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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Public Utilities Resolution No. 13885, Sub-No. 59.)

In the Matter of the petition of Union Terminal Warehouse, a corporation, for amendment of Resolution No. 13885, by eliminating therefrom the name of petitioner.)

Application No. 47216 (Order Granting Rehearing issued February 25, 1965)

John MacDonald Smith, for Union Terminal Warehouse, petitioner.
James Quintrall, for Los Angeles Warehouseman's Association, interested party.
Elmer Sjostrom, Counsel, and Eugene E. Cahoon, for the Commission staff.

OPINION ON REHEARING

The Commission by its order issued February 25, 1965, has granted rehearing pursuant to the petition of Union Terminal Warehouse in which it seeks to be eliminated from Resolution No. 13885 which restricts Union Terminal Warehouse from engaging in transportation under its permit when such transportation is covered by the highway common carrier operative authority of Pacific Motor Trucking Company and Pacific Motor Transport Company.

Rehearing was held before Examiner Cline in Los Angeles on June 29, 1966. The matter was taken under submission upon the filing of concurrent briefs on September 22, 1966.

The issue is whether Union Terminal Warehouse which is a wholly owned subsidiary of Southern Pacific Company is the alter ego of Pacific Motor Trucking Company and Pacific Motor Transport Company, other wholly owned subsidiaries of Southern Pacific

Company, and by reason of that fact would be violating Section 3542 of the Public Utilities Code by transporting under its radial highway common carrier and highway contract carrier permits the same commodities between the same points as does Pacific Motor Trucking Company and Pacific Motor Transport Company, under their common carrier certificates.

Section 3542 of the Public Utilities Code reads as follows:

"3542. No person or corporation shall engage or be permitted by the commission to engage in the transportation of property on any public highway, both as a highway common carrier and as a highway contract carrier or as a highway common carrier and a petroleum contract carrier of the same commodities between the same points."

Based upon a consideration of the record herein, the Commission finds as follows:

1. Union Terminal Warehouse conducts a general commodity warehouse business in the City of Los Angeles at 737 Terminal Street and has operated continuously as such since 1931.
2. Southern Pacific Company has owned the capital stock of Union Terminal Warehouse since 1931.
3. Union Terminal Warehouse operates its warehouse business under a prescriptive operating right and certificate granted by Decision No. 51395, issued April 26, 1955, in Application No. 26759.
4. Union Terminal Warehouse has been in the trucking business since 1931.
5. As of July 27, 1964, Union Terminal Warehouse was operating its trucking business under (1) Radial Highway Common Carrier Permit No. 19-42229, issued on August 28, 1950, as amended June 11, 1963; (2) Highway Contract Carrier Permit No. 19-579, issued February 10, 1936, as amended June 11, 1963; and (3) City Carrier Permit No. 19-40553, issued June 11, 1950.

6. As of July 27, 1964, Union Terminal Warehouse was operating approximately 30 trucks and tractor-semi-trailer combinations, transporting commodities in the territory commonly referred to as the Los Angeles Basin Territory, primarily for Union Terminal Warehouse's warehouse storers.

7. The motor carrier services of Union Terminal Warehouse were operated with Union Terminal Warehouse employees under the supervision and direction of Union Terminal Warehouse supervisors and officers. Its transportation services were closely coordinated with warehouse withdrawals, were adapted to the particular transportation requirements of the warehouse storers and their customers, and offered same-day delivery service in the Los Angeles Basin as contrasted to the normal next-day delivery service provided by non-warehouse-controlled motor carriers.

8. It is a common custom and practice in the Los Angeles area for public warehouses to offer trucking services.

9. As of July 27, 1964, Pacific Motor Trucking Company, a corporation wholly owned by Southern Pacific, held a certificate of public convenience and necessity, granted by Decision No. 56898 issued June 24, 1958, in Application No. 35802, authorizing it to transport general commodities between, among others, points and places in the City of Los Angeles, on the one hand, and, on the other hand, virtually all points and places in the Los Angeles Basin Territory.

10. The entire area presently covered by Union Terminal Warehouse's trucking operations is embraced within the service area of Pacific Motor Trucking Company's certificate of public convenience and necessity.

11. As of July 27, 1964, Pacific Motor Transport Company, another corporation wholly owned by Southern Pacific Company, held certificates as an express corporation granted by Decision No. 59617 issued February 1, 1960, in Application No. 41685, and by Decision No. 59977, issued April 19, 1960, in Application No. 41965, authorizing it to operate over the lines of Pacific Motor Trucking Company.

12. The drivers of the Union Terminal Warehouse trucks are all on the Union Terminal Warehouse payroll and Union Terminal Warehouse never uses drivers borrowed from Pacific Motor Trucking Company or from Pacific Motor Transport.

13. All of the supervisors of the Union Terminal Warehouse operations are Union Terminal Warehouse supervisors or officers, and there are no common officers between Union Terminal Warehouse, on the one hand, and Pacific Motor Trucking Company or Pacific Motor Transport Company, on the other hand. Union Terminal Warehouse is not managed or controlled by Pacific Motor Trucking Company or Pacific Motor Transport Company and does not manage or control either of said companies.

