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Decision No. 46912

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

Arlo D. Poe, Wyman C. Knapp, Wm. Meinhold, Frederick Pfrommer, Alfred B. Jobes, R. C. Fels, Daniel W. Baker, Jackson W. Kendall, Melvin A. Pixley, H. L. Mathewson, W. M. Cheatham, Marquam C. George, for various carriers and carrier associations, respondents and interested parties.

W. G. O'Barr, L. E. Osborne, H. B. Stephens, C. S. Connolly, P. J. Arturo, Henry E. Manker, W. O. Narry, R. T. Hunt, Ralph S. Schmitt, R. K. Wilson, J. A. Sullivan, J. N. Zeyen, Henry W. Fulhorst, Scott Elder, J. J. Deuel, Louie H. Wolters, Clifford Worth, H. A. Lincoln, A. F. Schumacher, P. Steele Labagh, C. J. Riedy, W. Y. Bell, A. D. Carleton, H. L. Gunnison, Mel A. Neuberger, Edward S. Feldman, Charles E. Hanger, Albert F. Heiner, S. A. Moore, Allen K. Penttila, W. L. Ryan, and Harry W. Dimond, for various shippers, shipper associations, and chambers of commerce, interested parties.

SUPPLEMENTAL OPINION

By prior orders in this and other proceedings the Commission has established minimum rates, rules, and regulations for the transportation of property between points in California by various classes of carriers. Recently, in separate phases of this proceeding, interested parties questioned whether the evidence upon which minimum rates had been established, or were then proposed to be established, included cost separations by classes of carriers which the parties deemed necessary to the fixation of minimum rates in conformity with certain statutory provisions. There being thus

raised a fundamental issue of concern to carriers and shippers generally, the instant phase of Case No. 4808 was designated for the receipt of oral argument relating to the interpretation and application of the statutory provisions and to fundamental rate-making procedures to be followed thereunder.

Oral argument was received before Commissioner Craemer and Examiner Bryant at Los Angeles on November 1 and at San Francisco on November 26, 1951.

Approximately twenty parties offered oral argument. The participants included representatives of manufacturers, distributors, shippers, shipper associations, agricultural interests, chambers of commerce, railroads, highway carriers of various classes, and the principal motor carrier associations. Collectively the participants comprised a broad cross-section of those concerned with either shipping or transporting property between points in this state.

The arguments covered a wide field. They included discussion of the background and legislative history of various rate sections of the Public Utilities Code, reference to and quotation from pertinent decisions of this Commission and of the courts, analysis and review of the procedures heretofore followed in the establishment of minimum rates, discussion of past and present economic conditions, and arguments for and against various regulatory practices and theories. Taken as a whole the discussions shed much light in areas which otherwise might have seemed obscure. Detailed recitation of the various positions is impractical, but the parties may be assured that all of the arguments have been thoughtfully considered.

The statutory provision herein particularly involved is the second paragraph of Section 726 of the Public Utilities Code, as reproduced below:

> "In any rate proceeding where more than one type or class of carrier, as defined in this part or in the Highway Carriers' Act, is involved, the commission shall consider all such types or classes of carriers, and, pursuant to the provisions of this part or the Highway Carriers' Act, fix as minimum rates applicable to all such types or classes of carriers the lowest of the lawful rates so determined for any such type or class of carrier. This provision does not prevent the commission from granting to carriers by water such differentials in rates as are permitted under other provisions of law."

The participants in the oral argument had two basically conflicting views. In general the shippers and shipper interests argued that the statute requires a segregation of cost evidence by classes of carriers, and that the necessary segregation has not been accomplished in minimum rate proceedings generally. The carriers argued on the other hand that such cost segregations are not required, and that the Commission has conformed fully to the statutory requirements in its rate-making procedures.

