C. 4246 H.M.

Decision No. 35212

ORIGINAL

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

CRAEMER, COMMISSIONER:

Additional Appearances

J. E. Lyons, for J. P. Haynes, Agent, Pacific Freight Tariff Bureau.
J. S. Lafferty, for The Atchison, Topeka and Santa Fe Railway Company.

O P I N I O N

This decision deals with rates applicable to the transportation of alcoholic liquors between San Francisco and Los Angeles. It arises out of the competitive efforts of rail and highway carriers to obtain the traffic. The background of the issues involved is contained in Decision No. 33514, In the Matter of the Investigation of Reduced Rates for the Transportation of Alcoholic Liquors, 43 C.R.C. 25. That proceeding was an inquiry into the lawfulness and propriety of reduced rates published by the rail lines for the transportation of alcoholic liquors in carload lots between railheads in San Francisco and Oakland on the one hand and railheads in Los Angeles and certain adjacent points on the other. The decision discloses that of a total of approximately 700 carload shipments forwarded during 1939 from the San Francisco distilleries of Hiram Walker and Sons, Inc, and Schenley Distilleries, Inc. to various destinations in Los Angeles

only 12 moved by railroad. To obtain a larger share of this traffic, the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company sought to reduce their rates from 35 cents per 100 pounds, minimum weight 40,000 pounds, to 28 cents per 100 pounds, minimum weight 30,000 pounds. The proposed rates were suspended upon representations of The Truck Owners Association of California that they were unjust, unreasonable, insufficient and discriminatory and in violation of Sections 13, 13½, 19, 32 and 32½ of the Public Utilities Act. Following a public hearing held for the purpose of receiving evidence concerning the lawfulness of the suspended rates, the Commission issued Decision No. 33514, supra, permitting the proposed reduced rates to become effective. It is stated in the decision that these rates would not have been considered lawful had it not been for the fact that transportation conditions then existing did not afford the rail lines an equality of opportunity to compete for the liquor traffic moving by for-hire carriers. In this respect, the Commission said:

> "Although in Case No. 4246 we attempted to place the trucks and rails on a plane of 'equal opportunity' it appears from the record here that at least in this instance the desired equality may not have been attained. However, the ultimate remedy does not lie in permitting the rails to place in effect and maintain indefinitely the proposed rate, but does lie in evaluating the differences in the services of the different forms of transportation more completely than has heretofore been done. Accordingly, a hearing will be immediately scheduled in Case No. 4246 *** for the purpose of considering those matters."

Pursuant to the announced intention, public hearings were subsequently held in San Francisco in the instant proceeding which involves the establishment of rates for both rail and highway carriers.[1] At the hearings evidence was received concerning the movement

[1] Case No. 4246 was instituted by the Commission on its own motion for the purpose of establishing rates, rules and regulations to be observed by all forms of for-hire transport subject to the Public Utilities Act and the Highway Carriers' Act for the transportation of property between all points in California and for accessorial services incidental thereto.

of alcoholic liquors between San Francisco and Los Angeles by railroad and by truck, and the record in the suspension proceeding just reviewed (43 C.R.C. 25) was incorporated in the one then being made by stipulation. Concurrent briefs were thereafter filed and the matter is now ready for decision.

The evidence introduced on behalf of the rail carriers was calculated to show that under a parity of transportation rates those carriers do not have an equality of opportunity to participate in the transportation of the traffic. A research engineer, testifying for the Southern Pacific Company, listed the following separate factors which, he stated, make rail transportation more costly and, hence, less desirable than truck transportation:

1. Added cost to consignor for loading cars.[2]

2. Added cost to consignee for unloading cars.[2]

3. Added cost to consignor of maintaining property with adequate track facilities for rail car loading.

4. Added cost to consignee of maintaining property with adequate track facilities for rail car unloading.

5. Added cost to consignor or consignee for interest on investment in inventory due to slower time in transit of rail shipments.

6. Added cost to consignee for larger warehouse space.

7. Added cost to consignee for interest on investment in larger stocks required to be maintained.

8. Added cost to consignee for insurance on the larger stocks.

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[2] Loading and unloading charges are borne by the consignors and consignee in connection with rail carload shipments. On shipments transported by highway carriers at rail rates there is no additional charge for this service if it is performed within 25 feet of the equipment.

In explanation of the first two factors the witness introduced time studies based on eight loading and six unloading observations. These time studies show the cost of carloading to exceed the cost of truck loading by 1.68 cents per 100 pounds and the cost of car unloading to exceed the cost of truck unloading by .89 cents per 100 pounds. Concerning the third and fourth factors the witness stated that, due to fluctuation in property values and cost of spur track construction, it was impossible to evaluate the greater cost of maintaining property occupied by track facilities. He acknowledged that the construction and maintenance of truck loading facilities require some capital expenditures but said that they would be much less if only for the reason that less space and no trackage are required. In explanation of the fifth factor the witness represented the average delivery time by rail to be third morning and contrasted this with first morning delivery by truck. Based on prevailing interest rates and the value of shipments, the witness estimated the added time in transit increased interest charges on the "in-transit" inventories by at least .87 cents per 100 pounds. He did not attempt to calculate the added cost in cents per 100 pounds for the remaining factors, but pointed out that increased storage space requirements and accompanying interest and insurance expenses resulting from the use of rail transportation were important factors in causing consignees to request the use of trucks.

