

Decision No. 29618

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

ORIGINAL

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 "D"
Rates for Transportation
of Fresh Fruit).

In the Matter of the Investigation and Establishment of rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of Common Carriers, applicable to the transportation of fresh fruits.

Case No. 4115.

ADDITIONAL APPEARANCES

Samuel Hill, for Lake County Fruit Exchange.
J. J. Deuel, for California Farm Bureau Federation.
L. N. Bradshaw and J. L. Amos, Jr., for The Western
Pacific Railroad Company and Sacramento Northern
Railway.

BY THE COMMISSION:

SECOND SUPPLEMENTAL OPINION AFTER FURTHER HEARING

The Commission issued its original order in the above entitled cases by its Decision No. 28928, dated June 29, 1936, which was amended by Decision No. 28970, dated July 8, 1936. Upon request of a number of interested parties for certain modifications of these orders, after they had had some experience of operation under the terms and conditions thereof, the matters were again placed upon the

calendar for further hearing and such a hearing was conducted by Examiner Hunter at Lakeport, February 26, 1937.

The majority of the testimony at this further hearing was directed toward a modification of the Order in said Decision No. 28928, as amended, in two respects, viz., a general reduction in the rate structure and an additional scale of rates based on weight minimum between 4,000 and 18,000 pounds.

With respect to the volume of the rates, considerable testimony was offered to show that a substantial portion of the pear growers in the Clear Lake Basin has, during the past few years, received less compensation for their pears than the cost of producing them, and it is largely upon this premise that these grower witnesses contend that the transportation expense should be correspondingly reduced.

A witness for the Lake County Fruit Exchange introduced Exhibit D-13, which shows what the grower members of the exchanges received for their pears for the three-year period ending December 31, 1936, as follows:

Year	Tons	Orchard run	
		Received per Ton	Total Receipts
1934	6161.332	\$26.11	\$160,874.49
1935	7316.289	23.06	168,786.52
1936	6047.142	19.19	116,057.35

Average for the three years = \$22.82 per ton

The membership of this organization (approximately 140 members), represents, by volume of production, about one-third of the tonnage of pears grown in the Clear Lake Basin.

Exhibit D-11⁽¹⁾ shows the result of a certain study dealing with the cost of growing pears in the Clear Lake Basin for the five-year period ending December 31, 1930. This specific study shows that on the average the cost of producing pears was \$26.27 per ton, which includes all labor, hauling to the packing sheds, materials, overhead, depreciation, and interest on the investment at 6 per cent.⁽²⁾ A number of witnesses testified that the cost of producing pears had increased subsequent to 1930 due primarily to increased cost of labor and pest control expense.

Upon the basis that the pear growers are confronted with costs of production in excess of return, Samuel Hill, representing the Lake County Fruit Exchange, and J. J. Deuel, representing the California Farm Bureau Federation, each urged the Commission to make a reduction of not less than 10 per cent in the minimum rates as prescribed in its said Decision No. 28928, as amended, for the transportation of pears in lots of 18,000 pounds and over.

(1) This report is entitled "Final Summary of the Lake County Pear Management Study for the five-year period 1926-1930, inclusive. Carried on by seventeen Lake County pear growers in cooperation with the Agricultural Extension Service of the University of California. L. C. Barnard, Lake County Farm Advisor, Kelseyville, California; Arthur Shultis, Extension Specialist in Farm Management."

(2) The following is quoted from this Study (Exhibit D-11):

"The future outlook for pears indicates an increasing total production to be sold. This means a lower price even in spite of all measures that can probably be taken to stabilize prices. It becomes necessary, therefore, for those growers who desire to make a profit to bring about a considerable decrease in their costs per ton. Growers should strive to lower their costs below \$22.50 a ton, although that figure is not a price prediction but a suggested goal for the cost of production. With costs that low a grower can continue to make a living from 20 acres or more of pears."

"The only way the grower can possibly meet future lower prices is to increase yields of fruit per acre and decrease some of the costs per acre. A grower who increases his average annual yield from 7 to 12 tons to the acre will find his cost per ton reduced from about \$25.00 a ton to about \$18.00 a ton. A reduction in costs of \$25.00 an acre with the same 7-ton yield would only reduce the cost per ton from \$25.00 to \$22.00."

The contention that the growers in this district are now receiving less for their pears than it costs to produce them, standing by itself, does not justify the Commission in reducing transportation rates below a point where the truck operator can realize something in excess of the actual out-of-pocket cost of providing the service. To deny the trucker this right would not only be illegal but would be adverse to public interest, as reasonable and adequate service cannot be expected to continue where the operator's revenue is not sufficient to pay his out-of-pocket cost.

