Decision No. [illegible]

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of C.B.MCCLAIN, an individual doing business under the fictitious name and style of MCCLAIN TRUCK COMPANY, for authority under Section 11 of Chapter 223, Statutes of 1935, as amended, to perform transportation and accessorial service at a lesser rate than the minimum rates prescribed by this Commission by Decision No. 30370, as amended, in Case No. 4088, Parts "U" and "V"

Application No. 21877

ORIGINAL

Harry M. Wade and Arthur H. Glanz, for applicant.

Wallace K. Downey, for Pacific Freight Lines and Pacific Freight Lines Express, protestants.

F.C.Nelson and Burton Mason, for Southern Pacific Company and affiliated companies, as their interests may appear.

BY THE COMMISSION:

OPINION

Applicant, a highway contract carrier, seeks authority under Section 11 of the Highway Carriers' Act to transport fresh meats, packing house products and related articles[1] from Los Angeles to certain defined territories north thereof along the coast and in the San

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[1] The application embraces the following commodities:

- Bladders, animal,
- Bones, meat, fresh,
- Butter and butter substitutes,
- Casing, sausage,
- Cheese,
- Chili con carne, dry,
- Eggs in shell, in cases,
- Eggs, frozen,
- Extract beef, cubes,
- Grease,
- Hog stomach lining,
- Hog skins or rinds, frozen, green salted, pickled or smoked,
- Lard, leaf, not rendered,
- Lard and lard compounds,
- Lard substitutes,
- Meat, canned, either with or without vegetable ingredients
- Meats, cooked, cured or preserved,
- Meats, dried, dry, salted or smoked,
- Meats, pickled,
- Meat, fresh,
- Meat, fresh, salted,
- Mince meat,
- Neatsfoot stock,
- Oil, lard,
- Oil, neatsfoot,
- Oil, oleo,
- Oil, tallow,
- Oil, vegetable,
- Oleomargarine,

Joaquin Valley, at rates lower than those established as minimum by this Commission in Decision No. 30370, as amended, in Part "V" of Case No. 4088.

A public hearing was had at Los Angeles before Examiner Bryant and the matter was submitted on briefs.

Applicant is engaged principally in the transportation of the commodities involved in this application under exclusive contracts with Cudahy Packing Company and Armour and Company, from the Los Angles plants of those companies to coast territory extending from Goleta to Paso Robles and to San Joaquin Valley territory extending from Bakersfield to Fresno. He proposes to charge for this transportation, in lieu of the established minimum rates, 42 cents per 100 pounds for transportation from Los Angeles to Fresno in quantities of 18,000 pounds or more, not including split deliveries; 55 cents per 100 pounds to the San Joaquin Valley territory, subject to a minimum weight of 10,000 pounds; and 59 cents to the coast territory, subject to a minimum weight of 15,000 pounds, the two latter rates including split deliveries.

W.J. Cawley, applicant's manager, described in detail the manner in which the transportation involved is performed. He stated that large refrigerator trucks and trailers are used for the line hauls and for deliveries along the direct routes and that "shuttle" trucks are used to make deliveries to sideline points. He said that many split deliveries are ordinarily made en route except in connection with shipments to Fresno which, he explained generally move through in truckloads.[2]

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1 (concluded)

Oleo stock,
Poultry, dressed,
Rennets,
Sausage, fresh,
Sausage, cooked, cured or preserved,
Stearine,
Tallow, animal
Weasands.

2 By Decision No. 30593 dated February 7, 1938, in Application No. 21701, applicant was authorized to assess a charge of 1 cent per 100 pounds for each stop, minimum 25 cents, in place of the 85 cents per stop charge established by Decision No. 30370 in Case No. 4088, Parts "U" and "V".

Witness Cawley stated that the truck equipment is in use 18 hours per day, six days per week, that the employees of the shipper do all the billing, and that loading of the line-haul trucks is done directly from the shippers' plants. He pointed out that the volume of movement is heavy - more than 14,500,000 pounds of meat, packing house products and related articles having been transported by applicant to the territories involved during 1937, for the Cudahy Packing Company alone. He said that the shippers usually have return loads from the valley but that return loads from the coast points are rare.