For the purpose of showing the physical disadvantages of rail transportation the research engineer introduced photographs and diagrams of the streets and track layout adjacent to the plants of Hiram Walker and Sons, Inc. and Schenley Distilleries, Inc.[3] The

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[3] The Hiram Walker plant in San Francisco is served by the Southern Pacific Company, its warehouse in Los Angeles being located on The Atchison, Topeka and Santa Fe Railway Company. The Schenley plant in San Francisco is located on the State Belt Line.

exhibits show that the tracks serving these shippers are located on streets which must also accommodate pedestrian and vehicular traffic. The engineer testified that the rail lines were also at a disadvantage from a time standpoint in so far as the spotting of equipment for loading is concerned. In this respect he pointed out that a truck can be obtained within 30 to 60 minutes after the order is placed, but that from 1 to 10 hours' notice is required before a rail car is ready for loading. The witness expressed the opinion that shippers' preference for truck transportation was due, in part at least, to the advertising space made available on the equipment without charge. Evidence of the value of this advertising was supplied by an advertising specialist whose testimony will be subsequently outlined.

Testimony of the traffic officers of Hiram Walker and Sons, Inc. and Schenley Distilleries, Inc. confirmed the statements of the research engineer. Each stressed that limited loading and unloading accommodations at his plant made it necessary to clear shipments with a minimum of delay, and contended that this could be accomplished more readily by truck than by rail transportation because trucks could be secured more quickly and were able to leave immediately upon completion of loading. These witnesses also pointed to the importance of overnight delivery in order to lessen costs attendant upon increased inventory resulting from the time utilized in transit. One of them stated that while he had made no cost study, it was his opinion that the particular truck service here involved was worth 8 to 10 cents more per 100 pounds than the comparable rail service. He stated, however, that even though such a differential were established his company would nevertheless use trucks for shipments requiring immediate delivery. This witness also testified that it was an advantage to advertise his company's brands on carriers' trucks, and

that the company currently bore the cost of painting the trucks. He could not say whether it would be willing to incur a greater expense for the advertising.

The specialist heretofore mentioned introduced exhibits purporting to show the value of the motion poster advertising furnished by trucks displaying advertisements of the shippers' brands and products on the trips between San Francisco and Los Angeles.[4] This witness likened the truck displays which may be viewed by a number of people in the cities and towns on the routes between San Francisco and Los Angeles to a stationary billboard of similar size exposed to the same number of people in one city. Based on the value of stationary signs the witness estimated the value of the mobile form of advertising to range from $2.04 to $2.12 per one-way trip, depending on the highway route taken.

Traffic officers for the Southern Pacific Company testified that since the rate of 28 cents per 100 pounds had been in effect, they had secured some additional traffic but that highway carriers were securing the large preponderance of business.[5] They expressed the opinion that if rail and truck rates remained at the same level, the liquor traffic would continue to move via highway carriers, because of flexibility of operation, greater speed in transit, opportunity to advertise on equipment, lower cost of transportation, and personalized service rendered by the truck carriers. They estimated that these factors accruing in favor of truck transportation could

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[4] According to the record only one shipper made use of truck advertising.

[5] It was stated that for the five-month period following the publication of the rate of 28 cents per 100 pounds, 27 carloads moved by railroad to Los Angeles from the San Francisco plants of Hiram Walker and Sons, Inc. and Schenley Distilleries, Inc. The total movement from the two plants is now shown. From one of the plants, for the same period, 152 shipments moved by truck and only 15 by rail.

be offset by the establishment of a differential in rates of at least 20 per cent of the current rail carload rate, or 5½ cents per 100 pounds, in favor of the rail lines. They stated that the railroads could only offer shippers the economies of mass transportation and that, in this respect, consideration had already been given to further reducing carload rates in an effort to obtain an equitable share of the traffic.

According to the testimony, precedent for the suggested 20 per cent differential is found in the action of the Railroad Administration during the first World War, which established Mississippi River barge line rates at 80 per cent of the corresponding rail rates. This, according to the Interstate Commerce Commission, was done "not so much upon estimated economy in operation compared with rail service, as upon the difference in the value of the service to the shippers, the barge service being less convenient and much slower than the rail service." (U.S. War Department v. A. & S. Ry. Co. 77 I.C.C. 317, 322.) On brief, the rail lines cited and discussed many decisions of this Commission and of the Interstate Commerce Commission wherein differences in services rendered by competing forms of transport were found to justify a differential in transportation rates in order that the inferior service might exist. However, with the exception of Decision No. 33514 in Case No. 4473, the record of which was made a part of this proceeding by stipulation, none of the decisions of this Commission which were reviewed by the rail lines dealt with the provisions of law here involved, at least from a differential standpoint. And the Interstate Commerce Commission is not guided by provisions of law similar to the California statutes with the consequence that their decisions cannot be viewed with authority on the differential question in this state.

