

Decision No. 23686**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation and
 Suspension by the Commission on its
 own motion, of reduced rating and rates
 on drugs, medicines, toilet preparations,
 chemicals, bandages and dressings, pub-
 lished by Pacific Freight Lines; Pacific
 Freight Tariff Bureau, L. F. Potter,
 Alternate Agent; Southern California
 Freight Forwarders; and Southern Cali-
 fornia Freight Lines.

Case No. 4142

Wallace K. Downey, for Pacific Freight Lines, respondent.
 H. J. Bischoff and Wallace K. Downey, by Wallace K. Downey,
 for Southern California Freight Lines and Southern
 California Freight Forwarders, respondents.
 E. C. Pierre and Gerald E. Duffy, for The Atchison, Topeka
 and Santa Fe Railway Company, respondent.
 R. E. Wedekind, for Southern Pacific Company, Pacific Motor
 Transport Company, and Pacific Motor Trucking Company,
 respondents.
 Edwin G. Wilcox, for San Francisco Chamber of Commerce.
 T. G. Differding, for Oakland Chamber of Commerce.
 L. N. Bradshaw and J. L. Amos, Jr., for The Western Pacific
 Railroad Company, Sacramento Northern Railway and Tide-
 water Southern Railway, respondents.
 Frances O'Callaghan, for J. S. O'Callaghan & Son.
 C. G. Dooley and William M. Casselman, for Colgate-Palmolive-
 Peet Company, Norwich Pharmacal Company and Northam-Warren
 Corporation.
 F. M. O'Donnell and Roy F. Lennon, for Johnson & Johnson.
 H. I. Allen, for Emerson Drug Company.
 Carl Hobbel, for Owl Drug Company.

BY THE COMMISSION:

O P I N I O N

In the above entitled proceeding the Commission suspended certain schedules filed by Pacific Freight Lines; Pacific Freight Tariff Bureau, L. F. Potter, Alternate Agent; Southern California Freight Forwarders; and Southern California Freight Lines, naming a reduced rating of third class, and reduced commodity rates, for the transportation of drugs, medicines, toilet preparations, chemicals,

bandages and dressings, pending a determination of the reasonableness, lawfulness and propriety thereof.¹

A public hearing was had at San Francisco on March 29, 1937, before Examiner Mulgrew. The matter was submitted on briefs. The proposed commodity rates have meanwhile been ordered cancelled by Decision No. 29480 of January 25, 1937, and as amended, in Part "B" of Case No. 4145. Thus there is before us for determination now only the reasonableness, lawfulness and propriety of the proposed third class rating.

The record shows that a rating of third class for interstate transportation of the articles here involved was first filed in the Pacific Freight Tariff Bureau Exception Sheet, to become effective June 5, 1935. Prior to this date Western Classification ratings (in most instances first class or higher) prevailed. Upon representation that the reduced rating was necessary to meet unregulated motor truck competition the Commission authorized the third class rating for a temporary period ending December 31, 1935. Shortly before this expiration date a further extension of three months was authorized on the representation that competitive conditions had not changed. Subsequently a further extension in time to June 30, 1936, was sought. However, before this application was disposed of, Decision No. 28761 of April 27, 1936 was entered in Part "A" of Case 4088. Inasmuch as this decision prescribed minimum rates for radial highway common car-

1

The particular schedules involved are:

- (1) Item No. 83-E to Pacific Freight Lines Local Freight Tariff No. 7, C.R.C. No. 7 of Motor Freight Terminal Company, filed to become effective July 10, 1936,
- (2) Item No. 685 to Pacific Freight Tariff Bureau Exception Sheet No. 1-P, C.R.C. No. 597, of L. F. Potter, Alternate Agent, filed to become effective July 12, 1936,
- (3) Item No. 419½-C to Southern California Freight Forwarders Local Express Tariff No. 1, C.R.C. No. 1, filed to become effective July 17, 1936,
- (4) Items Nos. 1512-C and 1091½-C to Southern California Freight Lines Local, Joint and Proportional Freight Tariff No. 1, C.R.C. No. 1, filed to become effective July 17, 1936 and July 18, 1936, respectively.

riers and highway contract carriers upon the basis of the lowest common carrier rate in effect June 1, 1936, permission further to extend the temporary rating was limited to May 31, 1936. Notwithstanding that the reduced rating was authorized on a temporary basis and extended upon showings that it was compelled by unregulated competition, the instant schedules were filed establishing the rating on a permanent basis. The history of the Pacific Freight Lines' exception sheet rating is substantially the same as that of the Pacific Freight Tariff Bureau.

In justification of the proposed third class rating common carriers participating in the Pacific Freight Tariff Bureau Exception Sheet contend that prevailing widespread deviations from Western Classification ratings on the articles here involved require the establishment of a third class rating to provide equitable and non-discriminatory rates; that commodity rates in volume the same as or lower than the third class rating are maintained between many points; that to provide a non-discriminatory rate adjustment between these and other points by extending the commodity rates would require an undue amount of tariff publication; that common carrier ratings not involved in this proceeding are third class in certain instances; that the establishment of increased class rates in southern California effective April 12, 1937,² aggravates the prevailing discriminatory rate situation; and that other competitive factors are such that the carriers doubt their ability to retain the traffic they now enjoy unless the proposed

2

Decision No. 29480, as amended, in Cases Nos. 4088 "M" and 4145 "B", established minimum rates for radial highway common carriers and highway contract carriers and reasonable and sufficient rates for common carriers for shipments not exceeding 15,000 pounds in weight in the general territory San Fernando and Burbank on the north to San Diego and San Ysidro on the south and from the Pacific Ocean on the west to Redlands, Yucaipa, Hemet Valley and Escondido on the east. The rates prescribed resulted both in increases and decreases.

