

**ORIGINAL**Decision No. 38230

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Pacific Freight Lines and Pacific )  
 Freight Lines Express for an order )  
 authorizing applicants to cancel )  
 their participation in Pacific )  
 Freight Tariff Bureau Exception )  
 Sheet 1-Q, C.R.C. No. 39 of J. P. )  
 Haynes, Agent. )

Application No. 26648

BY THE COMMISSION:

Appearances

Wyman C. Knapp for applicants.  
 Benjamin Chapman for Office of Price Administration,  
 interested party.  
 H. P. Merry for Southern California Freight Lines  
 and Southern California Freight Forwarders,  
 interested parties.  
 Jack Nott for Meat Packers, Incorporated, interested  
 party.

O P I N I O N

Applicant corporations, Pacific Freight Lines and Pacific  
 Freight Lines Express, are common carriers of property as defined  
 in the Public Utilities Act. By this proceeding they seek authority  
 to remove application of an exception sheet from the tariff in which  
 their principal local and joint rates are provided. The proposed  
 adjustment would involve some increases in charges, some reductions.

<sup>1</sup> The exception sheet is Pacific Freight Tariff Bureau Exception Sheet No. 1-Q, C.R.C. No. 39 of J. P. Haynes, Agent. The tariff is Local and Joint Freight Tariff No. 7, C.R.C. No. 2 (series of C. G. Anthony) of E. J. McSweeney, Agent.

below rates heretofore established by this Commission as minimum, and some revisions not affecting the rates or charges.

Public hearing was had before Examiner Bryant at Los Angeles on August 22, 1945, at which time the matter was submitted for decision.

Testimony in support of the application was offered by the traffic manager of the applicant corporations, who explained in detail the changes proposed and the reasons and facts relied upon to justify them. No other witness testified. No one appeared in opposition to the application, although the record indicates that approximately 600 shippers and consignees were informed of the proposal. The Office of Price Administration was duly notified and was represented at the hearing, but made no statement of its position.

The exception sheet in question is published by an issuing agent on behalf of some 180 common carriers, for use in California and seven other western states. About one-third of the participating carriers are rail lines; the others include highway common carriers, express corporations, and carriers by vessel. The exception sheet currently consists of 44 rules, about half of which are exceptions to the governing classification; and of some 145 rating items, all of which are exceptions to the classification.

None of the rules appear to have any material application to applicant's tariff. Thirty-seven of them are specifically nullified by tariff provision; three are inapplicable because they clearly affect only railroad traffic; and one is inapplicable because it applies only on interstate traffic. The three remaining rules

have limited technical application, but are of little significance in applicants' operations.<sup>2</sup>

Of the many rating items, 15 are not applicable upon California intrastate traffic, 24 relate only to shipments in designated types of rail equipment, 29 are nullified by conflicting provisions of applicants' tariff,<sup>3</sup> and 24 would be reproduced in applicants' tariff and thus retained without change. So far as all of these items are concerned, applicants' proposal would have no effect upon rates, charges, or services, and might therefore be adopted without authorization. There remain for consideration hereinafter 55 rating items, the proposed elimination of which would affect charges and services.

The primary objective of this application, as explained by applicants, is to eliminate provisions which are conflicting, indefinite or ambiguous. Although elimination of these provisions would have the effect of increasing some charges and of reducing others, applicants disavow any purpose to accomplish increases or reductions through this proceeding. Their proposal is presented as essentially one of tariff clarification and simplification, with the effect upon the charges being merely incidental.

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One rule (Rule 12) relates to packing requirements on used household goods and related articles; however, the tariff provides (Item 290) that articles may be accepted for transportation in any practicable container or shipping form. The other two rules (142 and 158, relating to prepayment of charges and participation in claim deficits on fresh fruits and vegetables) are limited by the tariff to application only locally within the Los Angeles Drayage Area.

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The tariff states (Item No. 25-D), "Where the ratings, rules and regulations or other provisions or conditions provided in the current Western Classification or current Exception Sheet are in conflict with those provided in this tariff, the provisions of this tariff will apply."

The incidental reductions below established minimum rates would be of little importance, as they would be few in number, would be mostly of a technical nature only, and would, if approved, be available in any event to competing carriers under alternative provisions of the minimum rate orders. The principal question to be considered in this application is whether or not the proposed increases have been shown to be justified as required by Section 63(a)<sup>4</sup> of the Public Utilities Act.

