

Decision No. 4088

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
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 1955, for the
transportation for compensation or hire
of any and all commodities and accesso-
rial services incident to such trans-
portation.

Case No. 4088

Part "X"

In the Matter of the Investigation and
Establishment of rates, charges, class-
ifications, rules, regulations, con-
tracts and practices, or any thereof,
of Common Carriers of property.

Case No. 4145

Part "J"

ORIGINAL

Gwyn H. Baker, for Allied Drug Distributors Association.
John J. O'Toole, City Attorney, by Dion R. Holm, Assist-
ant City Attorney, and Paul L. Beck, for the City and
County of San Francisco.

B. M. Williams, for Norwich Pharmacal Company.
Walter Generich, for Retail Druggists Association.
Frank M. Chandler, for California Motor Express, Ltd.
Milton P. O'Donnell and Roy F. Lennon, for Johnson &
Johnson.

H. T. Allen, for Emerson Drug Company.
W. M. Casselman, for Colgate Palmolive-Peet Company.
Carl Hobbel, for Owl Drug Company.
T. H. Losee, for Coffin-Redington Company.
F. A. Salter, for McKesson-Robbins, Inc.
E. J. McGuire, for E. R. Squibb & Son.
V. H. Butler, for United Drug Company.
G. E. Duffy and George Hurst, for The Atchison, Topeka
and Santa Fe Railway Company.

Sylvain Leipson, for Association of California Hospitals.
W. L. Ronald, for Frederick Stearns Company.
Noble W. Bohon, for The Bayer Company, California Fig
Syrup Company, Wells & Richardson Co., Dr. W. B. Cald-
well, Inc., and Centaur Company.

E. Trimmer, for Highway Transport Company.
J. W. Silva, for Jack Silva Truck Line.
E. E. Hart, for Pacific Motor Tariff Bureau.
R. L. Vaughan and H. W. Hendricks, for the Pacific Coast-
wise Conference.

J. F. Vizzard, for Draymen's Association of San Francisco.
R. E. Wedekind, for the Southern Pacific Company.
L. N. Bradshaw and J. L. Amos, Jr., for The Western Pacific Railroad Company.
Edward Stern, for the Railway Express Agency, Inc.
F. W. Mielke, for The River Lines.

BY THE COMMISSION:

O P I N I O N

By prior orders in the above entitled proceedings the Commission established just, reasonable and non-discriminatory minimum rates for radial highway common and highway contract carriers, and reasonable and sufficient rates for common carriers, for transportation of general merchandise in extensive territories throughout the state.¹ The instant phases, dealing with rates on drugs, medicines, toilet preparations, chemicals, bandages and dressings (hereinafter referred to as drugs), were set apart upon representations of certain drug interests that the rates so established would detrimentally affect the drug industry in California.

Public hearings were had at San Francisco on March 15, April 7 and April 8, 1938, before Examiner E. S. Williams.

In establishing general merchandise rates in the various minimum rate orders, the class rate method of stating rates was used. Rates for classes 1 to 4 inclusive were provided and commodities were rated according to the class specified therefor in the Western Classi-

¹ A full discussion of the purposes for which these proceedings were instituted will be found in Decision No. 28761 of April 27, 1938, in Part "A" of Case No. 4088 (39 C.R.C. 703) and Decision No. 29480 of January 25, 1937, in Part "B" of Case No. 4145. The decisions which are of particular importance here are (a) Decision No. 29480, supra, covering shipments in quantities of 15,000 pounds or less, within the general territory extending from 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 so-called "Part M" territory); and (b) Decision No. 30370 in

fication or in Pacific Freight Tariff Bureau Exception Sheet No. 1 series. The drug interests (represented by the Allied Drug Distributors Association) took the position at the hearing that the ratings thus provided for drugs resulted in unduly high charges when applied to the established minimum rates. They urged that an exception be provided, making drugs ratable at third class throughout the state.

The drug interests based their request for a reduction in the drug rating on three major propositions, viz.: (1) that the transportation characteristics of drugs are such as to entitle them to a third class rating; (2) that rates higher than third class would place California distributors, particularly those located at San Francisco, at a competitive disadvantage as against eastern manufacturers and as against wholesalers distributing from neighboring states; and (3) that rates higher than third class would compel local distributors to use their own trucks instead of employing for-hire carriers.

In support of the first proposition it was asserted that drugs enjoy a third class rating or a Class "75" rating (approximately 5 per cent higher than third class) in various other parts of the United States; that claims for damages on shipments of drugs are comparatively small in number and amount; that the service required is no greater than that required in connection with ordinary third class commodities; that the wholesale values of representative drug items compare favorably with representative items of canned goods and hardware rated at third class or lower; and that the density of the heavy moving drug items is generally high, permitting efficient loading of carriers' equipment.

