

Decision No. 28104.

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
the WALKUP DRAYAGE AND WAREHOUSE)
COMPANY, for authorization to trans-)
port for compensation or hire over)
the public highways in the City and)
County of San Francisco certain com-)
modities listed in the application.)

Application No. 20520.

- Fitzgerald, Abbott & Beardsley, by Milton W. Dobrzensky and Crellin Fitzgerald, for applicant.
- Sanborn & Roehl, by Clair V. MacLeod, for the Flour Dealers' Association of San Francisco, protestant.
- J. F. Wizzard, for the Draymen's Association of San Francisco, as its interests may appear.
- J. L. Roney, for Sussman, Wormser & Company and Equitable Cash Grocery Company.
- Calkins, Eager, Hall & Linforth, by A. H. Conard, for Daily News Company, Limited.
- Walter A. Rhode, for San Francisco Chamber of Commerce, as its interests may appear.
- Morrison, Hohfeld, Foerster, Shuman & Clark, by F. C. Hutchens, for Western Sugar Refinery and Spreckels Sugar Company, interested parties in support of the application.
- K. W. Coplin, for Charles J. Worth Drayage Company.
- Clifton E. Brooks, for Wholesale Grocers' Association, as interests may appear.
- P. J. Tehony, for Hearst Publications, Inc., owner of the Examiner Printing Company and Call-Bulletin Publishing Company.
- William Pimentel, for Pimentel Trucking Company.
- E. J. Heartsner, for Haas Brothers, wholesale grocers.

DEVILIN, Commissioner:

O P I N I O N

Pursuant to the mandate contained in Section 9 of the City Carriers' Act (Chapter 312, Statutes of 1935) and at the request of the Draymen's Association of San Francisco, the Commission established minimum rates for the transportation of property by carriers operating

within the City and County of San Francisco.¹ These rates as amended are now in effect.

By application filed April 30, 1936, and amended May 9, 1936 and again at public hearings had at San Francisco, Walkup Drayage and Warehouse Company, a member of the Draymen's Association, seeks authority to perform certain transportation services at lesser rates than those established by the Commission. This authority is sought under Section 10 of the Act which provides:

"If any carrier hereunder desires to perform any transportation or accessorial service at a lesser rate than the minimum rates so established, the Railroad Commission shall, upon finding that the proposed rate is reasonable and consistent with the public interest, authorize such rates less than the minimum rates established in accordance with the provisions of Section 9 hereof."

The commodities involved and the changes proposed in the rates thereon are as follows:

1. Flour, Feed and Cereal Products
Proposed to publish new rates

- (a) restricted to transportation for Flour Mills
- (b) applying only "in quantities of not less than 3000 tons per calendar year 'instead of' not less than 750 tons per calendar month."
- (c) having no minimum charge instead of varying minima from 50 cents on up for city delivery.

2. Flour
Publish new rates

- (a) restricted to transportation for Bakeries.

Decision No. 28632 of March 16, 1936, effective April 5, 1936 (39 C.R.C. 665), Decision No. 28731 of April 20, 1936, effective April 27, 1936 (59 C.R.C. 711), and Decision No. 28753 of April 20, 1936, effective May 1, 1936 (unreported) in Case No. 4084, in re-Establishment of rates etc. for the transportation of property etc. over the public highways of the City and County of San Francisco.

- (b) applying only "in quantities averaging not less than 5000 tons per calendar year (or 50,000 barrels) 'instead of' not less than 750 tons per calendar month."
 - (c) of 10 cents per barrel inhaul (including piling in bakery store room) instead of present rate of 70 cents per ton plus \$1.25 per man per hour accessorial charge.
3. Commodities transported for Wholesale Grocery Houses.
Publish new rates
- (a) applying on "quantities averaging not less than 24,000 tons per calendar year 'instead of' not less than 1000 tons per calendar month."
 - (b) approximately 10% lower than the existing rates and without minima for city deliveries.
4. Commodities transported for Wholesale Hardware Houses.
Publish new rates
- (a) applying on "quantities averaging not less than 12,000 tons per calendar year 'instead of' not less than 1000 tons per calendar month."
 - (b) including "pickups" and "shipping" at the same rate and minimum charge as "inhaul" and "city deliveries."
5. Newspaper paper, in rolls
Publish new rates
- (a) applying on "quantities averaging not less than 25,000 tons per calendar year 'instead of' 750 tons or more per calendar month."
 - (b) applying on all transportation within the City and County of San Francisco instead of on "inhaul only."
 - (c) of 55 cents per ton instead of 75 cents per ton.
6. Sugar
Publish new rate
- (a) restricted to sugar transported for refineries.
 - (b) applying on "quantities aggregating not less than 60,000 tons per calendar year 'instead of' 500 tons per calendar month."
 - (c) of 65 cents per ton on "lots to or from piers or wharves on San Francisco waterfront" without minimum instead of the present exception of a rate of 60 cents per ton on "sugar in quantities of 500 tons or more destined to one dock, to be forwarded on one steamer."

