

Decision No. 12240

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, for authority ) Application No. 22240  
to charge less than minimum rates under )  
the provisions of the Highway Carriers' )  
Act. )

ORIGINAL

Appearances on Rehearing

Ware and Berol, by Edward M. Berol, for applicant.  
E. Bissinger and F. F. Willey, for Pacific Electric  
Railroad Company, interested party.  
H. P. Merry and H. J. Bischoff, interested parties.

BY THE COMMISSION:

OPINION ON REHEARING

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.

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.

1

The record shows that Certified Grocers, Inc. 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 which is a stockholder in the organization. As of February, 1939, there were some 510 members operating about 690 retail stores.

The rates originally proposed by applicant herein were based primarily upon the sales price of the merchandise transported. By Decision No. 32308 of September 12, 1939, after public hearing, the Commission found the proposed rates not justified. Thereafter applicant filed a petition wherein it sought a further hearing for the purpose of introducing evidence in support of a revised proposal.

The petition was granted, rehearing was had before Examiner Bryant at Los Angeles, and the matter is now ready for decision based upon the original record and upon evidence introduced at the further hearing.

The record shows that applicant is not particularly concerned with or disturbed by the volume of the aggregate charges accruing under established minimum rates. What it primarily seeks by this application, both in the original form and as later amended, is authority which will enable it to avoid the necessity of weighing and classifying the freight.

The rates first sought, based upon the sales price of the merchandise transported, had no direct relationship to the weight of the shipment and only a casual relationship to the length of haul. The original record shows that applicant and the shipper were strongly opposed to the weight basis, arguing that it would be expensive and inconvenient to apply. In addition, the shipper asserted that under this basis the transportation cost per item would be difficult to determine; that in any event it would not pay transportation charges on a weight basis while determining delivered sales prices on a percentage basis, and that rather than use the weight basis it would purchase and operate its own trucks. Consideration of all the facts and circumstances then of record, however, compelled the conclusion that the disadvantages of the proposed form of rate making far outweighed the advantages which might have accrued to the shipper and

2  
carrier directly involved.

The revised proposal now under consideration differs materially from that which was originally made and found not justified, and represents applicant's attempt to arrive at a basis of transportation rates which will be satisfactory to the shipper, and which will at the same time be free from the serious objections which the Commission found in the original plan. It now appears that rates stated on a weight basis will be satisfactory to the carrier and acceptable to the shipper, provided that applicant may be permitted to apply a single basis of rates to all commodities in order to avoid the necessity of classifying each article, and to use average weights in order to avoid the necessity of actually weighing each shipment. Applicant proposes to state the rates in cents per 100 pounds, to make them the same for all commodities, and to vary them with the length of haul in accordance with mileage blocks similar to those employed by the Commission in Highway Carriers' Tariff No. 2.<sup>3</sup> The proposed rates themselves closely approximate those established by the Commission under that tariff for fourth class commodities subject to a minimum weight of 20,000 pounds.<sup>4</sup>

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The Commission pointed out (Decision No. 32308, supra), that the proposed rates did not follow any recognized basis of classification and rate making; were not in such form that they could be properly compared with rates previously established as minimum by the Commission; had 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 participation in the transportation. The Commission said that while all of this would tend to nullify in a large measure the benefits and advantages of rate stabilization, an even more serious objection to the proposed rates lay in the fact that they would be subject to fluctuations beyond the Commission's control.

<sup>3</sup>  
Highway Carriers' Tariff No. 2 is Appendix "D" to Decision No. 31606, as amended, in Case No. 4246. It names established minimum rates for the transportation of general commodities between points in the State of California.

<sup>4</sup>  
The proposed rates are set forth in Appendix "A" hereof.

Applicant also asks approval of shipping documents which do not meet the requirements heretofore specified by this Commission for general application, but which applicant states contain all information necessary to a determination of the rates and charges under the proposed rate plan.

