

Decision No. 31690

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of)
maximum or minimum, or maximum and min-)
imum 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 1935, for the)
transportation for compensation or hire)
of any and all commodities and acces-)
sorial services incident to such trans-)
portation.)

Case No. 4088

Part "X"

ORIGINAL

In the Matter of the Investigation and)
Establishment of rates, charges, classi-)
fications, rules, regulations, contracts)
and practices, or any thereof, of Common)
Carriers of property.)

Case No. 4145

Part "J"

BY THE COMMISSION:

ORDER DENYING PETITION FOR REHEARING
OR MODIFICATION

At public hearings held in the above entitled proceedings at San Francisco on March 15, April 7 and April 8, 1938, Allied Drug Distributors Association sought the establishment of a third class rating, statewide in application, to apply on drugs, medicines, toilet preparations, chemicals, bandages and dressings. It relied principally upon the contentions (1) that the transportation characteristics of these commodities are such as to entitle them to a third class rating, (2) that a third class rating was applicable on interstate shipments of these commodities and that, hence, a higher rating on intrastate shipments would prejudice California distributors and (3) that rates based on ratings higher than third class would divert this traffic to proprietary carriage.

By Decision No. 30961 of June 13, 1938, it was found that the third class rating had not been justified for statewide application, as sought. It was pointed out (1) that although certain drug items may be of low value, may move in volume and may be comparable from a transportation standpoint to certain commodities rated at third class, numerous other commodities included within the proposed drug group, notably those of the medicine or cosmetic types, are of high value and move in small quantities and (2) that even those commodities which move in volume do so only between a limited number of points. In view of these circumstances, the Commission said that a statewide change in ratings was not warranted and that any adjustments required to meet the needs of the drug industry should be accomplished through the establishment of point-to-point commodity rates, limited to the points and commodities as to which special rates could be shown to be justified by transportation characteristics and conditions.

The Commission recognized the existence of the interstate third class rating for drugs as a factor which might ultimately require a modification of particular intrastate rates in order to place California distributors on a competitive equality with those distributing from jobbing centers in neighboring states. It pointed out, however, that the interstate third class rating was published on a temporary basis and would expire June 30, 1938, and that, in any event, the competitive influence of interstate jobbing centers extended only within limited radii thereof and was not felt uniformly all over the state. The Commission also recognized the possibility of the traffic being diverted to shipper-owned trucks but said that no showing had been made that rates based on third class would be compensatory to the carriers and that, moreover, the carriers themselves had expressed no fear of such diversion taking place.

By petition filed October 13, 1938, Allied Drug Distributors

Association now seeks a rehearing of said Decision No. 30961, or a modification thereof, to provide the third class rating as originally requested. The allegations set forth in support of the petition are substantially the same as those made by petitioner during the course of the public hearings and considered by the Commission in reaching its decision. Particular emphasis is placed on the claim that the drug industry has been discriminated against, in that it has been subjected to an increase in ratings as well as to an increase in the basic rate scales, whereas ratings on commodities other than drugs have been left undisturbed.

While it is true that the drug industry has been subjected to a relatively greater increase in rates in connection with certain movements than have other industries, due to the expiration of the depressed third class rating and the subsequent increases in the basic rate scales, this does not establish that the drug industry has been subjected to discrimination. The fact that the third class rating for drugs was published on a temporary basis shows that competition was unusually keen in the transportation of that commodity and that rates had been driven thereby to a level relatively lower than that of other commodities having comparable transportation characteristics. Inevitably, where rates are established on a reasonable and compensatory level those commodities theretofore depressed to the greatest extent must be subjected to the greatest increases. The third class interstate rating has now expired and the interstate competition has been lessened to that extent. In addition, substantial reductions in the established class rate scales have been made by Decision No. 31606 of December 27, 1938, in Case No. 4246¹. Upon careful consideration of all

¹ The reductions mentioned will be offset to some extent by the interpretation placed upon the packing rules by Decision No. 31607 of December 27, 1938, in Cases Nos. 4088 and 4145. However, it does not appear that they will be eliminated entirely.

the allegations of the petition here under consideration, therefore, the Commission is of the opinion that no good cause for the granting of a rehearing or for modification of the decision has been made to appear. The petition will be denied. However, it should be understood that the Commission's findings in said Decision No. 30961 related to the propriety of a third class rating for statewide application and not to the propriety of modifications of rates for particular movements.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that petition of Allied Drug Distributors Association, filed October 13, 1938, in the above entitled proceedings, be and it is hereby denied, without prejudice however, to the subsequent filing of a petition or petitions seeking modifications in the rates established for particular movements of the commodities involved.

Dated at San Francisco, California, this 23^d day of January, 1939.

Frank L. Dwyer
By J. Dwyer
M. J. Hall
Justus D. Caseman
COMMISSIONERS