Request is also made that the Commission prescribe minimum transportation rates on a box or package basis rather than on the 100-pound unit. This request is supported by the fact that the trade has developed the practice of using the box as a unit of measure rather than the 100-pound basis in determining both revenue and expenses in the pear industry. The record shows that it is a common practice to consider the weight of 40 boxes of pears as one ton. It appears upon this record that this request is reasonable and can be met by including an appropriate rule in the Order. It should be pointed out, however, that such a rule is not to be considered as a precedent to apply in other decisions where the record might not justify such a conclusion.

It was pointed out that under prevailing conditions it costs less to ship pears from the Clear Lake Basin to Los Angeles if the shipment is re-billed at San Francisco than is the case where the shipment is on a single through-billing. This results from the fact that the Commission has not to date fixed the rates for this class of transportation between San Francisco and Los Angeles, therefore, the Radial Highway Common Carriers and Highway Contract Carriers have made their own rates for this haul.

Some difference of opinion exists between the rail carriers and truck operators as to the justification of a differential between

the rail and truck rates for the transportation of pears between the Clear Lake Basin and Los Angeles. The Pacific Motor Transport contends for a lower rate due to the fact that about double the time is consumed in a rail shipment as compared with a truck movement. On the other hand, the truck operators take the position that the advantage of the saving in time is more than offset by the added service offered by the rails in the way of refrigeration and holding the shipment in the cars at Los Angeles for three days without added charge. This question, however, is more or less incidental to this proceeding and the Commission cannot on this record establish a differential between these two classes of service.

The record shows that there were some "for hire" truck shipments of pears between the Clear Lake Basin and Marysville where icing facilities are provided on the lines of the railroads. The transportation rate structure set forth in Commission's Order in said Decision No. 28928 as amended, did not provide rates for such a movement. The following Order will prescribe minimum rates for truck transportation from the Clear Lake Basin to Marysville, as well as to Luther, Los Gatos, Gilroy, Seabright, Williams, Colusa, and Yuba City, which are other points of record where shipments of pears have been or may be made in the future.

A revised cost study was introduced by Fred H. Chesnut, one of the Commission's engineers, setting forth the result of his further study on cost of transporting fresh fruit, particularly pears, by truck out of the Clear Lake Basin to various points in California. This study was received as Exhibit No. D-15 and is to be considered as a supplement to his former cost study of truck operation introduced in this record as Exhibit D-1 at the former hearing at Lakeport on March 31, 1936. The cost of truck transportation, as set forth in Exhibit D-15, is lower than is the case with Exhibit D-1, varying in

amounts depending upon the size of the equipment. The difference comes primarily from the fact that the estimated operating speed is higher in Exhibit D-15. Mr. Chesnut testified that where any differences existed in the two estimates, the figures shown in Exhibit D-15 should prevail.

The following tabulation is taken from Exhibit D-15:

Size of Unit	Average Cost per 100 pounds (3) Length of Haul in Miles		
	50	100	200
5-ton	\$0.1191	\$0.2240	\$0.4330
10-ton	.0780	.1430	.2720
15-ton	.0716	.1259	.2350
20-ton	.0680	.1196	.2220

With the exception of the 20-ton unit, which is usually employed in the long haul movements, the above estimated costs of transportation are substantially less than those shown in Exhibit D-1. The amount of the difference varies depending upon the size of the equipment but is in general slightly in excess of 10 per cent. This revision in the cost estimate supports the contention for a 10 per cent reduction in the minimum transportation rates - except in the case of a 20-ton unit.

J. J. Deuel of the California Farm Bureau Federation made a motion that the Commission defer the fixing of minimum rates governing the transportation of pears out of the Clear Lake Basin until such time as it had fixed a comparable rate for the transportation of pears out of other producing areas in the State. It was his contention that where a district is required to operate under such rates, it is placed at a disadvantage with other districts of the State where no such

(3) The report specified that these costs are for Valley Highways and should be increased where Mountain roads are encountered or operating expenses are increased due to ferry or bridge tolls.

rates have been established. In passing upon Mr. Deuel's motion, consideration should be given to the fact that the Commission had theretofore established rates governing the transportation of pears out of the Clear Lake Basin by its Order in said Decision No. 28928 as amended, and the primary purpose of this further hearing was to take additional evidence in the light of experience which had been gained subsequent to the issuance of said Decision No. 28928 as amended, with the thought in mind that if the record justified, appropriate changes could be made in the rate structure prescribed by that decision. After due consideration it is concluded that this motion should be denied in so far as this proceeding is concerned.

