

Decision No. 42101

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
into the rates, rules, regulations,)
charges, allowances and practices)
of all common carriers, highway)
carriers and city carriers relating)
to the transportation of property.)

Case No. 4808

Appearances

Larry M. Fites, T. J. Champion and
Reginald L. Vaughan, for Truck
Owners Association of California..
J. J. Deuel and Edson Abel, for California
Farm Bureau Federation.
Thomas R. Phillips, for Western Growers
Association.

ORIGINAL

SUPPLEMENTAL OPINION

Statewide minimum rates established for the transportation of fresh fruits and vegetables by highway carriers are set forth in Highway Carriers' Tariff No. 8 (Appendix "C" of Decision No. 33977, as amended, in Case No. 4293). By petition filed September 1, 1948, Truck Owners Association of California seeks an increase of approximately 11 per cent in these rates in so far as they apply to transportation between points in San Mateo, Santa Cruz, Santa Clara, San Benito and Monterey Counties, on the one hand, and points in the City and County of San Francisco and the Counties of Alameda and Santa Clara, on the other hand.

Public hearings were had at San Francisco on September 14 and 15, 1948, before Examiner Mulgrew.

Petitioner's consultant submitted comprehensive studies of the operating results of, and the costs experienced by, Clark Bros. Motor Transport, Inc., a highway common carrier respondent. The principal operations of this carrier are between the Watsonville and Salinas areas and San Francisco and East Bay points. Its northbound traffic consists almost entirely of fresh fruits and vegetables. Southbound it handles general commodities. It proposes to establish fruit and vegetable rates of the same volume as the increased minimum rates sought by petitioner.

The consultant's studies disclose that in the seven-year period from July 1, 1941 to June 30, 1948, Clark Bros.' revenues aggregated \$2,512,223, and its expenses, before provision for income taxes, amounted to \$2,456,059. The resulting operating ratio is 97.8%. The indicated profit is \$56,164. The studies also disclose that in 1947-1948 respondent's operating results were less favorable than the seven-year average. To show the effect of additional revenues and greater expenses resulting from increased rates and higher costs which became operative during and subsequent to the 1947-1948 year, the consultant adjusted the actual revenue and expense figures. With these adjustments, the studies indicate that a loss would have been experienced had current rates and costs prevailed throughout the 1947-1948 year. The actual and adjusted figures, as well as operating results under an 11 per cent increase in fruit and vegetable rates, all before provision for income taxes

are shown in the following tabulation:

	<u>Revenue</u>	<u>Expense</u>	<u>Profit or Loss</u>	<u>Operating Ratio</u>
(1)	\$526,240	\$521,648	\$4,592	99.1
(2)	558,416	562,311	(3,895)	100.7
(3)	579,850	562,311	17,539	97.0

- () - Indicates loss.
 (1) - Unadjusted.
 (2) - Adjusted to current rates and costs.
 (3) - Revenue adjusted to show the effect of an 11% increase in fresh fruit and vegetable rates.

Based on 1947-1948 operations, the consultant also developed an estimated average cost of 34.99 cents per 100 pounds for the fruit and vegetable traffic handled by Clark Bros. under current wage and price levels. Expanded to provide for an operating ratio of 90 before income taxes, which he claimed was necessary to provide an adequate income for the carrier, the resulting figure is 38.88 cents per 100 pounds. This, he contrasted with the average revenue of 35.04 cents per 100 pounds which would have been earned during 1947-1948 had the present rates then been in effect. To achieve an operating ratio of 90 for fruit and vegetable hauling, the witness pointed out, an increase of 10.96 per cent in the rates for these commodities would be necessary. This is the basis of the 11 per cent increase proposal. Costs of statewide operations, the consultant said, fail to reflect the higher costs experienced in metropolitan areas.

