

Decision No. 40888

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
W. J. TANNAHILL, M. F. TANNAHILL and)
E. J. TANNAHILL, co-partners, doing)
business under the name and style of)
W. J. TANNAHILL & SONS.)

Application No. 21909

ORIGINAL

L. M. Phillips, for Applicants
James E. Lyons, for Southern Pacific Company
E. Bissinger, for Pacific Electric Railway
Max A. Vener, for Vener Truck Line
C. G. Anthony, for Pacific Freight Lines and Keystone
Express System
E. G. Renwick and W. H. Love, by W. H. Love, for
Union Pacific Railway Company
E. H. Ford, for Los Angeles Pool Car Distributing Co.

BY THE COMMISSION:

O P I N I O N

By this application W. J. Tannahill, M. F. Tannahill
and E. J. Tannahill, co-partners doing business as W. J. Tannahill
& Sons, seek authority under Section 10 of the City Carriers' Act
and Section 11 of the Highway Carriers' Act to transport lumber
and forest products within limited territories in southern California,
at rates lower than the established minimum rates.¹

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The particular rates from which applicant seeks authority to deviate are those established by Decision No. 28761 of April 27, 1936, as amended, in Part "A" of Case No. 4088, establishing minimum rates on property in quantities of less than 4,000 pounds between points served by common carriers and fixing the charge for 3,999 pounds as minimum for heavier shipments; Decision No. 29480 of February 19, 1937, as amended, in Part "M" of Case No. 4088, establishing minimum rates on property in quantities of 15,000 pounds and less within southern California, and fixing the charge for 15,000 pounds as minimum for heavier shipments; Decision No. 30404 of December 13, 1937, in Part "L" of Case No. 4088, establishing state-wide minimum rates on lumber and forest products in quantities of 20,000 pounds or more; and Decision No. 30600 of February 7, 1938, as amended, in Case No. 4121, establishing minimum rates on property within the so-called "Los Angeles drayage area."

The rates which applicants propose to charge, in lieu of the established minimum rates, are set forth in Appendix "A" hereof.

Public hearings were held before Examiner P. W. Davis at Los Angeles on May 12 and 24, 1938, and applicants submitted a memorandum of facts and argument.

Testifying at the public hearings, W. J. Tannahill described applicants' mode of operation in detail. It appears that applicants have transported for more than sixteen years and are now engaged in transporting lumber and forest products (as well as certain miscellaneous items, such as hardware, nails, roofing, etc., carried by lumber dealers) under contract with Owens-Parks Lumber Company, exclusively, from the yard of that company in the city of Vernon to various points in California; from Los Angeles Harbor and Long Beach Harbor to the Vernon yard of said shipper; between the Vernon yard of said shipper and a creosoting plant located at Long Beach; and between the dock of said shipper at Long Beach and the Long Beach creosoting plant.

Applicants operate twenty-two pieces of trucking equipment (18 trucks and 4 trailers) which are specially adapted and equipped for the service here involved. This equipment is garaged on property owned by applicants and located immediately adjacent to the Owens-Parks yard. Applicants maintain a small office on that property also, connected with the Owens-Parks office by a telephone line maintained by the latter company. Each evening the lumber company notifies applicants of its estimated equipment requirements for the next day. This equipment, with drivers, is sent to the yard early in the morning and is dispatched and controlled by employees of the lumber company

during the day. Applicants furnish no helpers for loading or unloading, nor do they perform any billing or other service; they merely provide and man the trucks. Loading is ordinarily performed by power cranes supplied by the lumber company, the time consumed in loading averaging less than 10 minutes per truck. The driver performs the unloading, either by hand or by "rolling" off the truck, but he is usually assisted by men at the job.

The Tannahill trucks go wherever the lumber company may have shipments to deliver, and on occasion may transport shipments for distances as great as 400 miles. However, the long-haul traffic is usually routed by the shipper via other carriers unless applicants have a surplus of equipment, and the bulk of applicants' business is confined within a 50-mile radius of the Vernon yard. The shipper's employees endeavor to route the trucks so that the minimum of empty movement will be entailed.

The deliveries from the Vernon yard are ordinarily made to the retail trade and range from shipments weighing less than 100 pounds to truckloads weighing nearly 30,000 pounds. The bulk of such shipments weighs less than 4,000 pounds. The movements from the harbors to the Vernon yard, between the Long Beach dock and the Long Beach creosoting plant, and between the Long Beach creosoting plant and the Vernon yard, are usually made in truck and trailer load quantities.

