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Decision No. 80351

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Wm. H. Hutchison & Sons, Inc., a corporation, also doing business as California Ship Service Company and California Salvage Company; Wm. H. Hutchison & Sons Service Co., Inc., a corporation; and Thums Long Beach Company, a corporation.	Case No. 9205 (Filed March 23, 1971)

James H. Lyons, Attorney at Law, for Wm. H. Hutchison & Sons, Inc. and Wm. H. Hutchison & Sons Service Co., Inc., and Robert H. Buchanan, Attorney at Law, for Thums Long Beach Company, respondents.
William David Figg-Hoblyn, Attorney at Law, and James Asman, for the Commission staff.

O P I N I O N

This proceeding is an investigation on the Commission's own motion into the operations, rates and practices of Wm. H. Hutchison & Sons, Inc., a corporation, also doing business as California Ship Service Company and California Salvage Company; Wm. H. Hutchison & Sons Service Co., Inc., a corporation; and Thums Long Beach Company, a corporation. The order states that it appears that Wm. H. Hutchison & Sons, Inc. (Hutchison) is engaged in the business of transporting property over the public highway for compensation, not having been issued any Commission authorization for such business, and that it appears that respondent Hutchison may have violated Sections 3548, 3571, 3664, 3667, 3668, 3669 and 3737 of the Public Utilities Code.

The order states that Thums Long Beach Company (Thums), a corporation, has received service from respondent Hutchison in

the form of transportation of property over the highways of this State for compensation, and is a shipper of property, and that Wm. H. Hutchison & Sons Service Co. (Service Co.), a corporation, is under the common control and ownership of Hutchison and that Service Co. is engaged in the business of transporting property over the public highways for compensation, having been issued a radial highway common carrier's permit and a petroleum irregular routes certificate, and may have violated certain sections of the Public Utilities Code appearing in the order.

There were 11 particulars subject to the investigation, the main thrust of which was whether or not Hutchison and Service Co. were in violation of Minimum Rate Tariff 13 (MRT 13).

The matter was set for a prehearing conference before Examiner Gilman on May 12, 1971.

The issues were generally identified as follows: (1) Can the movement of "waste" be transportation for hire under the Highway Carriers' Act and the Public Utilities Code? Related to this issue was the effect of Informal Ruling 56-A issued by the Commission staff on July 27, 1970. (2) Whether or not an alter ego theory could apply under the circumstances to identify Hutchison and Service Co. as one and the same company. (3) Whether or not the tariff in singling out transportation to oil and gas wells and storage tanks to the exclusion of all other users of vacuum truck service is discriminatory.[1/] (4) Whether or not the commodity description in the tariff applied to the materials in question. (5) Whether or not Hutchison was engaged primarily in a field other than transportation so as to make it exempt under Section 3549 of the Public Utilities Code. (6) Whether or not Hutchison's vehicle leases to Thums are devices to provide transportation.

1/ Respondents offered no evidence or argument in support of this issue; no further consideration is necessary.

The matter was then continued and heard before Examiner Gilman on August 4, 5 and 6, 1971, and was submitted subject to the filing of concurrent written briefs by the parties following receipt of the transcript and concurrent answering briefs. Decision No. 79831 reopened the proceeding on the Commission's own motion for further inquiry raised by the below-quoted language from Decision No. 75522 in Case No. 6008, and resubmitted on April 21, 1972.

Background

William H. Hutchison, as an individual or a partnership, first started business in 1926 under the name of California Ship Service; he engaged in cleaning services in the marine field, and then expanded into the industrial field. The operation was engaged in the cleaning of marine vessels and vessels and containers in refineries and other industrial facilities. Hutchison, as a sole proprietorship, partnership, or corporation, has been engaged in the disposing of waste created by the cleaning operations since its inception in 1926.

In 1960 all of the entities were brought under one operation and incorporated as Wm. H. Hutchison & Sons, Inc. Certain dba's were continued because they were well known in the various fields under their initial names.

The basic operation is heavy marine and industrial cleaning where for various reasons particular areas need cleaning either to be worked on or for a change of product or because of some blockage in the vessel or substance which is being worked on so that the machinery can no longer perform the function for which it was designed.

