

ORIGINALDecision No. 67251

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE RIVER LINES, INC.,
a corporation,

Complainant,

vs.

SOUTHERN PACIFIC PIPE LINES,
INC., a corporation, and
SOUTHERN PACIFIC COMPANY, a
corporation,

Defendants.

Case No. 7238 (Amended)

THE J. C. FREESE COMPANY, INC.,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY and
SOUTHERN PACIFIC PIPE LINES, INC.,

Defendants.

Case No. 7239

THE HARBOR TUG AND BARGE COMPANY,

Complainant,

vs.

SOUTHERN PACIFIC PIPE LINES, INC.,
and SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 7241

In the Matter of the Petition of

THE RIVER LINES, INC., J. C. FREESE
COMPANY, INC., and THE HARBOR TUG
AND BARGE COMPANY,for suspension of certain rates
contained in Local Pipeline Tariff
6-A (Cal. P.U.C. No. 8) of SOUTHERN
PACIFIC PIPE LINES, INC.

(I & S) Case No. 7539

ORDER DENYING REHEARING

A petition for rehearing of Decision No. 66695 having been filed by the River Lines, Inc., a corporation, the J. C. Freese Company, Inc., and the Harbor Tug and Barge Company, and the Commission having considered each and every allegation thereof and being of the opinion that good cause for rehearing has not been made to appear,

IT IS ORDERED that said petition for rehearing is hereby denied.

Dated at San Francisco, California, this 26th day of May, 1964.

William C. Beards
President

Everett R. King

George T. Grover

Fredrick B. Helshoff
Commissioners

I will file a dissent
Edw. E. Hatcher

COMMISSIONER PETER E. MITCHELL DISSENTING:

I dissent for the same reasons previously appended to Decision No. 66695.

Because of the "technical" approach of the said decision to a business crisis,^{1/} I am obliged to incorporate Section 310 of the Public Utilities Act into my dissent, expressly that portion thereof as follows:

"Every finding, opinion and order made by the commission, or commissioners so designated, pursuant to such investigation, inquiry or hearing when approved or confirmed by the Commission and ordered filed in its office, shall be deemed to be the finding, opinion and order of the Commission."^{2/}

The concurring opinion in this case does not approve or confirm the findings and order contained in Decision No. 66695. Specifically, it does not concur in the first two findings (page 27) that Pipe Lines is not a competing land carrier within Section 727. It excepts those findings.^{3/} Such exception negates the validity of the entire decision.

Our California Supreme Court has said:^{4/} "Though it is within the discretion of the Public Utilities Commission to determine the factors material to public convenience and necessity, Section 1705 requires it to state what those factors are and to make

^{1/} Page 14, Decision No. 66695

^{2/} Section 310 commences: "A majority of the commissioners shall constitute a quorum...."

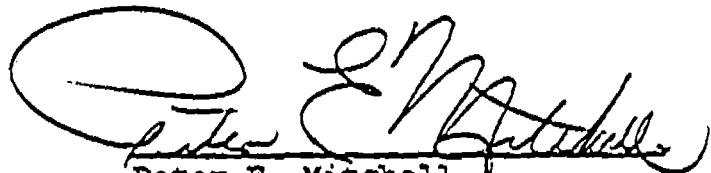
See also Const. Art. 12 #22

^{3/} Second sentence concurring opinion, Decision No. 66695

^{4/} California Motor Transport Co. v. Public Utilities Commission
59 C 2d 270 at 275

findings on the material issues that ensue therefrom."

A majority of the Commission has determined that whether or not Pipe Lines is a competing land carrier within the meaning of Section 727 of the Public Utilities Code is a "factor material", indeed, indispensable to this decision.^{5/} Findings must therefore be made on the issues ensuing therefrom. This Decision No. 66695 has failed to do.


Peter E. Mitchell
Commissioner

^{5/} See findings 1 and 2, page 27, Decision No. 66695; dissent pages 1 and 2, Decision No. 66695