Some criticism was directed to that portion of Appendix "A" of said Decision No. 28928 as amended, dealing with both definitions and rules and regulations with respect to the terms "Point of Origin," "Split Pick-up," and "Split Delivery." It was alleged that the definition of the term "point of origin" is not definite. However, no suggestions were offered which would improve the situation. Moreover, this definition has been employed in numerous decisions of the Commission involving transportation by motor trucks. In the record it has not been shown that this problem in Lake County differs materially from other parts of the State and under these circumstances we do not feel justified in making any change at this time.

It was also urged that the rules and regulations as set forth in Appendix "A" governing split pick-up and split delivery shipments are in need of modification in the interest of equity and clarity. Some shippers contend that the split pick-up privilege afforded to lots from two or more shippers is discriminatory to them under the rule as it now stands as they ship as a single organization. For example, various fruit exchanges maintain and operate more than

one packing plant in the Clear Lake Basin and are not permitted under the existing rule to enjoy split pick-up privileges.

There is carrier testimony to the effect that the costs involved in a split pick-up movement is substantially the same whether or not the split pick-up is made for the account of one or more shippers. It is concluded that the Order herein should amend the rule governing split pick-up service to permit its application for lots from one or more shippers and also clarify whatever ambiguity may exist under the rule now in effect.

There is some testimony in the record by "for hire" truck operators to the effect that the minimum transportation rates prescribed in said Decision No. 28928 as amended, are just and reasonable and should not be reduced. This position is supported by the statement that operation under these rates has not produced excessive returns to the truck operator and with increased labor costs, any reduction in the rates will result in inferior service.

A careful review of this record leads to the conclusion that the rates, rules and regulations established in and by the Commission's Order in said Decision No. 28928 as amended, be modified in the following respects:

1. The minimum transportation rates for the movement of pears, fresh in packages, from the Clear Lake Basin to the various points of destination moving under minimum weights of 18,000 and 30,000 pounds should be reduced approximately 10 per cent, except in the case of shipments moving to Los Angeles; together with a corresponding reduction for the transportation of empty containers.

2. The Order should provide for a scale of rates based upon a minimum of 10,000 pounds, in addition to those now prescribed.

3. The Order should provide minimum truck rates for the transportation of pears to additional points, viz., Marysville, Luther, Los Gatos, Gilroy, Seabright, Williams, Colusa, and Yuba City.

4. The Order should contain a rule prescribing estimated weights as a substitute for actual weights in the transportation of pears in standard pear boxes.

5. The definition of rules and regulations relating to charges for "split pick-up" and "split delivery" shipments should be modified.

Finally, it is the Commission's conclusion that the Order in said Decision No. 28928 as amended should be modified in accordance with the foregoing and that these changes can best be accomplished by promulgating another Order which, in effect, will supersede and be in lieu of the one prescribed in said Decision No. 28928 as amended.

O R D E R

Further hearings having been held in the above entitled proceedings and good cause appearing,

IT IS HEREBY ORDERED that the Order and Appendices attached thereto in Decision No. 28928 as amended by Decision No. 28970 in the above entitled proceedings are hereby amended to read as follows:

"ORDER

"Public hearings having been held in the above entitled proceedings and based upon the evidence received at the hearings therein, and upon the conclusions set forth in the preceding Opinion:

"IT IS HEREBY ORDERED that the rates, rules and regulations set forth in Appendix "A" attached hereto and made a part hereof, be and they are hereby approved and established, to become effective

April 30, 1937, as the just, reasonable, and non-discriminatory minimum rates, rules and regulations to be charged, collected and observed by all radial highway common carriers and highway contract carriers, as defined in Chapter 223, Statutes of 1935, for the transportation of fresh pears and empty carriers, returning, over the public highways from and to the points involved herein and set forth and included in said Appendix "A."

"IT IS HEREBY FURTHER ORDERED that the minimum rates herein established for the transportation of empty carriers, returning, supersede the minimum rates established in Decision No. 28761 in Part "A" of Case No. 4088.

"IT IS HEREBY FURTHER ORDERED that Melvin W. Prather, Mrs. J. A. Keithly, Charles Kuppinger, Guido de Ghetaldi, A. M. Akins, The Herrick Company, C. F. Frederickson & Sons, Wilbur Springs Stage Company, Pacific Greyhound Lines, Inc., Railway Express Agency, and Pacific Motor Transport Company be, and they are, hereby ordered to cease and desist on or before April 30, 1937, and thereafter abstain from applying, demanding, collecting or receiving for the transportation of the articles and commodities described in Appendix "A" hereof from and to the points involved herein, rates less than those set forth in said Appendix "A" hereof.