Hutchison has equipment for cleaning oil spills on land or on sea, including oil-skimming devices, emulsifiers and boats or vessels that can go out on the water to pick up spills on the seas. In addition to these functions the company has been engaged in handling the disposal of hazardous materials throughout the United States since 1934, including water-reactive metals, poisons, atomic

materials, contaminated products and gaseous materials, some of which disposal is performed under permits from the Atomic Energy Commission, the California Department of Public Health and the California State Water Control Board.

As a necessary incident to the cleaning operation, Hutchison transports waste materials because such materials cannot be disposed of in the area where they are working.

Hutchison or its predecessor owned patents on the vacuum or Wheeler System in the 1930's. The first application of the vacuum system was on a barge and the rights were later sold and the system was applied to trucks in the late 1950's. Trucks using this system were used in the cleaning and disposal business of the senior company. Hutchison has never hauled anything over the road other than waste material to be disposed of.

In 1966 it was anticipated that Thums would need the cleaning services of Hutchison on a continuing basis. As a result, a miscellaneous work agreement was drawn up that would allow Thums to utilize Hutchison's service on an as-required basis without having to negotiate a contract for each specific instance. This contract was to cover cleaning and waste disposal resulting therefrom.

Initially, the work done by Hutchison was to dispose of non-oily waste by dumping at sea, but a problem arose in cleaning the cellars on the islands located in San Pedro Bay as well as on Pier J. The oil pumps operated by Thums are located on four islands off shore and on Pier G and Pier J. The pumps are sunk into the ground and the areas surrounding the pumps are called cellars. Since 1966 Hutchison has been using its vacuum tank equipment and crews for cleaning and disposal for Thums on all of the islands as well as Pier J and Pier G in Long Beach. Hutchison also does cleaning and disposal business for customers other than Thums as a daily occurrence.

The instant operation consists of collecting and moving oily waste directly between various sites on the islands and piers to public dumps which accept such materials. There are also intermediate hauls between points near well sites to intermediate hauling tanks; since such moves begin and end without traversing public highways, the transportation was not claimed by staff to be within our jurisdiction.

The Hutchison interests had received inquiries about transporting drilling mud from other companies not herein involved. Since the transportation of drilling mud products and other drilling chemicals would be such a small part of the overall operation of Hutchison, it was thought better to form a separate corporation and acquire the necessary operating authority through the new corporation, thereby keeping the regulated company separate from Hutchison. Service Co. was therefore formed in 1970 and proceeded to acquire the certificate and permit.

Service Co. hired a manager specifically for the purpose of running that company. Although two of the directors were in common with each of the companies, they held separate meetings. The companies' operations were kept separate and distinct. The companies file separate tax returns, have separate business licenses from the City of Los Angeles, are separately registered with the Federal Government for tax purposes, and have separate bank accounts.

The operations in question are performed with two tractors with vacuum pumps and two 110-barrel trailers which are leased from Hutchison to Thums. It is claimed that junior company has no connection whatsoever with these arrangements.

The truck rental is a monthly charge; Hutchison remains responsible for maintenance and lubrication. Drivers are also supplied by Hutchison and Thums pays Hutchison for their services on an hourly basis - $7.12 per hour for off-shore work and $6.94 for on-shore work.

Jurisdiction - Transportation of Waste

Respondents contend that the use of the word "property" in such statutes as Sections 213, 3502 and 3511 to describe the Commission's jurisdiction over truck transportation, exempts transportation of waste material from regulation. Staff contends that that single word (which is nowhere defined in the Code) does not exclude such carriage from our jurisdiction.

The question is one of legislative intent: If respondent's position is correct we should hold that the Legislature intended by the use of the word "property" to introduce the quirks and oddities of the common law of property into the field of transportation regulation as jurisdictional questions.

If, on the other hand, we were to adopt the staff view we would necessarily have to conclude that the use of that single word was not specifically intended to reflect a policy that transportation of valueless objects and substances should be unregulated. We are aware that other jurisdictions have adopted the interpretation supported by respondents. Ex parte MC-85, Transportation of Waste Products for Re-Use, 114 MCC 92 (Cochise Sanitary Services, Inc. v. Corporation Commission, 410 P. 2d 677, 2 Ariz. App. 559).

However, we do not believe these precedents are necessarily indicative of the intent of the California Legislature. The most persuasive indication of legislative intent is to be found in the preamble to the Highway Carriers' Act (Section 3502, Public Utilities Code).[2/] That section expresses a concern to preserve the use and

2/ "3502. The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public."

benefit of public highway to all the public and to secure reasonable rates..."for transportation by carriers operating upon such highways..."