The shipper position may be summarized quite briefly as follows:

The several classes of carriers (railroads, highway common carriers, radial highway common carriers and highway contract carriers, in particular, and several others incidentally) must be presumed to have different costs of operation; there has been a tendency in Commission rate proceedings to merge the operating data

and cost estimates of the various classes of carriers, with little or no attempt to determine the separate costs; as a result of the blending of the cost data, minimum rates prescribed by the Commission have tended to reflect the composite experience of all of the classes of carriers affected; and the existing minimum rates are therefore reasonable "average" rates rather than the "minimum" rates contemplated under the statutes. Shippers declared further that the establishment of "going" rather than true "minimum" rates has effected virtual rate uniformity in this state, and they argued that a policy of fostering uniformity between all classes of rail and highway carriers is unsound. They reasoned that rate uniformity diverts traffic from the low-cost carriers, dissipates revenues of the high-cost carriers, is uneconomic, is undesirable, and is not in the public interest. The Los Angeles Chamber of Commerce, presenting the shipper view, said: "The advantages of low-cost performance inherent in the several types or classes of carriers, in the several fields where they individually excel, certainly are not and cannot be preserved to the benefit of the public, nor to the carriers themselves, when all of the different types or classes of carriers are encouraged to engage in every phase of transportation at identical rates." Shippers urged that Section 726 of the Public Utilities Code requires the Commission to (1) adduce or receive cost data separately for each type or class of carrier, (2) develop therefrom the lawful rates for each such type or class, and then (3) fix the lowest of such rates as minimum for all of the carriers before it in the same proceeding. There was further contention of some shippers that the Commission moreover should establish efficiency criteria, and thereafter in its minimum rate proceedings use cost data of only "efficient, truly low-cost operators" as a basis for "such minimum rates as may be required."

The carriers replied that the interpretation which the Commission consistently has placed upon the statute is thoroughly in accord with the plain language of the statute and with the obvious legislative intent, and is the only reasonable interpretation possible. The carrier representatives argued that Section 726 means simply that the Commission shall not fix minimum rates applicable to any one type or class of carrier at a level higher than the corresponding minimum rates of any other type or class (except with respect to water carriers). They argued that the shipper position is fallacious in that it attempts to read into the section a meaning that was not expressed or even implied by the Legislature. The statute, the carriers declared, contains nothing to suggest any intent of the Legislature to require the Commission to depart from rate-making principles theretofore followed under the Public Utilities Act or the Highway Carriers' Act, or to inaugurate any new tests or standards of "lawful rates", or to assign to "cost" any particular weight.

The carriers pointed out that the word "cost" can mean many different things, that the exact cost of transportation varies with each shipment and can never be determined with mathematical certainty, and that transportation costs can be estimated only by resort to allocations and averages. The carriers declared particularly that the shipper assumption that costs of highway transportation differ according to the legal status of the carrier is unsound and ignores realities. Carriers asserted that the cost of transporting a given shipment of a given commodity between two given points will be substantially the same regardless of the legal classification of the owner of the vehicle in which it is transported. They argued that the cost of transportation differs not according to the class of

carrier but according to the characteristics of the traffic, that the characteristics of the traffic will differ between carriers within a class as well as between classes, and that cost differences will therefore cut across the boundary lines of classes of carriers.

Replying to other shipper argument, the carriers stated that transportation by truck involves too many variables to permit the development of "efficiency criteria" for rate purposes. They stated that minimum rates of general application must be maintained at a level sufficient to reflect average cost plus a reasonable profit in order to effectuate the purpose of regulation inherent in the establishment of minimum rates. The carriers declared that any suggestion that minimum rates are unnecessary, or that substantial uniformity in transportation rates is undesirable, is contrary to public policies long since determined by the Legislature.

The argument offered by the rail lines, while consistent with that of the motor carriers, was directed more particularly to the rail rates. Their argument was directed principally to the conclusion that the Legislature did not intend to require, and has not required, the Commission to enter upon a study of the cost of transporting property by rail carriers nor to establish minimum rates for such carriers. The rail lines referred particularly to their carload commodity rates, since they recognized that the Commission had established minimum rates for less-carload traffic and for class-rated carload traffic, with the acquiescence or at the request of the railroads. They argued that it is unnecessary and undesirable for the Commission to endeavor to prescribe carload commodity rates. They declared that continuation of the long-established practice of permitting the rail lines to exercise managerial discretion in the publication of specific commodity rates on carload traffic will

insure that the public will continue to receive the benefit of the lowest lawful rates as required by Section 726 of the Public Utilities Code.

The foregoing summary of the arguments of record is necessarily abbreviated. Many details have been omitted, as has all discussion of general economic theories and objectives. The public policies of this State are determined by the people or their elected representatives, and are expressed in the Constitution and the statutes. The Commission is charged with the duty of administering specified constitutional and statutory provisions. It may establish regulatory policies only within the framework of these provisions.

