

Decision No. 61796

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into warehouse operative )  
rights of DELTA LINES, INC. )

Case No. 6912

Allan D. Smith and C. R. Nickerson, for respondent.

Elinore Charles, for the Commission staff.

O P I N I O N

The Commission instituted the present investigation on August 30, 1960. Its purpose is to determine whether or not respondent has acquired a prescriptive right as a warehouseman by reason of operations conducted in good faith on September 1, 1959 under tariffs and schedules of respondent lawfully on file with the Commission. Respondent has filed a verified response to the order alleging that it was, in fact, operating certain floor space as a public utility warehouseman in good faith on said date under tariffs and schedules lawfully on file with the Commission.

A public hearing was held before Examiner John Power at San Francisco on December 30, 1960. At the hearing the vice president and general manager of Delta Lines, Inc., testified that it desired to continue what it had done in the past, namely, to store for its transport customers.

The evidence shows and we find that respondent has been operating as a public utility warehouseman within the meaning of Section 239 (a) of the Public Utilities Code and not within the meaning of Section 239(b) of said Code. Sections 1051 and 1052 of said Code are only concerned with Section 239(b) of the Code. Therefore, we find that respondent has not been operating as a public utility warehouseman within the meaning of said latter section and that it

possessed no operating rights pursuant hereto.

The respondent has long maintained, in addition to its warehouse tariff filed August 31, 1959, provisions in its highway common carrier tariff for storage of refused or unclaimed freight.<sup>1/</sup> The order which follows will annul any operative right which the respondent may have claimed as a public utility warehouseman as defined in Section 239(b) of the Public Utilities Code and will cancel the respondent's warehouse tariff filed August 31, 1959. This action will not preclude respondent from continuing warehouse operations incidental to its highway common carrier services under tariff provisions cited in the margin relating to storage of refused or unclaimed freight.

The matter having been submitted, the Commission finds that respondent was conducting operations in good faith as a storer of property for the public generally on September 1, 1959 but that such operations were conducted in connection with or to facilitate the transportation of property by a common carrier or vessel or the loading or unloading of property.

### O R D E R

Investigation having been instituted on the Commission's own motion, public hearing having been held and the Commission basing its order on the evidence adduced at such hearing, the response filed by respondent, the tariffs, schedules and annual reports of the respondent,

#### IT IS ORDERED:

1. That any and all purported operative rights of Delta Lines, Inc., a corporation, as a public utility warehouseman, as that term is defined in Section 239(b) of the Public Utilities Code, are hereby annulled.

<sup>1/</sup> Pacific Coast Tariff Bureau Tariff No. 16, Cal. P.U.C. No. 19 of C. R. Nickerson, Agent, Item 475-Storage (Refused or Unclaimed Freight).

2. That any and all powers of attorney on file with the Commission in the name of Delta Lines, Inc., a corporation as a public utility warehouseman, are hereby canceled.

3. That C. R. Nickerson, Agent, is hereby authorized and directed to cancel the participation of Delta Lines, Inc., in warehouse tariffs filed by him as agent, said cancellation to be made within sixty days after the effective date of this order and on not less than five days' notice to the Commission and the public.

4. That this proceeding is discontinued upon the effective date hereof.

The Secretary is directed to serve forthwith a certified copy of this order upon respondent.

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

Dated at San Francisco, California, this 4<sup>th</sup> day of April, 1961.

Charles W. Bay  
President  
George F. Grover  
Commissioners  
Fredrick B. Halachoff