

ORIGINAL

Decision No. 42740

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

- O. B. Wynn, for Ray-O-Vac Company, Bright Star Battery Company, and General Dry Batteries, Inc., petitioners.
Wm. Meinhold, for Southern Pacific Company and Pacific Motor Transport Company; George Hurst and J. M. Souby, Jr., for The Atchison, Topeka and Santa Fe Railway Company; and Russell Bevens, for Draymen's Association of San Francisco; interested parties.

SUPPLEMENTAL OPINION

Minimum rates, rules and regulations established for line-haul transportation of general commodities in California by radial highway common and highway contract carriers are set forth in Highway Carriers' Tariff No. 2 (Appendix "D" of Decision No. 31606, as amended, in Case No. 4246). The tariff is governed, except as otherwise specifically indicated therein, by the Western Classification which provides a rating of third class on dry cell electric batteries, not spent, in less-than-carload quantities.¹ By petition, Ray-O-Vac Company, Bright Star Battery Company, and General Dry

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The third class rating in question is named in Item No. 15635 of Western Classification No. 73, Cal. P.U.C.-W.C. No. 6, of Geo. H. Dumas, Agent.

Batteries, Inc. seek modification of the tariff to provide a rating of 90 per cent of fourth class on such batteries.

A public hearing was had at San Francisco before Examiner Jacopi.

Petitioners manufacture all types of dry cell batteries at various eastern points. They distribute these articles throughout the nation. In supplying California's requirements, the batteries are shipped in carload quantities from the eastern manufacturing plants to warehouses in Los Angeles and San Francisco. Distribution within California is made from these warehouses. The transportation with which petitioners are here concerned is the movement of the batteries in less-than-carload quantities from the warehouses in question to distributors and from the distributors to retailers, located at various points in California.

The traffic manager of Ray-C-Vac Company, testifying in behalf of the petitioners, asserted that the third class rating now applicable on California intrastate less-than-carload shipments of dry cell batteries was improper in view of the unusually favorable transportation characteristics surrounding the movements. The evidence introduced by the witness showed that the aggregate volume of petitioners' shipments of the batteries in California amounted to about 2,600 tons per year, that there was a steady movement throughout the year, and that the size and weight of the shipping containers used permitted efficient loading of carriers' equipment. Exhibits were submitted indicating that the density ranged from 59.83 to 74.00 pounds per cubic foot, and that the value ranged from 15.9 cents

to \$1.00 per pound, depending upon the type of battery.² The witness testified that the shipments made by petitioners between points in California averaged about 700 pounds each. He said that the risk of damage to the batteries during transportation was slight. He explained that his company's records showed that since 1941 the damage experienced did not exceed one-third of one per cent of the freight charges on battery shipments in any one year. The witness asserted that there was no likelihood of the batteries damaging either other freight or the carriers' equipment. He claimed that no other commodity seriously competed with dry cell batteries and that he knew of no other article that was analagous thereto.

The witness further testified that motor carriers in the midwestern, eastern and southern sections of the United States voluntarily maintained exception ratings providing for application of Class 55 rates on less-than-carload shipments of dry cell batteries. This basis, he said, was equal to the fourth class motor carrier rates in those territories. He submitted exhibits showing an extensive list of motor carrier tariffs applicable in the aforesaid territories which he claimed provided for the Class 55 exception rating.

Exhibits were also submitted by the witness comparing the third class rates prescribed in Highway Carriers' Tariff No. 2 as minimum for California intrastate transportation of dry cell batteries

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The exhibits showed the following densities and values of the various types of dry cell batteries involved herein:

<u>Description of Battery</u>	<u>Weight in Pounds Per Cubic Foot</u>	<u>Value Per Pound</u>
Ignition Screw	74.00	\$.159
"B" Farm Radio	66.67	.161
"AB" Farm Radio	65.30	.219
"A" Portable Radio	82.80	.540
Flashlight	62.50	.219
Penlight	65.22	1.000
Lantern	66.09	.261

with the rates said to be applicable for comparable distances in eastern territories. These comparisons were said to demonstrate that the establishment of the sought rating would still result in California intrastate rates that would be slightly higher than those in effect for comparable transportation in other sections of the nation. The widespread adoption of the Class 55 basis by motor carriers elsewhere, he contended, warranted establishment of a rating of 90 per cent of fourth class for motor truck transportation of the batteries in California.

The foregoing testimony was confirmed by the traffic manager for Bright Star Battery Company. In addition, he testified that the Class 55 exception rating on the batteries was also maintained by motor carriers serving his company's plant at Clifton, New Jersey.

Interested parties participated in the cross-examination of witnesses. No one specifically opposed the granting of petitioners' request.

The evidence of record is not convincing that dry cell batteries in less-than-carload quantities should be accorded a lower rating than that now provided in the Western Classification. Petitioners' showing relative to the classification rating on the batteries rests principally upon evidence that an exception rating equal to the fourth class rates is voluntarily maintained by motor carriers in other sections of the nation. Nevertheless, petitioners seek a lower rating here, i.e., 90 per cent of fourth class. The record indicates that the sought rating was based upon the fact that it would result in California intrastate rates on the batteries that would more closely conform with the lower level of the rates said to be applicable in eastern territory. It is well settled, however, that

the work of classification should be confined to classification as such, entirely apart from the question of rates, and that the propriety of the level of particular rates is a separate question. Moreover, no attempt was made to compare the transportation characteristics of the batteries with other commodities that are now accorded an exception rating of 90 per cent of fourth class in California under the provisions of Highway Carriers' Tariff No. 2.

There remains for consideration petitioners' showing that an exception rating equal to fourth class rates is voluntarily maintained on the dry cell batteries by motor carriers in eastern territories as compared with the third class rating provided in California. It is incumbent upon the parties offering such comparisons to show that they are a fair measure of the reasonableness of the class ratings in issue. No showing has been made of any substantial similarity of the circumstances and conditions encountered in the transportation of the batteries in California and in the other territories where a lower rating is maintained. A mere showing of a difference between the ratings in different classifications and exceptions thereto affords no basis for a finding of unreasonableness. (In re Batteries in District of Columbia, Maryland, and Pennsylvania over Tidewater Express Lines, 18 MCC 118, 120.) Many of the favorable transportation characteristics shown for the batteries would merit substantial weight in considering the rates applicable to transportation of the batteries between the particular points involved. However, in dealing with a proposed classification rating that would be state-wide in application, the characteristics in question exert less influence upon the determinations involved therein.

Upon careful consideration of all of the facts and circumstances of record, we are of the opinion and hereby find that the existing third class rating applicable on dry cell batteries in less-

than-carload quantities has not been shown to be unreasonable and that the class rating sought in lieu thereof has not been justified. The petition will be denied.

O R D E R

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

IT IS HEREBY ORDERED that the petition of Bright Star Battery Company, General Dry Batteries, Inc., and Ray-O-Vac Company, filed October 11, 1948, be and it is hereby denied.

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

Dated at San Francisco, California, this 19th day of April, 1949.

R. Z. Dunning
Justice F. Cooney
W. H. [unclear]
Harold P. [unclear]
[unclear]
Commissioners