In addition to the foregoing, one of the traffic witnesses cited as additional examples of instances where differences in the value of the service had been found to warrant a differential in rates, the higher rates for special delivery mail than for ordinary mail deliveries, higher tolls for transmittal of telegrams than for delivery of letters, higher rates for transcontinental rail transportation than for slower service between the same points via the Panama Canal, and higher fares for taxicab than for street car transportation.

The traffic officers also testified that not only were the railroads unable to secure a fair share of liquor shipments moving between railhead points, but that they were likewise unable to share in the liquor traffic moving to off-rail destinations in Los Angeles. The inability to compete for off-rail traffic, they stated, was due to the fact that the local drayage rate under which rail shipments were delivered is substantially in excess of the rate which truck carriers are permitted to combine with the rail rate in computing freight charges to off-rail destinations.[6] These witnesses expressed the opinion that off-rail inequalities could be minimized if highway carriers were required to add to the rail rate the established drayage rate in lieu of the alternative 3-mile basis of rates contained in Highway Carriers' Tariff No. 2.

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[6] Highway carriers have been authorized to collect freight charges on off-rail shipments on the basis of the rates named in Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended, in Case No. 4246), or on the basis of the applicable rail rate, plus the established city delivery rate from team track to final destination or the rate named in Highway Carriers' Tariff No. 2 for a distance of 3 miles or less, whichever is lower.

The rail lines contended also that they could not speed up traffic to any marked degree and thereby offset their present inability to obtain a greater share of alcoholic liquor shipments. An operating witness for the Southern Pacific Company testified that although certain merchandise traffic is given overnight delivery it would not be feasible for his company to accord similar service to these liquor shipments. The merchandise traffic, he stated, is required to be transported only from freight shed to freight shed, whereas carload shipments, such as the liquor business here involved, must be first switched into classification yards from origin points, assembled into train lots, hauled to classification yards at point of destination, and there classified and switched to final destination. Apart from the method of operations, he testified that if the present delivery time was to be shortened, steel wheels would have to be installed on both local and foreign line equipment in lieu of cast iron wheels,[7] that passenger engines would be required to haul the loads in lieu of freight engines in order to cover the distance in the required time, that tonnage would either have to be distributed in keeping with the lighter passenger engine ratings or more than one engine would be required for the entire haul, and that schedules would have to be recast to eliminate the hauling of traffic destined to intermediate points which is now handled under present freight schedules. The witness also pointed out that from a schedule standpoint operations would be further complicated by reason of the fact that train movements would have to be coordinated with night passenger train service over lines which are mainly single tracked.

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[7] The necessity of equipping foreign line box cars with steel wheels is due to the fact that it is customary among the railroads to utilize foreign line equipment in the hauling of local traffic, particularly where it can be headed in the direction of the owner line.

A traffic officer for The Atchison, Topeka and Santa Fe Railway Company concurred in the evidence offered by the traffic witnesses for the Southern Pacific Company and stated that while his company's alcoholic liquor tonnage had increased slightly subsequent to the publication of the 28 cents per 100 pounds rate, it was still far from satisfactory.

No evidence was offered by the Association at the hearings, its participation being confined to cross-examination of the rail witnesses and to arguments advanced in its brief. It contended therein that the laws under which highway carriers and railroads are regulated prohibit the establishment of rail rates differentially lower than truck rates, except to compensate for accessorial services. In addition, it asserted that rail rates currently published are unlawful and should be supplanted by the rates previously in effect. It asserted also that the record does not warrant the establishment of accessorial charges for highway carriers respecting loading and unloading based upon cost data submitted by the railroad research engineer, mainly because the rail lines possess offsetting advantages which must be taken into account.

In this proceeding the determination of the volume of the proposed rates for the transportation by rail and by highway carriers of the commodities involved is of secondary importance. The essential issue is, what relation should the rates established for a carrier of the one class bear to those established for a carrier of the other? This question cannot be answered by a bare consideration of the facts but requires a careful analysis of the pertinent provisions of the applicable statutes.

Basically, the railroads are governed by the Public Utilities Act and the highway carriers by the Highway Carriers' Act.