Applicant contends that under the circumstances here obtaining the rates proposed are fully remunerative and that they are necessary to prevent the diversion to proprietary trucks of the traffic it now enjoys aggregating in the case of these commodities approximately \$200,000.00 per year.

In support of the contention that they are remunerative, it introduced a study (Exhibit No. 2) showing costs for the transportation services here in issue which are lower than the proposed rates. The large volumes in which these commodities move and the direction of the movement coupled with applicant's other business makes for a well balanced operation with relatively high load and use factors. In the case of the commodities transported for Flour Mills there is said to be a steady flow of traffic in trucks loaded to capacity from two points of origin ² to a concentrated delivery area. The flour transported for Bakeries is loaded at and delivered to not more than two points and is said to be handled in truckload lots with the utmost dispatch. The paper is transported in continuous and uniform movement from easily accessible places on the docks to points with good unloading facilities. The record shows that in each case the cost of performing the service is sub-

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The one origin is the carriers own warehouse and the other is a point not more than a mile distant therefrom.

stantially less than the proposed rates.³

The contention that the proposed rates are necessary to prevent the loss of traffic is supported by the testimony of shipper witnesses.⁴

³ The concerns for which the rates are proposed, the quantities handled during 1935 and the cost of the service as shown by Exhibit No. 2 are as follows:

<u>Commodity</u>	<u>Firm</u>	<u>Amount Handled</u>	<u>Cost</u>
Flour, Feed and Cereal Products	Sperry Flour Company	10,563 tons (year ending Nov. 30, 1935)	1.64 per ton - other than in-haul
Flour	Langendorf United Bakeries	12,023 tons	.0814 per bbl.
Commodities for Wholesale Grocery Houses	Sussman, Wormser & Co., Equitable Cash Grocery (a subsidiary)	27,655 tons	(.72 per ton - (inhaul and shipping over 2000 lbs.) (1.62 per ton - city delivery)
Commodities for Wholesale Hardware Houses	Baker-Hamilton & Pacific Co.	-----	-----
Newsprint Paper	Hearst Publications, Inc.	41,390 tons	.4785 per ton
Sugar	Western Sugar Refinery, Spreckels Sugar Company	109,000 tons	.538 per ton (average)

⁴ The following are excerpts from the transcript and brief:

Tr. 131 General Traffic Manager of Sperry Flour Company:
 " *** If he (the applicant) is unsuccessful so far as this company is concerned, Sperry Flour Company, it is not going to make any difference. We are just going to operate our own equipment."

Tr. 37 Cost Supervisor of Langendorf United Bakeries:
 Q. "If you are compelled to have your flour transported at the rate specified in Item 70, what would be the attitude of your Company towards the use of this carrier?"
 A. "We would be forced to discontinue having them do the hauling for us, and do our own hauling, as we have done with several other phases of our business."

The changes in the weight minima are proposed to take care of monthly fluctuations in quantity. It is contended that unless this is done shippers would be unduly penalized by not being able to apply the excess weight in any one month against the shortage in other months.

The granting of the application is opposed by the Draymen's and Flour Dealers' Associations who question the ability of shippers to perform this transportation in their own vehicles at costs not in excess of those suggested and who contend that the proposed rates are discriminatory and not in the public interest and that the establishing thereof would deprive them of an opportunity to conduct their business on a competitive basis.

4 (continued)

Tr. 100 Traffic Manager of Sussman, Wormser & Co. and Equitable Grocery Company:

"I want to confirm that part of the witness Bartholomew's testimony in which he stated in substance that unless Sussman, Wormser & Company received relief from the present rates, they would be forced to operate their own trucks. This was not said as a threat or to intimidate the Walkup Drayage and Warehouse Company, but was an actual statement of our intentions. Recently we made a study of our drayage and have had two studies made by the engineering departments of automobile manufacturers, with the result that we are firmly convinced that we can operate our own trucks at a cost not to exceed the present proposed rates."

Tr. 30 Manager of Hearst Publications, Inc.:

Q. "What would be the attitude of your company in the event that it should be charged a rate of 75 cents per ton?"

A. "It would force us into the drayage business."

Q. "And in reaching the conclusion that you would be forced into handling your own drayage in San Francisco would any rate higher than 55 cents per ton change your conclusion in that regard?"

A. "It would not, no."

Brief, page 3 Traffic Manager of Western Sugar Refinery:

Q. "Will you continue to dray?"

A. "No, not entirely. We would take advantage of our other facilities that are now offered."

Q. "What are those other alternative facilities?"

A. "Switching, and calling at the wharf by the steamship companies, our own wharf."

Q. "Would you consider possibly operating your own truck?"

A. "Yes, I think we would. We have been figuring on purchasing some trucks for a number of years. We have never made a study of it yet, but using the basis of the Commission's rental schedule in that order of April 6th, we could operate our own truck at a much more reasonable amount."