Section 726 is explicit. It reads: "In any rate proceeding where more than one type or class of carrier, as defined in this part or in the Highway Carriers' Act, is involved, the Commission shall consider all such types or classes...." The "this part" referred to is Part 1, Division 1 of the Public Utilities Code, cited as the "Public Utilities Act." The types or classes of carriers defined in the Public Utilities Act and in the Highway Carriers' Act may be readily determined by reference to the definitions therein provided.

It is quite apparent from analysis of the arguments that neither the shippers nor the carriers are particularly concerned with the rates of most classes of carriers. When all of the undisputed matters are removed from consideration there remains at the core of the controversy only the determination of minimum rates for the several classes of highway carriers. Of these, the field of practical concern might be further limited to highway common carriers and highway contract carriers; and it would probably not be an oversimplification to state that the present controversy had its inception in shipper concern with the rates of carriers of one class only -- highway contract carriers.

Shipper participants in the oral argument were almost universally of the opinion that highway contract carriers as a group have operating costs lower than do highway common carriers, and that these cost differences have not been properly reflected in the minimum rates. Stated conversely, the shippers feel that the operating experiences of highway common carriers, some of whom assertedly perform a preponderance of high-cost services, have exerted a substantial and disproportionate influence upon the minimum rate structures. It is clear that the shippers have gained an impression that minimum rates established by this Commission for highway carriers have been predicated upon an average of the operating costs of all kinds of highway carriers, thrown together into a potpourri of carriers large and small, efficient and inefficient, necessary and unnecessary, public and private. Upon this premise the shippers have concluded that the resulting rates are "average" rates, designed to return "average" costs of all highway carriers, and that inevitably such rates must be excessive for the "low-cost" carriers.

What is the carrier's understanding? In many respects it is the same as that of the shippers. The carriers do not agree with the shippers that costs of operation vary according to the legal definition of the type of carrier, but apparently share the prevailing shipper view that the Commission, in establishing minimum rates for highway carriers, has undertaken in effect to establish rates which will be compensatory on the average for any representative cross section of all highway carriers.

What are the facts? As we shall demonstrate presently, the Commission has undertaken at all times, whenever it has established minimum rates for more than one type or class of carrier, to fix as minimum rates the lowest of the lawful rates determined for any such type or class of carrier. This has been accomplished, however,

without resort to the cost segregations and procedural processes which the shippers assert to be a statutory requirement under Section 726 of the Public Utilities Code. It has likewise been accomplished without "averaging" the costs and operating experiences of carriers of the several classes, as the highway carriers seem to have assumed.

Thus far we have necessarily dealt somewhat in generalities. We shall now be more specific. If the Commission has in fact established minimum rates at the lowest of the lawful rates determined for any type or class of carrier, without resort to cost segregations and procedures which the shippers assert to be essential, what has been the process? The answer, as we shall see, is interwoven throughout the Commission's rate decisions.

The first state-wide minimum rate structure for the transportation of general commodities by carriers of various types or classes was established by Decision No. 31606, 41 C.R.C. 671 (1938). It became effective on August 27, 1939. The decision explained that the rate scales "were not projected mathematically from any cost study introduced during the hearings but were developed after consideration of all of the evidence...." This determination was made by developing the lowest lawful rates separately for carriers of each class and by ascertaining the rates for each transportation service in consideration of whatever carriers performed the service in the most efficient manner.

The most efficient means of performing the various services were found to vary according to the weight and nature of the shipment, the length of the haul, the special or accessorial services required, and other factors. For example, it was found that the intercity transportation of small shipments was performed most economically through the use of pickup trucks and consolidation

terminals, whereas truckload shipments were transported most economically when moved directly from origin to destination on the linehaul vehicles, without handling through terminals. In order that the truckload shipper might not be called upon to bear the cost of maintaining truck terminals, which were not required for this traffic, terminal expenses were excluded in the cost estimates applicable to truckload shipments.

From the cost studies of record the Commission thus determined the lowest costs, and therefrom the lowest lawful rates, for any type or class of carrier, without resort to cost segregations according to the legal classification of the carriers, and prescribed these rates as the minimum rates applicable to all affected carriers.

Rates thus developed clearly were not designed to return the costs of all carriers for all services. Carriers without the terminals and other facilities necessary to handle the small shipments most efficiently could handle them only at costs exceeding the minimum rates. Likewise, carriers which undertook to move larger shipments across their terminal platforms would experience over-all costs greater than those upon which the minimum rates were based. The minimum rates gave recognition to the fact that every service has its optimum method of performance.

