

Decision No. 28762

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of  
maximum or minimum, or maximum and  
minimum, rates, rules, and regulations  
of all Radial Highway Common Carriers,  
and Highway Contract Carriers, operating  
motor vehicles over the public highways  
of the State of California, pursuant to  
Chapter 223, Statutes of 1935, for the  
transportation for compensation or hire  
of any and all commodities, and accessorial  
services incident to such transportation.

Case No. 4088  
(PART "B", Rates for  
transportation of  
Beverages and  
Tonics, including  
Beer.)

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APPEARANCES

A list of the appearances is contained in the  
Appendix to the decision in PART "A" of this  
proceeding.

WARE, Commissioner:

O P I N I O N

This proceeding, Case No. 4088, has been instituted  
pursuant to the mandate of the legislature contained in Section 10  
of the Highway Carriers' Act (Chapter 223, Statutes of 1935). A  
full discussion of its purpose, the procedure followed, and other  
matters of general concern relating to the proceeding is contained  
in Decision No. 28761, issued this day in PART "A" of the  
case.

The subject of rates, rules, and regulations for the  
transportation of beverages and tonics, including beer, has for  
convenience been designated as PART "B". At public hearings of  
Case No. 4088 held at San Francisco on January 24 and February 7,

1936, evidence relating to this subject was received.

In accordance with the procedure outlined in the decision just referred to, and in the interest of early stabilization, minimum rates and rules and regulations will be established herein upon the basis of such evidence. They will, however, be subject to change as the case proceeds and as they become influenced or affected by other rates subsequently established herein, or by other factors.

For some time past, and particularly since the manufacture and sale of beer and similar beverages having an alcoholic content in excess of 1/2 of 1% were made lawful in this State, <sup>common carriers</sup> subject to the Public Utilities Act have maintained so-called group rates in their tariffs for the transportation of certain beverages, tonics, and related commodities including beer.

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1. The following commodities are accorded the beverage and tonic group rates:
    - Beverages made from cereals (not distilled), carbonated or not carbonated, fermented or unfermented.
    - Beverages (other than beverages made from cereals, not distilled), carbonated, flavored or phosphated (not including extracts, syrups or de-alcoholized or non-alcoholic cordials and liqueurs).
    - Extracts, viz.: Malt Extract, liquid.
    - Fruit juice (unfermented, not syrup), artificial or natural, sweetened or unsweetened, Ginger Ale.
    - Liquors, malt, viz.: Ale, Beer, Beer Tonic, Porter, Stout.
    - Liquors, vinous, containing not more than 3.2% alcohol by weight, in glass, earthenware or metal, boxed, or in bulk in barrels.
    - Syrup, viz.: Grape Juice, Malt.
    - Water, viz.: Distilled, plain, mineral, salt, in glass or earthenware, packed in boxes, barrels, or crates, with or without tops.
    - Soda (flavored or not flavored), in packages as provided in current Western Classification and subject to estimated weights as provided in current Western Classification (except as noted) .....Straight or mixed carloads, except as noted ....Minimum carload weight 24,000 lbs., except as noted....

Due to the comparatively greater volume of sale and distribution of beer, in kegs and in bottles, in cases or cartons, competition between the various carriers and classes of carriers for its transportation has been acute. Thus beer may be said to be the rate making commodity of the beverage and tonic group. The same rates have been extended to the other commodities carried in the group, in straight or mixed carloads, principally because of the fact that distribution of many or all of these commodities is in many instances affected by distributors of beer.

Breweries are located in both Northern and Southern California from Eureka to San Diego. Although beer is transported from the breweries in substantial volume daily, the record contains no evidence of the total weight involved. In the main, empty carriers, consisting of kegs, bottles, cartons and cases may be said to move from consuming areas back to the breweries.

The record shows that special motor truck equipment having insulated bodies is necessary to the safe transportation of draught beer in particular where distances of more than 300 miles or excessive temperatures are encountered. In the main, the trucking equipment used for the transportation of beer is seldom employed in other work. In fact many trucks are so painted and lettered as to advertise a particular brand of beer, thereby greatly restricting the field of its use.

Carload rail rates on beverages and tonics are generally subject to minimum weights of 30,000 and 40,000 pounds although there are a few instances where lower minimums are provided. Less carload quantity rates are published by common carriers subject to minimum quantities of 20,000 pounds and less.

