

Decision No. 37572

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Application of WALKUP)
DRAYAGE & WAREHOUSE COMPANY for an order)
granting permission to charge less than the) Application No. 25066
minimum rates established by Decision No.)
32541, in Case No. 4084.)

BY THE COMMISSION:

Douglas Brookman, for applicant and
for Baker and Hamilton.

FIRST SUPPLEMENTAL OPINION

Decision No. 35933 of November 5, 1942, in this proceeding, authorized applicant to observe rates less than the minimum rates established in Rates for San Francisco City Carriers, 39 C.R.C. 636, as amended, in connection with drayage service performed for Baker and Hamilton, a concern engaged in the wholesale hardware business. The established minimum rate for drayage for wholesale hardware houses is 7-3/4 cents, minimum charge 30 cents per shipment, for a minimum aggregate quantity of 9,000 tons per year.¹ In lieu of this basis, applicant was permitted to observe rates not less than 8 1/2 cents, minimum charge 35 cents per shipment, from November 15, 1942, to December 31, 1943. The minimum aggregate quantities required to be used in connection with this authority were 500 tons for the 1942 period involved and 4,000 tons for the year 1943.

By supplemental application, filed November 27, 1944, applicant requests that Decision No. 35933 be amended so as to grant it, for the calendar years 1944 and 1945, authority similar to that held in 1943.

¹ Rates stated in this opinion are in cents per 100 pounds. For transportation of quantities of less than 9,000 tons per year, minimum rates varying with the classification of the property and the size of the individual shipments are provided. They range from 5 1/2 cents on shipments weighing 6,000 pounds or more and classified at 80 per cent of 4th class to a minimum charge of 70 cents per shipment on shipments weighing less than 100 pounds and classified 1st class or higher.

A public hearing was had at San Francisco on December 14, 1944, before Examiner Mulgrew.

In the first eleven months of this year applicant has handled approximately 6,000 tons of freight for Baker and Hamilton. The shipper's acting traffic manager testified that there was no possibility of the December traffic raising the year's tonnage to the 9,000-ton minimum. For 1945, he said, there was little or no prospect that this minimum could be met. Abnormal conditions resulting from the war which materially reduced his firm's drayage requirements and which are discussed in Decision No. 35933, supra, the witness asserted, still prevail. These conditions, including the suspension of intercoastal vessel service and restrictions and priority on manufacturing and distribution of the merchandise handled by Baker and Hamilton, the witness pointed out, are matters over which his concern exercises no control.

Applicant's president testified that it had experienced higher costs on certain factors of operating expense. He said that, on the other hand, it had enjoyed an over-all increase in the volume of traffic because of the abnormally heavy demand for drayage service occasioned by the war. This increased volume, he asserted, has resulted in higher load factors and their attending operating economies. Under these conditions, the witness testified, operations under the proposed 8 $\frac{1}{2}$ -cent rate would be profitable notwithstanding increases in some expense factors.

No one opposed the granting of the supplemental application.

The record indicates that the circumstances and conditions which surround the drayage in question are substantially the same as at the time the previous authority was granted. It appears that the proposed rate is still sufficient to permit compensatory operations to be conducted thereunder. Reinstatement of the authority appears justified.

In various proceedings under the City Carriers' Act, the Commission has held that provision is not made in that act for the retroactive adjustment of rates and charges.² In so far as the application here before us seeks revision of the basis of determining charges on traffic handled during 1944 it raises the question of whether or not a retroactive adjustment is involved. Counsel argued that the sought revision would not be retroactive. He contended that applicant's proposal amounts to a modification of charges determined on an annual basis and that the adjustment of this basis before the end of the year would be a current adjustment. He also contended that the procedural provisions of Section 64 of the Public Utilities Act, which under Section 12 of the City Carriers' Act, have been incorporated in that act by reference, empower the Commission to amend its original order (Decision No. 35933, supra) so as to make the authority granted thereby applicable to transportation service performed during 1944.³

These arguments are not persuasive. Applicable transportation charges are those in effect at the time the shipments are accepted for transportation.⁴ We have here not one but a multitude...

² See Application of J. A. Clark Draying Company, Ltd.; and San Francisco Shopping News Company, Inc. vs. J. A. Clark Draying Company, Ltd. (40 C.R.C. 773); and Application of Floyd A. Greene and D. J. Glardon (Decision No. 36676 of October 26, 1943; unreported).

³ Section 64 of the Public Utilities Act reads as follows:
"The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter or amend any order or decision made by it. Any order rescinding, altering or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions."

Section 12 of the City Carriers' Act is reproduced below:

"Except as herein otherwise expressly provided; in all respects in which the Railroad Commission has power and authority under the Constitution of this State or this act, applications and complaints may be made and filed with the Railroad Commission, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon; and petitions for writs of review or mandate filed with the Supreme Court of this State, considered and disposed of by said court, in regard to the matters provided for in this act, in the same manner; under the same conditions and subject to the same limitations and with the same effect specified in the Public Utilities Act, so far as applicable. (Amended 1939, ch. 683.)"

⁴ Transcontinental Freight Co. vs. Director General (62 ICC 127).

of shipments all of which are or should be on separate bills of lading. The statutory provisions cited by applicant are admittedly procedural, not substantive. We find in them no authority for granting relief of the nature here sought.

Upon consideration of all the facts of record we are of the opinion and find that applicant's request for authority for 1945 similar to that held by it in 1943 has been justified and should be granted; and that in other respects the application should be denied.

O R D E R

Based upon the evidence of record and upon the conclusion and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that Walkup Drayage and Warehouse Company be and it is hereby authorized to transport property for Baker and Hamilton between points in the City and County of San Francisco at rates less than the minimum rates established for that transportation by Decision No. 28632 of March 16, 1936, as amended, in Case No. 4084 but not less than 8½ cents per 100 pounds, minimum charge 35 cents per shipment, minimum aggregate quantity 4,000 tons per calendar year.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall expire December 31, 1945, unless extended by appropriate order of the Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects the supplemental application, filed November 27, 1944, in this proceeding, be and it is hereby denied.

This order shall become effective January 1, 1945.

Dated at San Francisco, California, this 21st day of December, 1944.

Richard L. Lohse
Justus F. Calver
Frank R. Havener

James P. Farrell
Commissioners