

ORIGINAL

Decision No. 77903

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Donald D. Renner and Pete Bannon,  
doing business as BAYVIEW FREIGHT  
LINES,

Complainants,

vs.

Edgar Osgood and Correnah de Pue  
Osgood, doing business as DE PUE  
WAREHOUSE COMPANY OF SAN FRANCISCO,

Defendants.

Case No. 8859  
(Filed November 6, 1968)Robert C. Marks, for complainants.  
Frank Loughran, for defendants.O P I N I O N

By their complaint filed November 6, 1968, Donald D. Renner and Pete Bannon, doing business as Bayview Freight Lines, allege that during the period December 19, 1966 to March 27, 1967, they performed for-hire transportation pursuant to their authority as a permitted carrier for the defendants Edgar Osgood and Correnah de Pue Osgood, doing business as de Pue Warehouse Company of San Francisco; that the total cost of said transportation amounted to \$88,787.82 and that defendants have paid \$70,139.70, but refuse to pay the balance of \$18,648.12 because of a dispute between the parties hereto as to whether defendants' two warehouses constitute a single point of origin, as defined in Item 10 of Minimum Rate Tariff No. 2. Complainants therefore request an order of the Commission determining that defendants' two warehouses are not contiguous and are two separate and distinct points of origin.

On November 29, 1968, defendants filed a motion to dismiss the complaint on the ground that it fails to state a cause of action within the jurisdiction of this Commission.

Public hearing on the motion to dismiss was heard before Examiner Daly on September 2, 1970, at San Francisco.

Defendants take the position that the complaint constitutes a request for declaratory relief, which the Commission is without authority to grant, and that the matter is one that should be determined by a court of law.

Complainants argue that the Commission may grant declaratory relief when accompanied by a regulatory order. They contend that inasmuch as defendants are conducting a public utility warehouse operation they are subject to the provisions of Section 702<sup>1</sup> of the Public Utilities Code and if so ordered would be required to pay the amount found to be due and owing in conformity with Minimum Rate Tariff No. 2.

Complainants also contend that because the Commission staff, by letter dated November 27, 1967, expressed an opinion that the warehouses in question constitute a single point of origin, as defined in Item No. 10 of Minimum Rate Tariff No. 2, the Commission has in effect assumed jurisdiction of the matter and should resolve the issue by formal order following a public hearing.

The Commission has repeatedly held that it has no authority to grant declaratory relief. American Transfer Co., Decision

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<sup>1</sup> Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

No. 76038, dated August 19, 1969, in Application No. 50584; Moore Truck Lines, Decision No. 75413, dated March 11, 1969, in Application No. 50536; Holabird v. Railroad Commission, 171 Cal. 691, 696; Borden v. The California Company, 21 CRC 23, 25; Peckham, 30 CRC 851; concurring opinion in Arizona Edison v. So. Sierras, 31 CRC; Re Loomis, 34 CRC 137, 138; LA & S.L. R. Co., 46 CRC 790, 793.

Complainants' contention that because defendants operate a public utility warehouse they can be required to pay an amount found by the Commission to be due and owing is untenable. The fact that defendants are operating a public utility warehouse has no relation to the transportation service, which is the subject of the complaint, and can not be the basis for conferring upon this Commission the authority to issue a money judgment.

After consideration the Commission finds that the complaint fails to state a cause of action within the jurisdiction of this Commission in that it seeks a declaratory judgment and should therefore be dismissed. The granting of the motion shall not be considered as a determination of the issue as to whether the warehouses in question constitute a single point of origin and/or destination within the meaning of Minimum Rate Tariff No. 2.

O R D E R

IT IS ORDERED that the complaint in Case No. 8859 is hereby dismissed.

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

Dated at San Francisco, California, this 4th day of NOVEMBER, 1970.

*J. P. ...* Chairman  
*...*  
*William ...*  
*...*  
Commissioners

I abstain  
Vernon L. Sturgeon