

Decision No. 37338**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 FORTIER TRANSPORTATION CO., a co-)
 partnership, for authority to depart) Application No. 26241
 from the rules and regulations of)
 Highway Carriers' Tariff No. 2, under)
 the provisions of the Highway Carriers')
 Act.)

BY THE COMMISSION:

Appearances

Berol & Handler by Edward M. Berol, for applicants.
 William Meinhold, for Southern Pacific Company and
 Pacific Motor Trucking Company.
 George T. Hurst, Starr Thomas, and C. R. Bishop, Jr.,
 for The Atchison, Topeka and Santa Fe Railway
 Company.

O P I N I O N

By this application, W. J. Fortier and R. A. Fortier, copartners doing business as Fortier Transportation Co., seek authority under Section 11 of the Highway Carriers' Act to deviate from the minimum rates established by Decision No. 31606 (41 C.R.C. 671), as amended, for the transportation of groceries and other commodities handled by wholesale grocery houses. The authority sought is proposed to be restricted to transportation service performed for Better Buy Grocery Company in connection with shipments forwarded from Fresno to points in the San Joaquin Valley within 120 miles of that city. It is also proposed that this authority be limited to the duration of the war and six months thereafter.

A public hearing was had at San Francisco before Examiner Mulgrew.

Applicants have been performing a regular routed delivery service for the grocery company for more than ten years. Twelve

routes have been established. Ordinarily, each route is covered once a week but occasionally extra trips are required. Three semi-trailers, three full-trailers and the necessary tractors are generally assigned to the operation.

The total weight of the traffic transported averages approximately 400,000 pounds per week. The shipments usually exceed 30,000 pounds and involve the making of from 20 to 25 deliveries. From 10 to 80 different articles are ordinarily involved in each delivery. The grocery company handles some 3,000 different commodities. It is represented that the purpose of the application is not to reduce the volume of the aggregate charges but merely to simplify the method of ascertaining them.

The established minimum rates, which have been incorporated in Highway Carriers' Tariff No. 2, vary according to the weight of the shipment, the length of the haul and the classification of the commodity. For split delivery shipments (shipments consisting of component parts for delivery to two or more destinations), there are additional charges based on the weight of their component parts. Applicants propose to observe the tariff rates based on the weight of the shipment and the distance transported but to discontinue classifying the freight. Instead of classifying the property according to the commodities actually shipped, applicants propose to assign the following percentages to the various classifications involved:

<u>Per Cent</u>	<u>Classification</u>
2	1st Class
1	2nd "
3	3rd "
3	4th "
91	90% of 4th "

These percentages are predicated upon a study of the tonnage transported over a representative route on alternate months during a 2-year period beginning April, 1942. This study discloses that, of the total tonnage involved, 1.91%, .90%, 2.57%, 2.74% and 91.87% consisted of articles classified 1st, 2nd, 3rd, 4th and 90th of 4th Class, respectively.

Under Highway Carriers' Tariff No. 2, the additional charges for each component part of a split delivery shipment range from 27 cents for 100 pounds or less to \$2.12 for over 20,000 pounds. Applicants propose to use instead a rate of $3\frac{1}{2}$ cents per 100 pounds in determining split delivery charges. This rate was evolved from a study which developed that charges accruing under the established minimum rates for all shipments transported over the Shafter-Wasco-Delano route during the period April 1, 1942 to March 30, 1944 and over the remaining 11 routes during the 5-month period beginning December 1, 1943, amounted to 87.2 cents per delivery or 3.13 cents per 100 pounds.

Applicants point out that, for split delivery service, the proposed rate would produce higher over-all charges than the existing tariff charges; and that the recommended adjustment of the classification percentages would also tend to produce higher aggregate charges. The adoption of their proposals, it is claimed, would simplify determination of the applicable charges by making it unnecessary to classify the property transported or to determine the weights for component parts of the shipments.

