

Decision No. 30089

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 for the transportation of property, for compensation or hire, over the public highways, by all Radial Highway Common Carriers and Highway Contract Carriers between, and by all City Carriers within the cities of Oakland, Albany, Alameda, Berkeley, Emeryville and Piedmont, in the County of Alameda.

ORIGINAL
Case No. 4108

In the Matter of the Investigation and Establishment of rates, charges, classifications, rules, regulations, contracts and practices, or any thereof, of EAST BAY DRAYAGE & WAREHOUSE CO., HASLETT WAREHOUSE COMPANY, INTER-URBAN EXPRESS CORPORATION, KELLOGG'S EXPRESS & DRAYING CO., MERCHANTS EXPRESS CORPORATION, PEOPLES EXPRESS, SPECIAL DELIVERY SERVICE CO., UNITED PARCEL SERVICE, UNITED TRANSFER COMPANY, and WEST BERKELEY EXPRESS & DRAYING COMPANY, operating as Highway Common Carriers, for transportation of property, for compensation, over the public highways of the State of California, between the cities of Oakland, Albany, Alameda, Berkeley, Emeryville and Piedmont, in the County of Alameda, and for accessorial services incident to such transportation.

Case No. 4109

ADDITIONAL APPEARANCES

R. F. Ahern, for Rosenberg Bros. and Company.

E. P. St. Clair, for Kellogg Express and Draying Company.

DEVLIN, Commissioner:

SIXTH SUPPLEMENTAL ORDER

On June 2, 1937, a further hearing in the above entitled proceedings was held at San Francisco for the purpose of considering what if any modifications in outstanding orders had become necessary.

The Draymen's Association of Alameda County, hereinafter

referred to as the Association, proposed a reduced rating of first class on incandescent lamps, in barrels, boxes or cartons. This rating was said to be that generally provided on this commodity in practically all tariffs applying in this state,¹ the same as that provided in the transbay tariff in which common carriers respondents herein participate, as well as the rating which was applied on this commodity for many years prior to the Commission's original order in these proceedings.

It was stated that the bulk of shipments of incandescent electric lamps ranges in weight from 15 to 300 pounds, that while this commodity is fragile it is usually well packed and therefore not readily susceptible to damage, that it may be quickly loaded and unloaded and otherwise represents a desirable class of freight for transportation at the proposed rating.

Amendments to the commodity rate item on structural iron and steel were suggested by the Association. They involve (1) restricting the commodity description "structural iron and steel" to those commodities listed under this heading in "Exceptions to current Classification"; (2) restricting the rates to apply only when shipper loads and consignee unloads; and (3) providing for the application of such rates to shipments in addition to the existing application to "job,"² thereby establishing these rates for transportation between plants and between terminals and plants.

In justification of these changes the Association repre-

¹ Attention is particularly directed to a rating of first class provided on this commodity in Pacific Motor Transport Tariff No. 9, C.R.C. No. 13, applying between points in California.

² The term "job" is defined as a lot delivered to one or more locations on a single project within a period not to exceed one year.

sented that the suggested commodity description includes those structural iron and steel articles which constitute the bulk of the tonnage transported in the minimum quantities for which commodity rates are provided and will remove doubt as to the articles which are embraced within this description; that the restriction of the existing commodity rates to apply only where shipper loads and consignee unloads will confine these rates to the character of service usually requested and performed³ and will prevent them from being applied for transportation where carrier might be required to perform the loading and unloading for which service it is claimed these rates are unduly low. The Association represented further that the establishment of commodity rates of the volume of those now applying from plants and terminals to "job" to also apply for transportation between plants and between terminals and plants will provide reasonable and compensatory rates for this latter transportation;⁴ will remove the existing inequality in rates for like transportation services, and will prevent a diversion of traffic to proprietary trucking.

The establishment of a commodity rate of 5 cents per 100

³ Witness Bigge, representing a carrier specializing in the transportation of structural iron and steel and other heavy commodities, testified that although his company performed the bulk of the steel hauling under the commodity rates involved he had never been called upon to perform the loading and unloading in connection with such transportation.