The value or lack of value of commodities carried would be immaterial to either primary legislative concern. Respondent has, however, fastened on the clause "...consistent with the needs of commerce" and argues that waste transportation is not transportation for commerce. This phrase does not indicate to us a legislative determination that the transportation of waste is commercially unimportant. Moreover, neither that qualification nor the word "property" appears in those clauses which refer to the public's need for adequate transportation service, and for just and reasonable rates.

We are of the opinion that Section 3502, while not specifically mentioning waste transportation, is consistent with the staff's position.

The Legislature did not adopt the Highway Carriers' Act to operate in a vacuum. The Constitution (Sections 20, 21, 22, Art. XII Cal. Const.) had already conferred on this Commission certain powers to regulate rates for the transportation of "...freight or passengers..." (Sections 20, 21) or "...passengers and freight" (Section 22). Those powers are self-executing (People v. Western Airlines, 42 Cal. 2d 621).

It should also be noted that Section 21 uses the phrases "transportation of...freight or passengers" and "transportation of passengers or... property" interchangeably. We have found no indication that the word "freight" has any usual connotation of value. Insofar as our constitutional jurisdiction is involved, it is our opinion that the transportation of freight is subject to the above-cited provisions regardless of the value of the objects or material transported.

The question then becomes whether the Legislature which adopted the Highway Carriers' Act to allow regulation of carriers

who were not public carriers under the common law, intended to confer a subject-matter jurisdiction less extensive than that granted by the Constitution.

Parenthetically, it should be noted that the Legislature, in adopting statutes for the regulation of common carriers, has used "freight" and "property" apparently on the assumption that the terms are interchangeable (compare Section 728.5 with Section 731, Public Utilities Code).

When the Legislature added the Highway Carriers' Act (Section 3501, et seq.) to the Code it clearly intended certain sections to be inapplicable to passenger transportation. That intent was expressed by using the word "property" in Sections 3502, 3510, 3511 and 3541. We can find no reason to hold that that word was intended to express any secondary meaning requiring a valuation of the objects or substances transported as a jurisdictional test.

Where the Legislature intended to place other limits on the Commission's jurisdiction under the Highway Carriers' Act, it typically did so with precision and clarity (cf. Sections 3505(a)(b), 3511(d)(e), 3549, Public Utilities Code). In each instance, the exception is such that it is possible to deduce the policy considerations which motivated the exemption.

Respondents are asking us to declare that the Legislature intended another exception, and expressed its intent, by choosing a single word and then failed to define that word. Respondents have failed to even suggest any public policy which would justify the exception; nor have they advanced any explanation why a Legislature which has otherwise been careful to use legislative techniques which avoid unnecessary jurisdictional confusion and litigation should have deliberately obscured its intent in this one area.

We therefore conclude that the word "property" as used to confer either constitutional or statutory jurisdiction over highway transportation is synonymous with the word "freight" and signifies nothing more than a distinction between passenger and freight transportation.

Tariff Coverage - "Commodities"

Respondents contend that the word "commodities" as used in Item 40 of MRT 13 (entitled Application of Tariff - Commodities) indicates that only valuable freight is covered.

We reject this contention. The word "commodities", as used in transportation rate-making, is a broad generic term and would be appropriately used to refer collectively to both valuable and valueless objects or substances.

Primary Business

Hutchison engages in corporate activities for Thums and other customers which include operations in which the transportation element, if any, is apparently subordinate to cleaning and/or disposal.

Hutchison claims that we must consider all of the operations together with the operation in question, as an integrated whole, in determining the "primary business" issue (Section 3549, Pub. Util. Code).3/

If Section 3549 were interpreted to require all of a corporation's enterprises to be treated as a single integrated whole, carriers could undertake separate non-transportation activities in order to free themselves from regulation, with disastrous effects on both competitive single-purpose carriers, and on the public policies set forth in Section 3502. We think that the question of whether or not a corporation is engaged in a single or multiple enterprise is a question of fact.

