

Decision No. 47123**ORIGINAL**

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) Case No. 4808
 of all common carriers, highway)
 carriers and city carriers relating)
 to the transportation of property.)

Appearances

Edward M. Berol, Harry Moser, Ken D. Anderson, Harold F. Culy, M. D. Savage, Frank F. Terramorse, C. A. Millen, J. C. Kasper and Warren H. Biscailuz, for various carriers and carrier associations, respondents and interested parties.

L. E. Osborne, W. G. O'Barr, Gerald Collins, A. L. Russell, M. S. Housner, Paul G. Rahe, W. O. Narry, R. T. Hunt, Robert K. Wilson, P. J. Arturo, J. A. Sullivan, Lester A. Bey and John G. Crain, for various shippers, shipper associations, and chambers of commerce, interested parties.

Grant L. Malquist and J. H. Morrison, for the Commission's Staff.

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. The Common Carrier Conference of The Truck Owners Association of California, by petition, seeks an interim order modifying certain of the minimum rates contained in Highway Carriers' Tariff No. 2, and the rules and regulations applicable thereto, by imposing a surcharge of 12 percent "applicable to traffic moving between the San Francisco Territory and the Sacramento Territory, on the one hand, and the Los Angeles Territory, on the other hand."

Public hearings were held before Examiner Bryant at Los Angeles on April 17 and 18, 1952. The matter is ready for decision.

Petitioner alleges that since the minimum rates, rules, and regulations were last adjusted, effective April 2, 1951, highway carriers generally have been subject to changed conditions which have affected their revenue position seriously and adversely.¹ Assertedly, the carriers have been forced to grant increases in rates of pay to labor, and have experienced substantial increases in the cost of equipment, tires, materials, parts, supplies and taxes. Petitioner declares that the cumulative effect of these changed conditions upon the net revenue position of highway carriers imminently threatens their ability to provide a full and adequate service for the shipping public, and that an interim rate increase as herein sought is urgently necessary pending further investigation.

Petitioner introduced evidence through the testimony of seven witnesses. Six carrier representatives described principally the operations and revenue needs of their several companies, and a consultant introduced and explained exhibits consisting essentially of a summary of the operating profit and loss statements of 23 highway carriers. The operating statements were set forth separately for the first half and the last half of 1951, and the data for the latter period included projections and modifications to show the effect of certain revenue and expense adjustments.

According to the exhibits, the 23 carriers as a group, for the first six months of 1951, had operating revenues of \$22,983,535 and operating expenses of \$22,246,051, resulting in net operating

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The April 2 adjustment was made by Decision No. 45429, dated March 6, 1951, in Case No. 4808 (50 Cal. P.U.C. 493).

revenues of \$737,484, or an operating ratio of 96.79 percent.² The consultant explained that the data for the first six months of 1951 were of more interest as an historical record than as a representation of current conditions. He pointed out that the rate increase of April 2, 1951, was only partially reflected in the revenue figures for the first half of the year, and he testified that various increases in wage rates of pay and in other items of operating expense had been incurred at various times during the year. For the purpose of showing as nearly as practicable the current revenue position and revenue needs of the carriers, he introduced a summary of the actual operating profit and loss statements for the last half of the year, supplemented by certain modifications. The modifications consisted principally of estimates of the effect of additional revenues which would accrue from rate changes recently established or proposed, including the increase herein sought, and of expense adjustments for certain increased costs which developed during the year.³ These data were submitted separately for each of the 23 carriers, collectively for the carriers as a whole, and collectively for carrier groupings according to classes of operative authority. The operating profit and loss statements for the second six months of 1951, actual and modified, as submitted by the

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These figures are before provision for income taxes. Income tax data applicable to the first six months of 1951 were not supplied.