It must be observed that the application is grounded on the theory that rates otherwise reasonable may become unreasonable when they result in diverting traffic to proprietary trucks, and that similarly rates otherwise discriminatory may be not unduly discriminatory when necessary to meet competition not existing in other instances.

The proposal here is in each instance restricted so as to apply to the transportation of property in quantities of not less than a specified annual tonnage, the minimum ranging from 4,900 tons (50,000 barrels) on flour to 60,000 tons on sugar.

In promulgating its order establishing minimum rates for San Francisco city carriers (Decision No. 28632, supra), the Commission in discussing certain rates proposed for the transportation of property moving in large quantities said, "It is apparently conceded by all that unless low rates are established for commodities moving in substantial quantities this tonnage will be moved in shipper-owned trucks." Recognizing that if for-hire carriers are to retain the drayage business of shippers whose large volume of traffic places them in a particularly favorable position with respect to the handling of this business by means of proprietary trucks, it will be necessary that rates be maintained on a low basis, the Commission approved certain rates proposed by the carriers on levels which while admittedly low, were said to be remunerative.

Moreover in Decision 28891 wherein the Commission authorized M. S. Dodd to assess and collect for the transportation of compressed cotton a rate less than that established by Decision No. 22632 in Case No. 4084, it said:

"Rates at ports outside this State are obviously beyond this Commission's control. For this reason it should be liberal in circumscribing the bounds beyond which carriers subject to its jurisdiction cannot go in meeting such competitive rates. It seems clear that even though the proposed rate on high density

cotton may not cover the full normal costs of performing the service, it more than covers the out-of-pocket costs and will not cast an undue burden on other traffic."⁵

If it is a fact that the proposed rates are necessary to meet proprietary competition and go no further, then it is difficult to see how they could be held to be unduly discriminatory or to deprive competing for-hire carriers of an opportunity to conduct their business on a competitive basis.

The record supports the conclusion that the proposed rates are compensatory for the transportation of the commodities involved under the conditions upon which the cost study is based and that rates resulting in aggregate charges not higher than the proposed rates would produce are necessary to hold this traffic to for-hire carriers.

The application should be granted.

I recommend the following form of order:

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that until the further order of the Commission, Walkup Drayage and Warehouse Company is authorized to assess and collect rates less than those established in Decision No. 28632 of March 16, 1936, and as amended in Case 4084 but not less than the rates set forth in Exhibit "A" attached hereto and made a part hereof, for the transportation of property as described in said Exhibit "A", over the public highways of the City and County of San Francisco.

⁵ Application No. 20443, in re: Establishment of rates covering the transportation, etc. (40 C.R.C. 30).

This order shall become effective five (5) days from the date hereof.

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 14th day of September, 1936.

M B Harris

Leon Caldwell

M J. Carr

Walter Moore

Drew R. DeWitt

Commissioners.

EXHIBIT "A"

ITEM 1. Cereal Products, Feed and Flour transported for flour mills in quantities of not less than 8,000 tons per calendar year:

Inhaul to public warehouses	\$.70 per ton
City deliveries, shipping and returned city deliveries	Ø 1.70 per ton

ITEM 2. Flour transported for bakeries in quantities of not less than 50,000 barrels per calendar year:

Inhaul	Ø \$.10 per bbl.
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ITEM 3. Commodities transported for wholesale grocery houses in quantities of not less than 24,000 tons per calendar year:

<u>Inhaul</u>			
500 pounds and under		\$.35 per shipment	
Over 500 "	to 1200 pounds	.50 per shipment	
Over 1200 "	to 2000 pounds	.80 per shipment	
Over 2000 "		.80 per ton	

<u>Shipping</u>			
400 pounds and under		\$.25 per shipment	
Over 400 "	to 1000 pounds	.40 per shipment	
Over 1000 "	to 1500 pounds	.60 per shipment	
Over 1500 "	to 2000 pounds	.80 per shipment	
Over 2000 "		.80 per ton	

<u>City deliveries</u>	Ø \$1.75 per ton
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ITEM 4. Commodities transported for wholesale hardware houses in quantities of not less than 12,000 tons per calendar year:

City deliveries, Inhaul, Shipping and returned City deliveries	\$1.40 per ton
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Minimum Charge	.25 per shipment
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ITEM 5. Newsprint paper in rolls transported for publishers in quantities of not less than 35,000 tons per calendar year:

Ø \$.55 per ton

ITEM 6. Sugar transported for refineries in quantities of not less than 60,000 tons per calendar year:

Between docks, piers or wharves on the San Francisco waterfront on the one hand and points in Zone 1 on the other \$.65 per ton

Between points in Zone 1 except as otherwise provided herein, .80 per ton

Minimum Charge .50 per shipment

Ø Not subject to Rule 5(b).