During the course of the hearings the Commission's Engineering Division presented a study of the minimum cost of transporting beer between points in this State. Two theories

were employed in the development of costs in this study. The first involved the use of diesel powered tractor-semi-trailer equipment engaged in transporting beer between San Francisco on the one hand and the Fresno and Los Angeles areas on the other under ideal traffic and operating conditions. The second theory contemplated the use of gasoline powered equipment. Costs were separately developed and shown for varying distances up to 700 miles.

Under the first hypothesis, a load factor of 75% was employed.<sup>2</sup> It was likewise assumed that 143 trips per year might be made between San Francisco and Los Angeles. Under these conditions the study shows costs of 23.8 cents per 100 pounds between San Francisco and Los Angeles area and 12.4 cents per 100 pounds between San Francisco and the Fresno area.

Under the second hypothesis, using load factor of 69.1% and 104 trips per year between San Francisco and Los Angeles, for example, cost of 25.6 cents per 100 pounds was developed. Similarly on the basis of 208 round trips per year between San Francisco and the Fresno area, a cost of 13.3 cents per 100 pounds was shown.

Cost studies were also presented by E. L. LaSalle, Savage Transportation Company, Inc., and Valley Motor Lines, Inc. The cost figures submitted by these witnesses are substantially higher than those contained in the Commission's study. The following tabulation, compiled from the various exhibits of record is illustrative of the variation in cost studies presented:

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2. The study indicated that under the most ideal conditions beer might be made available for handling from San Francisco to Fresno and Los Angeles in lots of 36,000 lbs. with a return movement of empty carriers in lots of 18,000 lbs. producing a 75% load factor.

	Commission's Study		Savage (1)	LaSalle (2)	Valley (1)
	(1)	(2)			
Repairs	\$ .0150	\$ .0125	\$ .0238	\$ .0323	\$ .0423
Fuel & Oil	.0062	.0250	.0157	.0331	.0135
Tires	.0285	.0222	.0376	.0095	.0215
Depreciation	<u>.0233</u>	<u>.0109</u>	<u>.0402</u>	<u>.0281</u>	<u>.0293</u>
	\$ .0730	\$ .0706	\$ .1173	\$ .1030	\$ .1066

- (1) Diesel Equipment  
(2) Gasoline Equipment

The rail lines presented several exhibits showing rail rates for the transportation of beverages and tonics and empty carriers returning between various points in the State. Under carload rates the rail carriers do not load or unload. Pick-up and delivery service is rendered under carload rates only when both consignor and consignee are located on spur track facilities. The rail lines urge that in establishing minimum rates for radial highway common and highway contract carriers, due consideration should be given to the allegedly additional and accessorial services rendered by truck carriers that are not accorded by the rails, such as loading and unloading, faster service and advertising the products transported by means of specially painted and lettered truck and trailer bodies.

The record before us shows there are some 32 breweries in the State located at 12 points.<sup>3</sup> It has likewise been shown that there is a substantial movement of beverages and tonics, particularly beer, from the breweries to points located in all parts of the State. The movement of beer, however, is affected by the seasons, there being a very large movement during the summer months and considerably less in the winter.<sup>4</sup>

3. The breweries are located in Eureka, Santa Rosa, Sacramento, Stockton, Oakland, San Francisco, San Jose, Modesto, Fresno, San Diego, Los Angeles and Salinas.

4. It appears from the testimony of two operators that the winter movement of beer is but 20% of the volume transported during the summer months.

The load factor used in the Commission's cost study was criticized by two operators as being considerably higher than that experienced by these carriers in the movement of beer and empty cases. The record is quite convincing that the movement of empty carriers in particular is spasmodic in character. All things considered it does not appear that throughout an entire year a load factor as high as 69% can be maintained except under extraordinary conditions.

It seems clearly established on this record that rates below the level of those maintained by common carriers (exclusive of loading and unloading charges) will fail to return sufficient revenues to defray transportation expenses. As hereinbefore stated, rail rates are subject to minimum weights of 24,000, 30,000 and 40,000 pounds. These minima may not be exceeded in establishing minimum rates for radial highway, common and highway contract carriers. On the other hand the record offers no reason for establishing lower minima.

Where the carriers perform the accessorial service of loading or unloading, or loading and unloading, the record justifies the prescription of an accessorial charge therefor of not less than  $\frac{1}{2}$  cent per 100 pounds for either service and 1 cent per 100 pounds for both services. Little evidence of value has thus far been presented relating to the performance of other accessorial services or their worth to the shipper or the carrier.