⁴ Witness Bigge submitted an exhibit comparing the revenue which would obtain under the proposed rate on structural iron and steel of \$1.00 per ton in minimum quantities of 10 tons between terminals and plants with the revenue which would be derived at the hourly vehicle unit rates heretofore established for the transportation of shipments not reasonably susceptible to handling on a weight basis based on the time actually required to transport specific shipments of steel in lots exceeding 20,000 pounds during the period October 1, 1936, to May 15, 1937. This exhibit covered the movement of 519.85 tons from which a revenue of \$519.85 would be received under the proposed \$1.00 per ton rate, as compared with a revenue of \$474.15 which would obtain under the hourly vehicle unit rates.

pounds to apply to the transportation of wooden piling, treated or untreated, in lots exceeding 40,000 pounds was recommended by the Association. Witness Bigge stated that wooden piling generally moves in lots ranging from 300 to 1,000 tons, is loaded by railroad crane and unloaded by gravity and that help in addition to the driver is therefore unnecessary, and that the proposed rate would be compensatory. He testified that transportation conditions encountered in hauling of wooden piling were similar to those in connection with the transportation of structural iron and steel for which a rate of the same volume as that here proposed is now in effect or is recommended herein. He said that the costs submitted by him in justification of the rate on structural iron and steel proposed herein were representative of those experienced in the transportation of wooden piling.

Merchants Express Corporation proposed the establishment of a reduced classification rating of first class for the transportation of glass, as described under the heading of "Glass" in the current Classification, in packages named therein exceeding 120 united inches, when loading is performed by shipper and unloading is performed by consignee, or when crane facilities are furnished to carrier without cost. In the event carrier performs loading or unloading and crane facilities are not available, it proposed that there be added to the first class rate a charge of $3\frac{1}{2}$ cents per 100 pounds for each loading or unloading service performed by the carrier without the use of a crane.

The ratings provided by the current Classification on glass generally range from first class to two and one half times first class. However, by exception to the current Classification heretofore established in these proceedings, the current Classifi-

cation ratings are restricted to apply only when shipper performs the loading and consignee performs the unloading, or when crane facilities are furnished without cost to the carrier. When carrier is required to load or unload and crane facilities are not available, a charge of $3\frac{1}{2}$ cents per 100 pounds is provided for either or both of these services.

It was testified that experience showed that the existing ratings for the transportation of glass in the larger sized packages were excessive when loading and unloading are performed by other than the carrier or when crane facilities are furnished to carrier without cost,⁵ but that conversely the existing charge of $3\frac{1}{2}$ cents per 100 pounds, while proper for a single service of loading or unloading, is unduly low when both loading and unloading are performed by the carrier without the use of crane facilities. The proposal was supported by the Association.

Rosenberg Bros. and Company requested that dried fruit be included in the grocery description at the fourth class rating and commodity rates provided therefor.

The existing rating on dried fruit in the current Classification is third class. Commodity rates are provided for this commodity when moving in minimum quantities of 20,000 tons per year, but none apply for movements in smaller lots. In justification of this proposal a witness for Rosenberg Bros. and Company testified that dried fruit is generally included in the grocery mixtures maintained by highway common carriers elsewhere in the state and that the fourth class rating which would be applicable on this

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It was stated that an actual shipment of glass in large sized packages weighing 25 tons loaded by shipper and unloaded by consignee and transported in a low-bed truck with one driver took 7-3/4 hours, produced a revenue under the existing rates of \$130.00. It is said that under the proposed rates this same shipment would be transported for \$62.50.

commodity under the grocery mixture is the same as that now in effect for drayage transportation in San Francisco. He pointed out that the grocery description here involved contains some 78 commodities, many of which are comparable from a transportation standpoint to dried fruit. This witness stated that a comparison of the charges assessed on actual shipments of dried fruit moving prior to the establishment of rates by our original order herein with those resulting under the existing and proposed class rates showed that the present rates were 68% higher and the proposed rates 40% higher than those formerly paid. He further stated that the rates here proposed on dried fruit are generally 28% higher than those applying in San Francisco. This proposal he claimed had been endorsed by his drayman, Farnsworth & Ruggles.

No objection was offered to any of these proposals.

It is apparent that the proposed restriction of the structural iron and steel commodity rates to articles included under that heading in "Exceptions to current Classification" will bring about a needed clarification. The suggested restriction of these rates to transportation where shipper performs the loading and consignee the unloading will confine these rates to the character of service ordinarily performed. The establishment of the structural iron and steel commodity rates applying from plants and terminals to "job" for transportation between plants and between terminals and plants will provide a rate parity for these similar transportation services. These proposals appear justified.

The record shows that the circumstances and conditions attending the transportation of wooden piling are comparable to those involved in the transportation of structural iron and steel for which a rate of similar volume to that here proposed is now in effect. The proposed rate appears reasonable.

Dried fruit now enjoys rates in other territories in northern California below those which would result under the Western Classification rating of third class by virtue of this commodity being included in the grocery grouping on which common carriers generally apply fourth class rates.

