

Decision No. 32960.

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 to charge)
less than minimum rates under)
the provisions of the Highway)
Carriers' Act.)

Application No. 22240

ORIGINAL

BY THE COMMISSION:

Additional Appearances

- M.W. Reed and C.P. McPake, for Santa Fe Railway Company, protestant,
- H.J. Bischoff, for Southern California Freight Lines and Southern California Freight Forwarders, protestants,
- Wallace K. Downey, for Pacific Freight Lines and Keystone Express System, protestants,
- C.A. Hodgman, Traffic Manager for Port of San Diego, and for San Diego Chamber of Commerce, protestants,
- Harold W. Dill, for The Truck and Warehouse Association of San Diego and Imperial Counties, protestant,
- R.E. Crandall, for Associated Jobbers and Manufacturers, interested party, and
- C.A. Stowell, for Truck-A-Way Freight Company, interested party.

SECOND SUPPLEMENTAL OPINION

Applicants are engaged in the transportation of property as a highway contract carrier and as a city carrier. By Decision No. 32960, as amended in the above entitled application, they have been authorized to transport groceries and related articles for Certified Grocers, Inc. of Vernon, at rates less than the established minima. By supplemental application, as amended, applicants seek similar authority over an extended territory.

The matter was heard before Examiner Bryant at Los Angeles, and was submitted upon the filing of briefs.

Under the existing authority applicants are permitted to transport groceries and related articles for the shipper from its warehouse located in the City of Vernon to points situated within 100 miles of such warehouse at a single line of rates, regardless of the classification of the property transported. They are also permitted to use estimated weights rather than actual weights to avoid

the necessity of weighing the many articles handled. This authority was granted upon a showing that the proposed rates were reasonable and that unless applicants were relieved of the necessity of weighing, classifying and complying with the prescribed form of billing the shipper would resort to proprietary operations. For similar reasons permission is sought to extend the authority to destinations situated over 100 but not over 160 miles from Vernon.¹

The rates proposed by applicants would be subject to a minimum weight of 36,000 pounds per shipment, and to the rules and regulations prescribed by Decision No. 32960, supra, except that charges would be assessed on actual weights of shipments rather than on estimated weights.² Applicants notified the Commission

¹ The rates heretofore authorized and those here proposed are as follows:

| <u>Constructive Miles</u> | | <u>Rates in Cents</u> |
|---------------------------|---------------------|-----------------------|
| Under Present Authority | | <u>Per 100 Pounds</u> |
| <u>Over</u> | <u>But not over</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 |
| P r o p o s e d | | |
| 100 | 120 | 17 |
| 120 | 140 | 18 |
| 140 | 160 | 20 |

² Decision No. 32960, supra, contains rules and regulations providing that the distances shall be the shortest constructive distances computed by 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 point designated in connection with such distances. In addition the rates named are subject to a charge of not less than 25 cents for each delivery stop.

that the shipper can now furnish actual weights and consequently the use of estimated weights is no longer necessary.

Counsel for applicants made it clear that they are primarily concerned with relief from the necessity of classifying, of computing rates and charges in the prescribed manner, and of complying with the prescribed form of billing, rather than with the volume of the aggregate charges accruing under the established rates. Their position in these respects is identical with that expressed in the prior phases of this proceeding. Witnesses testified that subsequent to the granting of the relief they now enjoy, Certified Grocers, Inc. secured new members, some of which are located more than 100 constructive miles from its warehouse in Vernon;³ that the circumstances encountered in connection with the transportation here involved are no different than those attending the transportation of shipments moving under 100 miles; that the difficulties encountered in classifying and rating the property for which relief is here sought are of the same degree as those encountered prior to the granting of relief in transporting shipments within 100 miles;⁴ that the relief is not to accord the shipper transportation at charges which, in the aggregate, would be less than those accruing under the established rates but to render to the shipper uniform and efficient transportation service; and that unless granted relief the traffic may be lost to proprietary operations.

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Certified Grocers, Inc. is an organization of retail grocers formed primarily to secure the benefits of collective buying. Its operations are similar to those of a wholesale grocery company, except that it deals only with its members, each of which is a stockholder in the organization. The majority of applicants' new members are located in San Diego County.

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At prior hearing, witnesses for applicants testified that to weigh, classify, rate, and bill the shipments for strict compliance with the minimum rates would require approximately 5 additional employees at not less than \$150 per month, three of them to be employed by the shipper and two by the carrier. However, a protestant offered the statement of an experienced rate clerk that based on his transportation experience the services of not more than one man would be required.