It was not possible, the consultant testified, to develop similar showings for other carriers operating between the points covered by the petition. He explained that of the few carriers which provided service with any regularity only five had usable records. Even those figures, he indicated, were of dubious value here. He explained that the records of these carriers afforded no

feasible basis for making the adjustments necessary to show operating results under current conditions, for allocating over-all revenues and expenses to the fruit and vegetable traffic or for determining the cost of handling that traffic. He asserted, however, that Clark Bros. operated efficiently and claimed that its costs were representative of other efficient operations in the area covered by the petition.

According to the consultant and other witnesses for petitioner, the only suitable for-hire carrier service to bay area markets generally available to Watsonville-Salinas produce shippers is that provided by Clark Bros. Certain of these witnesses said they had formerly been engaged in providing service between these points but had discontinued this service because the applicable minimum rates were too low. They indicated that they would re-establish their operations if the proposed increases in minimum rates are authorized. At present, they said, truckload service could occasionally be obtained from other carriers but for less-truckload shipments the shippers were entirely dependent upon Clark Bros. All of these witnesses said that the minimum rates were for all practicable purposes the "going" rates and that higher rates could be secured only in relatively few instances.

The traffic manager for Clark Bros. testified that, with certain exceptions, it had published and maintained the minimum rates as its tariff rates. Higher rates, he said, were generally observed on shipments of berries and mushrooms. The other principal exception, he stated, was that his company had not established the 24,000 pound scale of minimum rates and applied the higher 18,000 pound scale to shipments weighing 24,000 pounds and over.

Clark Bros.' president testified, and the consultant's studies demonstrate, that the produce movement is largely seasonal and that losses incurred during winter and spring off-peak periods must be recovered in the summer and fall months of heavy fruit and vegetable traffic. Crop failures or sudden loss of traffic, the president asserted, would put the company out of business or, if it survived, several years of normal earnings would be required to offset its losses. He said that the executives of the company had reluctantly concluded that in the face of the "thin margin" under which it had been operating, the company could not continue to provide service for the transportation of produce from the Watsonville-Salinas area to the bay area markets unless it is accorded prompt and substantial rate relief. The consultant predicted that, should Clark Bros. withdraw from this operation, contract and radial carriers would "drift" into the field and move shipments weighing 10,000 pounds and more. Shippers of smaller quantities, he said, would have to change their shipping practices or "set up" some sort of proprietary operation.

A witness representing a highway common carrier operating from Santa Clara County points to bay area markets claimed that the increases proposed were necessary in order to provide adequate service between these points. He said that his company had recently acquired the business. He offered no specific evidence relating to operating results of the predecessor company or the actual or estimated cost of providing the service.

On cross-examination, the consultant admitted that his estimate of additional revenue from increased rates did not include the greater earnings resulting from increases established, effective August 1, 1946, in estimated weights used in determining freight charges on lettuce. He conceded that lettuce was one of the heaviest moving of the produce items shipped from the Watsonville-Salinas areas

but had no information on the tonnage of lettuce transported by Clark Bros. or other for-hire carriers.

California Farm Bureau Federation urged that the petition be denied. It contended that transportation costs have been raised to abnormal levels and that further increases will retard the free movement of fruits and vegetables and discourage their production and consumption. No evidence was offered in support of these contentions.

Attention was directed to the fact that, although Decision No. 41794 of June 29, 1948, in the proceeding, found that the \$1.33 per hour minimum charge for accessorial service should be increased to the Highway Carrier Tariff No. 2 (general commodity) level, this increase was not incorporated in the order in that decision or in the Highway Carrier Tariff No. 8 revisions appended thereto.

The factual showing here made is based almost entirely upon the experience of one carrier, Clark Bros. Motor Transport, Inc. This carrier's operations are centered on transportation between the Watsonville-Salinas and San Francisco Bay areas. In so far as fresh fruit and vegetable movements between these points are concerned, it appears to have a virtual monopoly of less-truckload traffic and little actual competition for truckload traffic. Potential for-hire carrier competition seemingly is limited to truckload movements. According to petitioner's figures, approximately 27 per cent of Clark Bros.' tonnage of fruits and vegetables consists of shipments weighing 24,000 pounds or more. On this truckload traffic its present rates are in excess of the proposed minimum rates. A substantial part of its aggregate movement, some 40 per cent of its tonnage, consists of noncompetitive less-truckload shipments (quantities of less than 10,000 pounds). Carrier competition has not been shown to require that Clark Bros.' rates be on the same levels as the corresponding minimum rates.

