

Decision No. 60584**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion on the rights and obligations
of highway common carriers and petroleum
irregular route carriers relating to
subhauling or leasing of equipment for
the transportation of traffic of another
carrier.

Case No. 6195

William Meinhold and Frederick E. Fuhrman, for
Pacific Motor Trucking Company; Norman R. Moon,
for Highway Transport Inc., Highway Transport
Express, M&L Trucking Company and Vic Adelson
Drayage; and E. J. Muzio, for Miles Motor
Transport System; respondents.
A. D. Poe, J. C. Kaspar and J. X. Quintrall, for
California Trucking Associations; William
Meinhold and Frederick E. Fuhrman, for
Southern Pacific Company; Milton Walker, for
Fibreboard Paper Products Corporation; Eugene
A. Read, for California Manufacturers Associa-
tion; and Ralph Hubbard, for California Farm
Bureau Federation; interested parties.
Karl K. Roos, for the Commission staff.

O P I N I O NProceedings

On October 28, 1958, the Commission issued an order instituting an investigation for the purpose of determining whether highway common carriers and petroleum irregular route carriers should be authorized to publish in their tariffs special rates and charges for transportation service performed as independent contractor subhaulers for other carriers. A public hearing was held on this order at San Francisco on May 5, 1959 before Examiner William L. Cole.

Subsequent to that hearing there was filed with the Commission a motion for amendment of the order instituting the

investigation. On June 29, 1959, the Commission granted this motion and issued its order broadening the scope of the investigation.

A second public hearing was held on October 14, 1959 before Examiner Cole at which time the matter was taken under submission subject to the filing of briefs. Briefs have now been filed and the matter is ready for decision.

Order of Investigation

As broadened, the investigation was instituted for the purpose of:

1. Determining whether, and if so to what extent, the provisions of the Public Utilities Code require highway common carriers and petroleum irregular route carriers, while operating as independent contractor subhaulers for the transportation of traffic of another carrier, to assess for such transportation the rates specified in their tariffs, and to collect from such other carriers the charges based upon such rates.
2. Determining to what extent, if at all, highway common carriers and petroleum irregular route carriers, while operating as independent contractor subhaulers for the transportation of traffic of another carrier, should be required to assess for such transportation the rates and charges specified in their tariffs which are available to all shippers.
3. Determining to what extent, if at all, highway common carriers and petroleum irregular route carriers should be authorized to publish in their tariffs special rates and charges for transportation service performed as independent contractor subhaulers for other carriers.

4. Determining what, if any, rules and regulations the Commission should issue relative to the publication of such special rates and charges.

5. Determining to what extent, if at all, highway common carriers and petroleum irregular route carriers are or should be authorized to enter into special contracts, agreements, or arrangements with each other or with other carriers for the transportation of traffic by such highway common carriers and petroleum irregular route carriers as independent contractor subhaulers, which contracts, agreements, or arrangements establish the rates and charges for such transportation.

6. Determining what, if any, rules and regulations the Commission should issue relating to such contracts, agreements, or arrangements.

7. Determining any other questions involving the rights, obligations, rates, and charges of highway common carriers and petroleum irregular route carriers relating to subhauling by such carriers.

Facts

The evidence in the record shows that subhauling services are being performed by highway common carriers and petroleum irregular route carriers for other carriers both certificated and permitted. These subhaul practices vary a great deal from carrier to carrier.

Many certificated carriers refuse to perform any subhauling services, others engage in the practice to a limited extent and some certificated carriers have made it an integral part of their over-all carrier business.

The compensation received for the performance of subhauling services also varies from carrier to carrier. In some instances a flat charge will be made. In other instances the subhaulers' charges are based upon a percentage of the gross revenue of the shipment subhauled. In still other instances other variations of assessing charges are utilized. The evidence shows that generally the revenue received for subhauling services is determined by the circumstances surrounding the particular shipment, the value of the subhauling service to the prime carrier, and the ability of the subhauler to perform the service. The charges assessed for subhauling service have varied from carrier to carrier, from shipment to shipment, and from season to season.

There is no apparent conflict of interest in the subject matter of this investigation, either between classes of carriers or between carriers and shippers. Subhauling has been practiced for many years, but there are no complaints either from shippers or carriers that subhauling discriminates against them or causes preference or prejudice to exist.