M. Lawrence Berk, a certified public accountant, introduced an exhibit showing the estimated cost to applicant of performing the transportation here involved, based on an analysis of applicant's general records for an eight-year period ending with December 31,1937, as applied to time and mileage records for the week of February 13 to 19, 1938. Fixed expenses (including taxes, licenses, insurance, rent, refrigeration, depreciation on a ten-year basis and 4 per cent return on the undepreciated investment) on each unit of equipment, were reduced to a daily basis. Running expenses (including drivers' wages, fuel, lubricants, tires and repairs) on each unit of equipment, were computed on a mileage basis. Overhead expenses, such as executive salaries, general office expense and compensation insurance, were expressed in percentages of the annual gross revenue. The estimated cost for the valley operation was then developed by allocating mileage costs for the mileage traveled one-way (it being asserted that other cargo was available for the return trip), fixed charges according to the operating time one-way, and overhead expenses according to the gross revenue which was actually received. The estimated cost for the coast operation was computed in a similar manner, except that round-trip mileage and operating time were used. The average cost developed for the valley operation was 56.86 cents per 100 pounds and for the coast operation was approximately 71 cents per 100 pounds.[3]

Harry M. Wade, one of the counsel appearing for applicant, presented two exhibits comparing the estimated costs developed by witness Berk with the revenue which would have accrued during the week of February 13 to 19, 1938, under the proposed rates. According to these exhibits the cost for the valley operation during that period, as developed by witness Berk, would have totaled $1112.45. This cost was computed on the one-way mileage, it being assumed that sufficient back-haul tonnage would be obtained to cover the cost of the return trip. Assuming that the proposed rates were charged on the meat and packing house products, and the rates in effect prior to the establishment of minimum rates were charged on other commodities handled, the one-way revenue for this operation would have totaled $1244.84.

On the coast operation the total cost would, according to Wade's exhibit, be $688.70 (adjusted to compensate for corrected allocation of fixed expenses). This figure was based on the round-trip cost on the theory that return tonnage was not available. The total revenue produced by applying the proposed rates to the meat and packing house products traffic and the rates previously in effect to the other commodities would be $671.45. Applicant asserts on brief that the loss so developed would to an appreciable extent be offset by subsequent increases in rates charged on commodities not covered by this application.

M. Love, assistant traffic manager of Cudahy Packing Com-

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3 The costs for the coast operation were revised orally at the hearing, witness Berk conceding on cross-examination that the time originally used in allocating the fixed charges to the round-trip movement was inadequate.

pany, introduced exhibits comparing the proposed rates with the rates used prior to the establishment of minimum rates and with the estimated average rates that would be produced by use of the established minimum rates applied to actual movements. He showed that the proposed rates were from 5½ to 8½ cents per 100 pounds less than the average of the established minimum rates, based on the actual operations of applicant for several representative days.[4]

Witness Love stated that, regardless of their volume, the established minimum rates were objectionable for this operation in that they made it necessary to classify commodities, that they prevented a mixture of differently classed commodities in the same shipping containers without penalizing the lower classed articles, and that they made it necessary to compute in each instance the shortest constructive mileage over routes which changed from day to day. He contended that these factors made it impossible to compute the rates in advance of time of shipment without additional expense.

C.L.Cooper, traffic manager for Cudahy Packing Company, stated that his company maintains a flat selling price throughout the San Joaquin Valley territory and throughout the coast territory. He asserted that this method of selling made it essential that transportation rates be similarly blanketed over the territories, and that it would be necessary for his company to operate its own equipment should this application be denied.