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The wage adjustments were based upon actual wage changes made for various classes of employees in various areas at different times throughout the year. Provision was made also for a recent increase in taxes on diesel fuel and gasoline. Other expense adjustments were minor. The revenue adjustments provided for the estimated effect of recent changes in constructive distances, of an increase in certain rail-competitive rates, and of the rate increase herein sought.

consultant, are summarized in the tables which follow:

TABLE I
ACTUAL - BEFORE ADJUSTMENT
Summary of Operating Profit and Loss Statements,
Second Six Months of 1951

Carrier Number	Operating Revenues	Operating Expenses	Net Profit or (Loss) (1)	Operating Ratio (1)
1	\$ 352,069	\$ 345,100	\$ 6,969	98.02
2	4,192,679	4,260,395	(67,716)	101.62
3	3,264,605	3,258,006	6,599	99.80
4	468,920	465,630	3,290	99.30
5	430,216	430,295	(79)	100.02
6	298,620	292,360	6,260	97.90
7	901,019	929,060	(28,041)	103.11
8	2,782,610	2,680,138	102,472	96.32
9	382,423	371,611	10,812	97.17
10	787,962	788,943	(981)	100.12
11	269,929	277,285	(7,356)	102.73
12	138,462	136,759	1,703	98.77
13	313,242	275,220	38,022	87.86
14	1,143,316	135,604	7,712	99.33
15	170,607	167,316	3,291	98.07
16	632,763	635,119	(2,356)	100.37
17	902,854	897,224	5,630	99.38
18	4,053,588	3,892,960	160,628	96.04
19	169,129	163,645	5,484	96.76
20	226,960	213,491	13,469	94.07
21	187,629	196,130	(8,501)	104.53
22	1,348,251	1,307,607	40,644	96.99
23	847,254	858,526	(11,272)	101.33
TOTAL	\$24,265,107	\$23,978,424	\$ 286,683	98.82%

(1) Before provision for income tax: Income tax data not supplied.

() = Loss

TABLE 2
OPERATING RESULTS - ADJUSTED AND MODIFIED

Carrier Number	* Net Operating Revenues Actual	Net Operating Revenues Adjusted	Income Tax	Net Operating Revenues Adjusted (1)	Operating Ratio (1)
1	\$ 6,969	\$ 42,045	\$ 20,031	\$ 22,014	94.34
2	(67,716)	184,214	96,688	87,526	98.03
3	6,599	38,907	18,339	20,568	99.38
4	3,290	51,192	24,963	26,229	94.94
5	(79)	48,965	23,762	25,203	94.77
6	6,260	40,607	19,256	21,351	93.62
7	(28,041)	2,423	795	1,628	99.83
8	102,472	278,866	147,725	131,141	95.60
9	10,812	51,970	25,382	26,588	93.76
10	(981)	25,990	11,373	14,617	98.22
11	(7,356)	2,274	746	1,528	99.46
12	1,703	17,814	6,966	10,848	93.00
13	38,022	48,582	23,556	25,026	92.29
14	7,712	66,051	32,975	33,076	97.26
15	3,291	23,530	10,048	13,482	92.94
16	(2,356)	21,173	8,777	12,396	98.11
17	5,630	27,052	11,946	15,106	98.38
18	160,628	573,484	306,583	266,901	94.05
19	5,484	22,844	9,678	13,166	92.97
20	13,469	40,626	19,266	21,360	91.64
21	(8,501)	7,990	2,621	5,369	97.38
22	40,644	111,654	57,564	54,090	96.21
23	(11,272)	47,247	22,836	24,411	97.32
TOTAL	\$ 286,683	\$1,775,500	\$901,876	\$873,624	96.62%

* From Table I

(1) After provision for income tax

() = Loss

Other information submitted by the consultant showed that, regardless of the carriers' legal classifications, the operating ratios of the 23 carriers are generally similar. According to his exhibits, six highway common carriers had a combined operating ratio for the last half of 1951 of 98.63 percent, seven highway permit carriers had a combined operating ratio of 98.55 percent, and the 23 carriers (some of which operate under both certificates and permits) had a combined operating ratio of 98.82 percent.

The consultant conceded that his adjusted operating statements were based in part upon various approximations and estimates, and he readily admitted that the exhibits were not free from error. However, he pointed out some respects in which the carriers' revenue needs had been understated as well as overstated, and he declared that his exhibits were essentially sound in their net effect.

Six carrier witnesses, representing seven of the 23 companies studied by the consultant, described the operations and the recent operating experiences of their several companies. The operations were varied. Some of the carriers were primarily highway common carriers, some were primarily highway permit carriers, and others conducted combined operations. Some of the carriers transported a substantial preponderance of small shipments; others were engaged largely in transporting truckloads. Some of the carriers specialized in transportation between terminal areas herein principally involved; others transported such traffic only incidentally. One carrier derived a substantial part of its revenue from the transportation of fresh fruits and vegetables from fields to processing plants. Another received approximately 45 percent of its revenues from services performed under contract for a single shipper at rates in excess of the minimum. All of the carrier witnesses were in agreement, however, that the financial conditions

of their companies had deteriorated since the early months of 1951. They said that all feasible operating curtailments and economies had already been effected, including some which could not be continued prudently for long. Witnesses who had recent data available declared that the first months of 1952 have brought no improvement in the revenue positions of their companies, and they said that none is anticipated except as the result of higher rates.