Applicants presented studies for the purpose of showing that the rates sought are fully remunerative, and would produce a total revenue greater than that which would accrue under the established minimum rates.

The granting of this application was opposed by The Truck & Warehouse Association of San Diego and Imperial Counties, the San Diego Chamber of Commerce, and by certain competing highway carriers, on the grounds that relief of the nature here sought would violate basic fundamentals of rate making and would result in preference to applicants' shipper and its member stores and in undue discrimination against both competing carriers and competing wholesale and retail grocers. In support of these objections, protestants contended that the adoption of "all freight" rates as here proposed ignores values, cubic measurements and transportation risks, fundamentally inherent in rate making. They also contended that if the application were granted, competing carriers could not offer transportation to wholesale grocers for whom they are now transporting property, at the same rates which applicants' shipper would enjoy and that shippers now paying rates commensurate with those established as minimum could therefore not be competitive with Certified Grocers, Inc. This, they said, could well create a diversion of business from competing wholesalers to applicants' shipper which would result in a loss of traffic to other carriers.

It is clear from the record that the physical characteristics of the transportation services here involved are no different than those now being performed within 100 miles of shipper's warehouse. The rates proposed closely approximate those established by the Commission, and the record supports applicants' allegations that the proposed rates will return costs, and produce a profit.

The volume of the rates is not, however, the paramount issue in this proceeding. Neither applicants nor the shipper seek rates which would produce charges in the aggregate less than those

established. What is sought is relief from an asserted burden involved in connection with classifying and rating shipments.⁵

The existing authority was granted upon a convincing showing that unless relieved of the necessity of weighing and classifying property, the shipper would resort to proprietary operations rather than disrupt the normal flow of its business. Here, however, relief from weighing is not sought, and the record is far from convincing that the traffic would be lost to shipper-owned vehicles merely because of an asserted burden involved with classifying and billing the freight.⁶ The record shows that approximately 76 per cent of the articles transported are ratable at 5th class, 23 per cent at commodity rates, and less than one per cent at the remaining classes. It indicates also that over a period of 10 years the mixture has not materially changed. We are not persuaded that the time required by competent employees to classify and rate shipments of this character would be great, or that the expense of this clerical operation would be a burdensome factor, particularly when considered in its relation to the aggregate revenue involved. The operation, moreover, should cause no delay in the movement of the shipments, and little, if any, delay in billing. Other than a mere assertion, there is no evidence of probative value to indicate that the shipper could or would resort to proprietary operations.

The reasons in the foregoing paragraph alone are sufficient to warrant denial of the relief sought. In addition, an

⁵ The established minimum rates are prescribed in Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended, in Case No. 4246). They are stated in cents per 100 pounds, and vary according to the classification of the commodity, the weight of the shipment, and the length of haul.

⁶ Inasmuch as applicants are no longer faced with the burden of determining weights, it may be questioned whether authority granted by Decision No. 32960, supra, is justified. However, that is a question not within the purview of this decision.

arrangement of the nature here involved is objectionable because of its effect upon competing carriers, shippers and the public in general. It is readily apparent that competing carriers and competing shippers, including retail stores, competitive with member stores of Certified Grocers, Inc. could not meet the competitive advantages which applicants and their shipper would enjoy under the instant proposal. Consequently, these shippers and carriers would be disadvantaged in that an equality of competitive opportunity would not prevail.

Applicants have not demonstrated on this record that the established minimum rates, rules or regulations place an undue burden on themselves or on the shipper. The supplemental application will be denied.

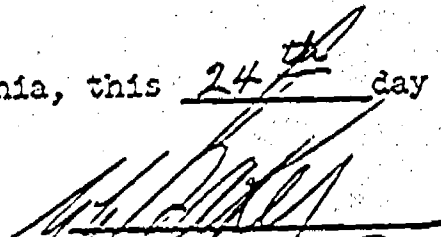
O R D E R

Public hearings having been held in the above entitled proceeding, and based on the evidence received at the hearings and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the supplemental application filed April 15, 1940, in this proceeding, be and it is hereby denied.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 24th day of June, 1941.


Carl H. Riley
Justice J. Coomer
Frank C. Hoenes
Richard L. Ketch
Commissioners.