3/ "3549. Any person or corporation engaged in any business or enterprise other than the transportation of persons or property who also transports property by motor vehicle for compensation shall be deemed to be a highway carrier for hire through a device or arrangement in violation of this chapter unless such transportation is within the scope and in furtherance of a primary business enterprise, other than transportation, in which such person or corporation is engaged. (Added 1963, Ch. 1576.)"

The evidence that the vacuum-truck operations had previously been conducted by a single-purpose operator demonstrates the lack of any necessary functional interrelationship between the Hutchison-Thums waste movements and its other activities for Thums and others.

The fact that both transportation and other services were covered by a single master contract should be of little weight. The possibly self-serving declarations of interested parties are not to be relied on to determine jurisdictional questions which affect the public interest.

The operation of concern here consistently involves the transportation of liquid wastes. In conjunction with this transportation the vacuum principle is consistently used to remove the material from various types of containers and again to empty the truck. These activities are parallel to loading and unloading activities in other forms of trucking and should be considered as accessorial services (Section 3662 Pub. Util. Code) and part of the rateable total transportation services.

The record indicates that the vehicle operators also occassionally work on other assignments such as cleaning and desanding. Insufficient facts are present to determine that these activities are so closely related to transportation to be classed as accessorial. Assuming they are within the scope of Hutchison's non-transportation activities, it does not appear they are the predominant element of the transaction. The individual transaction records indicate that such non-jurisdictional activities are less common than transportation and no evidence was offered to show that, despite frequency, they were more important, economically or functionally, than the transportation element. This conclusion is supported by the fact that the employees involved have trucks available full time; full-time truck availability would not be expected if the employee's service were primarily non-transportation.

It should be noted that our analysis of this issue does not distinguish between jurisdictional and non-jurisdictional transportation. The legislation used the phrase "primary business other than transportation". In applying the phrase we balance all of the transportation activities in the enterprise in question, whether conducted on or off highway, against the non-accessorial services in determining which is primary.

Finally, we note that Section 3549 has deliberately stated the primary business rule in the form of an exception. The plain intent was thus to put the burden of proof on the entity claiming the benefit of the rule. To escape regulation the putative carrier must offer evidence to convince the Commission or other tribunal to adopt its view of the scope of the enterprise in question and of the predominance of the non-transportation element.

Proprietary Carriage

Thums retains significant control over and involvement with, the ultimate disposition of the waste. This involvement is parallel to the control exercised by a shipper in more conventional transportation; as a consequence, we conclude that the oily waste does not become Hutchison's property at any point in the transaction and that therefore the exception stated in Section 3511(b), Public Utilities Code, which exempts from regulation a person transporting his own property, is inapplicable.

Alter Ego

Even if Hutchison had no transportation subsidiary and even if the corporate family performed no other transportation, we would still find that Hutchison's operations required operating authority from this Commission.

In addition, Hutchison's lack of operating authority is immaterial to the applicability of minimum rates (Keller v. Thornton Canning Co., 66 Cal. 2nd 963).

Therefore, no findings on this issue are necessary.

Leasing

Section 3548, Public Utilities Code, condemns as a device to evade regulation any operation whereby a vehicle and driver are provided by the same person.

Therefore, despite the documents which purport to be a lease of vehicles from Hutchison to Thums, the operation is within our jurisdiction as transportation since employees of Hutchison operate the vehicles. (Cf. General Order No. 130, Part II, paragraphs C6 and D.)

Impact of Decision No. 75522

Other absent parties might be confused as to the impact of the following quotation from Decision No. 75522, in Case No. 6008:

> "Unless a specific need has been shown the Commission has not undertaken to prescribe regulations for transportation involving clean-up work or debris removal. The exceptions include minimum rates in MRT-7 for the hauling in dump trucks of debris resulting from the demolition of buildings and structures and resulting from maintenance of streets and highways. Other rate regulation of clean-up work has been limited to clean-up performed at a job site as an incidental service to the carrier's transporting asphaltic concrete to said job site under the zone rates in MRT-17 and to clean-up work at oil and gas well sites under the rates in MRT-13. The minimum rates were established in such instances to meet individual special situations; however, the circumstances resulting in those special situations are similar; i.e., the carriers perform clean-up work for the shippers that regularly engage them to perform what might be called commercial transportation. Unless minimum rates were established for the clean-up work the carriers would be able to subvert the minimum rates established for the commercial transportation by providing clean-up work at free or reduced charges. The establishment of minimum rates for clean-up work was necessary to the application and enforcement of the minimum rates prescribed for other services the carriers perform."