IT IS HEREBY FURTHER ORDERED that the respondents named in the next preceding paragraph and each of them be and they are hereby ordered and directed to establish on or before April 30, 1937, upon not less than three (3) days' notice to the Commission and the public for the transportation of the articles and commodities described in Appendix "A" hereof, from and to the points involved herein, rates no lower than those set forth in said Appendix "A" hereof.

"IT IS HEREBY FURTHER ORDERED that every radial highway common carrier and highway contract carrier shall issue to the shipper, for each shipment received for transportation, a freight bill in substantially the form set forth in Appendix "B" hereof, but may include in said freight bill, in addition to the provisions appearing on said form, such other reasonable and lawful provisions as may be deemed proper, and shall retain and preserve for reference, subject to the inspection of the Commission or its employees, a copy of said freight bill for a period of not less than three (3) years from the date of its issuance.

"IT IS HEREBY FURTHER ORDERED that the Commission shall and it does hereby retain jurisdiction of these proceedings for the purpose of establishing or approving the just, reasonable and non-discriminatory maximum and minimum or maximum or minimum rates, charges, classifications, rules and regulations to be charged, collected, and observed by radial highway common carriers and highway contract carriers, both for transportation service 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 and for the purpose of establishing and prescribing such rates as will provide an equality of transportation rates for the transportation of the articles and commodities here involved between all competing agencies of transportation."

The effective date of this Second Supplemental Order shall be thirty (30) days from the date hereof.

Dated at San Francisco, California, this 22nd day of March, 1937.

[Handwritten signatures of four commissioners]
 Commissioners.

APPENDIX "A"

Naming Minimum Rates and Rules and Regulations for the Transportation of Fresh Pears and Empty Carriers, returning from and to points in Lake County on the one hand, and other points in California on the other hand.

EXPLANATION OF TECHNICAL TERMS AND ABBREVIATIONS

POINT OF ORIGIN means the precise location at which property is picked up or is to be picked up and loaded in or on equipment of the carrier for transportation.

POINT OF DESTINATION means the precise location at which property is discharged or is to be discharged from the equipment of the carrier.

SHIPMENT means a lot received from one shipper on one shipping order or bill of lading at one point of origin at one time for one consignee and one destination. (See rule governing "Split Pick-up and Delivery Shipments" under heading "Rules and Regulations" for exception).

SPLIT PICK-UP means a lot for delivery to one consignee at one point of destination received on one shipping order or bill of lading from:

- (a) One consignor at two or more points of origin.
- (b) Two or more consignors at one point of origin or at two or more points of origin.

SPLIT DELIVERY means a lot received on one shipping order or bill of lading from one consignor at one point of origin at one time, to be delivered to:

- (a) One consignee at two or more points of destination.
- (b) Two or more consignees at one point of destination or at two or more points of destination.

APPENDIX "A" (Cont'd)

RULES AND REGULATIONS

PICK-UP AND DELIVERY: Rates named herein include pick-up at point of origin and delivery at point of destination.

WEIGHTS: Except as noted below, charges shall be assessed upon the actual gross weight of the shipment. No allowance or deduction shall be made for the weight of containers.

EXCEPTION 1. - On shipments of fresh pears transported in standard pear boxes inside depth including cleats $8\frac{1}{2}$ inches, inside width $11\frac{1}{2}$ inches, outside length $19\frac{3}{8}$ inches, an estimated weight of 50 pounds per box shall be used in lieu of the actual gross weight.

EXCEPTION 2. - When the charges accruing on a shipment based upon actual gross weight or upon authorized estimated weight exceed the charges computed from a rate based upon the next greater unit of minimum weight, the latter shall apply.

SPLIT PICK-UP OR SPLIT DELIVERY SHIPMENTS: (Applies only to the transportation of fresh pears).

Split pick-up or split delivery service may be rendered only when the entire lot of property weighs 4,000 pounds or more or when transportation charges are computed upon a weight of 4,000 pounds or more. Shipments must originate on one shipping order or bill of lading on one day. No shipment shall be accorded both split pick-up and split delivery service. Split delivery service may be rendered only when shipments are to be delivered at one point of destination or when the first and succeeding points of destination are intermediate between the point of origin and the last point of destination.

Charges for split pick-up or split delivery shipments shall be computed as follows:

On split pick-up shipments charges shall be assessed upon the weight of the entire lot and upon the rate applicable to such weight plus a sum equal to one cent per 100 pounds for the weight of each pick-up but in no case less than 25 cents per pick-up.