Most of the items requiring specific consideration fall into four groups. The largest group consists of 33 items hereinafter identified, which assertedly provide only "dead" or "paper" ratings so far as the applicants are concerned; i.e., ratings on traffic which has not been tendered or transported for some years, and which is not anticipated for the future. The traffic manager stipulated that if cancellation of these ratings were permitted, the items would be promptly restored should any traffic be offered for transportation within a year. Under these conditions, retention of the items appears to be unnecessary. Their cancellation will be authorized, subject to the stipulation as more specifically set forth in Appendix "A" hereof.

A second group consists of 10 items which are nullified in varying degrees by conflicting and superseding provisions of the tariff, but which in other respects provide effective ratings or minimum weights lower than those which would become applicable if the items were cancelled. Included in these items are extensive lists of commodities, some of which are described in terms different from

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The section reads: "No public utility shall raise any rate, fare, toll, rental or charge or so alter any classification, contract, practice, rule or regulation as to result in an increase in any rate, fare, toll, rental or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified."

those used in either the tariff or the governing classification. Applicants' witness asserted that a considerable amount of clerical work is required to determine in each instance the extent to which the provisions of the items are superseded by those of the tariff, and said that errors in billing and collection of charges frequently occur for this reason. He declared also that such increases as would result from cancellation of the items would be largely technical rather than practical, for the reasons that they would apply on commodities not frequently tendered, or for distances greater than those over which the shipments normally moved. The record is convincing that the overlapping area between provisions of these 10 items and those of the tariff is not in harmony with the requirement that rates, rules and regulations of common carriers be plainly stated in clear and explicit terms. However, the existence of such an area does not serve to justify increased charges to the public. It is within the power of the carriers to simplify and clarify the terms of their schedules without effecting any increase in charges, technical or otherwise, and that is the procedure which should be followed by the applicants with respect to the 10 items here considered.<sup>5</sup>

A third group of items consists of three which name ratings on commodities that, according to the witness, the applicants do not undertake to transport. One of these items relates to certain explosives which the applicants are assertedly prohibited from transporting

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<sup>5</sup> For example, Item 210 of the exception sheet might be cancelled if certain commodities listed therein but not included in Item 400 series of the tariff were added to the latter item; and Items 390, 395, 400 and 410 of the exception sheet might be cancelled if any commodities listed therein but not included in corresponding items of the tariff were added to the latter items, and if the distance commodity rates named in the tariff, where higher, were reduced to the level of the class rates now applicable. The 10 items here referred to are 210, 390, 395, 400, 410, 475, 580, 1030, 1035 and 1040 series.

under normal conditions; and the other two relate to livestock, poultry and hares, which, it was said, the applicants are not equipped to handle. <sup>6</sup> Elimination of these items would have the effect of establishing higher charges on the commodities, although the volume of the charges would, of course, be of no practical importance if the traffic were not accepted. In addition to this point, the witness declared that one of the items is ambiguous in its relation to the tariff. Neither of these points will serve to justify an advance in the ratings and charges. As hereinbefore pointed out, any ambiguity may be removed without the necessity of effecting higher charges. That the traffic is not accepted is no justification for increasing the published charges thereon. Applicants have a statutory obligation to accept and transport all shipments tendered within the scope of their offer to serve. If they wish to eliminate some classes of traffic from their common carrier undertaking, they should take the necessary steps to obtain authority therefor and thereafter amend their tariffs accordingly.

The fourth group of items consists of three whose cancellation, as proposed, would result in direct increases in charges. Two of these items, involving iron or steel barrels, drums and pails, the witness thought to be inapplicable for the reason that minimum weights provided therein are made subject to an inapplicable rule of the classification. His interpretation is not supported by terms of the items in question. Since the classification rule does not apply, the reference thereto in the questioned items is of no effect; in other respects, however, the items including their

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<sup>6</sup> Item 520-B, explosives; Item 810-A, livestock chiefly valuable for breeding purposes; Item 1070, poultry and hares.

minimum weight provisions, are applicable.<sup>7</sup> In further justification of the proposed cancellation of these three items, the witness declared that they were "not compensatory" to applicants. In support of this statement he offered examples of gross revenue received from typical loads, but did not undertake to show the cost of performing the service. Unsupported statements that rates or ratings are not compensatory will not serve to justify increases. Applicants will be expected to retain the effective provisions of the three items here discussed.