The provisions of these Acts with which we are primarily concerned are contained in Sections 13, 13½, 32 and 32½ of the former and 10 of the latter. Most of these provisions are interrelated. Sections 13 and 32 require all charges made by rail carriers to be just and reasonable[7] and a charge may be unreasonable because it is unduly low as well as because it is unduly high.[8] Likewise rates for highway carriers under Section 10 of the Highway Carriers' Act may be either maximum or minimum but must fall within the zone of just and reasonable rates.[9] Were there no further statutory provision in this regard either form of transportation could establish

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7 The pertinent portions of these sections of the Public Utilities Act follow:

"Section 13(a) All charges made, demanded, or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby prohibited and declared unlawful.

"Section 32(a) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges or classifications, or any of them, demanded, observed, charged or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges or classifications are insufficient, the commission shall determine the just, reasonable or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided."

8 S.P. Co. vs. Railroad Commission 13 Cal. (2nd) 89, 106.

9 Section 10 of the Highway Carriers' Act reads in part:

"The Railroad Commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway carrier other than a highway common carrier, now subject to the jurisdiction of said commission under the Public Utilities Act, as amended, for the transportation of property and for accessorial service performed by said highway carrier."

any rate which, when considering the normal factors of rate making, was neither higher than maximum nor lower than minimum reasonable rates.

There are, however, additional precepts to be considered in determining the zone within which rates for these carriers must fall. Section 10 also provides that minimum rates established for transportation services by highway carriers shall not exceed the current rates of common carriers by land.[10] Thus where the rate that would normally be fixed as minimum for highway carriers exceeds the current rate of a common carrier by land it must be further reduced to permit the meeting of the land carrier rate. This, however, merely operates to broaden, in certain instances, the spread that would otherwise exist between a maximum and a minimum rate for highway carriers.

In its practical effect, excepting under three conditions, Section 13½ prohibits the establishing by a common carrier of any rate lower than the maximum reasonable rate. These conditions arise (1) where the needs of commerce and the public interest require a rate below the maximum level; (2) where such a rate is necessary to meet the competitive charges of other carriers or the cost of other means of transportation and the proposed rates are not less than the charges of competing carriers or the cost of transportation which might be incurred through other means; and (3) where such a rate is published to meet competitive charges of other carriers or the cost of other means of transportation and, although lower than such competitive charge or cost, is found by this Commission, upon a showing,

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[10] "***In the event the commission establishes minimum rates for transportation services by such highway carriers, such rates shall not exceed the current rates of common carriers by land subject to the provisions of the Public Utilities Act for the transportation of the same kind of property between the same points. ***"

to be justified by transportation conditions.[11]

There remain for consideration Sections 32 and 32½ of the Public Utilities Act. Subsection (a) of the former provides that the lowest of the lawful rates for any type or class of carrier shall be the minimum rates for all classes or types. Carriers by water, however, may be granted such differentials as may be permitted under other provisions of law.[12] Section 32½ directs that rates found lower than reasonable or sufficient and not justified by actual competitive rates or costs shall be superseded by "such rates as will provide an equality of transportation rates." Again

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[11] Section 13½ reads:

"Nothing herein contained shall be construed to prohibit any common carrier from establishing and charging a lower than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction of the California Railroad Commission may establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which shall be less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as may be required by the commission and a finding by it that said rate is justified by transportation conditions; but in determining the extent of said competition the commission shall make due and reasonable allowance for added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation."

[12] "*** In any rate proceeding where more than one type or class of carrier, as defined in this act or in the Highway Carriers' Act, is involved, the commission shall consider all such types or classes of carriers, and, pursuant to the provisions of this act or the Highway Carriers' Act, fix as minimum rates applicable to all such types or classes of carriers the lowest of the lawful rates so determined for any such type or class of carrier. This provision shall not be construed to prevent the commission from granting to carriers by water such differentials in rates as may be permitted under other provisions of law."

provision is made for differentials for water carriers.[13]

A broad policy of equality between the various forms of transportation is contained both in the title and in the preamble to the Highway Carriers' Act.

The foregoing are the guideposts established to point the Commission's way in establishing rates for rail and highway carriers and in determining the relationship between such rates. Let us then consider the facts in the light of these guides.

In Decision No. 33514, supra, it was concluded that transportation conditions then existing did not "afford the respondents an equality of opportunity to compete for the alcoholic liquor traffic" then moving by for-hire carriers. The slight improvement in the rail lines' traffic has not changed the basis for that conclusion. It is clear that at equal rates the rail lines cannot secure more than a relatively negligible portion of this traffic unless, of course, these rates are brought to a level that is no longer attractive to highway carriers. To enjoy an equality of opportunity at reasonable rates the rail lines must have a rate advantage. The question then is, may this Commission permit the rail lines to establish rates which are in all other respects lawful when necessary to accord them an equality of opportunity, even though such rates may be lower than those established as minimum for truck carriers?