If the reasons given were the basis for including waste within MRT 13, one would expect to find an item exempting waste hauling when the shipper does not also obtain commercial transportation from the waste hauler. There is no such item; we reopened to permit the parties on the record to present their views as to whether this omission was an oversight.

None of the parties have pointed out anything in the original or subsequent decisions adopting or modifying MRT 13 which would support the reasoning of Decision No. 75522. Consequently, insofar as Decision No. 75522 indicates an intent that oil-well waste transportation should be rateable only when performed in conjunction with the transportation of valuable substances, it is unsubstantiated. We conclude that MRT 13 governs the transportation of all oil-well waste, as described in the tariff, regardless of other transportation performed by the subject carrier for the shipper in question.

Undercharges - Rule Violations

Whenever transportation services are charged for on a different basis than that provided for in the tariff, there are difficult problems in converting the payments actually made back into the proper basis in order to determine whether the charge was or was not less than that provided in the tariff. This is why all minimum rate tariffs include a requirement that a carrier not use any other basis of charges than that specified in the tariff.

Rate enforcement problems may also occur when a carrier fails to prepare and retain documents containing all the information necessary to determine the proper rate and charge. For this reason, the Commission uniformly imposes documentation rules as part of a minimum rate tariff.

Neither shipper or carrier used the proper basis of charges (hourly) nor prepared documents containing all the necessary information for rating. Nevertheless, the staff attempted to show that the records, kept to justify charges under the "lease" and the service contract, could support a finding of the existence and amount of undercharges.

Staff also requested the Commission, based on the information available for a typical two-week period, to devise a formula which could be utilized to determine the total amount of undercharges to permit a fine in the amount of the undercharges against the carrier under Section 3800 and ultimate collection by the carrier of that amount from the shipper.

In order to do this, staff rested its assessment of the proper charges on the assumption that all of the "on-shore" time listed in the Hutchison daily bills was jurisdictional. Those same documents, however, indicate such services as working on a heater treater, and cleaning sand pots and pits, and desanding were included in "on shore time"; no adequate proof was offered as to what such services consisted of or whether they were accessorial. Further, some of the loads were apparently sand. No evidence was offered to show that the sand was in suspension in a liquid (as required by Item 40 of MRT 13). The staff's theory was apparently that all "on-shore" time should be presumed to have been used for jurisdictional transportation and accessorial services, unless the documents expressly described activities which were clearly non-accessorial.

On one shipment part of the service rated was described as follows: "Pumped cellars on J-5 site - pumped into H2/S [sic] Baker tank". It appears that both the J-5 and the Baker tank are on Thums property with no intervening public roads. Nevertheless no deduction was made for non-jurisdictional hauling.

Thus the staff's estimate of rateable time was faulty. No apparent means exists to acquire the necessary information to properly distinguish jurisdictional and non-jurisdictional time.

Further, any determination of undercharges requires a statement of the amount actually paid. The labor component of the actual payment was recorded on an hourly basis, and were it not for our doubts as to whether all the on-shore time was spent on jurisdictional work, could be readily calculated on an hourly basis.

However, the other component of the actual payment, the truck rental, was calculated on a monthly basis. The staff simply divided this payment into 31 equal segments and applied the resulting $32.91 to each day's transportation. On a minimum two-hour service (Item 70, MRT 13) this form of calculation would produce a constructive payment for truck and driver of $46.90, whereas the proper tariff charge would be $34.60. Thus, even accepting the 1/31 allocation, a finding that some jurisdictional service occurred in any particular day would not justify a determination that there was an undercharge; we would have to make a finding of the amount of jurisdictional service rendered. As indicated above, the "on shore" time entry on the freight bills would not support such a finding.

The 1/31 allocation presents problems in itself. The same value is arbitrarily assigned to each day's service regardless of the kind or amount of transportation actually performed. It requires us to assume without proof that the carrier constructively charged the same amount for a day in which no jurisdictional transportation occurred as for a day in which all or a major portion of the transportation is jurisdictional. Since a significant portion of the non-jurisdictional time is consumed with the truck sitting idle on a barge, consuming no gas or oil and not wearing out either tires or drive train, this assumption cannot be adopted.