Eight unrelated items remain for separate consideration. The first of these (170 series) names a carload minimum weight and rating on domestic brandy. In so far as grape brandy is involved, this item is superseded by a tariff provision applicable to "Liquors, vinous"; and the witness testified that no other type of brandy had been transported or tendered. Cancellation of this item will be justified, subject to the "dead rate" stipulation as to domestic brandy other than that derived from grapes.

Item 300 series (and Item 15 series to which it refers) provides ratings on used empty packages of various kinds as described therein. This item is in part superseded by provisions of applicants' tariffs; and here again the witness stated that the conflicting provisions were the cause of disputes and clerical errors. Beyond clarifying the items, applicants seek authority to make amendments which would increase the resulting charges substantially. Applicants would, for example, cancel the reduced ratings in so far as they apply to empty packages forwarded for a return paying load. Reasons advanced by the witness for this

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The two items here referred to are Nos. 260 and 360 series; the third item is No. 435 series, relating to specified clay articles.

proposed cancellation are that "some shippers have taken advantage of this rating .... and it is almost impossible to enforce the provision that the filled carriers be returned over the same line over which the empty carriers moved." Such policing problems as may be inherent in the practical application of the item are presumably common to all carriers which participate in or are governed by the exception sheet, and have been encountered over a period of many years. In the absence of a substantial showing that applicants have been and will be unable to apply the item in its present form, they will not be justified in adopting the simple expedient of cancelling the ratings. Applicants would also make these ratings subject to a "cubic-foot" rule, on the ground that "many shipments are transported at out-of-pocket loss due to their bulk." As hereinbefore stated, an unsupported assertion that ratings are not compensatory will not serve to justify an increase. To the extent that Items 15 and 300 series of the exception sheet, and related provisions of applicants' tariff, may be made more explicit without advancing the charges to shippers, applicants may and should do so. No sufficient justification has been shown for increasing any charges as a result of amendment of these items.

Item 980 specifies packing and prepay requirements in connection with shipments of ores and concentrates. The packing requirements are superseded by provisions of applicants' tariff; and elimination of the requirement that freight charges be prepaid will be a technical reduction rather than an increase. The proposed cancellation of Item 980 will be permitted.

Item 1080-A provides that articles refused by consignee may be returned to original shippers and to original point of shipment at one-half of the outbound rate current at time of return movement, subject to specified conditions. The witness declared



that the stated conditions were indefinite and difficult of application; and that the half rate provision was established prior to commencement of store-door pickup and delivery service "and is not compensatory when such service is performed." The conditions to which the witness objected were suggested by the Commission in 1929,<sup>8</sup> upon consideration of a somewhat more liberal item then applicable. That applicants experience difficulties in the practical application of the item under their present operating methods is unfortunate, but is not a sufficient justification for cancelling its provisions as proposed. Little is added in justification by the unsupported assertion that the rating is not compensatory.

Item 1150-B provides a rating of Class C, minimum weight 36,000 pounds, on hard asbestos shingles (artificial stone shingles or slates). Applicants' witness pointed out that these provisions are the same as those of the governing classification, thereby suggesting that cancellation of the exception sheet item would not result in any change. However, he apparently overlooked the fact that a higher rating is provided in a separate item of the exception sheet, and that the higher rating would govern if Item 1150-B were removed.<sup>9</sup> No justification was offered for such an increase in rating. Applicants will be required to retain provisions no higher than those now applicable under Item 1150-B.

Item 1210 provides a carload rating on telegraph, telephone and power line construction outfits. The same rating is specified in the classification on contractors' outfits, not otherwise indexed by name. The witness stated that no increase would result from

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Decision No. 20951, in Application No. 14985 (32 C.R.C. 822).

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The separate item is 1110-B which specifies a rating of 5th Class, minimum weight 30,000 pounds. This item is one which applicants propose to retain.

cancellation of Item 1210, since the identical classification rating would thereafter govern. The elimination of this item will be authorized.

