

Decision No. 28804.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation on
the Commission's own Motion into the
rates, rules, regulations, charges,
classifications, contracts, practices,
operations and schedules, or any of
them, of ASBURY TRUCK COMPANY and
MOTOR FREIGHT TERMINAL COMPANY.

ORIGINAL

Case No. 4036.

Rex W. Boston, for Asbury Truck Company, respondent.

Wallace K. Downey, for Pacific Freight Lines, formerly
Motor Freight Terminal Company, respondent.

Gerald E. Duffy and Berne Levy, for The Atchison, To-
peka and Santa Fe Railway Company, interested party.

H. W. Hobbs, for Southern Pacific Company and for Pac-
ific Motor Transport Company, as their interests
may appear.

BY THE COMMISSION:

O P I N I O N

This proceeding, instituted by the Commission on its own motion, involves the lawfulness of rates maintained by respondents Asbury Truck Company and Pacific Freight Lines¹ for the transportation between Los Angeles and various other points in the State of California of oil, water or gas well outfits and supplies and articles grouped therewith.

The matter was submitted upon the record made at a public

¹ The order instituting investigation was directed to Motor Freight Terminal Company. By appropriate amendment to its articles of incorporation the name of the corporation was changed to Pacific Freight Lines. It will be so referred to in this decision.

hearing had in Los Angeles before Examiner Geary and is now ready for decision.

Asbury Truck Company, a corporation, holds a certificate of public convenience and necessity to operate a transportation service by motor truck over eleven specified routes in the southern part of the State for the transportation of oil well supplies,² heavy machinery, pipe, steel and tanks in truck load lots.³

Pacific Freight Lines, a corporation, holds a certificate of public convenience and necessity to operate a truck transportation service for the transportation of property between Los Angeles and Los Angeles Harbor on the one hand and various other points in the State of California, including points in the San Joaquin Valley as far north as Fresno, on the other.⁴

Asbury Truck Company's Local Freight Tariff No. 4, C.R.C.

² The term "oil well supplies" as here used includes "articles described under that designation in the current Western Classification C.R.C. No. 517 of F. W. Gomph, Agent, or reissues thereof, as well as such commodities as may be incidental or necessary to the establishment or dismantling of an oil well, but only where such additional commodities are shipped by or consigned and delivered to the person, firm or corporation establishing, operating or dismantling such well, or when such commodities are transported between established oil well supply houses and their branch stores in the oil fields".

³ This right was granted by Decisions Nos. 26279 and 26503, dated August 21, 1933, and November 6, 1933, respectively, in Application No. 18634, in re Application of Asbury Truck Company et al., unreported, in lieu of a certificate of public convenience and necessity formerly granted to Asbury Truck Company in Decision No. 19067, dated December 1, 1927, in Application No. 10148, in re Application of Asbury Truck Company, etc., 30 C.R.C. 710, as modified by Decision No. 26490, dated March 9, 1931, in Supplemental Application No. 10148, unreported.

⁴ By Decisions Nos. 24136 and 24396, dated October 19, 1931, and January 18, 1932, in Application No. 17517, in re Application of San Joaquin Valley Transportation Company et al., Motor Freight Terminal Company was authorized to acquire and consolidate the operative rights theretofore owned and operated by several affiliated concerns (36 C.R.C. 694, 37 C.R.C. 40). By Decision No. 26490, dated November 6, 1933, in Application No. 18918, in re Application of Motor Freight Terminal Company, etc., unreported, it was permitted to extend its operative rights northward from McKittrick to Coalinga and from Bakersfield to Coalinga via Wasco.