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[4] The following table shows the comparisons made by witness Love:

	Prior Rate	Average Rates produced under Decision 30370	Proposed Rate
Coast operation	53½	67	59
Valley operation	50	60.5	55
Fresno operation	40	(not developed)	42

The Southern Pacific Company and affiliated companies, Pacific Freight Lines and Pacific Freight Lines Express opposed the application. C.G. Anthony, vice-president and general traffic manager of Pacific Freight Lines, testified that the protesting carriers served Swift and Company and also from 17 to 20 smaller packers in the Los Angeles area, which packers he said were in direct competition with Cudahy and Armour for the business in the San Joaquin Valley and coast territories. He asserted that these packers are using common carrier service and that they have not objected to use of the class rate basis. He contended that the granting of the special authorities here sought would be disciminatory in favor of applicant's shippers and prejudicial to patrons of the Pacific Freight Lines.

Witness Anthony pointed out that the sought rates were proposed to be blanketed between Bakersfield and Fresno, a distance of 108 miles, and between Goleta and Paso Robles, a distance of 152 miles. He contended that rates so blanketed would result in excessive rates to Bakersfield and other relatively short-haul points higher in fact than the established minimum rates, and that the rates to the more distant points would be non-compensatory. He expressed the opinion that the effect would be to divert the short-haul tonnage to some other carrier, leaving for applicant only the long-haul low-rated traffic, and would thus tend to disrupt commodity mixtures upon the assumed continuation of which the established minimum rates were predicated.

The record is not convincing that the proposed rates would be compensatory. It is true that applicant enjoys a heavy volume of traffic and that through the cooperation of his shippers he is able to effect certain economies of operation. On the other hand, the service which he performs is highly specialized, requires the use of specially trained employees who receive wages above the average, and requires the use of expensive refrigerated equipment. Any economies made possible by cooperation with the shippers would appear to be outweighed by the unusual expenses incurred in performing the transportation service.

Applicant's cost exhibits have three serious infirmities. The first is that the overhead costs have been assigned on the basis of a percentage of the gross revenue actually received, rather than upon the revenue which would have accrued under the proposed rates; the second is that fixed charges and overhead costs have been computed only for the equipment actually used during the period selected, without regard to the fact that these charges would continue to run on idle equipment; and the third is that it has been assumed that the back-haul tonnage from the Valley will be of a quantity and kind able to bear the full back-haul cost. An adjustment of the final figures to compensate for the first two infirmities mentioned would, of course, weaken applicant's position in contending that the sought rates would be compensatory. However, the failure to show definitely that the tonnage obtained on the return trip from the San Joaquin Valley to Los Angeles will produce sufficient revenue to offset the one-way cost is the gravest defect. According to Exhibit No. 8 introduced by witness Wade the revenue produced by the return tonnage during the week of February 13 to 19, 1938, was $1061.78. Assuming that the cost of making the return trip was substantially the same as the outbound cost of $1112.45 as developed by witness Berk, the return tonnage would not have paid its way and the assumed profit on the outbound movements would have been dissipated to that extent.

While it may be that increases in revenue on commodities other than meat and packing house products, resulting from observance of the minimum rates in effect after April 1, 1938, would reduce or eliminate the losses, the record affords no indication of what increase in revenue on this account may reasonably be anticipated.

In view of the fact that applicant's own figures show a loss on the coast operation and that the potential profit on the Valley operation overlook several probable offsetting factors, the record is not convincing that the rates proposed by applicant would return the cost of rendering the service required or that the general level of the established minimum rates is excessive for these operations. While it does appear that, due to peculiarities in the character of the transportation service performed and in the nature of the commodities transported, provision for use of a limited commodity grouping and of territorial rate blankets may be appropriate, there is not sufficient evidence of record from which modified rates might be substituted. This application will be denied, therefore, without prejudice to the filing of a supplemental application proposing a revised basis of rates which may be shown to be reasonable and compensatory.

O R D E R

This application having been duly heard and submitted,

IT IS HEREBY ORDERED that the application of C.B.McClain, an individual doing business as McClain Truck Company, be and it is hereby denied without prejudice.

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

Commissioners