All of the carrier representatives testified that the sought increase in minimum rates is urgently needed and is essential if the transportation services are to be maintained. They stated that it is an economic impossibility for their companies to obtain needed revenues by increasing their rates or charges except in response to an order of this Commission establishing increased minimum rates for all competing carriers. The witnesses declared that, according to their experience, any increase in the rates of one carrier would result in prompt diversion of the traffic to other competing carriers, so that the net revenue position of the high-rated carrier would be worsened rather than improved. They testified that shippers in general, even though agreeable to paying reasonably increased charges themselves, universally refuse to pay any carrier more than competing shippers might be called upon to pay other carriers for similar transportation. As a result, they said, the minimum rates established by the Commission are looked upon generally as the "going" rates, and it is not feasible for any carrier to assess, nor for any shipper to pay, rates in excess of such minimum rates.⁴

⁴ As hereinbefore indicated, one carrier testified that his company charges a rate in excess of the established minimum rate for transportation performed under contract with one producer. The circumstances were not explained.

No other witnesses testified. Members of the Commission's staff and representatives of the California Manufacturers Association, Los Angeles Traffic Managers Conference, Western Traffic Conference, Los Angeles Chamber of Commerce, and of various shippers and carriers participated in the proceeding and assisted in the development of the record.

The record discloses examples of deferred maintenance, curtailed services, and impaired credit, and outlines on the whole a picture of financial distress among the carriers. Nonetheless, for reasons which will be explained, it fails to establish that the relief sought by petitioner is reasonable, necessary or justified.

Petitioner's presentation was founded and advanced upon the premise that the minimum rates should be raised to the level necessary to provide reasonable earnings for a representative cross-section sample of all highway carriers engaged in performing the service. The contention is that the carriers are compelled by circumstances to apply the minimum rates as both minimum and maximum rates, and that the rates established by this Commission as minimum should therefore be high enough to be reasonably compensatory to an average of all of the affected carriers.

Petitioner is apparently heedless or unmindful of the admonitions contained in the Commission's Decision No. 46912, dated March 27, 1952, (51 Cal. P.U.C. —), some of which were restated from prior decisions in this and other proceedings. Its basic premise is fallacious. Whether or not the carriers are helpless to adjust their rates and charges above the levels established by this Commission as minimum, as a number of witnesses asserted, the statutes do not contemplate the establishment of uniform rates for

all classes of carriers at a level which will be reasonable for application as both maximum and minimum rates, and which will be compensatory on the average for any representative cross-section of the carriers. If carriers in the past have found it expedient or even necessary to adopt such minimum rates for use as both minimum and maximum rates, they have done so voluntarily and not at the direction or suggestion of this Commission.

If the carriers are seriously persuaded that the maintenance of adequate transportation facilities requires the fixation by this Commission of rates which will be reasonable for general application as both minimum and maximum rates by all competing carriers, they may wish to propose statutes authorizing or directing this Commission so to proceed. In the absence of statutory sanction it will not be the purpose of the Commission to establish such rates in the guise of "minimum" rates.

Aside from the fallacy of petitioner's underlying premise, the record is defective in other respects. Petitioner relied upon a sampling of the revenues, expenses and operating ratios of a group of carriers which it deemed to be representative of all carriers transporting the terminal traffic in question.⁵ The record shows that approximately 400 questionnaire forms were sent in January to highway carriers having membership in a motor carrier association. The forms called principally for operating profit-and-loss statements for 1951, by quarterly periods, for statements of wages paid by classes of employes, and for statements of increases in specified items of expense. Despite tracers, telephone calls and some personal contacts, only 58 of the forms were returned. Some of these were

⁵ For convenience, the term "terminal traffic" is used herein to denote general commodities moving between Los Angeles Territory on the one hand and San Francisco Territory and Sacramento on the other hand, including intermediate points.

incomplete. Of the completed forms, only 23 were received from carriers deriving as much as 10 percent of their gross revenues from the terminal traffic. The 23 carriers reported gross revenues of about \$50,000,000 for the year 1951, less than 45 percent of which accrued from the terminal traffic. One witness expressed the opinion, based upon his general knowledge, that the 23 carriers handle as much as 80 or 85 percent of the traffic moving between San Francisco and Los Angeles. Another witness estimated that the 23 carriers move about 25 percent of the traffic between Sacramento and Los Angeles. These general estimates were not otherwise substantiated. Petitioner's selected sample must be deemed to be inadequate for the purposes for which it was intended.