I (concluded)
Parts "U" and "V" of Case No. 4088 and Parts "F" and "G" of Case No. 4145, covering shipments in quantities of 20,000 pounds or less, within the general territory north of Gaviota Pass and the Tehachapi Mountains, and between Part M territory on the one hand and points north thereof to but not including Madera and Monterey counties on the other hand.

In regard to the intensity of interstate competition it was shown that in many instances shipments moving from points outside the state now enjoy a third class exception sheet rating or move under commodity rates.² It was stated that although San Francisco has long been the principal Pacific Coast distributing point for drugs, the fast transportation afforded by air from eastern states makes it possible to obtain emergency shipments promptly and thus it is now feasible to distribute directly from eastern manufacturing points.³ The fear was expressed that the failure to accord drugs a third class rating for intrastate movements would disrupt present methods of distribution, causing San Francisco distributors to abandon their warehouses in that city in favor of warehouses outside the state or of direct purchasing from the east. It was pointed out that the retail selling prices of nationally advertised brands are generally fixed by the manufacturer and are the same throughout the United States, making it difficult to pass increased transportation costs on to the consumers.

Excepting that one witness testified that since the effective date of Decision No. 50370, supra, his company had been handling small shipments from its East Bay plant to San Francisco in its own equipment, and certain other witnesses stated that their companies were considering purchasing their own trucks, little definite evidence was offered in support of the proposition that the failure to accord a third class rating to drugs would encourage the use of proprietary trucks.

² Drugs are now rated at third class in Item No. 685-B of the Pacific Freight Tariff Bureau Exception Sheet. This rating is not applicable on California intrastate traffic, and as to interstate traffic will expire June 30, 1938, unless sooner cancelled, changed or extended.

³ On transcontinental less-carload traffic drugs are subject to Western Classification ratings, but lower less-carload commodity rates are maintained.

Interested carriers were represented during the early part of the hearings but did not participate in the presentation of evidence. They neither supported nor opposed the position taken by the drug interests.

It was apparently assumed throughout the hearings that the rating established by this Commission for drugs was first class. As a matter of fact, however, all of the minimum rate orders to which the drug interests objected specify that when two or more ratings are provided in the Western Classification or Exception Sheet for an article in the form in which it is shipped, subject to different packing requirements, the lowest of such ratings will apply, without regard to the type of container actually used. Drugs and medicines not otherwise classified, as well as many drug items which are named specifically in the Western Classification, are rated at second class or lower in some forms of shipment. Under the provision mentioned the lowest rating provided for such form of shipment would be applicable regardless of the type of package used.⁴

⁴ Some of the commodities on which ratings lower than first class are now applicable are as follows:

<u>Commodity</u>	<u>Form</u>	<u>Classification Rating</u>
Drugs or Medicines, N.O.I.B.N.	Liquid	2
Chemicals, N.O.I.B.N.	Liquid	2
Alcohol	Liquid	3
"	Solidified	2
Bark, medicinal - not ground	Dry	2
Chalk, precipitated		3
Cream Tartar	Dry	3
Dip, Animal or Poultry	Liquid	4
Disinfectants, not medicinal	Liquid	2
"	Dry	3
Extracts, meat or medicated		2
Flowers, Herbs, or Leaves, not ground	Dried	2
Fluid, embalming	Liquid	3
Gelatine (not dessert preparations)	Dry	2
Glycerine, other than crude	Liquid	3
Gum Arabic	Dry	2
Licorice Compound	Dry	3
Licorice Extract - Mass	Dry	3

Thus it appears that much of the relief sought is already provided. In fact, in certain instances the minimum rating is even lower than the third class exception here sought.

Moreover, the ratings contained in the Western Classification represent the studied judgment of transportation experts, based upon a consideration of relative densities, values, claim hazard, competition with other commodities, and upon the many other influencing transportation characteristics. While it is recognized that departures from these ratings may in some instances be warranted due to peculiarities of transportation conditions within California, such departures should only be made after a careful consideration of the justification and need therefor. Particularly, statewide departures should not be made to take care of local situations, nor should group ratings be changed to remedy maladjustments in connection with a few component commodities. It has been shown on the present record that some drug items are of low value, move in volume and are not essentially different from a transportation standpoint from many third class commodities. On the other hand, it is apparent that numerous commodities included within the drug group, notably of the medicinal or cosmetic type, are of high value and move in

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<u>Commodity</u>	<u>Form</u>	<u>Classification Rating</u>
Magnesium Sulphate	Dry	3
Oil, Castor	Liquid	3
Oil, Fusel	Liquid	2
Oxide of Tin	Dry	2
Peroxide Hydrogen	Liquid	3
Petrolatum or Petrolatum Preparations		3
Roots, Licorice (not spent)	Dry	2
Sodium, Chlorate of	Dry	4
Sugar of Milk - Crude	Dry	3
- Refined	Dry	2
Sulphate of Copper	Dry	4
Tartaric Acid	Liquid	2
Water - Mineral	Liquid	4
Witch Hazel Extract	Liquid	3

small quantities.⁵ While it may be, therefore, that the transportation characteristics of a few drug items might entitle them to lower ratings, it cannot be said that the transportation characteristics of all drug items, collectively, are such as to justify a reduction on the drug group as a whole. Even those items which were said to move in volume do so only between a limited number of points. Clearly a statewide reduction in ratings because of an unusual volume of movement between certain points would not be warranted. Upon this record it cannot be said that the transportation characteristics of the drug group as a whole are such as to entitle it to a third class rating.

