

Decision No. 38884

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. )

Berol and Handler, by Edward M. Berol, for  
applicant. William Meinhold, for Southern  
Pacific Company and Pacific Motor Trucking  
Company, protestants.

THIRD SUPPLEMENTAL OPINION

This proceeding involves rates for the transportation of groceries from Fresno to points within a 120-mile radius of that city. Fortier Transportation Company, a corporation, (successor to Fortier Transportation Company a copartnership), has been authorized to deviate from minimum rates otherwise applicable to this transportation.<sup>1</sup> The authorization is limited to service performed for the Better Buy Grocery Company. It expires April 30, 1946. A one-year extension is now sought.

Public hearing was had at San Francisco on March 22, 1946, before Examiner Mulgrew.

There are several wholesale grocers in the San Joaquin Valley. Most of them are located at Fresno. All except Better Buy distribute goods to retail outlets with their own highway vehicles. Some of the competing wholesalers formerly had their hauling done by Fortier Transportation. Fortier has been providing distribution service for Better Buy for approximately 12 years.

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<sup>1</sup> Decision No. 37338 of September 20, 1944, as amended, in this proceeding.

Since 1944, when permission to deviate from the prescribed minimum rates was first granted, the number of retail stores served in the Better Buy delivery service has increased from approximately 225 to more than 300. Weekly tonnage of close to 400,000 pounds now exceeds 650,000. Operations are conducted over the same 12 routes but the substantial increase in the business handled generally requires service twice a week instead of once a week. In excess of 60 deliveries per day are made. There are wide variations in the size of these deliveries. More than 2,500 different articles have been handled on the same day.

Minimum rates for the transportation of general commodities, including groceries, by highway carriers have been prescribed by Decision No. 31606 (41 C.R.C. 671), as amended.<sup>2</sup> These rates vary according to the weight of the shipment and the distance it is transported. They also vary with the classification of the commodity. Additional charges are made in connection with split delivery shipments (shipments consisting of component parts for delivery at 2 or more points). These charges are based on the weights of the individual deliveries making up the shipment.

Applicant's outstanding authorization relieves it from classifying the commodities shipped and from determining separate weights for the component parts of split delivery shipments. Thereunder, applicant is permitted to classify the commodities on a fixed percentage basis and to observe a flat split delivery charge. These classification percentages were based on a study of the traffic handled prior to the filing of the original application to deviate from the minimum rates in 1944. A recent study shows that, from a classification standpoint, the traffic now handled differs somewhat

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The prescribed rates are set forth in Highway Carriers' Tariff No. 2.

from that handled in 1944. The following tabulation illustrates this situation:

	<u>Percentages of Total Tonnage</u>				
	<u>1st Class</u>	<u>2nd Class</u>	<u>3rd Class</u>	<u>4th Class</u>	<u>90% of 4th Class</u>
Authorized Basis	2.00	1.00	3.00	3.00	91.00
1944 Tonnage Study	1.91	0.90	2.57	2.74	91.87
1946 Tonnage Study	2.34	0.79	1.07	13.40	82.40

Under the minimum rate structure, the additional charges for component parts of split delivery shipments range from 27 cents for deliveries of 100 pounds or less to \$2.12 for deliveries of over 20,000 pounds. Applicant's 1944 study showed that on split deliveries for Better Buy the average additional charge amounted to 3.13 cents per 100 pounds. Its recent study discloses that under current conditions the minimum rate order would provide charges amounting to 4.14 cents.

The authorized basis of rates was designed to produce over-all charges somewhat higher than those which would be produced by the minimum rates. It is now observed only to the extent that it produces per-shipment charges higher than 20½ cents per 100 pounds. Lesser charges are raised to that level. This increase in revenues was said to be designed to offset changes in the character of the traffic and increases in operating costs. Charges under the minimum rates, under the authorized rates, and under the above referred to modification of the latter for a one-week period in January, 1946 are shown below:

	<u>Line Haul</u>	<u>Split Delivery</u>	<u>Total</u>
Minimum Rates	\$ 834.68	\$272.13	\$1,106.81
Authorized Rates	829.40	229.95	1,059.35
Rates Charged	1,126.00	229.95	1,355.95

In certain respects the traffic in question is handled under conditions which tend to reduce costs. It is offered and accepted for shipment on a "shipper's load and count" basis. The merchandise is loaded into applicant's equipment by the shipper and the shipper's count and description of the contents are not checked or verified by applicant. The goods are loaded in the order in which deliveries are to be made. Discrepancies between the merchandise covered by the billing and that received by the retailers are matters which the retailers handle directly with Better Buy. Aggregate weights for the shipments are furnished by Better Buy and are checked by applicant's weighing of the loaded equipment on truck scales. Variations have been found to be negligible. Determination of the weights of component parts of the loads is unnecessary under the outstanding authorization.

Better Buy's president testified that a shortage of trained personnel still exists and that this shortage handicaps the company in filling orders, pricing goods and preparing invoices. He stated that groceries are now distributed under an allotment program which requires at least as much additional work as wartime rationing. The company's warehouse and loading facilities, the witness said, are taxed to their capacity by operations as they are now conducted. It is not feasible, he claimed, to change operating methods so that information necessary to classify the goods could be supplied and so that weights for individual consignments could be furnished. He asserted that the delays which would necessarily attend such classifying and weighing would prevent orders being filled promptly. Keen competition between wholesale grocers, the witness stated, requires prompt service. He stressed the fact that his concern is the only

wholesale grocery located in the San Joaquin Valley which uses a for-hire delivery service and would, therefore, be the only one faced with meeting the classification and weighing requirements. He flatly stated that if authority to continue the existing arrangements should not be granted, his company would either purchase or lease vehicles to make its own deliveries. The present arrangements, he said, were satisfactory and if they are continued Better Buy will not enter the transportation field.

The participation of protestants Southern Pacific Company and Pacific Motor Trucking Company in the hearing was limited to cross-examination of applicant's witness. There were no other protestants.

Previous decisions in this proceeding have pointed out that under ordinary circumstances the Commission would not approve rates which do not differentiate between commodities possessing widely varying transportation characteristics. We adhere to that view. The record shows, however, that abnormal conditions still prevail in connection with the handling and distribution of the goods in question. The interested shipper's president has unequivocally stated that the hauling will be diverted from for-hire to proprietary carriage in the event applicant's authority to deviate from classification and weighing requirements is not extended. Revenues under the rate basis now being observed are substantially higher than the minimum rates would produce. In the circumstances, a one-year extension of the authorization at this time is justified. The authorization will be modified, however, so as to reflect the adjustment which has been made by applicant and the shipper to offset changed conditions. It will also be made subject to earlier cancellation or further change should circumstances warrant.

Upon consideration of all the facts of record, we are of the opinion and find that, with the above indicated modifications, the proposed extension of applicant's authorization to deviate from the established minimum rates is justified.

O R D E R

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

IT IS HEREBY ORDERED that Decision No. 37338, as amended, in this proceeding, be and it is hereby further amended by providing that the per-shipment charges determined thereunder shall not be less than those produced by a rate of 20½ cents per 100 pounds, and by extending the expiration date to April 30, 1947, unless sooner changed or further extended by appropriate order of the Commission.

This order shall become effective April 30, 1946.

Dated at San Francisco, California, this 23<sup>rd</sup> day of April, 1946.

Harold Anderson  
Justin J. Cresser  
J. J. ...  
James H. ...  
Harold P. ...  
Commissioners