

Decision No. 32194

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of WALTER C. HULSMAN to charge less) Application No. 22030
than established minimum rates.)

ORIGINAL

BY THE COMMISSION:

SECOND SUPPLEMENTAL OPINION AND ORDER

By Decision No. 31035 of June 27, 1938, in the above entitled application, Walter C. Hulsman, an individual doing business as Walter C. Hulsman Trucking Company, a highway contract carrier, was authorized to transport beer, wine and empty carriers returning, under contract with Grace Bros. Brewing Co. and Grace Bros. Inc., between the Santa Rosa wineries and breweries of those companies on the one hand and San Francisco, Redwood City, San Jose, Monterey, Oakland, San Leandro, Stockton, Sacramento, Woodland, Willows, Marysville, Oroville, Chico and Redding on the other hand, at rates lower than the established minimum rates. Provision was made that the authority would expire June 27, 1939, unless sooner changed, cancelled or extended by appropriate order of the Commission. By supplemental application applicant sought an extension of that authority until December 31, 1939. An extension until August 7, 1939, was authorized by Decision No. 32099, and a public hearing was held before Examiner P. W. Davis in San Francisco on July 13, 1939, for the purpose of determining whether or not a further extension was justified.

At the hearing, a certified public accountant who had been in charge of applicant's bookkeeping since July 1, 1938, verified the revenue and cost data shown in Exhibit "B" attached to the supplemental application. According to this exhibit, the expenses incurred by applicant in performing the transportation here involved, during

the period from July 1, 1938 to April 30, 1939, amounted to \$16,698.51 and the revenue received under the contract rate amounted to \$19,514.22. This witness also furnished corresponding figures for the months of May and June, 1939, to the extent they could be compiled at the time of hearing, indicating that a proportionate profit had been realized during that period.

Applicant, testifying in his own behalf, stated that, in his best judgment, the authorized rates had been profitable for each of the individual movements to which they applied. He showed that, based on constructive mileages set forth in the Commission's Distance Table No. 3, less the number of constructive miles used therein to compensate for ferry and bridge tolls,¹ the revenue accruing under the authorized rates exceeded the corresponding estimated costs in each instance.

Applicant testified, further, that the interested shippers had requested him to cancel his present contract in order that they might purchase and operate their own trucking equipment; that he had not acceded to this request but had agreed to a shortening of the period covered by the contract from June 15, 1940 to December 31, 1939; that the shipper planned to use proprietary trucks after that date; and that the shipper intended to place proprietary trucks in operation immediately if this application were denied.

Southern Pacific Company and affiliated common carriers, as well as California State Brewers' Institute, protested the granting of the application. They contended that the form in which the proposed rates were stated was objectionable in that the charge for returning empty containers was included in the charge for the outbound load

¹ Bridge and ferry tolls accruing in connection with the transportation here involved are paid by Grace Bros.

and, moreover, that competing shippers would be placed at a disadvantage. A traffic witness called by the Southern Pacific Company cited I. & S. Docket 3130, Southwestern Rates, 173 I.C.C. 662 (at page 702), as authority for the proposition that the inclusion of the charge for returning empty containers in the charge for the outbound load prejudices shippers who pack their products in non-returnable containers.² He expressed the belief that, in view of that decision, common carriers could not publish rates competitive with those sought by applicant. A witness for the Brewers' Institute pointed out that, effective August 7, 1939, competing brewers will be required to pay the minimum rates established by Decision No. 31606, as amended, in Case No. 4246, and showed that, under that basis, brewers located in San Francisco would incur higher freight charges for equivalent distances than would Grace Bros. under the contract rates.

The cost showing made is convincing that the authorized rates have been profitable to applicant in the past and will be so in the future, at least for the duration of the present contract. There is little doubt, moreover, but that this traffic will be diverted to proprietary carriage immediately if extension of the present authority is denied. I. & S. Docket 3130, supra, does not appear to support the contention that the form in which the authorized rates are stated is

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In that proceeding the carriers sought to increase to the normal rating a rating of $\frac{1}{2}$ of 4th class maintained on returning containers. Protestants urged that the existing rating was adequate in that the carriers were partly compensated for the return movements by the rates paid on the outbound loads. The Interstate Commerce Commission found that the outbound rates did not in fact include partial compensation for the return movement and added, by way of dictum, that such an adjustment would, in any event, be unfair to shippers who ship in non-returnable containers and inequitable to carriers when the containers are returned via a route different from that used in the outbound movement.

such that competitive rates could not be established by common carriers for the same transportation. Nor can it be said that other brewers will be unduly disadvantaged by the granting of this application, in the absence of a showing that they have shipments to be made under conditions substantially similar to those attending the transportation here involved. Under these circumstances we are of the opinion that extension of the previous authority until December 31, 1939, has been justified.

Therefore, good cause appearing,

IT IS HEREBY ORDERED that the expiration date of the authority granted by Decision No. 31035 of June 27, 1938, as amended, in the above entitled application, be and it is hereby extended to December 31, 1939, unless sooner changed, cancelled or further extended by appropriate order of the Commission.

This order shall become effective August 7, 1939.

Dated at San Francisco, California, this 25th day of July, 1939.

Robert W. ...
Frank ...
W. K. ...
Justice ...
Commissioners