

Decision No. 4236

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 rates published by Pacific Motor Transport Company for the transportation of candy; confectionery; chocolate; chocolate coating; cocoa; cocoa butter; nuts, edible; and nut meats, plain, salted or sweetened, from San Francisco, Oakland, Alameda, Berkeley and Richmond to Los Angeles.

Case No. 4236

ORIGINAL

- James E. Lyons, for Pacific Motor Transport Company, respondent
- Roy B. Thompson and Edward M. Berol, for Truck Owners' Association of California
- T.G. Differding, for Oakland Chamber of Commerce
- G.E. Duffy and G.B. Hurst, for The Atchison, Topeka and Santa Fe Railway Company
- Frank M. Chandler, for California Motor Express, Ltd.
- H.W. Hendrick, for Pacific Coastwise Conference
- J.R. Bordeaux, for Confectioners' Traffic Bureau

BY THE COMMISSION:

O P I N I O N

This is an investigation instituted by the Commission on its own motion into the reasonableness, lawfulness and propriety of certain reduced rates filed by Pacific Motor Transport Company for the transportation of candy, confectionery and related articles from San Francisco Bay points to Los Angeles.

A public hearing was held at San Francisco before Examiner Mulgrew.

The rates involved were published in Item No. 2087 of Pacific Motor Transport Company's Local Express Tariff No. 9, C.R.C. No. 13. They were suspended prior to their effective date upon consideration of protests from The Truck Owners' Association of California and the Pacific Coastwise Conference alleging that they were insufficient, unjust, unreasonable, discriminatory, not justified by transportation conditions, and detrimental to their interests.

Rates now in effect for the transportation involved are published in Pacific Motor Transport Company's Express Tariff No. 6-A, C.R.C. No. 18. They are non-intermediate in application and include store-door pick-up or store-door delivery. The suspended rates are from 5 cents to 20 cents per 100 pounds less than the rates now in effect, but are subject to substantially higher weight minima. They apply from depots at points of origin to store doors at destinations, are made applicable as maximum from and to intermediate points and include split delivery at destination.²

M.G. Smith, a witness for respondent, testified that the reduced rates were motivated (1) by the steady diversion to truck carriers of the traffic here involved; (2) by a definite understanding with the shippers that the proposed rates would enable respondent to participate in this business to a greater degree; (3) by a reasonable expectation that shipments would be tendered in quantities considerably in excess of the minimum weights proposed; and (4) by the belief that the proposed rates would cover the cost of handling this business as added traffic. He stated that little candy or confection-

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The suspended rates and those now in effect are as follows:
(Rates are in cents per 100 pounds)

	Suspended Rates		Effective Rates	
	Rates	Minimum Weight in pounds	Rates	Minimum Weight in pounds
Candy; Confectionery; Peanuts, shelled (salted or unsalted)	40 35	10000 20000	45	Any Quantity
Chocolate, other than confectionery; Cocoa			55 45	Any Quantity 8000
Nut Meats; Nuts, edible in shell	40 35	10000 20000		

ery traffic was moving under present rates, and that during a test period (May, June and July 1937) his company did not enjoy a single shipment of 10,000 pounds or more from any San Francisco Bay point to Los Angeles or to any intermediate points in the San Joaquin Valley. Witness Smith attributed this lack of traffic in part to an arrangement entered into between The Confectioners' Traffic Bureau and Willig Truck and Transportation Company, a highway contract carrier. By that arrangement the Traffic Bureau agreed to pool its members' shipments and Willig agreed to transport the consolidated shipments at a rate of 35 cents per 100 pounds, minimum weight 5,429³ pounds, including split delivery at Los Angeles.

A witness representing the Confectioners' Traffic Bureau asserted that the members of his organization were faced with severe competition in the Los Angeles market from eastern and middle-western candy manufacturers. He stated that the proximity of such manufacturers to the source of supply of raw materials reduced their production costs and that through pooling arrangements they were able to obtain the benefit of carload rates on their westbound traffic. The witness urged that the suspended rates be permitted to become effective, stating that Bureau members would take advantage of them and would move at least a portion of their business by rail. He estimated that even during the off-season (June 1 to September 1) shipments would range from 8 to 16 tons per day, and would increase to from 15 to 20 tons daily, exclusive of San Joaquin and Sacramento Valley points, during the balance of the year.