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[13] "Whenever the commission, after a hearing had upon its own motion or complaint, shall find that any rate or toll for the transportation of property is lower than a reasonable or sufficient rate and that said rate is not justified by actual competitive transportation rates of competing carriers, or the cost of other means of transportation, the commission shall prescribe such rates as will provide an equality of transportation rates for the transportation of property between all such competing agencies of transportation. When in the judgment of the Railroad Commission a differential is necessary to preserve equality of competitive transportation conditions a reasonable differential between rates of common carriers by rail and water for the transportation of property may be maintained by said carriers and the commission may by order require the establishment of such rates."

It is not suggested that this may not be done if there is no statutory prohibition against it. On the other hand, it is contended by protestants that it may not be done by virtue of Section 10 of the Highway Carriers' Act. A proper answer to this question requires an analysis and consideration of all of the aforementioned statutory provisions.

As we have seen, Section 13½ of the Public Utilities Act permits the establishing of a rate less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation "upon such showing as may be required by the Commission and a finding by it that said rate is justified by transportation conditions."[14] The effect of this provision, however, is procedural only; the provision did nothing more than clarify the existing law.[15]

It is argued by protestant that under Section 10 of the Highway Carriers' Act, if a lower rate is permitted for rail carriers it automatically becomes the minimum rate for highway carriers. This conclusion does not necessarily follow. The portion of the section under discussion provides that in the event the Commission establishes minimum rates for highway carriers, such rates shall not exceed the current rates of common carriers by land. It merely states a general rule and requires that in establishing minimum rates

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[14] Section 13½ also accords permissive authority to common carriers to charge less than maximum reasonable rates (1) when the needs of commerce or the public interest require and (2) to meet the competitive charges of other carriers or the cost of other means of transportation so long as said rates do not produce charges lower than those of other carriers or lower than the cost of other means of transportation. Neither of the conditions under which these provisions of law would become operative are involved in this proceeding.

[15] Southern Pacific Company vs. Railroad Commission, 13 Cal.(2nd)89.

the Commission shall have regard to the then "current rates of common carriers." After the competing rates of rail carriers in effect upon the establishment of minimum truck rates have been observed, particular and unusual circumstances not necessarily amenable to the general rule may well arise, and under such circumstances it may well be that authority is reposed in the Commission, after a showing and finding, to exercise its discretion in the determination of a reasonable rate. Nothing can be found in Section 10 which requires that a rail rate established after the establishment of minimum highway carrier rates, forthwith and ipso facto, reduces the minimum highway carrier rates.

Neither does Section 32½ of the Public Utilities Act necessarily preclude the establishing of such rail rates as are necessary to accord those carriers an equality of opportunity even though the resulting rates may be less than the minimum rates of highway carriers. It provides that when rates are found to be unreasonable and insufficient and not justified by actual competitive transportation rates or the cost of other means of transportation they shall be superseded by "such rates as will provide an equality of transportation rates." It is noteworthy that here the Legislature does not speak of an equality of opportunity but of an equality of rates.

However, Section 32(d) says clearly that in any rate proceeding where more than one type or class of carrier is involved, the Commission shall fix as minimum rates applicable to all such types or classes of carriers, the lowest of such lawful rates for any such type or class of carrier. In other words, then, in such a proceeding as this, whenever rates lower than the current rates might be found lawful for rail service, such rates would also have to be established for the truck carriers.

What has been said compels the conclusion that this Commission may not permit rail lines in a proceeding such as this to establish rates lower than the minimum rates of highway carriers without making those rates the applicable minimum rates of the highway carriers. Moreover, both Sections 32(d) and 32½ expressly recognize the need of water carriers for a differential and by their failure to make such provision in the case of rail lines vitiate the argument for differentials for carriers of that class.

It is not disputed that the required equality of rates applies only to the same transportation between the same points. Added or accessorial services performed by one carrier and not contemporaneously performed by the competing agency of transportation may and should be reflected in a difference in rates. Thus, our discussion now turns to what added or accessorial services are here involved, and what allowance should be made therefor.

Of the various factors which the rail lines contended justify special rate treatment, only loading, unloading, and advertising may be classified as added or accessorial services; the others represent advantages accruing through differences in the line-haul operations concerning which, as heretofore stated, no rate differential may be accorded. It is at once apparent that even though the record before us justifies the establishment of additional charges to be collected by highway carriers for loading, unloading and advertising services, the resulting differential will in no measure place the rail carriers and the highway carriers on a plane of equal opportunity with respect to obtaining the San Francisco-Los Angeles liquor traffic here involved. In view of these circumstances it must be concluded that the rail lines should be permitted to continue in effect the presently effective rates on alcoholic liquors, in carload lots, between San Francisco railheads and Los Angeles railheads, of 28 cents per 100 pounds, minimum weight 30,000 pounds, in order that they may obtain

whatever share of the traffic such rates will produce.

No one disputed the propriety of establishing charges for loading and unloading services; the only dispute concerns the volume of the charges. The Association contended that these services were adequately covered by present demurrage[16] and helper charges,[17] and by the rail advantage of according 48 hours free time to load and unload equipment.