Decision No. 31606 was explicit that the minimum rates thereby established were only "the rate level below which no carrier should under ordinary circumstances be permitted to go in competing with other carriers." It was regarded as a highly important decision. In fact the Commission said that it was "one of the most momentous" decisions it has been "called upon to render for many years." Continuing, the Commission said further:

"The protection of the interests of the public of California in preserving to itself the full benefit and use of the highways consistent with the needs of commerce, in having adequate, dependable and financially sound systems of transportation by truck, rail and vessel, and in having at the same time a stable and known minimum rate structure which will be reasonable and nondiscriminatory, foster industry and promote the unimpeded flow of traffic, is largely dependent upon our conclusions herein."

Decision No. 31606 also referred to the general provisions of the Highway Carriers' Act directing the Commission to assume jurisdiction over the operation and rates of radial highway common and highway contract carriers and to the following specific provisions of the Public Utilities Act:

"Whenever the commission, after a hearing, finds that any rate or toll for the transportation of property is lower than a reasonable or sufficient rate and that the rate is not justified by actual competitive transportation rates of competing carriers, or the cost of other means of transportation, the commission shall prescribe such rates as will provide an equality of transportation rates for the transportation of property between all such competing agencies of transportation. When in the judgment of the commission a differential is necessary to preserve equality of competitive transportation conditions, a reasonable differential between rates of common carriers by rail and water for the transportation of property may be maintained by such carriers, and the commission may by order require the establishment of such rates." (Section 731 of the Public Utilities Code.)

"Nothing in this part shall be construed to prohibit any common carrier from establishing and charging a lower than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction of the commission may establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which is less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as is required by the commission and a finding by it that the rate is justified by transportation conditions. In determining the extent of such competition the commission shall make due and reasonable allowance for added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation." (Section 452 of the Public Utilities Code.)

These legislative enactments, the Highway Carriers' Act and the above-quoted provisions of the Public Utilities Act, the Commission said, were considered as directing it "to stabilize the transportation industry by providing a basis for equalizing competitive conditions between truck, rail and vessel carriers."

The Commission specifically overruled contentions that weight should not be attached to any rate-making elements other than those specifically mentioned in the Highway Carriers' Act, namely, the cost of performing the service, the value of the facility reasonably necessary to perform the transportation, and the value of the commodity transported. It concluded that all of the recognized elements of rate making should be considered in developing reasonable and nondiscriminatory minimum rates for highway carriers but that particular consideration should be given to those specifically mentioned.

The series of postwar rate adjustments in the general commodity rate structure was built on the Decision No. 31606 foundation. The first such adjustment was made in May 1946. Highway carrier associations asserted that a minimum increase of 20 percent was absolutely essential. Evidence was offered to show that such an increase in revenue would produce for 48 representative carriers an average operating ratio, after taxes, of approximately 92.7 percent. This evidence made little or no allowance for the possibility that the carriers involved were performing, at minimum rates, services for which their facilities and methods were not well adapted. However, other evidence showed that the war years had brought about substantial increases in practically all items of operating cost incurred by carriers of every class. From this other evidence the Commission was able to determine that the minimum rates should be

increased -- not by 20 percent, but by 12 percent. In Decision No. 39004, 46 C.R.C. 486 (1946), which disposed of this matter, the Commission said:

> "With exception of the horizontal increases of 6 or 3 per cent, dependent upon the commodities transported, granted in 1942 this rate structure (the general commodity rate structure), with but few unimportant exceptions, is that originally prescribed by the Commission in Decision No. 31606, of 1938.
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> "The record is entirely inadequate to support increases as great as requested by the carriers. However, it is convincing that operating costs have increased to the point where some relief is necessary as an interim measure. On this record we conclude that an increase of 12 per cent in existing minimum rates is justified. It should be noted, however, that this does not represent a 12 per cent increase in transportation costs to shipper (sic). On a substantial portion of the traffic presently transported by highway common carriers the going rates are now up to 10 per cent above the previously established minimum rates. Similarly the rates observed by permitted highway carriers are in the aggregate substantially in excess of the minimum rates. In connection with the 48 carriers shown on Exhibit No. 2 herein the rates here prescribed amount to an over-all increase of 7.6 per cent. The increase herein authorized should continue until such time as a more comprehensive record can be made, the Commission's intention being to proceed as expeditiously as possible to develop comprehensive cost and rate studies."

