of June, 1956.

PETER E. MITCHELL,
President
JUSTUS F. CRAEMER
RAY E. UNTEREINER
MATTHEW J. DOOLEY
REX HARDY
Commissioners

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of property for non-profit shipper associations as defined in Section 220 of the Public Utilities Code.

Case No.
5783

THE STATE OF
MISSISSIPPI
COMMISSION ON
TRANSPORTATION

ORDER INSTITUTING INVESTIGATION

Good cause appearing,

IT IS HEREBY ORDERED that an investigation be and it is hereby instituted by the Commission upon its own motion for the purpose of investigating the rates, rules, regulations, charges, allowances and practices of any and all carriers of property, including common carriers, radial highway common carriers, highway contract carriers and city carriers as defined in the Public Utilities Code, (all of said carriers are hereby made respondents to this proceeding) relating to the transportation of property for groups or associations of shippers as defined in paragraph three of Section 220 of the Public Utilities Code, for the purpose of determining:

1. Whether this transportation has been performed in violation of the Public Utilities Code by charging, demanding, collecting or receiving a lesser compensation for this transportation than the applicable charges prescribed in the minimum rate tariffs of this Commission on the part of radial highway common carriers, highway contract carriers and city carriers.
2. Whether this transportation has been performed in violation of the Public Utilities Code by charging, demanding, collecting or receiving compensation different than that prescribed in the published tariffs of common carriers.
3. Whether any arrangements, agreements or practices involved in this transportation are in violation of the Public Utilities Code.
4. Whether any carrier or carriers should be ordered to cease and desist from any unlawful acts or practices found to exist.
5. Whether any or all of the operating authority of the respondents should be canceled, revoked or suspended.
6. Whether respondents should be ordered to collect from shippers the difference between the charges billed or collected and the applicable charges due under the minimum rate tariffs or tariffs on file by common carriers.
7. Whether any other order or orders that may be appropriate should be entered in the lawful exercise of the Commission's jurisdiction.

IT IS HEREBY FURTHER ORDERED that public hearings in this investigation be held before such Commissioners or Examiners as shall hereafter be designated, at times and places hereafter to be set.