The last item to be considered is 1400-B, which names a rating of Class E, minimum weight 30,000 pounds, on fuel wood, sawed or cut to length. The witness declared that the applicants had not been tendered shipments of fuel wood, but nevertheless wished to retain the rating for possible future use; subject, however, to the condition that the wood be loaded by the shippers and unloaded by the consignees. As justification for imposition of this condition, he testified that it was not practical for one man to load or unload truckload shipments of fuel wood without assistance; that it was not feasible for applicants to furnish helpers in areas where such shipments were likely to originate; and that similar conditions might frequently prevail at points of destination. In view of applicants' asserted inability to supply all of the labor necessary to accomplish the loading and unloading of these shipments, some restriction appears necessary. However, all of the truckload rates of these carriers, with negligible exceptions, include the services of the driver for loading and unloading, and no reason appears why service to that extent should not be accorded to shippers and consignees of fuel wood. In lieu of the condition proposed, applicants will be authorized to provide that the carriers do not undertake to furnish helpers for the loading or unloading of such shipments -- that where labor in addition to the driver is required, such extra labor must be furnished by the shipper or consignee. A condition to that effect is justified.

Upon careful consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds that this application should be granted as specifically limited and condi-

tioned in Appendix "A" hereof, and that in all other respects the application should be denied. The Commission finds as a fact that the increases which will result from such limited granting of the application ~~will be~~ <sup>all</sup> justified.

O R D E R

Public hearing having been had in the above entitled application, the proceeding having been duly submitted, full consideration of the matters and things involved having been had, and the Commission now being fully advised,

IT IS HEREBY ORDERED that this application be and it is hereby granted, subject to each and all of the exceptions, limitations, and conditions specifically provided in Appendix "A", which is attached hereto and by this reference made a part hereof.

IT IS HEREBY FURTHER ORDERED that in all other respects said application be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall be void except to the extent that revisions authorized herein are published, filed, and made effective within ninety (90) days from the effective date hereof.

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

Dated at San Francisco, California, this 18<sup>th</sup> day of September, 1945.

*Richard G. Anderson*  
*Justice J. C. Coe*  
*Richard G. Anderson*  
*Thomas J. Coe*  
*James J. Coe*  
 Commissioners

APPENDIX "A"SPECIFIC EXCEPTIONS, LIMITATIONS AND CONDITIONS  
TO GRANTING OF THE APPLICATION

1. Any action taken by applicants to make inapplicable in whole or in part the provisions of Items 20, 25, 90, 100, 110, 120, 150, 155, 170, 180, 190, 195, 485, 510, 530, 540, 550, 560, 590, 670, 690, 730, 750, 800, 830, 1025, 1060, 1140, 1180, 1240, 1250, 1260 and 1350 series of the Exception Sheet shall be subject to the following stipulation by and on behalf of the applicant carriers: "I hereby certify that to the best of my knowledge and belief no movement whatever has taken place under either or any of these rates during a period of twelve months preceding the date of this statement. These rates were known as 'dead rates' and it is necessary and desirable for many reasons to cancel and eliminate them from said schedule on file as aforesaid.

"I hereby agree that in case any traffic should be offered for transportation under either or any of said rates within a year from the date of cancellation said carrier will, upon the suggestion of this Commission, without contest, or on its own initiative without suggestion, republish and file any or all of said "dead rates" necessary to accommodate said traffic so offered, and should any traffic move within a year from the date of cancellation at a higher rate than is specified for said traffic by these said "dead rates" I will make reparation to the shipper or consignee in interest without contest, upon the order of said Commission duly entered, of the difference between the said 'dead rates' and the legal rate actually assessed and collected."

2. Any action taken by applicants to make inapplicable in whole or in part the provisions of Items 15, 210, 300, 390, 395, 400, 410, 475, 580, 1030, 1035, and 1040 series of the Exception Sheet shall be subject to the condition that no increase in any rate, rating, minimum weight, charge, or other provision, shall result therefrom.

3. In lieu of the condition proposed by applicants in connection with Item 1400 series of the Exception Sheet, applicants are authorized to establish a provision to the effect that carriers do not undertake to furnish helpers for loading or unloading such shipments, and that where labor is required in addition to the driver, such extra labor must be furnished by the consignor or consignee.

4. No change is herein authorized in the effective provisions of Items 260, 360, 435, 520, 810, 1070, 1080 or 1150 series of the Exception Sheet.

(End of Appendix "A")