This decision recognized the fact that in services and in rates highway common and permitted carriers present different regulatory considerations. It found, however, that a uniform rate increase was justified as a temporary measure in the light of the showing of increased costs. It is interesting to note that at the time of the issuance of this decision the minimum rates were not the "going" rates for any type of highway carrier transportation. Shortly thereafter the Motor Truck Association of Southern California petitioned for another increase in the minimum rates of "at least 7 percent." This petition, after hearings, was denied. The Commission concluded that the evidence was insufficient to justify another general rate increase under the circumstances (Decision No. 39436, 46 C.R.C. 705 (1946)). In this decision the Commission said.

"Increases in operating costs are significant from a rate making standpoint in their effect upon net operating results. A showing that costs have risen may carry the presumption that rates should be increased to yield compensating increases in revenues. However, the extent to which such presumption may be valid cannot be measured without reference to the net results of the operations. The evidence submitted in this proceeding was related primarily to showing the percentage and dollar increases in operating costs. No figures disclosing the net operating results for the northern California carriers were provided. Only Pacific submitted detailed figures relative to its revenues, expenses, net operating results and financial position. In general, the carriers represented that the cost increases to which they testified had resulted in a condition of financial emergency for those in their industry.

"Petitioners apparently proposed that an adjustment in the minimum rates could be made upon a composite showing of common carriers as defined in the Public Utilities Act and of highway carriers as defined in the Highway Carriers' Act. Any adjustment in minimum rates that might be made would have to reflect the lowest lawful rates applicable to any of the defined types or classes of carriers.*******"

This decision illustrated the interrelated use of costs and operating ratios in measuring revenue requirements of the carriers, the Commission's insistence on showings of operating results, and the consistency of its refusal to accept composite showings of operating results as determining the necessity for rate increases. Within three months after this denial of the proposed increase the highway carrier associations again petitioned for an adjustment of the minimum rates. They sought, as it developed, an increase of about 14 percent. Evidence was introduced to show that such an increase would be necessary to reduce the average operating ratio of 52 representative highway carriers of various classes to a basis deemed reasonable and desirable. More than a score of carrier witnesses testified. The Commission was confronted with substantial evidence of increased and increasing expenses of operating during the year 1946. It said that the record established "indisputably the fact that all classes of highway carriers" had encountered these

cost increases. However, the Commission considered separately the revenue requirements of "common carriers" on the one hand and "permitted carriers" on the other. In the decision, No. 39945, 47 Cal. P.U.C. 136 (1947)), the Commission said:

> "The evidence shows that the common carriers, as a class, receive and transport a great preponderance of small shipments, and are tendered relatively few large shipments. It shows that the permitted carriers, on the other hand, specialize generally in truckload or near-truckload shipments, and accept few shipments in the lower weight brackets. It is evident, therefore, that an increase in the minimum charge per shipment or in the rates for the lower weight brackets would affect primarily the revenues of the common carriers, whereas the revenues of the permitted carriers would be responsive to a rate increase in the higher weight brackets."

After concluding that an increase in the minimum charge per shipment was justified, the Commission went on to say:

> "Referring to other rates and charges of the common carriers, it is clear from the evidence of record that the accessorial charges and the levels of transportation rates for shipments subject to minimum weights of less than 20,000 pounds, as provided in Highway Carriers' Tariff No. 2, should be increased by not less than 12 per cent. If, in addition, the "any-quantity" rates were further increased by the amount of 3 cents per 100 pounds, as suggested by carrier witnesses, the relationships between the rates would be brought into closer harmony with current cost experience, and the over-all rate structure would, in our judgment, be reasonable and sufficient. Greater increases have not been justified on this record.
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> "The revenue deficiencies of the permitted carriers, as indicated by the table hereinbefore set forth, are less than those of the common carriers. It appears from the operating results for the 34 permitted carriers that the impact of increases in operating costs has fallen less heavily upon this class of carrier than upon the common carriers as a group. On the instant record we must conclude that the minimum rates for shipments subject to minimum weights of 20,000 pounds or more, which are transported primarily by permitted carriers, should be increased by no more than 8 per cent."