The propriety of maintaining commodity group rates on less than truckload traffic is now the subject of investigation in Cases Nos. 4088 and 4145 involving the rates, rules and regulations of all highway carriers and common carriers. Part "U" of Case No. 4088 and Part "F" of Case No. 4145 deal with rates between points in northern California, including transportation from and to points on San Francisco Bay. Furthermore, in Decision No. 29480, in Part "M" of Case No. 4088 and as amended, the Commission in establishing minimum rates for highway carriers and reasonable and sufficient rates for common carriers in southern California⁶ eliminated from the new rate structure all commodity rates, including group rates, on shipments of 15,000 pounds and less.

However, unless and until the propriety of maintaining commodity group rates in this section of the state has been determined, there appears to be no sound reason why dried fruit moving between points in the particular territory with which the instant proceedings deal, should not be accorded the basis of rates now largely prevailing in northern California. The authorization of this adjustment however is without prejudice to any other or different conclusions which the Commission may reach upon a more comprehensive record.

The suggested rating of first class on incandescent electric lamps represents a departure from the established rating of one and one half times first class provided on this commodity in the Western Classification. The justification offered in support

6 The territory in Part "M" of Case 4088 embraces points bounded generally by Burbank and San Fernando on the north, Redlands, Yucaipa, Hemet Valley and Escondido on the east, the Mexican border on the south, and the Pacific Ocean on the west.

of the proposed rating is predicated largely upon a similar rating maintained by certain common carriers in other territories.⁷ However, aside from the assertion that the proposed rating is proper for application in the territory here involved, no evidence of probative value was offered to show that a first class rating is the normal rating for this commodity or that the application of the rates now in effect is unreasonable or cause undue prejudice and discrimination.

While the evidence of record indicates in particular cases that there may be a need for an adjustment in the existing rates on glass in large sized packages, it furnishes insufficient justification for the particular changes recommended.

Upon careful consideration of all the facts of record, I am of the opinion and find that the minimum rates heretofore established in these proceedings should be modified to the extent indicated in the order herein. Proposed changes not covered by the order herein are found not justified on this record.

It may well be that certain of the proposals found not justified are meritorious but unless or until they are supported by convincing evidence they cannot be approved. In this connection it should be observed that a mere showing of past practice or statement of the desirability of an adjustment from the carriers' standpoint, or the declaration that proposed rates are compensatory is insufficient to sustain the burden of proof that modifications or revisions of established rates are justified.

The following form of order is recommended:

⁷ Although it was testified that a rating of first class is provided in Pacific Motor Tariff Bureau Tariff No. 7, C.R.C. No. 12, referred to as the transbay tariff, in which the majority of the highway common carriers respondents to Case No. 4109 participate, a check of this tariff does not disclose a rating of first class on incandescent electric lamps although commodity rates are provided, some of which are the same while others are higher than the first class rates.

O R D E R

A public hearing having been held in the above entitled proceedings,

IT IS HEREBY ORDERED that Decision No. 29217 of October 26, 1936, as modified, in the above entitled proceedings, be and it is hereby further modified effective ten (10) days from the effective date of this order, as follows:

Amend Appendix "A" of Decision No. 29217, as follows:

Add to Page 22 a new commodity rate:

"Piling, wooden, treated or untreated, minimum 40,000 pounds per shipment 5 cents per 100 pounds."

Substitute for the commodity rate on "Iron and Steel, structural" shown on Page 19:

"Iron or Steel, viz.: Structural Iron or Steel, fabricated or unfabricated, as described in 'Exception to current Classification' applicable on structural iron or steel

Applies only when shipper loads and consignee unloads.

Minimum 10 tons per shipment; or per job, subject to Item 230 series ... 5 cents per 100 pounds.

Minimum 500 tons per shipment; or per job, subject to Item 230 series ... (1) 4½ cents per 100 pounds.

(1) Rate includes distribution at point of delivery."

Amend Appendix "A" of Decision No. 29594, as follows:

Amend "Exception to current Classification" on Groceries and Grocers' Supplies by adding to the commodity description:

"Fruit, dried".

IT IS HEREBY FURTHER ORDERED, that all common carriers respondents in Case No. 4109 be and they are hereby ordered and directed to establish on or before ten (10) days from the effective date of this order on not less than five (5) days' notice to the

Commission and the public, rates, rules and regulations no lower in volume and effect than those established in and by said Decision No. 29217 as modified by prior orders and by this order.

IT IS HEREBY FURTHER ORDERED that in all other respects said Decision No. 29217, as modified, shall remain in full force and effect.

The effective date of this order shall be twenty (20) 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 23^d day of August, 1937.

Walter M. ...
Leon C. Whelan
Walter R. ...
Robert ...
Ray L. Kelley
Commissioners.