The briefs of California Trucking Associations, Inc., and of California Manufacturers Association both point out that subhauling is done on a voluntary basis and is performed only if and when the carrier is willing. Such service is not included in the carrier's undertaking to serve the public. The certificated carrier by the legal nature of common carriage and the publication of a tariff offers to transport freight for the shipping public. It does not offer to transport freight for other carriers -- its competitors. Only by special contract does it agree to do that. Subhauling for other carriers is, therefore, not included in the offer that is tendered by the certificated carrier.

In subhauling the certificated carrier has no direct contractual relationship with the shipper. The subhauler simply performs a part of the service undertaken by the principal carrier for the shipper. For regulatory purposes subhauling is sufficiently dissimilar from the transportation service performed by the certificated carrier for the shipping public in general, so that it does not constitute the transportation of the same commodities between the same points both as a common carrier and as a highway contract carrier or as a common carrier and a petroleum contract carrier within the prohibition of Section 3542 of the California Public Utilities Code. See Robertson Drayage Co. (55 C.P.U.C. 60).

As stated in the brief of California Trucking Associations, Inc., freedom to subhaul for other carriers is beneficial to certificated carriers and to the shipping public served by them. The opportunity to subhaul tends to promote greater utilization of equipment. It tends to improve load factors by reducing empty miles. Better use and load factors promote more economical service, which is conducive to public interest.

The Commission has the power to supervise and regulate the contractual arrangements of highway common and petroleum irregular route carriers. However, in the absence of complaint by any party and any evidence of abuses by independent contractor subhaulers, further restrictive rules and regulations will not be imposed by this Commission. See Decision No. 42647 in Case No. 4808 (48 C.P.U.C. 576).

Findings and Conclusions

Based upon all of the evidence of record, the Commission makes the following findings and conclusions:

Highway common carriers and petroleum irregular route carriers which operate as independent contractor subhaulers for the

transportation of traffic of another carrier are not required either (1) to publish in their tariffs and to assess and collect special rates and charges for subhaul transportation service, or, (2) to assess and collect the rates and charges specified in their tariffs which are available to all shippers, and they may enter into special contracts, agreements, or arrangements for the transportation of traffic as independent contractor subhaulers. No further rules and regulations relating to such contracts, agreements or arrangements will be issued at the present time.

O R D E R


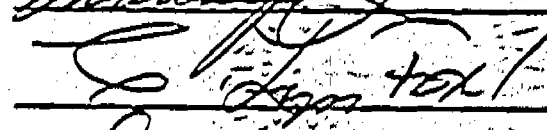
Public hearings having been held in the above-entitled matter and the Commission being informed therein; now, therefore,

IT IS ORDERED that the investigation herein be discontinued.

The secretary is directed to cause copies of this decision to be mailed to each highway common carrier and petroleum irregular route carrier.

The effective date of this decision shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16th day of August, 1960.

President

Secretary

Theodore J. Deiner
Commissioners

McKEAGE, President, dissenting.

I dissent.

The decision of the Commission does violence to the pattern of regulation envisioned by the State Constitution and the Public Utilities Code. Broad and plenary as the discretion of this Commission is, within the framework of constitutional and legislative bounds, such discretion does not extend to matters of the kind here in issue. The action of the Commission stultifies and emasculates a remedial regulatory statute.

These certificated carriers, here concerned, are public utilities, charged and burdened with all the lawful requirements of entities of such status. They may not devote their dedicated property to nonutility use without the prior authorization of the Commission. This is elementary regulatory law. It is statutory in California. (Section 851, Public Utilities Code.) Were this not true, these carriers could dispose of their dedicated property as they saw fit. Such a situation would be intolerable.

These carriers cannot be public utilities and not public utilities at the same time. If these subhauling operations are not public utility in nature, then, these carriers may not employ dedicated property to engage in such operations. If such operations constitute public utility operations, then, compliance with the provisions of Section 489 of the Public Utilities Code by filing tariffs with the Commission covering such subhauling service is mandatory. Sections 491, 493 and 494 of said Code must be observed.

A public utility is constituted for public purposes. It performs a function of the state and occupies a trustee status towards the public. It is not free to make excursions into nonutility fields to the prejudice of its public utility operations, nor is it free to divest itself of public utility obligation just because it may be convenient for it to do so. These cardinal principles underlie Sections 489, 491, 493, 494 and 851 of the Public Utilities Code.

The foregoing rules are fundamental and statutory. The Commission is not privileged or authorized to render them inoperative in order to get around an annoying problem. The action of the Commission, today, constitutes a plain refusal to enforce the law.

If these carriers have just cause for relief from regulation as applied to these subhauling operations, the Legislature is the proper forum to which a request for such relief should be directed--not this Commission.

Dated: August ¹⁶ 1960


McKEAGE