Except for the general showing of Clark Bros.' system-wide experience, no satisfactory showing of the operating results of the carriers involved has been made. Clark Bros.' operations do not cover all of the points embraced by the petition. The extent to which its experience, reflecting principally Watsonville-Salinas area service, may be typical of operations of all carriers operating in the wide territory involved is at best speculative and affords no adequate basis for concluding that the sought increased minimum rates are reasonable and proper for general application throughout that territory. Petitioner has failed to demonstrate that higher minimum rates on fruits and vegetables between the points involved are justified.

On the other hand, it has been shown that Clark Bros.' revenues are insufficient to provide adequate earnings. It has likewise been shown that a substantial increase in its fruit and vegetable revenues is necessary if that traffic is to be handled on a reasonably compensatory basis. The 11 per cent increase proposed contemplates the establishment of rates which will produce an operating ratio of 90, before income taxes, on the fruit and vegetable traffic. This proposal does not take into account either the additional revenues under higher weights established for the transportation of lettuce or those which may result from increased accessorial charges found justified by Decision No. 41794, supra. However, as has hereinbefore been noted, shipments weighing 24,000 pounds and more account for a substantial part of Clark Bros.' aggregate produce tonnage and its present rates exceed those proposed for such shipments. It appears, therefore, that an operating ratio of 90 will not be achieved if rates for shipments of 24,000 pounds and more are not increased. It has not been shown that the margin between revenues and expenses provided by such an operating ratio is necessary to produce adequate earnings.

It appears from the foregoing that an increase of not more than 11 per cent should be authorized in Clark Bros.' fruit and vegetable rates, except in connection with shipments weighing 24,000 pounds

or more. Such increased rates appear reasonable in the light of the showing made. The authority to establish such higher rates should be permissive, not mandatory. The extent to which it may be exercised is a matter for the discretion of the carrier's management. Long and short haul relief from the provisions of Section 24(a) of the Public Utilities Act should be granted to the extent that outstanding relief from these provisions requires modification in connection with the establishment of like increases in the rates involved. If different adjustments of these rates are deemed necessary the carrier may apply for further authority. The increase in accessorial charges contemplated by Decision No. 41794, supra, should be established.

Upon consideration of all the facts and circumstances of record, we are of the opinion and hereby find that increases in rates and charges of Clark Bros. Motor Transport, Inc. for the transportation of fresh fruits and vegetables have been justified to the extent indicated in the foregoing paragraph; that the increased accessorial service charges found justified by Decision No. 41794, supra, should be established; and that in all other respects the increases in rates and charges proposed by petitioner have not been justified.

O R D E R

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

IT IS HEREBY ORDERED that Decision No. 33977 of March 11, 1941, in Case No. 4293, as amended, be and it is hereby further amended by incorporating in Highway Carriers' Tariff No. 8 (Appendix "C" of said Decision No. 33977, as amended), to become effective November 15, 1948, Fourth Revised Page 14 cancels Third Revised

Page 14, which page is attached hereto and by this reference made a part hereof.

IT IS HEREBY FURTHER ORDERED that tariff publications required to be made by common carriers as a result of the revision of Highway Carriers' Tariff No. 8 as hereinbefore provided shall be made effective on or before November 15, 1948, on not less than three (3) days' notice to the Commission and to the public.