These adjustments unquestionably had the general effect of maintaining the rates at the lowest levels determined for any type or class of carrier, but the Commission was not wholly

satisfied. In its decision it said further:

> "We wish to emphasize, however, that the evidence upon which our conclusions are based, while it is persuasive and convincing that such increases are necessary to the maintenance of a sound transportation system, does not show conclusively the extent to which the present rates in Highway Carriers' Tariff No. 2 may be deficient as reasonable minimum rates. The rates hereinafter established are not intended to provide a basis for further modifications, but are considered to be interim rates, to be continued in effect until current cost and rate studies are available and a more comprehensive record has been made. The Commission's staff is now engaged in making such studies, and the work will be completed as soon as possible."

Upon a similar petition and substantially like evidence, the minimum rates were again adjusted by varying amounts on September 1, 1947. In Decision No. 40557, 47 Cal.P.U.C. 353 (1947), which made these adjustments, the Commission said:

> "The record is convincing that for-hire carriers have experienced materially higher operating costs since January 1, 1947; that the impact of higher wages has fallen more heavily upon the cost of transporting shipments in the lower weight brackets and for relatively short distances; and that an increase in the minimum rates is required if the carriers involved are to continue to provide efficient and adequate service."

It will be noted that selective treatment was again found necessary in measuring the impact of higher costs. Within six months the highway carrier associations again petitioned for a further rate increase. At that time they asked that the minimum rates be raised to the then existing level of the rail pickup-and-delivery rates, which would have produced a revenue increase estimated to be 7 percent. The evidence again consisted largely of a study of the revenues and expenses of a selected group of highway carriers of several classes. In its decision the Commission said:

> "On this record we are not persuaded that the revenue needs of the carriers as a whole are so urgent, or the competition between them so keen, that the minimum rates should be increased at this time to the extent sought by petitioners."

After pointing out that cost and economic studies were under preparation, the Commission concluded:

> "In the meantime, however, ... certain unavoidable increases in costs have been added to the carriers' expenses ... From the data of record it is evident that the combination of these two increases added nearly 5 per cent to the carriers' total operating expenses. On this basis an increase of approximately 5 per cent in the minimum rates has been justified" (Decision No. 41768, 48 Cal.P.U.C. 171 (1948)).

Further increases in the minimum rates were made by decisions issued in October 1949, August 1950 and March 1951. (Decision No. 43462, 49 Cal.P.U.C. 186 (1949); Decision No. 44637, 50 Cal.P.U.C. 8 (1950) and Decision No. 45429, 50 Cal. P.U.C. 493 (1951)). In each of these proceedings the highway carriers persisted in offering evidence of the revenue needs of the carriers as a whole. In each case, however, the rate adjustments made by the Commission were based upon concrete evidence of specific cost increases rather than upon operating ratios and average revenue needs. The 1950 revision, which none of the parties opposed, was a relatively minor one. The 1949 and 1951 adjustments were in amounts substantially less than those sought by the carriers.

In Decision No. 43462 which established the 1949 adjustments, the Commission appraised the effect of increased costs as follows:

> "The strong influence of wages upon highway carrier costs and rates is apparent. Wage increases have been given effect in the rate levels by horizontal percentage increases. Studies of record confirm that wages are a relatively more important factor in the costs for short-haul than for long-haul traffic and for smaller than for larger quantities. Expenditures for labor at points of origin and destination do not vary appreciably with the length of the haul. A larger shipment does not incur handling costs in cents per 100 pounds at origin and destination as great as those incurred in connection with a smaller like shipment. Handling over terminal platforms is not necessary when large shipments are involved. Adjustments which have heretofore been granted following the various wage

increases have been established on records which did not afford a basis for giving effect to these circumstances. It is clear that percentage increases in rates have unevenly distributed the burden of the higher costs. The San Francisco Bay district carriers have a preponderance of small-lot short-haul traffic. Their experience, as well as the experience of other carriers engaged principally in handling short-haul traffic, shows that the need for higher rates is critical in so far as such short-haul traffic is concerned. To this extent, remedial action cannot be deferred as recommended by certain of the shippers.

