

Decision No. 32308

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of A. M. GROSS and F. GROSS, co- )  
partners doing business under the )  
firm name and style of GROSS SYSTEMS, ) Application No. 22240  
for authority to charge less than )  
minimum rates under the provisions )  
of the Highway Carriers Act. )

BY THE COMMISSION:

Edward M. Berol, for applicant.  
E. Bissinger and F. F. Willey, for Pacific Electric  
Railway Company, interested party.  
William C. Klebenow, for Motor Truck Association of  
Southern California, interested party.  
H. J. Bischoff, interested party.

O P I N I O N

By this application, A. M. Gross and F. Gross, copartners doing business as Gross Systems, engaged in the transportation of property as a highway contract carrier and city carrier, seek authority under Section 10 of the City Carriers' Act and Section 11 of the Highway Carriers' Act, to transport groceries and related commodities between the warehouse of Certified Grocers, Inc.,<sup>1</sup> situated in the City of Vernon, and points situated within a radius of 100 miles of such warehouse, at charges which differ from, and are in some instances less than, those heretofore established as minimum by the Commission.

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The Secretary-manager explained that Certified Grocers is an organization of retail grocers formed primarily to secure the benefits of collective buying, with functions similar to those of a wholesale grocery company, except that it deals only with its own members, each of whom is a stockholder in the organization. There are some 510 members operating about 690 retail stores, only 25 or 30 of which are located more than 100 miles from the Vernon warehouse. Approximately 70 per cent of the groceries is transported to the retail stores by Gross Systems; the balance is picked up at the warehouse by members operating their own trucks.

A public hearing was held before Examiner Bryant at Los Angeles and the matter was submitted upon the filing of briefs.

The minimum rates established by the Commission are named in cents per 100 pounds and vary according to the classification of the commodities, the weight of the shipment and the length of haul; those proposed by applicant are based primarily upon the sales price of the merchandise transported.<sup>2</sup>

It is unnecessary to discuss the physical characteristics of this operation. The record indicates that in the aggregate the proposed rates would return a revenue at least as great as, if not

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The minimum rates from which relief is sought were established by Decision No. 29480 of January 25, 1937, as amended, in Case No. 4088, Part "M"; Decision No. 30370 of November 29, 1937, as amended, in Case No. 4088, Part "Y"; and Decision No. 31473 of November 25, 1938, in Case No. 4121. The proposed rates are as follows:

(a) For transportation from Certified Grocers' warehouse (located at corner of Loma Vista and Fruitland Avenues, in the City of Vernon) to destinations within 50 constructive highway miles of the warehouse, 1-1/8 per cent of the sales price of the merchandise transported. Distances are proposed to be computed in accordance with the methods provided by the Commission in Decision No. 31605 of December 27, 1938, in Cases Nos. 4088, 4145 and 4246.

(b) For transportation from Certified Grocers' warehouse to destinations more than 50 but not more than 100 constructive highway miles from the warehouse, 2-1/8 per cent of the sales price of the merchandise transported.

(c) For return to Certified Grocers' warehouse of merchandise which was shipped in error to points not more than 100 constructive highway miles distant from the warehouse, no additional charge for the return transportation.

(d) For transportation from points within the Los Angeles drayage area (as described in Decision No. 31473, supra) to the Certified Grocers' warehouse, 1-1/2 cents per package when 200 packages or more are received at one point of origin at one time, and 2 cents per package when less than 200 packages are so received. According to the applicant about 75 per cent of the outbound shipments are delivered within the Los Angeles drayage area as described in Decision No. 31473, supra, and the balance beyond. About 5 per cent of the total traffic consists of inbound merchandise picked up within the drayage area and delivered to the warehouse. The only other inbound merchandise is an occasional shipment which is returned from the retail stores because of some error in filling orders.

greater than, that which would result from a strict application of the rates now in effect.<sup>3</sup> In 1938 applicant earned a profit at rates said to have been identical with those here sought. Under these circumstances the only question to be determined is whether or not applicant should be authorized to base its rates on a percentage of the sales value of the commodity hauled and with but slight regard to the distance involved.

In justification of this proposal applicant and the interested shipper represented that this method of assessing charges had been satisfactorily employed by them for approximately 10 years, that it would be difficult to change methods without disrupting the shippers' practices or affecting the charges to be paid, and that it was simpler<sup>4</sup> and less expensive than the assessing of charges on a weight basis.

Applicant furthermore testified that the shipper was strongly opposed to a weight basis and would, he feared, if it were adopted resort to operating its own trucks. The shipper argued that under the weight basis the transportation cost per item was difficult to determine; that he would not pay transportation charges on a weight basis

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3.