Applicant asserts that authority to use estimated instead of actual weights is necessary in order to overcome the shipper's objections to the weight basis, and to avoid the inconvenience and expense which allegedly would attend the weighing of shipments. The known actual weight would be applied to sugar and flour in sacks, but all other pieces would be rated at the approximate average weight developed by actually weighing those shipments for an entire day. Applicant proposes to use at first a weight of 35 pounds per package resulting from a test already made, and to adjust this average from time to time in accordance with tests to be made periodically in the future.

It appears that applicant gave serious consideration to the possibility of determining and applying actual weights, but concluded that there was no feasible or satisfactory method of doing so. The testimony indicates that the shipper employs twenty order clerks working through the night to fill orders for movement the following morning, and that if all of the merchandise had to be weighed and recorded before checking and loading, it would be physically impossible to get the orders ready for morning delivery. Even without regard to the additional expense of such a weighing operation, the shipper stated that it would unquestionably discontinue applicant's services rather than be faced with this delay to its shipments.

The plan of obtaining an average weight for each size and kind of merchandise, and using the averages thus tabulated for the

purpose of computing weights at the end of each day, was considered by applicant, but was discarded when it was estimated that this method would require the employment of several additional clerks at total salaries in excess of \$600 per month.<sup>5</sup> Applicant also considered weighing the trucks themselves, both empty and loaded, but found that the cost of obtaining weights by this method would be at least \$400 or \$500 per month.<sup>6</sup> The expense of obtaining weights by any of these methods, applicant said, would entirely eliminate every element of profit from its operation.

Shipper testimony shows that the proposed basis of rates would be satisfactory to Certified Grocers for the present at least, but that if applicant were required strictly to observe the established minimum rates, rules and regulations, the shipper would be forced to discontinue applicant's services entirely and substitute proprietary service.

No one opposed the granting of this application in its amended form.

The record leaves little doubt that the proposed rates would return to applicant the cost of operation plus a reasonable profit. Applicant estimates that the revenue to be received would

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Applicant explained that a typical order consists of 5 pages of 20 lines each, and that on the basis of 150 to 200 orders per day there are from 750 to 1000 individual order sheets consisting of 20 items each. It estimated that it would take an experienced clerk ten or fifteen minutes to figure the cost on each order, thus requiring five or six clerks at a salary of not less than \$125 per month for each.

6

This estimate consists of \$140 for weighmaster's certificates; from \$250 to \$300 for extra drivers' wages incurred in traveling to and from the nearest scale; and an indefinite amount for the extra mileage cost of operating the vehicle to and from the scale.

be at least as great as that which accrued under rates which returned a fair profit during 1938 and 1939, and probably as great as would be received under strict application of the established minimum rates. Moreover, even though applicant's estimate should prove to be somewhat high, the record shows clearly that the service here involved permits of many substantial economies not found in ordinary truck transportation. Under these circumstances it may be fairly assumed, for the purpose of this opinion, that the proposed rates would be compensatory; and it appears, therefore, that the only questions to be determined are whether deviation from the established basis is necessary, and whether the proposed rate plan is reasonable and its use not inimical to the public interest.

Unquestionably the transportation service here involved differs in many essential respects from ordinary truck transportation. The shipper performs services and furnishes facilities which serve materially to reduce the carrier's expenses. Applicant is engaged in no other transportation service, and has no terminal facilities of its own. The operation has existed in substantially its present form for more than ten years, during all of which time it appears that the carrier and shipper have worked together in a spirit of complete harmony and cooperation. The record shows that the shipper is satisfied with and desirous of continuing applicant's services, but it is at the same time convincing that insistence upon strict observance of established rates, rules and regulations would cause the shipper to resort to performing its own transportation. The rate plan now suggested is free from many of the infirmities of the original application, and we are of the opinion that under the special circumstances and conditions here shown to exist its use

would not be inimical to the interests of other shippers, carriers or the general public. We are of the opinion and find, therefore, that the proposed rates are reasonable rates within the meaning of Section 10 of the City Carriers' Act and Section 11 of the Highway Carriers' Act. Applicant will be authorized to deviate from the established rate bases in substantial accordance with its amended proposal.