The Commission appreciates that the establishment of compensatory rates for transportation within California may in some instances disadvantage jobbers and shippers who market their merchandise within the state in competition with jobbers and shippers located in neighboring states and enjoying depressed interstate rates. Where intrastate rates are subject to the jurisdiction of one Commission and interstate rates to those of another, it is not unusual to find overlappings and temporary inequalities, favoring first one class of traffic and then the other. However, if neither Commission could move to establish rates on a sound and compensatory basis until the other had taken a similar step, all progress in rate regulation would be halted. Should the depressed interstate rates remain in effect indefinitely it would of course be necessary for this Commission to take action to insure that California interests would be protected. However, as hereinbefore indicated, the third class interstate rating on drugs is in

⁵ C. Hobbel, traffic manager for Owl Drug Company, testified that the value of drugs, medicines and toilet preparations ranges from \$4.00 to \$51.00 per 100 pounds.

effect for a temporary period only. It will expire June 30, 1958, (unless sooner cancelled, changed or extended by authority of the Interstate Commerce Commission). Upon its expiration the interstate rates will again be subject to the Western Classification basis, and to this extent the competitive threat of distributors in neighboring states will be lessened if not removed entirely. Moreover, the competitive influence of interstate jobbing centers extends only within limited radii thereof and is not felt uniformly all over the state. Here again a statewide reduction in rating to third class would not be appropriate. Should modifications prove to be necessary to protect California interests they can best be accomplished by the establishment of point-to-point rates, related to the rates in effect from the competitive interstate points. It cannot be said on this record that interstate competition justifies the statewide reduction in rating sought.

The threat of a diversion of the drug traffic to proprietary carriage, at least for the shorter hauls, should not be ignored. There is, however, on this record no evidence to show that the application of the third class rating would produce rates which would be compensatory to the carriers for the transportation of drugs and which would enable them to perform such transportation without unduly burdening other traffic. Carriers cannot reasonably be expected to engage in transportation which will not return to them the cost of performing the service merely to prevent its diversion to other forms of transportation, nor could this Commission legally compel them to do so. In the absence of a showing that the proposed third class rating would produce compensatory rates, and in the absence of a request by the carriers to meet the threat of proprietary competition, it cannot be found that such potential competition justifies the reduction in rating sought.

While counsel for the drug interests prosecuted the petition here on the theory that a reduction in the basic ratings was required, he conceded at the termination of the hearing that the matter should more properly be handled by the establishment of commodity rates, in that conditions affecting particular movements could be given greater recognition in that manner. However, counsel did not suggest what the volume of such commodity rates should be nor did he offer evidence from which a line of commodity rates might be developed.

It must be remembered that except for a temporary time of approximately one year's duration, drugs have been rated under the Western Classification in California over a long period and a heavy volume of traffic has moved freely under such ratings in the past. The drug industry in San Francisco grew up during the period in which these ratings were applicable, unusual competitive or traffic conditions being taken care of by the maintenance of special commodity rates without depressing unnecessarily the basic ratings. The establishment of lower ratings was based solely on the presence of carrier competition and not upon any need of the drug industry.⁶

In denying to petitioners the relief here sought, it is not to be inferred that on some particular drug items or for some particular hauls a modification of the established rates may not be appropriate.

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The third class rating on drugs was first filed in the Pacific Freight Tariff Bureau Exception Sheet to become effective June 5, 1935. Prior to that date, Western Classification ratings prevailed. The reduced rating was expressly filed as a temporary expedient to meet the then unregulated motor truck competition and bore December 31, 1935, as an expiration date. Thereafter the expiration date was extended to May 31, 1936. On June 1, 1936, the minimum rates for highway carriers, established by the Commission in Decision No. 28761 of April 27, 1936, in Part "A" of Case No. 4088, became effective, the need for the maintenance of temporary ratings for intrastate was removed, and the authority to maintain the third class rating expired.

Moreover, should the depressed interstate rating be further extended, it may become necessary to establish special rates in those territories in which the competition from distributing centers in neighboring states is serious. On this record, however, the rates and ratings heretofore established for the transportation of the commodities here involved should not be changed.

In view of the conclusions reached in this matter no further order is necessary.

Dated at San Francisco, California, this 13th day of June, 1938.

Walter M. ...
Leon ...
Grant ...
Robert ...
W. H. ...
Commissioners