Carrier and shipper witnesses testified that these proposals resulted from the shipper's demand that applicants secure relief from the existing classification and weighing requirements,

lease its trucks to the shipper for proprietary operations, or forego the business. These demands, the witnesses said, are the outgrowth of the serious manpower shortages faced by applicants and the interest-shipper. Assertedly, it has become increasingly difficult and burdensome to classify and weigh the individual deliveries. The press of necessary clerical work in both the carrier's and shipper's offices would, the witnesses said, be noticeably lessened by the granting of the relief here sought. The carrier witness stated that the burden of applicants' office work has become so heavy that its experienced and reliable employees have threatened to take positions elsewhere unless given some relief from their present work-load. One employee, he also said, would be released for full time handling of other matters if the sought authority is granted. This witness also testified that although the account here involved approximates only 5% of applicant's total gross revenue the amount of office time devoted to it approximates 20% of the total time given all accounts. According to the shipper witness, his concern is facing a comparable situation with respect to clerical work and would derive similar benefits from the granting of the application.

Applicants are extremely reluctant to lease their trucks. They have not yet decided whether or not they would do so should the application be denied. However, the shipper witness declared flatly that unless the relief sought is granted or the carrier consents to a lease arrangement his firm will secure sufficient equipment to conduct its own proprietary operations from some other source. Offers to lease suitable equipment, he said, have been made by other parties. All of the several competing wholesale grocery concerns have engaged in proprietary carriage of their goods for some time. Certain of them formerly used applicants' for-hire carrier service but discontinued it in favor of private carriage.

Southern Pacific Company, Pacific Motor Trucking Company and The Atchison, Topeka and Santa Fe Railway Company opposed the granting of the authority sought. Grounds for the Santa Fe's opposition are not disclosed. The position of Southern Pacific Company and Pacific Motor Transport Company is that this application may not be properly considered under Section 11 of the Highway Carriers' Act because the aggregate charges which would accrue under the proposal would probably be not less than those which would otherwise be realized and that the granting of the application would extend special privileges to applicants and to their patron Better Buy Grocery Company. A witness for these companies explained it would not be feasible for them to make arrangements similar to those proposed by applicants.

The aggregate charges under applicants' proposals may reasonably be expected to exceed those which would accrue if all articles were classified and the existing split delivery rates applied to individual shipments. It is clear, however, that by taking averages of split delivery shipments, for example, charges for individual split deliveries would in some cases be less than those which would be applicable under the established minimum rates. In regard to the allegations respecting preference and prejudice, the record indicates that the interested shipper is the only wholesale grocery concern in the Fresno area depending upon for-hire carriage for a routed delivery service. The record also shows that applicants have enjoyed the business for a substantial period of time and that it will be lost to all for-hire carriers if the application is denied. Under such circumstances protestants' opposition to this application loses most, if not all, of its force.

Under ordinary circumstances, the Commission would not approve rates which do not differentiate between commodities possessing

widely varying transportation characteristics. Here, however, the record is clear that the granting of the authority sought is necessary if the traffic is to be retained to for-hire carriage. The revenue produced by the proposed rates would approximate, and in any event be not less than, that produced by the rates now in effect. Granting of the sought relief will conserve much needed manpower. Limited to the emergency, it will not affect others adversely. The application will be granted.

Because the length of time the present abnormal conditions may prevail cannot now be determined, the authority herein granted will be limited to a period not exceeding one year. It may be shortened or extended if future conditions warrant.

O R D E R

A public hearing having been held in the above entitled proceeding, and based upon the evidence received at the hearing and upon the conclusions set forth in the preceding opinion,

IT IS HEREBY ORDERED that W. J. Fortier and R. A. Fortier, copartners doing business as Fortier Transportation Co., be and they are hereby authorized to deviate from the requirements of Decision No. 31606, as amended, in Case No. 4246, by assessing and collecting for the transportation of property for Better Buy Grocery Co. from Fresno to points situated within 120 miles thereof rates based upon the classification of property under the percentage basis proposed in the above entitled application and split delivery charges based upon a rate of $3\frac{1}{2}$ cents per 100 pounds in lieu of the rates and charges otherwise applicable under the provisions of the aforesaid Decision No. 31606, as amended.

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

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

Dated at San Francisco, California, this 20th day of September, 1944.

Justice F. Craven
Francis K. Havenner
Frank J. ...
Commissioners