Furthermore, the reliability of petitioner's evidence was not well established. The consultant, in submitting his summaries, admitted that he had not undertaken to check or spot-check any of the revenue or expense figures supplied to him by the carriers. The carriers themselves could not be questioned at the hearing since the representatives of only seven carriers were offered as witnesses. Some of these witnesses admittedly were not qualified to answer questions concerning the revenues or expenses of their companies. The completed questionnaire forms were not offered in evidence. Moreover, petitioner declined, short of a compelling order from the examiner or the Commission, to identify the carriers whose figures were submitted by the consultant.⁶ Cross-examination, although thus limited, was sufficient to disclose a number of errors. The consultant explained that the questionnaires were supplemented in important respects through means of correspondence, personal contacts, and telephone calls. Under all of the circumstances his exhibits must be recognized as being essentially founded upon hearsay.

⁶ Petitioner supplied the names of the 23 carriers, but, except for seven, withheld the code by which the figures might be identified with the carriers.

Since the studied carriers as a group derive the greater part of their revenues from transportation services other than those herein involved, it is not clear how petitioner reaches its conclusion that the terminal traffic in question, as distinguished from other traffic, should be selected for increased charges. In some respects petitioner's proposals appear not to have been considered carefully in advance. The petition seeks imposition of a surcharge of 12 percent "to the minimum rates, rules and regulations applicable to traffic moving between the San Francisco Territory and the Sacramento Territory, on the one hand, and the Los Angeles Territory on the other hand." At the hearing it developed that petitioner contemplated also that the surcharge would be imposed upon "intermediate" traffic to the extent that the rates between the terminals would apply as maximum between intermediate points. Contrariwise, petitioner asked at the hearing that the carriers be authorized to depart from the long- and short-haul provisions of the California Constitution and the statutes to the extent necessary to put the sought rates into effect. The consultant had not considered that the traffic beyond the terminal areas would be involved, and he did not seek information concerning such traffic from the carriers. Other carrier witnesses understood, however, that "beyond" traffic would necessarily be affected in instances where the combination of rates proposed from and to the terminals would supplant the higher through distance rates. Other questionable aspects of the proposal might be noted.

Some of the carriers made important changes in their operations during the year 1951 or early in 1952. One acquired a new fleet of vehicles. Others changed maintenance and solicitation

practices. One common carrier extended the hours of its pickup service at added cost, assertedly to meet competition. Another, to curtail expenses, substantially reduced its pickup fleet and also induced some shippers to divert from it certain low-rated traffic. Various other operating changes were indicated. The record does not afford an adequate basis for estimating the extent to which these several changes in conditions may affect the future earnings of the carriers in question.

If the common carriers were seeking permissive authority to establish increased rates under Section 454 of the Public Utilities Code, they would be expected to supply all information necessary to permit a reasonable forecast of their earnings under the proposed rates. The burden of proof is not lighter where, as here, they seek a mandatory minimum rate order applicable to all affected carriers. The record is clear that the carriers do not seek, and are not interested in, permissive authority. They ask for an order which would require all competing carriers to raise their rates as proposed in the petition, and would prohibit any affected carrier from assessing lower charges. Any mandatory order prescribing or revising minimum rates should be based upon substantial affirmative evidence that the resulting rates will be reasonable and not excessive.

Petitioner has not sustained the burden of proof necessary to justify the proposed increase in minimum rates. Our conclusion is not that no revision of the minimum rates is necessary, but that the present record affords no basis for making the changes sought by petitioner. The petition will 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 petition filed in this proceeding on February 28, 1952, by the Common Carrier Conference of The Truck Owners Association of California, be and it is hereby denied.

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

Dated at San Francisco, California, this 5th day of May, 1952.

P. J. [Signature]
President

Justin S. [Signature]

Harold A. [Signature]

[Signature]

[Signature]

Commissioners