Rail cars are loaded by shippers and unloaded by consignees, whereas the evidence based on actual observations and time studies of loading and unloading operations reveals that highway carriers perform those services with little, if any, shipper or consignee assistance. It is to be noted, moreover, that under the provisions of Highway Carriers' Tariff No. 2 helper charges, which the Association alleges offset the railroad loading and unloading disadvantage, do not apply where, as here, the railroad rates are used as a basis for determining freight charges.[18]

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16 The demurrage provision referred to is contained in Note 1 of Item No. 130, in Highway Carriers' Tariff No. 2. It reads:
"Note 1.-When the time consumed in performing loading, unloading or accessorial services exceeds 20 minutes per ton (based on the weight on which transportation charges are computed) a charge of $2.00 per hour shall be assessed for the time consumed in excess of 20 minutes per ton."

17 Helper charges are found in Item No. 140 of Highway Carriers' Tariff No. 2 reading: "An additional charge of $1.00 per man per hour, minimum charge 50 cents, shall be made for stacking, sorting, helpers for loading or unloading, or any other accessorial or incidental service which is not authorized to be performed under the rate named in this tariff and for which a charge is not otherwise provided."

18 Item No. 240-B of Tariff No. 2, reads in part:
"Accessorial Services Not Included In Common Carrier Rates.
"In the event *** a rate of a common carrier is used in constructing a rate for highway transportation, and such rate does not include accessorial services performed by the highway carrier, the following charges for such accessorial service shall be added ***
"(1) For tailgate loading or tailgate unloading -
no additional charge ***;"

Demurrage charges referred to are designed, not to cover cost of loading and unloading, but to provide the carriers with reasonable revenue for use of equipment beyond the time ordinarily required for loading and unloading. While the railroads are permitted to accord 48 hours free time for loading and unloading service, the record herein does not show this to have been a railroad advantage, particularly where loading facilities, at least, were shown to be unduly congested and where expedited handling and overnight service is the desideratum.

In view of the circumstances just outlined, it is my conclusion that the truck loading and unloading costs submitted by the railroad research engineer should be given effect. A charge of 1½ cents per 100 pounds for loading, slightly lower than the estimated costs, and 1 cent per 100 pounds for unloading, slightly higher than the estimated costs, should be included in Highway Carriers' Tariff No. 2 as minimum accessorial charges to be applied by highway carriers in connection with the particular transportation here involved.

With respect to advertising displayed on carriers' trucks, the rail lines sought the establishment of an accessorial charge of two dollars per truck per one-way trip, which the Association conceded would be an appropriate charge. This charge appears to be reasonably related to the value of the service as measured by the testimony of the advertising specialist. To make clear its application, however it would be expressed in terms of the value realized from a round-trip operation instead of on a one-way basis, having in mind that the advertising value to the shipper is present regardless of the content of the trucks or whether they are proceeding away from or returning to the San Francisco Bay area.

It appears from the record that the highway carriers have a particular rate advantage on liquor shipments moving to off-track facilities in the Los Angeles drayage area, due to the fact that highway carriers are authorized to combine the 3 mile distance class rate in Highway Carriers' Tariff No. 2 (4½ cents per 100 pounds, 4th class) with the 28 cents per 100 pounds rail rate, whereas shippers using rail service are required to add local drayage rates (ranging from 9 to 11 cents per 100 pounds on shipments subject to minimum weights of 20,000 pounds or over) to the rail rate for the same transportation. Quite obviously the rates here used in constructing combinations of rates for rail-truck movement are not related or even close to the Highway Carriers' Tariff No. 2 basis of determining through truck rates, contrary to the intent expressed re Establishment of Rates, etc., of All Common and Highway Carriers[19], 41 C.R.C. 671,712.

Under the circumstances here, there appears to be no reasonable ground for permitting the highway carriers to use the 3 mile distance class rates as a factor in combination with rail rates to determine transportation charges on liquor shipments to off-rail points in the Los Angeles drayage area. This inequality will be corrected as suggested by the rail line witnesses.

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19 In that proceeding which was Decision No. 31606 of the case here involved, the Commission said:

"That the examiners had in mind the fact that intracity movements to and from railheads would not be governed by the minimum rates herein established and that, consequently, the rate used in constructing combinations with rail and vessel rates should be kept reasonably close to the 'going' drayage rates is evident ***. In the event highway carriers are found to be disadvantaged unduly at particular points, action may be taken to establish minimum drayage rates at those points or to provide proportional rates equivalent to what are shown actually to be the 'going' drayage rates."