No. 4, in effect since October 23, 1933, names rates (a) in dollars and cents per hour varying according to the size and character of the equipment used, (b) in cents per 100 pounds between specific points and (c) in cents per 100 pounds based on varying distances. With the exception of commodity rates on "carriers, empty, returned", "compressed gases" and "iron and steel scrap", all rates published are applicable to the transportation of "Oil Well Supplies",⁵ "Heavy Machinery, Pipe, Steel and Tanks" or any other articles which this respondent is authorized to transport.⁶

Effective March 5, 1934, by supplement to its Local Freight Tariff No. 7, C.R.C. No. 7, Pacific Freight Lines published rates in cents per 100 pounds for the transportation of "Oil, Water or Gas Well Outfits and Supplies" as described in its Item 990 series. In addition to numerous specifically named articles, this item includes oil, water or gas well outfits and supplies, as described under heading "Oil, Water or Gas Well Outfits and Supplies" in current Western Classification, and:

⁵ Item No. 100 series of the tariff describes the articles embraced by the words "Oil Well Supplies".

⁶ The tariff is not properly constructed. The various rate sections indicate that the rates apply for the transportation of Oil Well Supplies, Heavy Machinery, Pipe, Steel and Tanks. Rule 5 however reads in part:

"Rates and charges published herein cover the transportation of Oil Well Supplies, Heavy Machinery, Pipe, Steel, and Tanks, as well as such commodities as may be incidental or necessary to the establishment or dismantling of an oil well, but only when such additional commodities are shipped by or consigned and delivered to the person, firm or corporation establishing, operating or dismantling such well, or when such commodities are transported between established oil well supply houses and their branch stores in the oil fields."

It is, moreover, apparent from the testimony of F. H. Isbury, President of respondent corporation, that it was intended that the tariff should provide the same rates for the transportation of the so-called "incidental commodities" as for the transportation of oil well supplies. (Tr. pages 60 and 61)

"All commodities as may be incidental or necessary to the establishment or dismantling of oil wells, gas wells, pipe lines, oil refineries and cracking or casing head plants."

This adjustment was made to meet the competition of respondent Asbury Truck Company.⁷

Pacific Freight Lines also publishes a complete line of class rates and numerous specific commodity rates between the points involved in this proceeding. However, due to the unusual phraseology employed in Item 990 series, the determination of what rates to apply appears to lie solely within the discretion of the carrier. A shipment of nails might be accorded the commodity rate applying in connection with Item 990 series as being "incidental or necessary to the establishment or dismantling of an oil well". On the other hand the same shipment might be subjected to a higher class or commodity rate as a commodity that is not "incidental or necessary to the establishment of an oil well". The nature of the business of the consignor or consignee has been an important factor in determining which rate should be assessed.

This condition also exists with respect to the application of rates named in the tariff of Asbury Truck Company. A shipment of compressed acetylene gas might be accorded a rate applicable to "oil well supplies" or it might be given the higher specific commodity rate contained in Item 122 series of the tariff, depending upon the interpretation the carrier chooses to place upon the tariff.

General Order No. 80, adopted by the Commission November 12, 1927, effective December 1, 1927, contains rules and regulations

⁷ C. G. Anthony, Vice-President Pacific Freight Lines, testified:

Q. "Now, was that item published by your Company?"

A. "That item was published, to meet the description as contained in the tariff of the Asbury Truck Company." (Tr. page 11)

governing the construction and filing of motor freight and express tariffs and requires such tariffs to be definite and certain. The use of such generic terms as "grain products", "forest products", "petroleum and its products", is strictly forbidden unless "a full list of the articles intended to be included in and covered by such terms is printed in the tariff". Obviously the term "commodities as may be incidental or necessary to the establishment or dismantling of an oil well" falls within the class of generic terms prohibited by the General Order.

On this record it must be concluded that Item 100 series and Rule 5 series of Asbury Truck Company Local Freight Tariff No. 4, C.R. C. No. 4, and Item 990 series of Pacific Freight Lines Local Freight Tariff No. 7, C.R.C. No. 7, are violative of the provisions of General Order 80. The manner in which the rates and descriptions in question are published obviously lends itself to discrimination. Respondents will be required to amend or reissue their tariffs so as to show clearly and specifically the articles upon which the rates contained therein apply.