M. F. Tannahill, the partner in charge of the clerical and accounting features of applicants' operation, introduced profit and loss statements for the year 1937 and for the first three months of 1938, during which periods the rates here proposed were charged. These statements show that for the year 1937 applicants' income from their entire trucking operation was \$113,087.74 and that total

expenses (including overhead, depreciation at 20 per cent per year and 8 per cent return on depreciated investment and working capital) was \$101,446.44. Thus, according to these statements, a net profit of \$11,641.30, or 10.3 per cent of the gross income was realized during a period in which the rates here proposed were assessed. This witness asserted that the low operating costs experienced and the profits shown were made possible by the congenial relations between shipper and carrier and the unusually efficient use of equipment which the existence of such relations made possible.

M. F. Tannahill introduced statements comparing the revenue which would accrue under the proposed rates (which rates were in effect prior to the establishment of minimum rates) with the revenue which would be produced by use of the established minimum rates for eight representative days in April, 1938. These statements show that during the period selected the minimum rates would have produced revenue in connection with the lumber shipments of \$3,394.65, as compared with revenue of \$1,558.91 accruing under the proposed rates. No movements from the harbors or the Long Beach creosoting plant were included in these statements. The revenue produced under the proposed rates for sash and doors would have been slightly in excess of that resulting from use of the established minimum rates.

Charles R. Melin, president and general manager of Owens-Parks Lumber Company, described the competitive conditions existing in retail lumber business in the territory here involved, and asserted that his company would operate their own trucks should the authority here sought be denied. This witness testified that there are approximately 140 lumber yards in the Los Angeles metropolitan area, many of which now distribute with their own trucks. These

companies attempt to maintain a uniform delivered price under stabilized selling agreements. They make cartage allowances up to \$2.50 per thousand board feet when the shipment is picked up at the yard by the purchaser. Witness Melin stated that this selling arrangement made it imperative that his company obtain a flat transportation rate for large and small shipments, blanketed over the entire metropolitan area. He further stated that lumber is invariably sold and accounts are kept on a per 1000 feet basis rather than according to poundage. He asserted that rates in effect in the Los Angeles drayage area (Decision No. 30600, as amended, supra) are set forth in cents per 100 pounds, with no provision for use of estimated weights being made.

Interested common carriers participated in cross-examination of applicants' witnesses but presented no evidence on their own behalf. Counsel for Southern Pacific Company and its affiliates stated that the companies he represented were not opposed to a modification of the established minimum rates should it appear that such rates were excessive, but that they did object to the granting of a preferential rate adjustment to a carrier which is engaged in competitive hauling with other regulated carriers. He pointed out that minimum rates were of necessity based on costs for average operations, and argued that to grant Section 11 relief upon the basis of costs for individual operations would inevitably result in tying up the majority of the traffic in special contracts, leaving only a "standby" or overflow service to be provided by the common carriers. He contended that Section 11 relief was proper only when the service involved was different in its inherent features from ordinary operations and was not competitive with

other carriers. He expressed the intention of petitioning for a modification of the established minimum rates should this application be granted. Counsel argued, moreover, that Owens-Parks could not engage in proprietary operations without revising their selling methods entirely. He contended that shippers making deliveries in their own equipment but observing a differential between the yard price and the delivered price were subject to the Commission's jurisdiction.

Although there is no evidence of record from which it can be ascertained whether or not any individual rate sought would be compensatory, the profit and loss statements introduced by applicant indicate quite clearly that the proposed rates would be compensatory to applicants, considering their operations as a whole. It is apparent, moreover, that Owens-Parks Company will discontinue the employment of for-hire carriers in favor of proprietary operation rather than pay rates substantially higher than the rates here proposed, even though a readjustment of selling practices might be required.

In determining the reasonableness of the proposed rates applicants' operations may be grouped into two principal classes. The first embraces the retail distribution from the Vernon yard, which generally consists of what may be termed "less-truckload" shipments. The second includes the movements from and to the harbors and the Long Beach creosoting plant, which movements are ordinarily made in truckload quantities. The record shows clearly that the established minimum rates are not suitable for application in connection with distribution from the Vernon yard. Such rates were predicated on the assumption that individual less-truckload shipments would be picked up at several points whereas in this operation applicants

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obtain a full load at one loading point. Moreover, such rates require classification of each commodity and weighing of each shipment, the extra cost of which both the carrier and the shipper desire to avoid. The facts that in this operation numerous less-truckload shipments are available at one loading point, that the shipper handles the billing and dispatching, and that through close cooperation with the shipper the carrier is able to obtain the full efficiency of his equipment, appear to distinguish this from the operations of other carriers and to make Section II relief appropriate. However, the proposal to assess charges in connection with shipments of sash and doors on the basis of 3 per cent of the invoice price cannot be authorized in that form, and there is no evidence of record from which it could be converted to a cents per 100 pounds or board foot basis. The objection to basing rates on invoice prices is that the price factor is indeterminable from an enforcement standpoint, and is subject to fluctuations which are outside the Commission's knowledge or control.