I recommend the following form of order:

ORDER

Public hearings having been held in the above entitled proceeding, and based upon the evidence received at the hearings herein held at San Francisco on January 24 and February 7, 1936, and upon the conclusions set forth in the preceding opinion:

IT IS HEREBY ORDERED that:

1. The following rates be and they are hereby established as the just, reasonable and non-discriminatory minimum rates to be charged and collected by all Radial Highway Common Carriers and Highway Contract Carriers, as defined in Chapter 223, Statutes of 1935, for the transportation and the accessorial services hereinbelow described, to-wit:

- (a) For the transportation between any points in California served by any common carrier\* of any shipment\* consisting of beverages and tonics\* in lots weighing 18,000 pounds or over, or of used or second-hand empty containers for said commodities in lots weighing not less than 10,000 pounds, the minimum rate shall be the same as the lowest common carrier rate\* for the same transportation of the same shipment.
- (b) For loading or unloading performed in connection with any such transportation of any such shipment, the minimum rate shall be 1/2 cent per 100 pounds; and for loading and unloading performed in connection with any such transportation of any such shipment, the minimum rate shall be 1 cent per 100 pounds; and said rates for said services shall be charged and collected in addition to the transportation charge, excepting when the transportation charge, assessed in accordance with the preceding paragraph, includes loading or unloading services.

2. The rules, regulations and classifications governing the common carrier rate upon which is based any minimum rate herein established, be and they are hereby established as the rules, regulations and classification to govern such minimum rate; and

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\* See definitions, Paragraph 3 of this order.

in the event of any variation between any such rules, regulations or classifications of any two or more common carriers having the same rate, the rules, regulations and classifications most onerous to the carrier shall govern the minimum rate.

3. (a) The term "beverages and tonics," as used herein, shall be deemed to mean beverages made from cereals (not distilled), carbonated or not carbonated, fermented or unfermented; Beverages (other than beverages made from cereals, not distilled), carbonated, flavored, or phosphated (not including extracts, syrups, or dealcoholized or non-alcoholic cordials and liqueurs; Extracts, viz.: Malt Extract, liquid; Fruit juice (unfermented, not syrup), artificial or natural, sweetened or unsweetened, ginger ale; Liquors, malt, viz.: Ale, Beer, Beer Tonic, Porter, Stout; Liquors, vinous, containing not more than 3.2% alcohol by weight, in glass, earthenware or metal, boxed, or in bulk in barrels; Syrup, viz.: Grape Juice, Malt; Water, viz.: distilled, plain, mineral, salt, in glass or earthenware, packed in boxes, barrels, or crates, with or without tops; Soda (flavored or not flavored), in packages as provided in current Western Classification and subject to estimated weights as provided in current Western Classification (except as noted)... straight or mixed carloads, except as noted.....minimum carload weight 24,000 pounds, except as noted.....

(b) The term "common carrier," as used herein, shall be deemed to mean all those common carriers of property included within the term "common carrier," as used in the Public Utilities Act of the State of California.

(c) The term "common carrier rate," as used herein, shall be deemed to mean the rate, and the rules, regulations, and classification which produce and govern said rate, of any such common carrier lawfully in effect on the day this order becomes

effective, under a tariff lawfully on file with this Commission pursuant to Section 14 of said Public Utilities Act.

(d) The term "shipment," as used herein, shall be deemed to mean a lot received from one shipper on one shipping order or bill of lading at one point at one time for one consignee and one destination.

IT IS HEREBY FURTHER ORDERED that all said Radial Highway Common Carriers and Highway Contract Carriers, from and after the effective date of this order, shall refrain from charging, collecting, demanding, or receiving any lesser rates than said minimum rates herein established for such transportation, and shall comply with all said rules, regulations, and classifications.

IT IS HEREBY FURTHER ORDERED that the Commission shall and it does hereby retain jurisdiction of this proceeding to alter or amend the minimum rates, charges, classifications, rules, and regulations hereby established, and also to establish or approve such other just, reasonable, and non-discriminatory maximum or minimum, or maximum and minimum, rates, charges, classifications, rules, and regulations to be charged, collected, and observed by Radial Highway Common Carriers and Highway Contract Carriers, both for the transportation and accessorial services hereinabove described, and for other transportation and accessorial services as may from time to time appear proper in the light of other or further evidence received herein.

IT IS HEREBY FURTHER ORDERED that this Order shall become effective June 1, 1936.

The foregoing Opinion and Order are hereby approved and ordered filed as the Opinion and Order of the Railroad

Commission of the State of California.

Dated at San Francisco, California, this 27<sup>th</sup> day  
of April, 1936.

*W. B. Lewis*  
*Leon A. ...*  
*W. J. ...*  
*Arthur ...*  
*Frank ...*

Commissioners.