"An increase of approximately 6 per cent, as proposed for application except within the twelve-county San Francisco area, appears fully justified for highway carrier operations up to approximately 150 miles for the any-quantity, 2,000-pound and 4,000-pound rate scales. For the remaining scales generally applicable to less-than-truckload traffic, the 10,000-pound and 20,000-pound weight brackets, a like increase is warranted for hauls of approximately 75 miles and less. As the rates approach the 150-mile and 75-mile limits of the increases the amount of the increase will be lessened as the necessity for higher charges becomes less compelling. These adjustments have been shown to be necessary in order to tide the carriers over the period while further consideration is given to permanent rate adjustments. They are temporary increases and will be reviewed in the light of the full record to be made in the general further investigation. The showing made in support of extending the proposed interim increases to the truckload rate scales and beyond the above-stated mileage limits is not persuasive that emergency treatment is justified. Much of the truckload traffic is transported between points where rates lower than the present scale of highway carrier rates apply by virtue of the alternative application of railroad carload rates. Further increases in the highway carrier rates would have no effect on such traffic. Such increases would also serve to widen the spreads in minimum rates between points served by rail and those which are not. With respect to the distance limitations, it has not been demonstrated that the revenues of carriers generally engaged in long-haul traffic are so deficient that emergency treatment of their rates is necessary. It is evident that proper further adjustment of the truckload rate scales and the long-distance less-than-truckload scales requires greater factual background than that at hand."

Again in Decision No. 45429 which established the 1951 increases the impact of increased costs was analyzed at some length. The Commission then said:

"It is clear from the record that the existing interim rates are not generally adequate in the face of further increased wages and other increased operating expenses. Petitioners have not shown, however, that the full increases in rates applied for are justified as a further interim adjustment, As in previous interim increase proposals, the carriers shown to be in need of rate relief are for the most part those carriers which are chiefly small-lot and short-haul carriers. However, such carriers centering their operations in the San Francisco Bay area have had the benefit of higher rate levels for some time and are shown here to be in a relatively better earning position than the carriers operating elsewhere in the less-truckload field. The southern California less-truckload carriers have experienced the greatest wage increases. They are in the most perilous position. The showing in regard to truckload carriers and truckload rates is meager. There is, likewise, no specific showing on less-truckload or truckload commodity rates.

"Petitioners' less-truckload surcharge proposals applied to the state-wide class rate level appear generally justified and necessary in view of current costs and the operating experience of the carriers as developed in this record. However, the shipper proposal that any increase be such that it will reflect classification principles is well founded. The flat surcharges will be adjusted according to the established class rate relationships. These adjusted rates are somewhat higher than the rates now in effect within the twelve-county San Francisco Bay area and for transbay operations between San Francisco and East Bay points. The increases between the existing bay district rate levels and the new state-wide class rate levels are as much as this record supports for the operations involved.

"Increases in truckload class rates or in truckload or less-truckload commodity rates find no adequate support on this record and will not be established. The hourly rate increase proposed for oil field transportation is, likewise, without adequate basis on this record and similarly will not be adopted."

The revisions of March 1951 were the last in the postwar series. Other developments in the general minimum rate proceeding have been the issuance of an examiner's proposed report, the filing of exceptions to the report, and the issuance (on July 31, 1951) of a decision which reviewed the postwar rate adjustments in general and concluded that no additional changes should be made at that time (Decision No. 46022, 51 Cal.P.U.C. 3 (1951)). In this decision the Commission concluded as follows:

> "In considering this record as a whole, it is apparent that a further broad and sweeping inquiry is not warranted at this time. It is likewise apparent that under rapidly changing circumstances and conditions further investigations of specific matters herein should await the showing of a need therefor. Interested parties may file petitions seeking such adjustments as they may deem necessary and justified. They should be prepared to make adequate and complete showings based on current information in support of the adjustments sought."

From the foregoing compressed review of some thirteen years of the development of minimum rates for general commodities, it is evident that the pattern of the changes in the minimum rate structure has been laid out and measured by the continuing increases in costs -- higher wages, higher fuel prices, higher tire prices and higher taxes. Operating ratios have been used as an aid in determining the impact of the higher expenses. They have been used selectively; not indiscriminatively nor on an over-all or average basis. The character of the traffic handled has been considered and the varying effects of the higher costs have been determined. The increased costs have been distributed equitably throughout the rates to reflect the increased cost of performing the type of service involved. It has been recognized that there are differences in the service requirements and in the costs for less-truckload and truckload traffic and differences in the service requirements and the

costs for short hauls and long hauls. The existing minimum rates for general commodities were developed originally and have subsequently been revised on the basis of careful study of the cost of performing the transportation service by the most efficient means. They are the lowest of the lawful rates determined for any considered type or class of carrier.

