

ORIGINAL

Decision No. 39696

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of THOMAS W. GILBOY, doing business )  
as GILBOY COMPANY, for authority to ) Application No. 27977  
increase rates. )

Appearances

Gwyn H. Baker for Applicant.  
C. O. Burgin for Office of Price Adminis-  
tration, Interested Party.

O P I N I O N

Thomas W. Gilboy, doing business as Gilboy Company, is engaged in transporting motion picture films and motion picture theatre supplies, as a highway common carrier, between San Francisco and numerous points in northern and central California as well as Los Angeles. By this application, he seeks authority to increase his rates and charges by 25 per cent. A public hearing was held before Examiner Bradshaw at San Francisco on November 22, 1946.

Applicant began transporting motion picture films and theatre supplies in 1915. His original operations were those of a forwarder. In 1935 he was granted a certificate of public convenience and necessity to transport these articles by motor vehicle and such authority has been amended from time to time to include additional territory.<sup>1</sup>

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<sup>1</sup> Decision No. 28235 of September 19, 1935, as amended by Decision No. 29269 of November 16, 1936, in Application No. 19890; Decision No. 34385 of July 1, 1941 in Application No. 21802; and Decision No. 35914 of November 5, 1942 in Application No. 24556.

Except for an increase of 12 per cent authorized by Decision No. 39004, dated May 21, 1946, in Case No. 4808 (46 C.R.C. 486), applicant's rates are on the same level as when they were originally established. According to the testimony, substantial increases in many items of operating expense, including taxes, insurance, drivers' and mechanics' wages, repair parts and other supplies, occurred during this period. It was also stated that, on the date the 12 per cent increase in rates became effective, distributors of sample films of coming attractions, called "trailers", established branches in San Francisco and discontinued shipping from Los Angeles. As a result, applicant no longer enjoys the movement of this business from Los Angeles to San Francisco and return. The loss of revenue from this source, Gilboy testified, amounts to \$200 per week and, instead of being able to effect reductions in operating costs, the new method of handling "trailers" from San Francisco, instead of Los Angeles, requires greater and more costly service. He estimates that the effect of this change upon his over-all operations was to accord him an increase in gross revenue of 7 per cent, instead of 12 per cent as contemplated by the decision in Case No. 4808, supra.

Other factors are also claimed to have affected the profitability of applicant's operations. It is represented that new capital has been necessary to purchase additional equipment and other facilities; that depreciation accruals have not been adequate to replace worn-out equipment; and that, inasmuch as about one-half of the trucks now in operation should be replaced with new vehicles, the cost of maintenance has increased. Applicant also testified that it was necessary to enter into a new contract with the union, of which his drivers and platformmen are members, providing for increased wages, effective October 1, 1946, which, it is estimated,

will exceed \$600 per week. The necessity of granting similar wage increases to other employees, including mechanics and clerical help, is also believed to be unavoidable. It was stated that, as a result of the increased expenses already experienced, applicant is now operating at a loss. While applicant's revenues as a whole have increased during recent years, this condition is said to be of a temporary nature brought about by the movement of films to and from Army and Navy camps as well as to and from new theatres in communities into which there was a heavy influx of population during the war. Applicant states that the Army and Navy establishments are gradually being closed and it is not expected that many of the new theatres will be able permanently to remain in business.

An exhibit was introduced disclosing applicant's operating results since November 1, 1936. The figures for the period January 1, 1941 to and through September, 1946, together with applicant's forecast of prospective revenues and operating expenses for 1947 appear in the following table:

	<u>Revenue</u>	<u>Expenses</u>	<u>Net Operating Revenue</u>	<u>Operating Ratio</u>
1941	\$257,157	\$237,353	\$19,804	92.3
1942	263,326	244,806	18,520	93.0
1943	280,934	286,336	(5,402)	101.9
1944	287,066	272,408	14,658	94.9
1945	308,284	296,001	12,283	96.0
Jan. to June, inc. 1946	160,317	157,585	2,732	98.3
July to Sept. inc. 1946	83,925	83,885	40	99.9
Forecast for 1947#				
(1)	335,700	335,540	160	99.9
(2)	335,700	365,990	(30,290)	109.0

( ) Denotes loss.

# Based on traffic handled and operations conducted during July, August and September, 1946.

(1) Excluding increased wages for drivers and platform labor effective October 1, 1946.

(2) Including increased wages for drivers and platform labor effective October 1, 1946.

To meet current expenses and provide a reasonable profit, applicant urges that his rates should be increased by 25 per cent. He states that the rates charged for his contract carrier and city carrier services have already been increased 15 per cent and that such rates were increased on several previous occasions.<sup>2</sup> It is contended that an increase as great as that sought is justified because of (1) the hazards involved in conducting the specialized type of service he renders and (2) the uncertainties surrounding the use of motion picture films in the future.

