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ORIGINAL

Decision No. 40201

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CLIFFORD LOWRY, doing business as)
 MARKEN TRANSFER COMPANY, for authority)
 to deviate from minimum rates for the) Application No. 28249
 transportation of general merchandise)
 for Sears Roebuck and Company from)
 points in Los Angeles Drayage Area to)
 points beyond said Area.)

Appearances

Richard E. Irwin and Clifford Lowry, for applicant.

F. H. Powers, for Sears Roebuck and Company,
 intervenor in support of the application.

Arlo D. Poe, for Motor Truck Association of Southern
 California, protestant.

L. M. Hail, for Southern California Freight Lines and
 Southern California Freight Forwarders,
 interested parties.

O P I N I O N

Clifford Lowry, an individual doing business as Marken Transfer Company, is engaged in for-hire trucking service in southern California under permits authorizing operation as a radial highway common carrier, highway contract carrier, and city carrier. Three of his five vehicles are regularly devoted to the transportation of merchandise for Sears Roebuck & Company, under contract, from two retail stores in the Los Angeles Drayage Area to customers both within and without the drayage area.¹ By this application Lowry seeks

¹ The Los Angeles Drayage Area referred to herein is the area embraced within the zones described in Items 30 to 33 inclusive of City Carriers' Tariff No. 4, Highway Carriers' Tariff No. 5, sometimes referred to as the Los Angeles Drayage Tariff. This tariff is Appendix "A" to Decision No. 32504, as amended, in Case No. 4121.

authority, under Section 11 of the Highway Carriers' Act, to charge for the transportation performed beyond the drayage area, in lieu of the minimum rates applicable thereto, a basis of hourly vehicle-unit rates heretofore established by this Commission for transportation within the drayage area.

Public hearing was had before Commissioner Potter and Examiner Bryant at Los Angeles on April 10, 1947. The matter is ready for decision.

Lowry testified that he had performed service for Sears Roebuck & Company for about eight years, but had not until recently transported any substantial volume of traffic to destinations beyond the Los Angeles Drayage Area. Currently about two-thirds of his shipments are delivered within the area, and one-third at points beyond. On both classes of traffic he has based his charges upon an agreed rate per vehicle-hour and man-hour. He assertedly learned only recently that minimum rates established by this Commission for transportation performed beyond the drayage area are named in cents per 100 pounds, the rates varying according to the commodity, the weight of the shipment, and the constructive distance from point of origin to point of destination. He declared that such rates are not appropriate for the service which he performs; that their application would require the services of an experienced rate clerk; and that they do not provide adequately for numerous delays encountered in his operation, such as in laying rugs and installing stoves and other appliances. He stated that the expense of employing a rate clerk would be avoided if he were permitted to use hourly rates as sought in this application.

The application alleges that by operating on an hourly basis as herein requested the applicant would be charging well above the minimum rate schedule established for application beyond the drayage area. In support of this allegation, Lowry introduced in evidence shipping documents covering three truckloads of merchandise transported from one store to numerous consignees. The shipments were said to be representative ones handled in the regular course of business. Lowry explained that the documents were prepared for purposes of the instant proceeding. According to a rate clerk employed by the shipper, charges under the sought hourly rates were higher on each of the three truckloads than would have been received under the established minimum rates.²

The traffic manager of Sears Roebuck & Company testified that his company operates about ten retail stores in metropolitan Los Angeles; that proprietary and leased trucks are used to a considerable extent; and that his arrangement with other for-hire carriers transporting traffic similar to that herein involved is that the shipments will be rated on both the established weight basis and an agreed hourly basis, charges being paid on whichever level is higher. He declared that the hourly rates almost invariably produced the higher charges, and that they were much more satisfactory to his company than the weight-and-classification basis. When asked whether he knew of any distinguishing features in applicant's operation which would make the hourly rates more appropriate for Lowry than for other carriers delivering from Sears' retail stores, he

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It is apparent from the record that the rate clerk's calculations were based upon misunderstanding of several provisions of the tariffs. What charges would have accrued under correct application of the established minimum rates does not appear.

stated that in his opinion the hourly rates should be authorized for all of them.

The Motor Truck Association of Southern California appeared as a protestant and participated in the cross-examination of applicant's witnesses. Its position was that relief of the nature herein sought should be granted only upon a clear and satisfactory showing of need; and that if the Commission concluded that such need had been shown in this instance, then the relief should be limited to the specific store and delivery territory encompassed in the showing. Applicant replied that such restrictions would necessitate further applications in event of future growth of his business.

The objective of this application, according to the record, is to enable applicant and his shipper to avoid the necessity of weighing, classifying and rating the shipments transported beyond the drayage area. It was asserted that this process, as applied to the traffic in question, would be burdensome, costly, and impracticable. The record shows, however, that applicant reached this conclusion without making any serious attempt to apply the established basis of rates. He admittedly had little familiarity with the established rate structure. His exhibits indicate that he has about 30 shipments a day on which the weight rates would apply, constituting one truckload in total, and that most of these shipments are so light that minimum charges would apply and classification would be unnecessary. The shipper conceded that, although hourly rates were preferred, the established weight rates and charges were regularly determined in connection with similar transportation performed by other for-hire carriers. This evidence is not convincing that it would be unduly burdensome or impracticable to apply

the established basis of rates to the shipments herein involved. While the necessity of classifying individual commodities may result in some inconveniences, they are ordinarily far outweighed by the public benefits accruing from a stabilized basis of known transportation charges. (See Decision No. 32320 in Application No. 22408, Ben Gruell, unreported.) It is not contended that the established rates are excessive or otherwise unreasonable. To the contrary, it is asserted, although not clearly established, that the proposed hourly rates would result in higher charges.

Neither is there any clear showing on this record that the proposed basis of hourly rates would be reasonable for the service in question. Applicant declared that to the extent such rates are proper it should make no difference whether they are applied exclusively with the drayage area or to some extent between points in the drayage area and points in the vicinity thereof. It does not necessarily follow that minimum rates established to meet conditions within a defined area would be reasonable for application to exterior points. As hereinbefore indicated, it has not been clearly established that the proposed hourly rates would result in higher over-all revenues than would result from the established weight rates. The record contains no information regarding applicant's costs or revenue experience.

Upon careful consideration of all of the evidence of record it is concluded that applicant has not shown the proposed rates to be either necessary or reasonable for the services involved in this proceeding. The application will therefore be denied.

O R D E R

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

IT IS HEREBY ORDERED that the above entitled application be and it is hereby denied.

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

Dated at San Francisco, California, this 29th day of April, 1947.

Harriet Kula
Justus J. Cozzani
Joseph J. Powell
R. J. ...
Leslie ...
 Commissioners