The peculiar features present in the distribution from the Vernon yards are not discernible in connection with the second class of movements mentioned. Applicants perform a truck-and-trailer transportation service which does not appear to be essentially different from that which the minimum rates were designed to cover, nor does it appear that applicants are in a position to perform such transportation more economically than can competing carriers. Moreover, the disparity between the established and the sought rates is

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Neither Decision No. 30404 in Part "L" of Case No. 4088 or Decision No. 30600, as amended, in Case No. 4121, permit split deliveries.

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less pronounced in this class of transportation.

Upon consideration of all the facts of record the Commission is of the opinion and finds that the rates proposed by applicants for transportation from the Vernon yard, with the exception of the rate proposed for sash and doors, are reasonable and should be authorized. The Commission is of the further opinion that the rates proposed for transportation of sash and doors from the Vernon yard, and of lumber from Los Angeles Harbor and Long Beach Harbor to the Vernon yard, between the shipper's dock at Long Beach and the Long Beach creosoting plant and between the Long Beach creosoting plant and the Vernon yard, have not been justified.

The authority herein granted is based on existing conditions and will be made effective for a temporary period of one year, unless sooner cancelled, changed or extended.

Should common carriers desire to compete for the traffic involved in this application, on which applicant is here authorized to charge less than the established minimum rates, appropriate petitions for modification of the outstanding minimum rate orders should be filed.

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The rate which applicants propose to assess for transportation of lumber from Long Beach Harbor and from the Long Beach creosoting plant to the Vernon yard is \$1.00 per 1000 board feet, subject to a minimum of 10,000 board feet. Using 2,500 pounds as the estimated average weight of 1000 board feet of lumber, this rate is the equivalent of 4 cents per 100 pounds, minimum weight 25,000 pounds. The established minimum rates for this transportation, subject to the alternative application of lower rail rates, are 6 cents per 100 pounds, minimum weight 20,000 pounds, and $4\frac{1}{2}$ cents per 100 pounds, minimum weight 30,000 pounds (Decision No. 30404, supra).

O R D E R

Upon consideration of all the facts and circumstances of record,

IT IS HEREBY ORDERED that W. J. Tannahill, M. F. Tannahill and E. J. Tannahill, co-partners doing business as W. J. Tannahill & Sons, be and they are hereby authorized to transport the commodities and within the territories hereinafter described, under contract with Owens-Parks Lumber Company, at rates less than the established minimum rates, but not less than the following rates:

\$1.50 per thousand feet on all lumber and forest products as described in Appendix "A" of Decision No. 30404 in Part "I" of Case No. 4088, (except sash and doors) delivered within a radius of 30 miles (computed in accordance with Decision No. 30000, as amended, in Part "N" of Case No. 4088) of the Vernon yard of Owens-Parks Lumber Company.

Hourly penalty charges shall be assessed in addition to the foregoing for unnecessary delays in loading, C.O.D., and all other delays, in accordance with the following basis:

\$1.10 per hour for 4-wheel $1\frac{1}{2}$ ton trucks
1.50 per hour for 6-wheel $1\frac{1}{2}$ ton trucks
2.20 per hour for 2-ton trucks
2.59 per hour for trucks of over 2 tons

IT IS HEREBY FURTHER ORDERED that in all other respects this application be and it is hereby denied.

The authority herein granted shall expire one year from the date hereof, unless sooner cancelled, changed or extended by appropriate order of the Commission.

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

Los Angeles
Dated at ~~San Francisco, California~~ California, this 6th day
of June, 1938.

[Handwritten signatures of Commissioners]

COMMISSIONERS

APPENDIX "A"

Applicant's proposed minimum charges are:

\$1.50 per thousand board feet on all lumber delivered within a radius of 30 miles of the Vernon yard of the shipper.

3% of the invoice price of all sash and doors delivered within a radius of 30 miles of the Vernon yard of the shipper.

\$1.00 per thousand board feet on all lumber moved in intrastate commerce and transported from Los Angeles and Long Beach Harbors to the Vernon yard of the shipper. Minimum shipment 10,000 feet.

\$1.00 per thousand board feet on all lumber transported between the Long Beach creosoting plant and the Vernon yard of the shipper. Minimum shipment 10,000 feet.

50¢ per thousand board feet on all lumber transported between the shipper's dock at Long Beach and the Long Beach creosoting plant.

Hourly penalty charges in addition to the foregoing for unnecessary delays in loading, C.O.D., and all delays:

\$1.10 per hour for 4 wheel 1½ ton trucks
1.50 per hour for 6 wheel 1½ ton trucks
2.20 per hour on 2 ton trucks
2.59 per hour on trucks of over 2 tons

The foregoing rates are minimum rates only and are subject to revisions upward by agreement, as proper conditions arise.