It was testified that (a) extreme precautions must be taken to avoid mishaps in transporting films, (b) the carrier is subject to heavy claims when shipments are not delivered to theatres at the time they are required and performances are cancelled, (c) competent drivers are not obtainable, and (d) many of the present films (Technicolor) are more costly than those used in former years although transportation rates have not been increased to compensate for the additional liability. Applicant is also apprehensive that television constitutes a threat to the continued use of motion picture films and, based on expenditures assertedly being made by motion picture producers for the purpose of perfecting television, believes that in the next ten years the transportation of films will be eliminated entirely. For these reasons, applicant regards a rate

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In addition to his highway common carrier service, applicant transports newspapers from San Francisco to certain areas of northern and central California as a highway contract carrier, as well as films and theatre supplies within San Francisco as a city carrier. The revenue therefrom is approximately one-third of the total. While no attempt was made to allocate the expenses chargeable to the several operations applicant considers that an apportionment of expenses in the same ratio as the revenues would be proper. As justification, he points out that the newspapers are transported in the same trucks as carry films, etc., that the pickup and delivery service on newspapers does not involve the use of any terminal service, and that he has to return the films to San Francisco which is not the case with respect to newspapers.

level which would produce an operating ratio of 96 as insufficient and urges that he should be permitted a reasonable opportunity to "get some of the investment out of the business" before it becomes obsolete. He considers rates which would yield an operating ratio of between 85 and 87 as proper under the circumstances.

No protests against the granting of the application have been received from interested parties. It is claimed that, in order to insure the continuation of necessary service, applicant's shippers are agreeable to the proposed increase becoming effective. Applicant also stated that the sought increase will not result in the diversion of any traffic to other carriers.

The evidence bearing upon the expected development of television in displacing motion picture films at some time in the future is too general and speculative to warrant consideration in passing upon applicant's rate structure. Nor does the showing presented with respect to applicant's revenue requirements, the nature of the transportation service performed and the risk incurred in connection therewith demonstrate the necessity for an increase in rates and charges as great as that sought. An increase of 14 per cent would appear to be as high as is justified by the record in this proceeding. Based upon the estimated operating expenses for 1947, an increase of this amount would produce a net operating revenue before income taxes of approximately \$17,800 per annum. The resultant operating ratio would be 95, as compared with applicant's average operating ratio during the 5-year period from 1941 to 1945, inclusive, of 95.6.

In this proceeding consideration has been given to applicant's over-all revenue requirements. Of necessity no study has been made of each or any of the individual rates or charges published in applicant's tariff for the purpose of determining the

reasonableness or lawfulness thereof. In authorizing applicant to increase his present rates and charges by a given percentage the Commission does not make a finding of fact of the reasonableness or lawfulness of any particular rate or charge.

Upon careful consideration of all of the facts and circumstances of record in this proceeding, the Commission is of the opinion and finds as a fact that an increase of 14 per cent in the rates and charges of Thomas W. Gilboy, doing business as Gilboy Company, is justified. To this extent, the application will be granted.

O. R. D. E. R.

The above entitled application having been heard and submitted, full consideration of the matters and things involved having been had, and the Commission being fully advised,

IT IS HEREBY ORDERED that Thomas W. Gilboy, doing business as Gilboy Company, be and he is hereby authorized to establish on not less than five (5) days' notice to the Commission and to the public, increases in the amount of 14 per cent in the rates and charges published in his Local Freight Tariff No. 6, C.R.C. No. 3.

IT IS HEREBY FURTHER ORDERED that, in computing the increased rates and charges herein authorized, the following will govern in the disposition of fractions:

Fractions of less than  $\frac{1}{2}$  or .50 of a cent, omit.  
Fractions of  $\frac{1}{2}$  or .50 of a cent or greater, increase to the next whole figure.

IT IS HEREBY FURTHER ORDERED that the authority herein granted is subject to the express condition that applicant will never urge before this Commission in any proceeding under Section 71 of the Public Utilities Act, or in any other proceeding, that the opinion and order herein constitute a finding of fact of the

reasonableness of any particular rate or charge, and that the filing of rates and charges pursuant to the authority herein granted will be construed as consent to this condition.-

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall be void unless the rates and charges authorized in this order are published, filed and made effective within ninety (90) days from the effective date hereof.

IT IS HEREBY FURTHER ORDERED that, in all other respects, the above entitled application be and it is hereby denied.

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

Dated at San Francisco, California, this 10<sup>th</sup> day of December, 1946.

Harold Kula

Justus F. Calmes  
Francis Blair

W. A. Powell

A. J. Anderson

Commissioners