COMMENT

NO "COMMON OWNERSHIP" PROBLEM IN CALIFORNIA

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Neither the California Commission nor the trucking or shipping industries, to the writers' knowledge, have had any problem with intermodal transportation. As we understand it, the concern is that a common control of various modes of transportation can so channel business back and forth between "family" concerns as to stifle or destroy competition.

Fundamental to our regulation is the regulation of rates. Thus the threat of inter-carrier economic competition is diminished. Partial control of entry into the field, control of joint or through rates and joint use of facilities have taken care of part of any additional potential problem; the virtually unlimited entry into the highway carrier field by "permitted" carriers has taken care of most of the rest.

RATES

In the late twenties the truck emerged as a significant factor in transportation.

A new type of carrier emerged. They either served a relatively few shippers or served many shippers in a restricted area. They were not common carriers in the traditional sense and they were not governed by the pre-1930 regulations of railroads and regular route highway common carriers. At about this time also, the great depression was upon the land. Chaos struck transportation as a result of the combination of unregulated trucks competing with regulated rails, on the one hand, and the general depression, on the other hand. In this atmosphere, regulation of truck transportation was born.

In the early 30's there was general concern with developing chaotic conditions in transportation. The Commission concluded after extensive study that either the trucks should be regulated or, in the alternative, the rails should be deregulated and the laws of the jungle "allowed full and equal play." The general hue and cry was for "government to do

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something." Responsive thereto the Commission recommended regulation of these new truck carriers. It proposed to the 1933 legislature, revised legislation providing for the conventional type of regulatory control coupled with heavy reliance on restricted entry into the field. These legislative proposals failed to pass.

Between 1933 and 1935 the chaotic conditions increased, making legislative action imperative. In the 1935 session, compromise legislation was hammered out for regulation of trucking which had the support of agricultural, business, industrial and carrier interests.

This legislation did not follow the conventional pattern. It departed from the limited entry theory; in fact, it reversed it. It embodied a concept of unrestricted entry and, instead of the usual carrier established and published rates, the Commission was directed to establish and approve maximum or minimum rates. It thus became the Commission's responsibility to establish rate control within the framework of the legislative policy. This California system is unique.

Californa's pattern of regulation was in fact a dual system. The rail carriers generally were subject to the conventional scheme of regulation and the so-called permit truck carriers were subject to regulation through rate control. This dual pattern of regulation is in existence today. California's current pattern of regulation has not been followed or adopted to any significant degree by any other state to our knowledge. Other jurisdictions have followed the conventional pattern.

Rates are fixed on a graduated scale according to size of the shipment, based upon costs. Small shipments have a fully compensatory rate; truckload rates, also cost-related, reflect the lesser unit cost to transport greater weights.

The minimum rates (which in practice tend to be the going rates) provide a "basement" for all highway carriers, regardless of their type or common control. If rail rates are lower than minimum rates for the transportation of the same commodity between the same (rail) points, the highway carrier may apply the rail rate as an alternate to the minimum rate.

Rail rates are subject to Commission scrutiny and comparison with minimum rates, and if clearly out of line the Commission may investigate them.

While unique, and in many ways not perfect, this rate system has provided a practical equality of rates between competing rail and highway carriers, and has provided a healthy transportation system for this constantly growing state.

CONTROL OF ENTRY

Transfers or Mergers

Section 851 of the California Public Utilities Code prohibits, absent prior Commission authorization, any disposition of necessary and useful public utility property, any franchise or permit or any right thereunder or any merger or consolidation with another public utility.

Security Issues

Section 852 prohibits, absent prior Commission authorization, the acquisition of the capital stock of one public utility by another. The criterion for such authorization is whether it will or will not be adverse to the public interest. In arriving at a decision the Commission would consider any protests and whether the resultant transfer or merger would tend to stifle competition or to unfairly increase the ability of the transferee or surviving utility to compete.