APPENDIX "A" (Cont'd)

RULES AND REGULATIONS (Cont'd)

On split delivery shipments charges shall be assessed upon the weight of the entire lot and upon the rate applicable to such weight to the highest rated point of destination of any part of the entire lot plus a sum equal to one cent per 100 pounds for the weight of each delivery but in no case less than 25 cents per delivery.

RATES IN CENTS PER 100 POUNDS ON FRESH PEARS, IN PACKAGES,
FROM POINTS OF ORIGIN IN LAKE COUNTY NOT MORE THAN 20 MILES
DISTANT BY HIGHWAY FROM LAKEPORT.

: TO: Points of destination : located within the corporate : limits of named cities, ex- : cept as otherwise indicated. :	Minimum Weight in Pounds			
	4,000	10,000	18,000	30,000
Hopland*	15	12	10	9
Ukiah	15	12	10	9
Santa Rosa	28	22	17	14
Sebastopol	28	22	17	14
Napa	38	30	23	18
Petaluma	32	25	19	15
San Francisco	48	39	30	24
Oakland	48	39	30	24
Alameda	48	39	30	24
Emeryville	48	39	30	24
Berkeley	48	39	30	24
Albany	48	39	30	24
El Cerrito	48	39	30	24
Richmond	48	39	30	24
San Leandro	48	39	30	24
Hayward	52	42	32	25
Niles*	52	42	32	25
Centerville*	52	42	32	25
San Jose	58	46	34	27
Santa Clara	58	46	34	27
Sunnyvale	58	46	34	27
Mountain View	58	46	34	27
Campbell*	58	46	34	27
Luther*	58	46	34	27
Los Gatos	60	48	36	28
Gilroy	62	50	38	30
Seabright*	65	53	41	32
Williams	28	22	17	14
Colusa	32	25	19	15
Yuba City	38	30	23	18
Marysville	38	30	23	18
Sacramento	48	39	30	24
Stockton	55	45	36	29
Modesto	60	50	41	32
Los Angeles	100	90	80	65

* Rates apply to points of destination not more than 2 miles distant by highway from the rail depot.

APPENDIX "A" (Cont'd)

RULES AND REGULATIONS (Cont'd)

RATES IN CENTS PER 100 POUNDS ON EMPTY CARRIERS, RETURNED, OR WHEN SHIPPED FOR A RETURN PAY LOAD VIA THE SAME CARRIER AS THE OUTBOUND MOVEMENT TO POINTS OF DESTINATION IN LAKE COUNTY NOT MORE THAN 20 MILES DISTANT BY HIGHWAY FROM LAKEPORT, FROM POINTS OF ORIGIN LOCATED WITHIN THE CORPORATE LIMITS OF NAMED CITIES, EXCEPT AS OTHERWISE INDICATED.

Hopland*	5	El Cerrito	12	Los Gatos	14
Ukiah	5	Richmond	12	Gilroy	15
Santa Rosa	7	San Leandro	12	Seabright*	16
Sebastopol	7	Hayward	13	Williams	7
Napa	9	Niles*	13	Colusa	8
Petaluma	8	Centerville*	13	Yuba City	9
San Francisco	12	San Jose	14	Marysville	9
Oakland	12	Santa Clara	14	Sacramento	12
Alameda	12	Sunnyvale	14	Stockton	15
Emeryville	12	Mountain View	14	Modesto	16
Berkeley	12	Campbell*	14	Los Angeles	33
Albany	12	Luther*	14		

* Rates apply to points of destination not more than 2 miles distant by highway from the rail depot.

SHIPPING ORDER AND FREIGHT BILL									
Name of Carrier _____ (Name of Carrier must be same as shown on Permit)						Bill No. _____ Permit No. _____			
Point of Origin _____				Date _____, 193__					
Shipper _____				Consignee _____					
Street Address _____				Street Address _____					
City _____				City _____					
Packages	Kind	Description of Commodities				Weight	Rate	Charges	
Shipper _____					Check here				
By _____ (Show name in full)					Origin		Destination		
Received by Carrier in good condition except as noted _____					Term- inal	Store Door	Term- inal	Store Door	O. O. D.
By _____									O. O. D. Fee
Driver (show name in full) _____					* Advances				
Received by Consignee in good condition except as noted _____					* Other Charges				
By _____ (show name in full)					Prepaid				
* Show each charge separately and what it represents.									Total to Collect
** If other unit of charges, show per box, crate, bundle, bag, head, etc.									