IT IS HEREBY FURTHER ORDERED that Clark Bros. Motor Transport, Inc. be and it is hereby authorized to increase its rates and charges for the transportation of fresh fruits and vegetables by not more than 11 per cent, and on not less than ten (10) days' notice to the Commission and to the public, except in connection with rates for shipments weighing 24,000 pounds or more; that in determining maximum increases in rates authorized herein fractions of less than $\frac{1}{2}$ or .50 of a cent shall be omitted and fractions of $\frac{1}{2}$ or .50 of a cent or greater shall be increased to the next whole cent; that Clark Bros. Motor Transport, Inc. be and it is hereby authorized to depart from the provisions of Section 24(a) of the Public Utilities Act in exercising the authority herein granted to the extent that such departures result from applying a like percentage increase to the rates involved in outstanding 24th Section authorizations; that the authority herein granted shall expire unless exercised within sixty (60) days from the effective date of this order; and that in all other respects the petition of the Truck Owners

Association of California, filed September 1, 1948, in this proceeding, be and it is hereby denied.

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

Dated at San Francisco, California, this 5th day of October, 1948.

R. E. Zimmerman
Harry Lawrence
Harold P. Kula
Kenneth D. Lott

Commissioners

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)								
140-C Cancels 140-B	<p>APPLICATION OF RATES ON SHIPMENTS SUBJECT TO MINIMUM WEIGHTS IN EXCESS OF 10,000 POUNDS</p> <p>Rates in this tariff subject to minimum weights in excess of 10,000 pounds include loading into and unloading from the carrier's equipment at established depots. At points of origin or points of destination other than established depots, such rates include service of driver only for loading into and unloading from the carrier's equipment, subject to Note 1.</p> <p>NOTE 1.- When the time consumed in performing loading, unloading or accessorial services exceeds 20 minutes per ton (based on the weight on which transportation charges are computed) a charge of \$2.78 per hour shall be assessed for the time consumed in excess of 20 minutes per ton.</p>								
*150-D Cancels 150-C	<p>ACCESSORIAL CHARGES</p> <p>An additional charge of \diamond \$2.10 per man per hour, minimum charge \diamond \$1.05 cents, shall be made for helpers for loading or unloading, or any other accessorial or incidental service which is not authorized to be performed under the rates named in this tariff and for which a charge is not otherwise provided.</p>								
155-B Cancels 155-A	<p>REFRIGERATION - TOP OR BODY ICING</p> <p>When shipments of fruits and vegetables, including mushrooms, as described in Item No. 40 series, are refrigerated by the shipper or his agent by means of top or body icing, the weight of the ice used, less 30 per cent meltage allowance, shall be added to the weight of the fruits and vegetables determined under the provisions of this tariff and the applicable fruit and vegetable rate applied thereto, provided that on the basis of the aggregate weight so ascertained the shipment is subject to a rate governed by a minimum weight of 10,000 pounds or more. On such shipments the following additional charges shall be assessed:</p> <table> <thead> <tr> <th>Minimum Weight (In Pounds)</th><th>Additional Charge (Per Shipment)</th></tr> </thead> <tbody> <tr> <td>10,000 -----</td><td>\$1.97</td></tr> <tr> <td>18,000 -----</td><td>3.94</td></tr> <tr> <td>24,000 -----</td><td>5.91</td></tr> </tbody> </table>	Minimum Weight (In Pounds)	Additional Charge (Per Shipment)	10,000 -----	\$1.97	18,000 -----	3.94	24,000 -----	5.91
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10,000 -----	\$1.97								
18,000 -----	3.94								
24,000 -----	5.91								
160-C Cancels 160-B	<p>MINIMUM CHARGE</p> <p>The minimum charge per shipment shall be as follows:</p> <p>(a) When the constructive distance from point of origin to point of destination does not exceed 150 miles:</p>								

Weight of Shipment	Minimum Charge in Cents
25 pounds or less -----	49
Over 25 pounds but not over 50 pounds -----	62
Over 50 pounds but not over 75 pounds -----	75
Over 75 pounds but not over 100 pounds -----	87
Over 100 pounds -----	93
(b) When the constructive distance exceeds 150 miles: The charge for 100 pounds at the commodity rate applicable thereto but not less than \$1.05.	
◇ Increase) Decision No. 42101 * Change)	
EFFECTIVE NOVEMBER 15, 1948	
Issued by the Public Utilities Commission of the State of California, San Francisco, California.	
Correction No. 79	