

Decision No. 10000.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Establishment of)
maximum or minimum, or maximum and)
minimum rates, rules and regulations)
of all common carriers as defined in)
the Public Utilities Act of the State)
of California, as amended, and all)
highway carriers as defined in Chapter)
223, Statutes of 1935, as amended,)
for the transportation for compensation)
or hire, of any and all commodities.)

ORIGINAL

Case No. 4246

BY THE COMMISSION:

Additional Appearances

J.E. Collins, for Fibreboard Products, Inc.
Aaron Glickman, for Richmond & Improvement
Co., Sonoma Express, and Motor Carriers
Traffic Bureau.

SUPPLEMENTAL OPINION AND ORDER

Under minimum rates heretofore established, drugs and related articles are subject to class rates applied in accordance with the ratings established in Western Classification No. 69, C.R.C.-W.C. No. 2 of R.C. Fyfe, Agent. These ratings range from fourth class to multiples of first class depending upon the commodity. By petition, Northern California Retail Druggist Association, Ltd. and Allied Drug Distributors seek a uniform rating of third class on the articles now subject to higher ratings. ¹

Public hearings were had at San Francisco before Examiner Earl S. Williams.

Petitioners contend that the sought third class rating is justified by the transportation characteristics of the articles, and that higher ratings have curtailed and, if continued in effect, will further curtail the intrastate movement of these articles by for-hire carriers.

¹ Petitioners introduced an exhibit showing the articles on which this rating is sought. A number of the articles originally listed were eliminated during the hearings.

With respect to transportation conditions, petitioners introduced an exhibit showing numerous commodities rated third class or lower in the Western Classification, the densities and values of which are no greater than those of the commodities here involved. Both in density and in value, they contend, drugs are comparable to canned goods and hardware rated 90 per cent of fourth class and third class, respectively. Studies submitted by petitioners were said to show that the time required to load drugs was comparable to that required to load many other commodities and that loss and damage claims on drugs were negligible. Petitioners also showed that by the publication of exceptions applicable to intrastate traffic, the ratings provided in the Western Classification have, in numerous instances, been reduced. In addition they pointed out that drugs and commodities grouped therewith are now subject to ratings comparable to third class in substantial portions of the United States, which fact they argued, further evidences the propriety of the rates sought.

The contention that the sought rates are necessary if further curtailment of intrastate movement by respondents is to be avoided is based on two premises. It is represented, first, that unless the sought rates are established, eastern manufacturers will make direct distribution to California retailers and, second, that a large portion of the property that will continue to be distributed within this State will be distributed by the shippers themselves.

The commodities here involved are for the most part produced in plants located along the Mississippi River or east thereof. From there they are forwarded in carloads, usually to San Francisco, Los Angeles, Sacramento and Fresno, and are distributed from those cities in less-carload quantities. The cost of shipping, warehousing and distributing in this manner is said to exceed the cost of

distributing directly from the eastern shipping points, and to jeopardize the practice of handling this business through California distributors.

Diversion of traffic to proprietary carriage is contingent upon the formation of a cooperative association of drug distributors and the pooling of the shipments of these distributors for truck transportation.

The proposal here made originally was protested by the Truck Owners Association of California. Upon the elimination by petitioners of a number of articles originally included in their proposal, this organization asked that its appearance be changed to that of an interested party. Other than this, the position of the various respondents is not disclosed.

Analysis of the evidence discloses that the showing of densities and values of individual drug articles is limited to selected commodities. What relation the tonnage of these articles bears to the total tonnage is not shown. Other density and value figures do not disclose the identity of the articles. Without this information these studies shed little light. The same is true of the canned goods and hardware with which the comparisons were made.

A showing of the circumstances and conditions under which the compared ratings have been established is entirely missing. Such a showing is also missing in the case of the ratings assertedly comparable to third class and applicable elsewhere. In addition, it was conceded that those lower ratings were for the most part depressed to meet competition and were temporary in nature. From petitioners' point of view, loss and damage claims are negligible, but the record does not disclose how the claims on these commodities compare with those on other property. Figures are submitted in substantiation of the contentions as to the loading characteristics. It is not shown, however, whether or not all of the articles involved

have been included in the study, and, if so, in what proportion. The study is particularly questionable for the reason that it purports to show that the loading and unloading of canned goods requires more time than the loading and unloading of general merchandise.

It is likewise questionable whether an arrangement such as the drug distributors are considering is lawful. In McMurray Transportation Service, Ltd. vs. Henry Buchardi, et al. (40 C.R.C. 403) this Commission found that a nonprofit cooperative association of milk producers organized for the purpose of transporting the property of its members by means of motor trucks was operating as a carrier subject to the jurisdiction of the Commission. In any event there is no evidence in this record to show that the distribution of pooled shipments would be feasible except from San Francisco and Los Angeles to a limited number of points.

This is not the first occasion upon which the Commission has formally considered the propriety of a third class rating for drugs and related articles. In Decision No. 29686 (40 C.R.C. 457) it was found that such a rating had not been justified, and the suspended provisions of the common carrier tariffs in which it had been filed were ordered canceled. Subsequently, Allied Drug Distributors, one of the petitioners herein, sought the establishment of the rating on a statewide basis, and again it was found that the rating had not been justified. (Decision No. 30961, 41 C.R.C. 417.) Rehearing of that decision was denied.

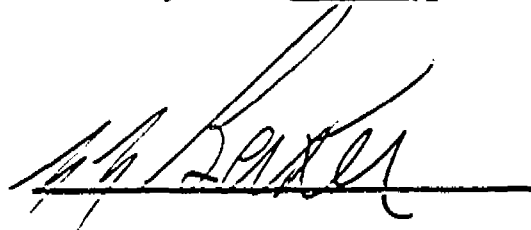
It follows from what has been said that the showing made lacks that conclusiveness which is essential to a proper determination of the issues. While the showing indicates that petitioners may well be entitled to a more favorable basis of rates than that which obtained at the time this matter was heard, it does not contain the information necessary to a precise determination

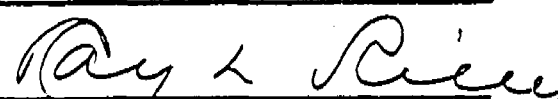
of the nature and extent of the adjustment which might properly be made. During the time this proceeding was pending, however, Supplement No. 3 to Western Classification No. 69 became effective. By virtue of this supplement, drugs and medicines not otherwise indexed by name and not more specifically provided for are given a second class rating. (See Item 15260-A cancelling Item 15270.) A rating more favorable to petitioners cannot be said to be justified on this record. The petition will be denied. Therefore, good cause appearing,


IT IS HEREBY ORDERED that the petition of Northern California Retail Druggists Assn., Ltd. and Allied Drug Distributors Association be and it is hereby denied.


The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11th day of March, 1941.









Commissioners.