Certificates of Public Convenience and Necessity—Permits

The California Legislature has provided that the following must obtain certificates of public convenience and necessity from the Commission prior to commencing operations: Vessels operating intrastate (Sec. 1007), express corporations and freight forwarders (Sec. 1010), buses (Sec. 1031), highway common carriers, cement carriers and petroleum irregular route carriers (Sec. 1061). Pipelines which transport crude oil or other fluid substances (except water) are not requred to obtain a certificate but must file tariffs. Of course, these may be suspended and investigated.

By comparison, the Highway Carriers' Act (Sec. 3501 et seq.) provides much less costly and virtually unlimited entry into the field of highway transportation. No public convenience and necessity need be shown; upon the filing of an application, required insurance, and establishment of financial responsibility, the Commission "shall issue a permit" (Sec. 3572). Such permits are issued to radial highway common carriers, highway contract carriers, petroleum contract carriers and cement contract carriers. Newly enacted amendments create the category of dump truck carriers (Sec. 3517 et seq.). The effect of these sections is to provide competition with the certificated carriers by the permitted carriers, to say nothing of the economc impact of unregulated persons operating trucks or pipelines which transport only their own property, and farmers and nonprofit agricultural cooperative associations which

transport their own, neighboring farmers' or members' property (Sec. 3511).

JOINT USE, JOINT RATES

The Commission may order joint use of the facilities of public utilities and may prescribe reasonable compensation therefor (Sec. 767). It may order the establishment of joint rates between two or more common carriers (Sec. 732) and prescribe the division if the carriers do not agree (Sec. 733).

INSTANCES OF COMMON CONTROL OF DIVERSE CARRIERS

While the Commission's control of rates, partial control of entry, and competition between various modes of transportation have served to control any "common ownership" problems, a fairly recent development has been the acquisition by truck lines of express or freight forwarder operating rights to fill out their operations. This has resulted in the consolidation of less-truckload shipments by the express or freight forwarder entity and their shipment over the common carrier truck line entity at the latter's truckload rate, the saving to the controlling entity, of course, being the difference between the less-truckload rate and the truckload rate. There is no adverse impact on shippers, and no unreasonable impact on competitors in this method of operation.

The only instance of a problem in the common control of diverse modes arose out of Southern Pacific Company's control of Southern Pacific Pipelines, Inc. The pipeline was built along the railroad's right of way. There is no requirement that a pipeline obtain a certificate of convenience and necessity. It filed its rate schedules for the transportation of petroleum between points served by the petroleum-carrying barges of River Lines, Inc. and others at substantially lower rates. In *River Lines, Inc., et al. v. Southern Pacific Pipe Lines, Inc., et al.*, (1964) 62 CPUC 238, the Commission found that the reasonableness of Pipelines' rates, alleged to be unreasonably low by its competitors, would be determined by the Commission. The Commission found them to be reasonable either on the basis of out-of-pocket costs or fully distributed costs. Complainants also alleged that because of the common ownership and control of Southern Pacific Company and Pipelines, the Commission should treat Pipelines as the *alter ego* of the rail line, and thus a "land carrier"; that Section 727 of the Public Utilities Code declares that it is the policy of the State to encourage use of waterways, and that in fixing water carriers' rates the Commission is

directed to establish a differential under the rates of "competing land carriers" such that the water carriers shall be able fairly to compete for such business. The Commission found that the creation of the subsidiary had not frustrated the lawful operation of the statute: that the fact that the pipeline was owned by a railroad made it no less a pipeline: that the statute dealt with rate relationships between railroads (and highway carriers) on the one hand and water carriers on the other, and simply did not apply to pipelines. In *River Lines, et al., v. CPUC, et al.*, (1965) 62 C.2d 244, the California Supreme Court affirmed the decision of the Commission, holding, however, that the statute required the Commission to adjust water carriers' rates and not those of the land carrier. The Court stated that if it were to conclude "that to encourage competition the commission was required to raise rates of competing land carriers where the costs of water carriers exceeded those of the land carriers," this would not only create "an administrative aberration, but would be economically unsound at the expense of the consuming public."

Conclusion

Due primarily to our unique rate regulation and secondarily to broad jurisdictional powers, we conclude that there is at least at this time no "common ownership" problem in California.