³ This contract was in effect from June 1 to June 18, 1937, when it was terminated by the carrier. A witness for respondent contended that the contract was terminated when Willig learned of respondent's intention to publish the rates here under suspension. Protestant, Truck Owners' Association of California represented that the cancellation was due to the low volume of the contract rate and to advice given Willig by his attorney that he could not legally contract with the Traffic Bureau.

Pacific Coastwise Conference, one of the organizations requesting suspension of the proposed rates took no active part in the hearing.

A witness for California Motor Express, Ltd., a highway contract carrier, objected to the proposed reduced rates contending that they were unnecessarily low. He said that although truck competition might have prevented the rails from obtaining a normal share of this business, the situation was not so critical that it could not await adjustment in the broader rate investigation then⁴ in progress.

Protestant Truck Owners' Association of California argued that respondent is attempting to meet a competitive situation that no longer exists. It contended that increased expenses now being experienced by highway carriers precludes profitable operation under former contract rates, and that there is little likelihood of a recurrence of truck competition at rates as low as provided under the Willig contract.

M.D.Savage of the Savage Transportation Company testified that an effort was made to interest his company in this business after Willig had relinquished his contract with the Confectioners' Traffic Bureau. He indicated that the Bureau's offer was declined because the traffic could not be transported profitably by his company at the rates offered which, he said, were identical in volume with those under suspension in this proceeding. His principal objection to the proposed contract was that it would not compensate

⁴ The investigation referred to is Case No. 4246 in which the Commission has concluded a series of hearings dealing with rates for the transportation of property generally between all points in the State. The matter is now awaiting decision.

for the handling required in performing split deliveries.

The suspended rates were filed in an attempt to meet the competition created by the Willig Truck and Transportation Company, a highway contract carrier.⁵ At the time they were probably justified. However, the record is convincing that since then competitive conditions have changed materially. The Willig contract has been terminated under circumstances which make it improbable that it will again be revived. The Savage Transportation Company has subsequently refused to undertake this transportation at the rates formerly extended by Willig. Minimum rates recently established in other proceedings for less than half the distance approximate those here proposed.⁶

On this record it must be found that the suspended rates have not been justified. This finding is without prejudice to the subsequent filing of such rates as may be necessary to meet changed conditions.

O R D E R

A public hearing having been held in the above entitled proceeding, and based upon the evidence received at the hearing and upon the conclusions and findings set forth in the preceding opinion,

⁵ Minimum rates have not as yet been established for transportation of candy and confectionery by highway contract carriers from San Francisco to Los Angeles in shipments weighing 4,000 pounds and over, except that the aggregate charges for such shipments shall not be less than the highest charge for a shipment weighing less than 4,000 pounds, based on the lowest common carrier rate applicable for the same transportation. (Decision No. 28761, as amended, in Part "A" of Case No. 4088.)

⁶ The constructed highway distance from San Francisco to Los Angeles is 463.5 miles. Decision No. 30370, as amended in Cases Nos. 4088 "U" "V" and 4145 "F" "G" requires respondent and competing highway carriers to observe for transportation services similar to those here in issue but involving movements between points affected by those decisions rates not lower than 37 and 35 cents per 100 pounds at minima of 10,000 and 18,000 pounds respectively, plus an additional charge of 85 cents for each delivery more than one. To illustrate, minimum rates from San Francisco to Paso Robles, 218.5 constructive miles, and from Oakland to Selma, 200 constructive miles are 34 cents per 100 pounds at 10,000 pound minimum and 32 cents per 100 pounds at 18,000 pound minimum. These rates are subject to the additional charge of 85 cents for each delivery in excess of one.

IT IS HEREBY ORDERED that Pacific Motor Transport Company be and it is hereby ordered and directed to cancel on or before May 21, 1938, on not less than one (1) day's notice to the Commission and to the public, the rates under suspension in this proceeding. Upon such cancellation the order of suspension and investigation herein shall be vacated and this proceeding discontinued.

Dated at San Francisco, California, this 16th day of May, 1938.

Arthur J. [Signature]
Leon [Signature]
Frank [Signature]
Robert [Signature]
Carl [Signature]
Commissioners