14. The headquarters for the Union Terminal Warehouse trucking services are at the warehouse, 737 Terminal Street, Los Angeles, a point at which Pacific Motor Trucking Company and Pacific Motor Transport Company have no terminal employees stationed and carry on no operations.

15. The equipment used in the Union Terminal Warehouse trucking services is separately identified as that of Union Terminal Warehouse.

16. Neither Pacific Motor Trucking Company nor Pacific Motor Transport Company does any solicitation work for or refers any freight for handling to Union Terminal Warehouse.

17. There are no understandings of any nature between Union Terminal Warehouse, on the one hand, and Pacific Motor Trucking Company or Pacific Motor Transport Company, on the other hand, with respect to rates, service or any other facet of Union Terminal Warehouse's trucking operations.

18. Pacific Motor Trucking Company offers statewide regular route service in the same manner as a number of other reliable motor common carriers in California. Such common carriers provide next-day delivery service from the warehouses.

19. The Union Terminal Warehouse trucking service is a highly specialized same-day delivery service, very closely coordinated with the warehouse, to give metropolitan area wholesalers a delivery service closely adapted to their needs.

20. Shippers using trucking services of both Union Terminal Warehouse and Pacific Motor Trucking Company consider the two carrier operations to be complementary rather than competitive, providing functionally distinct types of services. Such shippers are opposed to having the trucking permits of Union Terminal Warehouse curtailed so as to preclude its making deliveries in the areas in the Los Angeles Basin in which Pacific Motor Trucking Company is certificated to serve.

21. If Union Terminal Warehouse should be precluded from providing highway permit carrier services from the warehouse and points in the vicinity of the warehouse to other cities in the Los Angeles Basin Territory which Pacific Motor Trucking Company is certificated to serve, it would be at a substantial disadvantage in its warehouse business.

22. Pursuant to Resolution No. 13885, dated July 28, 1964, amended radial highway common carrier and highway contract carrier permits were prepared by the Secretary of the Commission and mailed to Union Terminal Warehouse. Such amended permits were transmitted to Union Terminal Warehouse by letter dated July 28, 1964.

23. Decision No. 67338, dated June 3, 1964, in Application No. 44129, involved an application for a highway carrier permit by Emile Pozas and Florencio Pozas, a partnership, to which Union Terminal Warehouse was not a party. Union Terminal Warehouse had no notice that the amendment, curtailment, or restriction of its permits was involved or would be considered by the Commission in that proceeding.

24. Union Terminal Warehouse was given no notice of the pendency of the proceedings in Resolution No. 13885, was given no notice of the fact that its trucking permits were being reviewed and might be curtailed by Commission action, was given no opportunity to be heard before the Commission voted on and passed Resolution No. 13885, and was not furnished a copy of Resolution No. 13885 until December 18, 1964.

25. The petition of Union Terminal Warehouse for rehearing of Resolution No. 13885 was filed December 24, 1964, less than ten days after the service of said resolution upon Union Terminal Warehouse.

Based upon the foregoing findings, the Commission concludes as follows:

1. The procedural due process which was lacking insofar as Union Terminal Warehouse is concerned at the time of the issuance of said Resolution No. 13885 on July 28, 1964, has now been met by the hearing of the petition for rehearing of said resolution.

2. The restricted permits sent to petitioner on July 28, 1964, should be amended as hereinafter indicated, and they did not supersede Union Terminal Warehouse's Radial Highway Common Carrier Permit No. 19-42229, as revised June 11, 1963, and its Highway Contract Carrier Permit No. 19-579, as revised June 11, 1963.

3. During the course of this rehearing no cause has been shown why said permits should be restricted in the manner provided by Resolution No. 13885. The record does not disclose that the operations of Union Terminal Warehouse and Pacific Motor Trucking Company and Pacific Motor Transport Company are such as to frustrate the legislative scheme of regulation.

4. Resolution No. 13885 should be amended by deleting Sub-No. 59, Union Terminal Warehouse Permit 19-42229 and Permit 19-579, from page 23 of Schedule "A" thereof, effective July 28, 1964.

ORDER ON REHEARING

IT IS ORDERED that:

1. Union Terminal Warehouse's restricted Permit No. 19-42229 to operate as a radial highway common carrier, as amended July 28, 1964, and its restricted Permit No. 19-579 to operate as a highway contract carrier, as amended July 28, 1964, are hereby rescinded as of July 28, 1964.

2. Union Terminal Warehouse's Permit No. 19-42229 to operate as a radial highway common carrier, as amended June 11, 1963, and its Permit No. 19-579 to operate as a highway contract carrier, as

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amended June 11, 1963, are hereby declared to have been in full force and effect since June 11, 1963.

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

Dated at San Francisco, California, this 7th day of NOVEMBER, 1967.

John E. Mitchell
President

William C. Binnick

Augusta

William J. ...

Glenn P. ...
Commissioners