If applicant elects to use estimated, rather than actual, weights on commodities other than sugar and flour in sacks, it will be authorized to do so, in connection with the rates hereinafter provided, upon the basis of 35 pounds per package (or piece) during the first sixty days of its authority, and thereafter upon the basis of not less per package (or piece) than the average weight of all packages (or pieces), other than sugar and flour in sacks, as disclosed by periodically weighing all such shipments for a single day. Such a weight test shall be made within sixty days from the effective date of the order herein, and not less than once each 120 days thereafter; the results of such tests shall be verified in the manner prescribed in the Commission's Rules of Procedure, and promptly communicated to the Commission in writing; and the estimated weights used shall not at any time be less than the average weight as disclosed by the weight test last made.

Upon electing to exercise the authority granted by the order herein, applicant will be relieved from the necessity of observing the rules, regulations and other requirements of the minimum rate orders which would otherwise be applicable, but will be required to issue for each shipment received for transportation a shipping document or shipping documents containing all information necessary to an accurate determination of the minimum rates and charges applicable under the order herein, and to retain and preserve in its

possession a copy of such shipping document or documents for reference and subject to the Commission's inspection, for a period of not less than three years from the date of issuance.

Because the findings herein are necessarily predicated upon existing conditions, the authority hereinafter granted will be limited to a period of one year. If, prior to expiration, the carrier is of the opinion that an extension is justified, an appropriate supplemental application requesting such extension should be filed.

#### O R D E R

Public hearings having been had in the above-entitled proceeding, the matter having been duly submitted, and based upon the evidence received at the hearings and upon the conclusions and findings set forth in the foregoing opinion,

IT IS HEREBY ORDERED that A. M. Gross and F. Gross, copartners doing business as Gross Systems, be and they are hereby authorized to assess and collect, for the transportation of the property and within the territory for which rates are provided in Appendix "A" attached hereto and by this reference made a part hereof, rates, rules and regulations less than the minimum rates, rules and regulations heretofore established by this Commission for such transportation, but not less than those provided in said Appendix "A", and subject to all of the restrictions, limitations and conditions specified in the foregoing opinion.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall expire one (1) year from the effective date of this order, unless sooner cancelled, changed or extended by order of the Commission.



The effective date of this order shall be ten (10) days from the date hereof.

Dated at San Francisco, California, this 2<sup>nd</sup> day of April, 1940.

Ray & Roney  
Frank D. Wynn  
Harold G. ...  
M. Baker  
Justin J. Casper  
Commissioners

APPENDIX "A"

Application of Appendix

Rates in this appendix apply only for the transportation of property for Certified Grocers, Inc., from its warehouse situated in the City of Vernon, to destinations situated within 100 constructive miles of such warehouse; except that rates include free return of merchandise returned to the warehouse because of spoilage, error in shipping, or similar circumstance.

Distances shall be the shortest resulting mileage via any public highway route computed in accordance with the method provided in Decision No. 31605, as amended, in Case No. 4246, except that distances from or to points located within zones described in Item No. 260 series of Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended, in Case No. 4246) shall be computed from or to the mileage basing points designated in connection with such descriptions.

In addition to rates named below, a charge of not less than 25 cents shall be assessed and collected for each delivery stop.

DISTANCE RATES

<u>Constructive Miles</u>		<u>Minimum Rates</u>
<u>Over</u>	<u>But Not Over</u>	<u>In Cents per 100 Pounds</u>
0	5	5
5	10	6
10	20	7
20	30	8
30	40	9
40	50	10½
50	75	14
75	100	16½

(End of Appendix)