

Decision No. 27328.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of the SAN DIEGO FORWARDING COM-)
PANY to establish on less than) Application
statutory notice a rate on drugs) No.15-19105.
and druggists' sundries from Los)
Angeles to San Diego.)

- F. A. Jones, for applicant.
- Wallace K. Downey, for Motor Freight Terminal Company, protestant.
- W. E. McMullen, for The Atchison, Topeka and Santa Fe Railway Company, interested party.
- H. J. Bischoff, for Southern California Freight Lines and Southern California Freight Forwarders, protestants.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

In this proceeding the San Diego Forwarding Company seeks authority to publish and make effective on one day's notice a reduced rate of $35\frac{1}{2}$ cents for the transportation of drugs and druggists' sundries in lots of 1000 pounds or over from Los Angeles to San Diego.

A public hearing was had before Examiner Corman at Los Angeles August 29, 1934. Rates are stated in cents per 100 pounds.

Applicant's rates for the transportation of drugs and druggists' sundries from Los Angeles to San Diego are and since August 16, 1934, have been $45\frac{1}{2}$ cents when in lots of 1000 to 2000 pounds, $40\frac{1}{2}$ cents in lots of 2000 to 4000 pounds, and $35\frac{1}{2}$ cents when the weight exceeds 4000 pounds.¹

¹ Some time previously the rate was 35 cents regardless of the size of the shipment. It was changed pursuant to the Commission's orders in Decision 26947 of April 16, 1934, in Case 3777, Certified Highway Carriers, Inc. vs. Chas. J. Gamble, and Decisions 27174 of June 25, 1934, and 27231 of July 25, 1934, in Case No. 3823, In the Matter of the Investigation into the rates, etc., of A.T. & S.F.Rv.Co. et al., wherein it was found that the class rates of the carriers operating in this territory were unreasonably low.

The sole justification advanced in support of this application is a desire to meet the competition of other carriers in this territory. The rate of these carriers is 40 cents in lots of 1000 pounds or over.² Applicant testified that it was not looking for any advantage over its competitors but that a rate of the volume here proposed was necessary to offset advantages which its competitors are said to enjoy.

The alleged advantages which applicant seeks to offset by a rate of $4\frac{1}{2}$ cents lower than that of the other carriers are three in number. They are said to arise, first, from a provision for the return of empty containers; second, from a provision for making split deliveries; and third, through furnishing hampers or containers for the articles to be shipped and assessing transportation charges on basis of net weights.

The Commission today granted applications filed by protestants for authority to cancel from their tariffs a provision for the free return movement of the empty containers, and applicant's first alleged disadvantage is thus being removed. Nor is a rate $4\frac{1}{2}$ cents lower than maintained by competing carriers justified on the ground that it is necessary to offset a split delivery privilege which these competitors allow. While rates providing split deliveries are ordinarily undesirable, it is recognized that they may be justified under certain conditions, and this Commission will not deny applicant a right to publish such rates if they are necessary to meet like rates of its regulated competitors.

The competition referred to under the last heading is confined to the operations of the Coast Truck Line and the Southern Cali-

² Thus on lots of 4000 pounds or over applicant's rate is and will be $4\frac{1}{2}$ cents less than that of its competitors.

fornia Freight Forwarders. These carriers maintain special containers equipped with padlocks and casters into which drugs are loaded at Los Angeles and transported to San Diego. Charges are assessed on basis of the total weight of the container and contents. Shipments returned from San Diego are handled in a similar manner but charges are assessed on the weight of the contents only. While the testimony is confusing, it seems that upon the granting of the applications removing the provision for the free return of the empty containers, these protestants propose to regard them as carriers' equipment furnished for their own convenience and to transport them without charge in either direction. In fact, although assessing a charge thereon on the southbound movement these protestants now contend that they are furnished for their own convenience.

A witness for these same protestants could not testify as to the tariff provisions governing the packing and marking of less than truckload merchandise, nor say whether or not the shipments transported in these containers are in such a form that under the applicable tariffs they could be accepted for transportation without these containers. If the Coast Truck Line and Southern California Freight Forwarders are adhering to their tariffs, applicant can not be at a disadvantage by having these protestants for their own convenience and protection furnish additional containers. On the other hand, if the package requirements are not being observed these protestants are violating their filed tariffs and have an advantage over applicant. As heretofore stated, the witness could not testify as to the tariff rules or the form in which the shipments are being transported. There is a strong inference however that the tariffs are not being observed. The Commission should institute an investigation of this matter.

Protestants also introduced an exhibit purporting to show that the cost of transporting the articles here involved, exclusive of a return

on investment, profit and insurance was slightly in excess of the revenue derived therefrom, and the showing so made has not been rebutted.

Under the circumstances here related it must be concluded that the application has not been justified. On shipments of certain sizes, however, applicant's present rates are in excess of those of its competitors. It is not intended that any of these competing regulated carriers should be at a disadvantage from a rate standpoint. If an application is received to meet protestants' rates it should have the Commission's prompt consideration.

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that the above entitled application be and it is hereby denied.

Dated at San Francisco, California, this 4th day of September, 1934.

James C. [Signature]

W. H. [Signature]

M. B. [Signature]

[Signature]

Commissioners.