

Decision No. \_\_\_\_\_

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FORTIER TRANSPORTATION COMPANY, a co-partnership, for authority to charge less than minimum rates under the provisions of the Highway Carriers' Act.

Application No. 22548

ORIGINAL

BY THE COMMISSION:

SECOND SUPPLEMENTAL OPINION AND ORDER

By Decision No. 31768 of February 20, 1939, in the above entitled application, Fortier Transportation Company, a co-partnership, was authorized to transport coca cola for Coca Cola Bottling Company of Fresno from its Fresno plant to warehouses at Merced, Tulare and Hanford at a rate of 4 cents per case, minimum 1050 cases, which rate included the return of empty containers when transported on return trips. The authority was made to expire on March 2, 1940. Upon supplemental application, and by Decision No. 32816 of February 13, 1940, the authority was extended to February 23, 1941, in so far as transportation to Merced and Hanford was concerned, and additional authority was granted to charge a rate of the same volume from said Fresno plant to warehouses at Madera and Visalia, and a rate of 4½ cents per case, minimum 1050 cases, from said plant to warehouses at Coalinga and Porterville. It was explained by applicant that the reduced rate to Tulare was no longer necessary for the reason that the Coca Cola Bottling Company was moving its warehouse from Tulare to Visalia to which point it would ship approximately the same tonnage as it theretofore forwarded to Tulare.

By third supplemental application, <sup>1</sup> filed August 17, 1940, applicant seeks amendment of the outstanding authority, by nunc pro tunc order as of February 23, 1940, reinstating Tulare as a warehouse

1 Action on the second supplemental application, involving transportation from Fresno to a warehouse at Los Banos, is being withheld awaiting applicant's advice with respect to the notification of interested parties.

point taking the 4-cent rate. In support of the sought amendment applicant represents that through oversight it did not specifically request that the substitution of Visalia for Tulare be authorized concurrently with the proposed abandonment of the Tulare warehouse; that the Visalia warehouse has not been completed and will not be completed until on or about October 1, 1940; that, meanwhile, operations from and to Tulare have continued; that the rate formerly authorized has been used to assess charges for the Tulare transportation since the cancellation of that rate; that until July 31, 1940, the unauthorized rate was so used without the personal knowledge of the co-partners; and that if it is required that the undercharges occasioned by inadvertent negligence be collected, the shipper will revert to proprietary operations.

It appears that this is a matter in which a public hearing is not necessary and that the sought amendment of the outstanding authority is justified, except in so far as the proposed retroactive adjustment is concerned. No statutory provision has been cited whereby the Commission may lawfully authorize a retroactive adjustment of minimum rates established under the Highway Carriers' Act.<sup>2</sup> In this respect the third supplemental application, filed August 17, 1940, will be denied.

Therefore, good cause appearing,

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This point was directly in issue in Application of J. A. Clark Draying Company, Decision No. 29105 in Application No. 20629, in which the Commission said: "Applicants ask, however, that authority sought be granted as of June 1, 1936, or, in the event the Commission is of the opinion that it is without authority to grant such relief, that it be made effective from time the application was filed. Under what provision of law this relief is sought, the record does not show. This Commission is authorized to award reparation in cases where the applicable charges of carriers subject to the Public Utilities Act are found to be unreasonable, excessive or discriminatory by virtue of Section 71 of that act. No such provision is contained, however, in the Highway Carriers' Act under which this proceeding is brought. The request for retroactive relief will be denied." This interpretation was reaffirmed in Application of Triangle Transfer & Storage Company (Decision No. 29974 in Application No. 21275) and in Applications of C & R Transfer Company (Decision No. 29992 in Applications Nos. 21309 and 21310), and in the Matter of the Application of Brown Trucking Company for authority to charge less than the minimum rates (Decision No. 30733 in Application No. 21618). See also Decision No. 31184 in Case No. 4286 and in Applications Nos. 21496, 21719 and 21816, and Decision No. 31653 in Application No. 22226.

IT IS HEREBY ORDERED that Fortier Transportation Company, a co-partnership, be and it is hereby authorized to transport coca cola for the Coca Cola Bottling Company of Fresno from the Fresno plant of that company to its warehouse at Tulare for a rate of 4 cents per case, minimum 1050 cases; this rate to include the return of empty containers only when transported on return trips.

IT IS HEREBY FURTHER ORDERED that the authority granted in the preceding paragraph shall expire February 23, 1941, unless sooner cancelled, changed or extended by appropriate order of the Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects the third supplemental application, filed August 17, 1940, be and it is hereby denied.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 24<sup>th</sup> day of August, 1940.

Ray & Alley  
Frank D. Allen  
R. H. ...  
A. L. ...  
Justin J. ...  
Commissioners.