A rate and traffic consultant testified that he had been engaged by applicant to determine how charges under the percentage basis of rates would compare with those which would have accrued under the established minimum rates. He explained that in order to accomplish this purpose he analyzed, classified and rated all shipments transported during one week in September, 1938, believed to be a representative period. The results of his study, introduced in the form of exhibits, indicate that, although the proposed charges would be below the established minima on some shipments, they would in the aggregate result in greater charges than would be returned by strict application of the established rates.

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Witnesses for applicant estimated that to weigh, classify, rate and bill the shipments for strict compliance with the established minimum rates would require 5 additional employees at not less than \$150.00 each per month. Three of them, he said, would probably be paid by the shipper and two by the carrier.

while determining delivered sales prices on a percentage basis; and that the use of a weight basis would force it to purchase and operate its own trucks.

It may be conceded that, from the standpoint of the shipper, there are certain advantages to the practice of assessing transportation charges on a percentage of the invoice value of the shipment.<sup>5</sup> On the other hand, it must be pointed out that the proposed rates do not follow any heretofore recognized basis of classification and rate making; are not in such form that they may be properly compared with rates previously established as minimum by this Commission; have no direct relationship to the weight of the shipment and only a casual relationship to the length of the haul; would be difficult to enforce; would not afford competing carriers and shippers any basis for comparison with charges which they must apply for similar transportation; and would entirely preclude common carriers from participating in the transportation. They would thus tend to nullify in a large measure the benefits and advantages of rate stabilization.

While standing by themselves the infirmities just enumerated may not necessarily and in all cases require a denial of relief of the nature sought, the proposal here is subject to a more serious objection. It is apparent that rates based on invoice prices which

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Although certain advantages are here conceded, they do not appear to be as important as represented. It is extremely doubtful that the weighing, classifying and rating of commodities which are of one general character and are transported exclusively for shippers and receivers engaged in the same line of business should require the services of 5 men, unless these men are inexperienced in and unfamiliar with this work. An affidavit of an experienced rate clerk has been submitted, in which it is stated that the average rate clerk is able to rate in excess of 1200 items an hour, including the computation of charges; that the rating and billing of grocery items is very rapid because a large percentage of them falls into one class; and that it would be a comparatively simple matter to show the weight and rating of each item on the buyer's invoice, and to incorporate such invoice into the freight bill by attachment and reference.

change from time to time are subject to fluctuations outside this Commission's control. Even though it may be true, as applicant and shipper contend, that these fluctuations may be expected to be minor in nature, the basing of rates upon a unit of measurement which for a given kind and quantity of freight would produce different charges from time to time would clearly be improper. This in itself requires the denying of the requested relief.<sup>6</sup>

Although the carrier stated that the authority was sought in order to forestall proprietary hauling, and the shipper stated that the assessing of charges on a weight basis would force proprietary operation, the shipper conceded that he had made no investigation to determine whether or not a proprietary operation would be practicable. Aside from the question of its feasibility financially, it is incredible that costs could be kept in a manner that would enable the shipper to compute transportation expense on a sales price basis more readily than he can by paying charges to a carrier on a weight basis.

It is stated in applicant's brief that "if grant of the authority sought herein could in any way be considered a precedent for future applications of a similar nature, we ourselves would hesitate to urge that the authority sought be granted." The operation is then distinguished on the ground it "has existed for a period in excess of 10 years upon the type of proposal that is proposed herein,"

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In Decision No. 30960 of June 6, 1938, W. J. Tannahill & Sons sought authority to assess charges on a similar invoice value basis. In denying this authority the Commission said:

"However, the proposal to assess charges in connection with sash and doors on the basis of 3 per cent of the invoice price cannot be authorized on that form \*\*\*. The object 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."

that it "has been built around distribution methods in accordance with that proposed herein," and that "the carrier is not engaged in any other type of business whatsoever." The fact that business has been conducted in the past under rates similar in form to those here proposed does not justify the granting of this proposal. It is patent, moreover, that if it were justified by the fact that the carrier devotes its entire equipment to this one shipper, other shippers having sufficient business to justify the operation of as little as one small truck and giving all of it to one operator would be entitled to like treatment. The effects of the resulting shifting of traffic and disruption of rate structures would be far-reaching.

Consideration of all the facts and circumstances here of record compels the conclusion that the disadvantages of the proposed form of rate making far outweigh the advantages which might accrue to the shipper and carrier directly involved. The application will be denied.

O R D E R

This application having been duly heard and submitted, full consideration of the matters and things involved having been had, and the Commission now being fully advised,

IT IS HEREBY ORDERED that this application be and it is hereby denied.

Dated at San Francisco, California, this 12<sup>th</sup> day of September, 1939.

Frank D. Miller  
Ray H. Carey  
W. H. Keen  
Justice J. Coe  
Commissioners.