We are not here passing upon the reasonableness or propriety of the practice of maintaining the large and comprehensive list of commodities that are specifically named and grouped in respondents' tariffs under the heading "Oil Well Supplies". This question is now before the Commission in another proceeding⁸ in which Asbury Truck Company and Pacific Freight Lines are also respondents.

We turn now to the question of the lawfulness of the volume of the rates applicable to the transportation of the commodities here involved. Witness for Pacific Freight Lines testified that the rates

⁸ On September 16, 1935, the Commission issued its Order Instituting Investigation on its own motion into the practices of common carriers to determine the lawfulness and propriety of the practice of grouping commodities in their tariffs under such headings as "groceries and grocers' supplies" and similar captions.

"were abnormally low" and that for the year of 1934 a gross revenue of \$73,702.93 was earned, while operating expenses for the same period amounted to \$77,536.74, resulting in a loss of \$3,833.81. The class rates maintained by this respondent are considerably higher than the commodity rates in question, and in the opinion of the witness yield slightly more per ton than the "cost of conducting transportation". The loss by this carrier is attributed to the fact that the bulk of the traffic is moving under the commodity rates in issue, which "are entirely too low".⁹ Support for this contention is found in the testimony offered by a competing rail carrier to the effect that the commodity rates in question were so low that the railroad company decided not to meet the competition of respondents.

On the other hand, Asbury Truck Company contends that the rates are not only compensatory but that the revenue accruing therefrom during the first five months of 1935 yielded a return of 2.8 per cent on its investment. However, the testimony relating to its transportation costs offered by this respondent is far from convincing. It appears that the return of 2.8 per cent. on its investment is not clear of all taxes and other expenses. Moreover, the witness admitted that the task of ascertaining the actual financial results of his company's operations for the period of a year had not been undertaken and that "it would take two men about six weeks to go through the records and pick it all out". Furthermore the testimony presented here seriously conflicts with the testimony of the same witness given in 1933 in support of an application for an enlargement of its operative rights.¹⁰ There

⁹ Transcript, pages 15 and 16.

¹⁰ Decision No. 26279, August 21, 1933, in Application 18634, supra.

the witness stated that the rates it proposed to establish, and which in some instances were higher than those now in effect,¹¹ would result "in an operating loss, in that moneys which would otherwise be set aside as reserve for depreciation will not be earned".

Although it is questionable that the revenues derived from transportation under the rates here in issue are sufficient to defray operating expenses, the record here made does not justify the issuance of an order requiring that these rates be increased. Indeed it could not be said on this record what the volume of the rates should be. Respondents should establish reasonable and non-discriminatory class or specific commodity rates for the transportation of commodities other than those specifically enumerated in their tariffs under the heading of "oil well supplies". By creating a reasonable spread between so-called high-rated articles and low-rated articles and casting on each its fair share of the transportation burden their revenues will be somewhat augmented. Further increases if necessary should be sought through application proceedings.

O R D E R

This proceeding having been duly heard and submitted,

IT IS HEREBY ORDERED that Asbury Truck Company and Motor Freight Terminal Company (now Pacific Freight Lines) be and each of them is hereby directed to amend or reissue their or its tariff or tariffs within thirty (30) days from the effective date of this order, on thirty (30) days' notice to the Commission and the public, so as to enumerate specifically the articles upon which the rates

¹¹ In the instant proceeding the witness testified: "We started out with a mileage table, as a mileage rate, * * *. We operated under that until Pacific Freight Lines * * * were given a permit to operate into the same territory, when it became necessary to reduce our rates to meet their fourth class rate * * *."

involved in this proceeding apply and so as to provide reasonable and non-discriminatory rates for the transportation of all articles not now specifically enumerated in the oil well supplies grouping.

IT IS HEREBY FURTHER ORDERED that upon the filing of tariffs or supplements to their tariffs in accordance with the order herein, this proceeding be and it is hereby discontinued.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 28th day of October, 1935.

M. J. Lee

W. B. Harris

William H. ...

Frank R. ...
Commissioners.