FINDINGS AND CONCLUSIONS

Upon consideration of all the evidence of record, I am of the opinion and find:

1. That in the transportation between San Francisco and Los Angeles of the shipments of alcoholic liquor involved in this proceeding, highway carriers perform loading, unloading, and advertising accessorial services which are not performed by respondent rail lines, and for which the accessorial charges set forth in the preceding opinion are just, reasonable and non-discriminatory and should be established;

2. That for the transportation of such shipments from San Francisco railhead points of origin to off-rail points of destination in the Los Angeles drayage area, the highway carriers when constructing combinations with the rail rates should be required to add to the rail rates charges no lower than those established as minimum for the transportation from any team track or established depot to which the rail rates apply to points of destination;

3. That under existing transportation conditions, the rail line respondents are not on a plane of equal opportunity in competing with highway carriers for the transportation of the alcoholic liquor shipments involved in this proceeding, nor will they be after giving effect to the matters contained in Findings Nos. 1 and 2 hereof;

4. That to place the rail line respondents on a plane of equal opportunity with highway carriers for the transportation involved in this proceeding the Commission, in addition to the accessorial charges and rates found reasonable and non-discriminatory in Findings Nos. 1 and 2 hereof, should establish rates for rail transportation differentially under those of highway carriers.

5. That in such a proceeding as this, in which rates of both classes of carriers are in issue, Section 32 (d) prohibits the Commission from establishing rates for transportation by railroad differentially under those established for the same transportation by highway carriers.

The following form of order is recommended:

O R D E R

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

IT IS HEREBY ORDERED that Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended) be and it is hereby amended by substituting therein, to become effective May 25, 1942, First Revised Page 19 (Cancels Original Page 19), Second Revised Page 24 (Cancels First Revised Page 24), and Sixth Revised Page 26 (Cancels Fifth Revised Page 26), said revised pages being attached hereto and by this reference made a part hereof.

IT IS HEREBY FURTHER ORDERED that tariff publications required to be made by common carriers as a result of the amendment herein of Highway Carriers' Tariff No. 2 shall be made effective on May 25, 1942, on not less than five (5) days' notice to the Commission and to the public; and that tariff publications not required to be made but which are herein authorized may be made effective not earlier than May 25, 1942, on not less than five (5) days' notice, if published to become effective on that date.

IT IS HEREBY FURTHER ORDERED that in all other respects Decision No. 31606, as amended, shall remain in full force and effect.

The effective date of this order shall be thirty (30) days from the date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 31st day of March, 1942.

Commissioners.

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
120 8-7-39	APPLICATION OF LESS CARLOAD RATES Rates based upon less carload or any quantity ratings in the Western Classification, Exception Sheet, or this tariff, and commodity rates subject to minimum weights of less than 10,000 pounds, include loading into and unloading from the carrier's equipment, subject to Note 1. NOTE 1.- When shipment is picked up at or delivered to a point not at street level, and no vehicular elevator service or vehicular ramp is provided and made available to the carrier, an additional charge of 5 cents per 100 pounds shall be assessed for the service of handling shipment beyond carrier's equipment; except that no additional charge shall be made for this service in connection with shipments weighing 100 pounds or less.
130 8-7-39	APPLICATION OF CARLOAD RATES Rates based upon carload ratings in the Western Classification, Exception Sheet, or this tariff, and commodity rates subject to minimum weights of 10,000 pounds or more, including loading into and unloading from the carrier's equipment at established depots. At points of origin or points of destination other than established depots, such rates include service of driver only for loading into and unloading from the carrier's equipment, subject to Note 1. (See Item No. 140 series for charges for additional help.) NOTE 1.- When the time consumed in performing loading, unloading or accessorial services exceeds 20 minutes per ton (based on the weight on which transportation charges are computed) a charge of $2.00 per hour shall be assessed for the time consumed in excess of 20 minutes per ton.
*140-A Cancels 140	ACCESSORIAL CHARGES An additional charge of $1.00 per man per hour, minimum charge 50 cents, shall be made for stacking, sorting, helpers for loading or unloading, or any other accessorial or incidental service which is not authorized to be performed under the rate named in this tariff and for which a charge is not otherwise provided. *Advertising on Equipment. - For placing or carrying any sign, or signs, or advertising, of alcoholic liquors on carrier's equipment engaged in transporting alcoholic liquors, N.O.I.B.N., as described under that heading in the Western Classification, moving between San Francisco Territory and Los Angeles Territory, an additional charge of $4.00 per unit per shipment shall be assessed by the carrier.

*Increase
*Change
Decision No. 35212

EFFECTIVE MAY 25, 1942

Correction No. 250

Issued by The Railroad Commission of the State of California,
San Francisco, California.

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)

ALTERNATIVE APPLICATION OF COMBINATIONS WITH COMMON CARRIER RATES

When lower aggregate charges result, rates provided in this tariff may be used in combination with common carrier rates, except rates of coastwise common carriers by vessel, for the same transportation as follows:

(a) When point of origin is located beyond railhead or an established depot and point of destination is located at railhead or an established depot, add to the common carrier rate applying from any team track or established depot to point of destination the rate provided in this tariff for the distance from point of origin to the team track or depot from which the common carrier rate applies. (See Notes 1, 2 and 3.)