We could just as well on this record allocate $10.36 for each jurisdictional hour of truck service. Added to the amount specified by the contract for labor, this assumption would prima facie require a conclusion that no undercharges had occurred. A violation of the minimum rate requirements could be established only by a demonstration that the remainder of the payment made was unreasonably low in comparison to the amount and type of non-jurisdictional service rendered and the service consequently constituted a rebate in kind.

On the present record the staff has not met its burden of proof of demonstrating that any undercharges did in fact occur.

Given this failure of proof and the staff's complete failure to itself propose a workable formula, we do not think the Transportation Rate Fund or the private resources of respondents should be burdened with further investigation into this matter.

Nor do we think that assessing fines for violation of either the documentation or basis of charges rules is warrented for the protection of the minimum rate program. We note that if there were an acceptable disposal site in the city limits of Long Beach, this transportation would have been exempt from the tariff in question (Item 30).[4/]

Third, the parties could have apparently avoided the Commission's jurisdiction by the simple expedient of having Thums rather than Hutchison supply the employees. There would appear to be no significant economic or functional disadvantage to the shipper in such a modification; the volume and regularity of the traffic would logically make this a feasible proprietary operation.

Therefore, no further hearings will be held, and no fines, penalties or undercharge collection orders will be issued.

Findings

1. Hutchison hauls oil-well waste material for compensation for Thums. Hutchison provides the vacuum tank vehicles under a lease and the operators of the vehicles are employees of Hutchison. The transportation is between various locations at and near oil-well sites and public dumps not both within a single city and traverses public streets and highways.

2. The oil-well waste material is without value and is generated in the process of extracting petroleum products from well sites.

4/ The exemption for intracity hauling is being repealed. (cf. Decision No. 80294 in Case No. 6008, signed July 25, 1972.)

3. Thums directs the location of disposal and pays the fees for disposal.

4. Service Co. holds operating authority as a radial highway common carrier and as a petroleum irregular route carrier; Hutchison holds no operating authority.

5. Hutchison is engaged in enterprises other than that referred to in Finding 1 which have not proven to be within the scope and furtherance of a transportation business.

6. The utilization of the vacuum capability of the vehicles in question by which oil-well waste is transferred from the places where it normally accumulates or from intermediate storage locations into the vacuum tank truck is a loading operation ancillary to the transportation of such waste.

7. The operations necessary to properly discharge and distribute oil-well waste on the disposal site are unloading operations ancillary to the transportation of oily waste.

8. Hutchison's employees on occasion also perform cleaning and other services which do not utilize the vacuum capability of the vehicles supplied to Thums' operations.

9. No undercharges were proven to have occurred. Respondent Hutchison violated Items 90 and 140 of MRT 13.

Conclusions

1. Oil-well waste material is property within the meaning of Section 3511.

2. Thums exercises dominion and control over the oily waste until ultimate disposal. The oil-well waste hauled by Hutchison is not Hutchison's property.

3. The transportation of oily waste by Hutchison for Thums is not within the scope and in furtherance of Hutchison's non-transportation enterprises.

4. Minimum rates for the transportation performed by Hutchison for Thums are established in MRT 13.

5. The cleaning operations are not within our jurisdiction and not rateable; they are not the primary purpose of the typical transaction.

6. Hutchison may not lawfully perform transportation of waste material without operating authority from this Commission.

7. Hutchison may not lawfully perform the transportation of commodities governed by MRT 13 without observing the documentation rules provided therein and observing the minimum rates and charges provided therein.

8. An attempt to determine whether Hutchison charged and collected, and Thums paid, less than the minimum rates provided in MRT 13 is not justified.

9. No fines for violations of Item 90 or Item 140 of MRT 13 are warranted.

O R D E R

IT IS ORDERED that:

1. Wm. H. Hutchison & Sons, Inc. shall cease and desist performing transportation for Thums Long Beach Company until and unless Wm. H. Hutchison obtains a permit or certificate from this Commission authorizing such transportation.

2. Wm. H. Hutchison & Sons, Inc. shall cease and desist from performing transportation for Thums Long Beach Company subject to Minimum Rate Tariff 13 without preparing and retaining the documents required by said tariff and without calculating and charging the minimum rates and charges as provided in said tariff.

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

Dated at San Francisco, California, this 8th day of AUGUST, 1972.

Vernon L. Sturgeon
President

Commissioners