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Decision No. \_\_\_\_\_

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into warehouse operative  
rights of VALLEY EXPRESS CO. }

Case No. 6925

F. S. Kohles and C. R. Nickerson, for  
respondent.  
Sam R. Choate, for California Warehousemen's  
Association.  
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 public utility warehouseman as that term is defined by Section 239(b) of the Public Utilities Code 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 under Section 239, either (a) or (b), 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 March 28, 1961, and the matter submitted.

Respondent's traffic manager testified in its behalf. He stated that they had stored for many years under the provisions of common carrier tariffs. It wished to continue to operate as it had in the past. It had filed a warehouse tariff to protect its rights but did not desire to engage in the public warehouse business as such.

The respondent has provisions in its highway common carrier tariff for storage of refused, unclaimed or will-call freight.<sup>1</sup> Also, certain storage duties are imposed on carriers by bills of lading which follow forms now in use in the transportation industry.<sup>2</sup> The following order will cancel respondent's participation in public warehouse tariffs under Section 239(b) of the Public Utilities Code. This action will not preclude respondent from continuing warehouse operations under the terms of its common carrier tariffs when such operations are incidental to its transportation services or are required by a lawful bill of lading.

The Commission finds that respondent was storing property for its transport customers on September 1, 1959. Such operations were, however, conducted in connection with or to facilitate the transportation of property by a common carrier or the loading or unloading of property. They were, therefore, of the type contemplated by Section 239(a) rather than 239(b) of the Public Utilities Code. Such operations do not require a certificate.

### 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 upon the evidence adduced at such hearing, the response filed by respondent, the tariffs, schedules and annual reports of respondent,

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<sup>1</sup> Respondent has rules and rates for refused or undelivered shipments and storage in Valley Express Co. Local and Joint Express Tariff No. 9-B, Cal. P.U.C. No. 9, and Valley Express Co./Valley Motor Lines, Inc., Local Freight and Express Tariff No. 1, Cal. P.U.C. No. 1, of F. S. Kohles, Agent.

<sup>2</sup> e.g. Uniform straight bills of lading pp. 165-170 of Western Classification No. 77 of J. P. Hackler, Tariff Publishing Officer, especially Sections 1(b) and 4(a) of contract terms and conditions.

IT IS ORDERED that:

1. Any and all powers of attorney on file with the Commission in the name of Valley Express Co., as a public utility warehouseman, are hereby canceled.



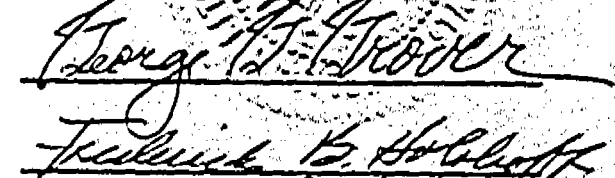
2. C. R. Nickerson, Agent, is hereby authorized and directed to cancel the participation of Valley Express Co. in warehouse tariffs filed by him as agent, said cancellation to be made within sixty days after the effective date of this order and on not less than five days' notice to the Commission and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

3. This proceeding is discontinued upon the effective date hereof.

The Secretary is directed to cause service of a certified copy of this order to be made upon respondent and upon C. R. Nickerson, Agent.

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

Dated at San Francisco, California, this 9th day of MAY, 1961.

  
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President  
  
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George W. Froder  
  
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Commissioners