Additionally, there are broader aspects of this matter. The Commission is an agency created, among other purposes, to regulate the rates of for-hire carriers of property. The general policies of such regulation, except as provided in the Constitution, have been laid down by the Legislature. The Commission has heavy obligations to the public. Correspondingly it is given broad powers and a considerable latitude in exercising these powers in the public interest. Section 726 of the Public Utilities Code, one of the many legislative enactments dealing with for-hire carrier rates, directs the Commission to fix as minimum rates applicable to all considered classes of carriers the lowest of the lawful rates determined for any such class. It does not undertake to specify in what manner, upon what evidence, or by what precise steps, the lawful rates for any class of carrier shall be determined. The Commission cannot merely look to the provisions of Section 726 and ignore the provisions of other sections. It must see also, for example, that the general purposes of the Highway Carriers' Act are realized. They are set out in Section 3502 of the Public Utilities Code and reproduced below

> "The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public."

There are also such provisions as those contained in Sections 452 and 731 of the Public Utilities Code dealing with carrier competition which have been hereinbefore reproduced. There are many others. We adhere to the views expressed in Decision No. 31606, supra, that "all of the recognized elements of rate making should be considered in developing reasonable and nondiscriminatory minimum rates."

The Legislature throughout many years of legislative history has refrained from specifying the precise processes and procedures by which the reasonableness and lawfulness of transportation rates shall be determined. We cannot agree with the shipper contention that the statute should be construed as a mandate to pursue a specified procedure in the development of minimum rates. The shipper position would read into Section 726 specific procedural requirements which are not there. In particular, a requirement that operating costs be determined for each class of carrier, separate and apart from the costs of all other classes, would be a procedural straight-jacket. Such a requirement would be wholly impracticable and is unnecessary to the proper determination of the lowest lawful rates for any class of carrier. There is no basis for assuming, as apparently certain of the shippers do, that the suggested procedures would result in any lower or different rates than those which the Commission has established by the methods which have been employed. The suggested procedures, moreover, would so hamper rate-making processes that the Commission could not fulfill its obligation to see that the rates of transportation agencies are so regulated that adequate service of all necessary transportation agencies will be maintained.

The highway carriers, for their part, must recognize that the Commission has not subscribed, and does not now subscribe, to

their view that minimum rates are intended to be sufficiently high to assure reasonable remuneration to a cross section of carriers of all kinds. Minimum rates will not be based upon average operating statements which disregard the nature and extent of the services performed, but upon specific rate considerations including the cost of performing particular services by efficient means. If the highway carriers and their associations continue to seek from this Commission upward adjustment of minimum rates upon bases similar to those thus far used in the period following World War II, they must expect disappointment in the future as they have experienced in the past. Minimum rates will be revised from time to time as such revisions are shown to be necessary to meet economic changes and the needs of commerce. While carriers of all classes are permitted freely to compete at the lowest lawful rates, their revenues will inevitably be deficient if they offer rate competition unwisely in services for which they are not economically suited.

No affirmative order was contemplated in this phase of Case No. 4808, and none is required.

Dated at San Francisco, California, this 27th day of March, 1952.

President

Commissioners

DISSENTING OPINION

Section 726 of the Public Utilities Code is specific in stating that in any rate proceeding where more than one type or class of carrier, "as defined in this part or in the Highway Carriers' Act, is involved," the Commission shall consider all such types or classes of carriers. Having done this, the Commission is to "fix as minimum rates applicable to all such types or classes of carriers the lowest of the lawful rates so determined for any type or class of carrier." The majority opinion herein sets forth at length the procedure that has been followed. It seems clear that what consideration has been given to types or classes of carriers dealt with them according to the services rendered or commodities transported, rather than according to their legal classifications as prescribed by Section 726 of the Public Utilities Code. While this may have produced results equally desirable, it is not in accord with the express mandate of the statute.

For the foregoing reason, I cannot concur in the majority opinion. The Commission staff should be instructed to proceed in accordance with the strict terms of the law, and to that end make studies showing segregated data for each of the various types or classes of carriers specified in the Code.

Harold P. Huls
Commissioner

I concur in this dissenting opinion
Peter E. Mitchell
Commissioner