(b) When point of origin is located at railhead or an established depot and point of destination is located beyond railhead or an established depot, add to the common carrier rate applying from point of origin to any team track or established depot the rate provided in this tariff for the distance from the team track or depot to which the common carrier rate used applies to point of destination. (See Notes 1, 2 and 3.)

*210-B Cancels 210-A

(c) When both point of origin and point of destination are located beyond railhead or an established depot, add to the common carrier rate applying between any railheads or established depots the rate provided in this tariff for the distance from point of origin to the team track or depot from which the common carrier rate used applies, plus the rate provided in this tariff for the distance from the team track or depot to which the common carrier rate used applies to point of destination. (See Notes 1, 2 and 3.)

NOTE 1.- If the route from point of origin to the team track or established depot, or from the team track or established depot to point of destination, is within the corporate limits of a single incorporated city, the rates provided in this tariff for transportation for distances of 3 miles or less, or rates established for transportation by carriers as defined in the City Carriers' Act (Chapter 312, Statutes of 1935, as amended), whichever are the lower, shall apply from point of origin to team track or established depot or from team track or established depot to point of destination as the case may be; except that if the route from team track or established depot is within the limits of the Los Angeles Drayage Area (see Item No. 30 series for reference), rates no lower than those established for transportation therein shall apply in connection with shipments of alcoholic liquors originating in San Francisco Territory.

NOTE 2.- When a rail carload rate is subject to varying minimum weights, dependent upon the size of the car ordered or used, the lowest minimum weight obtainable under such minimum weight provisions may be used in applying the basis provided in this item.

NOTE 3.- In determining the aggregate charge by railroad of transporting shipments of hay and related articles, as described in Item No. 657 series, there shall be added to the rail rate (or the combined rail and highway carrier rate) 25 cents per ton for shrinkage.

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)

ACCESSORIAL SERVICES NOT INCLUDED IN COMMON CARRIER RATES

In the event under the provisions if Items Nos. 200 to 230 series, inclusive, a rate of a common carrier is used in constructing a rate for highway transportation, and such rate does not include accessorial services performed by the highway carrier, the following charges for such accessorial services shall be added (except as otherwise provided in connection with individual rates):

*(1) For tailgate loading or tailgate unloading - no additional charge (See Notes 1 and 3);

(2) For loading or unloading other than tailgate loading or tailgate unloading - 2 cents per 100 pounds. (See Note 2);

(3) For C.O.D. service - charges provided in Item No. 180 series;

(4) For other accessorial services - charges provided in Item No. 140 series;

(5) Split pickup or split delivery shall not be accorded unless included in the common carrier rate. (See Items Nos. 220 and 230 series for exception.)

*240-C Cancels 240-B

NOTE 1.- When shipments consisting in whole or in part of Oil, Water or Gas Well Outfits and Supplies, and Other Articles, as described in Item No. 365 series, moving between points located in Los Angeles and Orange Counties on the one hand and points located in California, Salinas, Fresno and south thereof, on the other hand, are transported:

(a) Under the provisions of Item No. 200 series, a charge of 2 cents per 100 pounds shall be added for tailgate loading, and a charge of 2 cents per 100 pounds shall be added for tailgate unloading;

(b) Under the provisions of Paragraph (a) of Item No. 210 series, a charge of 2 cents per 100 pounds shall be added for tailgate unloading;

(c) Under the provisions of Paragraph (b) of Item No. 210 series, a charge of 2 cents per 100 pounds shall be added for tailgate loading;

(d) Under the provisions of Paragraph (c) of Item No. 210 series, no additional charge shall be added for tailgate loading or tailgate unloading.

NOTE 2.- For loading or unloading other than tailgate loading or tailgate unloading of Lumber and Forest Products as described in Item No. 660 series or of hay and related articles as described in Items Nos. 657 and 658 series, the charge will be one cent per 100 pounds.

*NOTE 3.- When shipments consisting in whole or in part of Liquors, alcoholic, N.O.I.B.N., as described under that heading in the Western Classification, moving between San Francisco Territory and Los Angeles Territory are transported:

(a) Under the provisions of Item No. 200 series a charge of 1½ cents per 100 pounds shall be added for tailgate loading, and a charge of 1 cent per 100 pounds for tailgate unloading;

(b) Under the provisions of Paragraph (a) of Item No. 210 series, a charge of 1 cent per 100 pounds shall be added for tailgate unloading;

(c) Under the provisions of Paragraph (b) of Item No. 210 series, a charge of 1½ cents per 100 pounds shall be added for tailgate loading;

(d) Under the provisions of Paragraph (c) of Item No. 210 series, no additional charge shall be added for tailgate loading or tailgate unloading.