schedule is permitted to become effective.³

A group of interested shippers advocate the establishment of the third class rating. They state that the practice of maintaining exceptions to the classification at lower ratings is one of long standing; that ratings on California intrastate traffic should be no higher than those generally prevailing in other states; that if ratings higher than third class are maintained, serious consideration will be given to the diversion of common carrier shipments to proprietary trucks and to contract carriers; that market competition may force shippers to transact business in a manner that does not involve a California intrastate movement rather than continue to operate under the handicap imposed by the alleged rate inequality; and that the Interstate Commerce Commission has held that intrastate rates should not be higher than interstate rates.⁴

The San Francisco Chamber of Commerce, through Witness Rohde, stressed the fact that ratings on these commodities lower than first class prevail generally throughout the country. The witness is of the opinion that to refuse to accord a rating similar to ratings generally prevailing in other territories would handicap local industry and forestall any business growth in the lines of endeavor involved in this proceeding.

3

The competitive influences referred to are:

- (1) Carrier competition with highway contract carriers in connection with shipments of over 4,000 pounds;
- (2) Existing and potential proprietary truck operations;
- (3) Market competition between California shippers and shippers supplying their customers by transporting shipments into California as follows:
 - (a) from Eastern points of origin via intercoastal vessel to California ports, thence directly to point of destination as a part of an interstate movement;
 - (b) by rail from Eastern shipping points to final destination, principally under partial unloading in transit privileges;
 - (c) deliveries from Oregon and Arizona wholesale druggists to California consuming points.

4

Reference is made to "Waste Paper from, to and between Indiana points" (206 I.C.C. 127), decided December 28, 1934.

Pacific Freight Lines, Southern California Freight Forwarders and Southern California Freight Lines made no attempt to justify their proposed ratings. On the contrary they now oppose the adjustments contemplated and take the position that fast, frequent and expensive service in transporting these commodities is demanded by shippers; that no recent rate complaints have been received nor do the Western Classification ratings impede free movement; that a substantial part of these truck lines' operations are within the area embraced by Part "M" of Case No. 4088 and Part "B" of Case No. 4145, supra; that increased carrier costs require the maintenance of rates no lower than those prescribed therein; that there is presently no important movement of the commodities in issue in large quantities; and that if such movement develops, appropriate quantity rates can be established. On brief, these carriers deny that the maintenance of the existing rates in any way prejudices interstate commerce or that the case cited by shippers establishes a precedent that intrastate and interstate rates should be on the same level.

The record shows that the justification for the proposed reduced ratings is predicated largely upon the ratings maintained elsewhere. It also shows that the ratings in other territories with which comparison is made were published to meet motor truck competition.⁵ It has not been shown that a third class rating is a normal rating for the transportation of drugs and related articles nor has it been shown that the application of the rates now in effect causes unjust and undue prejudice and discrimination.⁶ What action may be taken in other rate territories upon the development of more complete rate regulation of for-hire carriers is of course a matter of conjecture. However, in

⁵ Witness Rohde stated that the tariffs reviewed in his rate study indicate that the ratings are established to meet motor truck competition. These tariff items also carry expiration dates. North Pacific Coast territory ratings are not qualified in this manner.

⁶ "A mere comparison of rates used in other territory does not of itself constitute preference and prejudice" In re Suspension of tariffs of A.T. & S.F. Ry. Co. etc. (36 C.R.C. 135).

California, particularly in the southern part of the state, the first steps in a transportation rate stabilization program have been effected.⁷ The Commission proposes to proceed with all possible dispatch in its rate stabilization task. It is recognized that until such time as rates have been fixed on all commodities between all points in the state certain inequalities will exist. Such temporary rate inequalities however do not necessarily constitute unjust and undue discrimination. It is evident that the third class rating in California, as well as the low ratings in other rate territories, are depressed. It also seems clear that these depressed ratings were established by common carriers in an effort to retain or recapture traffic in competition with unregulated for-hire trucks. Upon the enactment of legislation placing hitherto unregulated carriers under the jurisdiction of a regulatory body, and upon the subsequent establishment of rates in compliance with the legislative mandates contained therein, it appears no longer necessary that subnormal ratings be retained. Under these circumstances it seems obvious that the lack of uniformity between intrastate and interstate rates is not unavuly prejudicial. The contention that intrastate rates must be not higher than interstate rates has not been substantiated on this record.

Other than the assertion that a third class rating is justified by the maintenance of similar admittedly depressed ratings in other territories little evidence of probative value was presented in justification of the proposed rating. Respondents will therefore be required to cancel the suspended rate schedules.

7

Rates are established for the transportation of property with certain exceptions in quantities of less than 4,000 pounds between all points served by common carriers. In southern California rates for the transportation of property, likewise with certain exceptions, are provided for quantities of not to exceed 15,000 pounds.

O R D E R

The matter having been duly heard and submitted,

IT IS HEREBY ORDERED that Pacific Freight Lines; Pacific Freight Tariff Bureau, L. F. Potter, Alternate Agent; Southern California Freight Forwarders; and Southern California Freight Lines be and they are hereby ordered and directed on or before May 5, 1937, on not less than one day's notice to the Commission and to the public, to cancel the rating and rates here under suspension.

IT IS HEREBY FURTHER ORDERED that upon the cancellation of the suspended rating and rates our order of June 30, 1936, in the above entitled proceeding be vacated and the proceeding discontinued.

Dated at San Francisco, California, this 19th day of April, 1937.

Walter L. ...
Leon ...
Frank R. ...
Ray B. ...
Ray L. ...
Commissioners