

ORIGINALDecision No. 49860

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Blankenship Motors, a corporation,)
 for authority to depart from the)
 rates, rules and regulations of) Application No. 35255
 Highway Carriers' Tariff No. 2,)
 under the provisions of the Highway)
 Carriers' Act.)

- E. M. Berol, for applicant.
- R. E. Tewson and D. O. Day, for Montgomery Ward & Company, in support of applicant.
- F. L. Merwin, for Kaiser Steel Corporation, interested party.
- H. F. Wiggins and W. E. Turpen, for the Commission's staff.

O P I N I O N

Blankenship Motors is a corporation operating as a highway contract carrier of property. By this application, filed March 17, 1954, it seeks authority to observe rates less than the established minimum rates on certain transportation performed for Montgomery Ward & Company.

A public hearing of the application was held at San Francisco on March 31, 1954, before Examiner Jacopi. Evidence was introduced by applicant's president and by Montgomery Ward's traffic manager. Counsel for the Commission's staff participated in the examination of the witnesses and otherwise assisted in the development of the record. No one appeared in opposition to the granting of the application.

The transportation involved herein consists of the merchandise needed for sale by the 52 retail stores operated by Montgomery Ward in California.¹ The goods are hauled by applicant from the

¹ The 52 retail stores are situated at various points in the territory extending generally from Eureka and Yreka on the north to San Diego on the south.

company's warehouses at either Oakland or Los Angeles, depending upon the location of the stores. The total movement amounts to about 90 million pounds per year. According to the evidence, the merchandise stocks are purchased from manufacturers and distributors situated in virtually every state in the nation, including California. All classes of for-hire carriers are used in bringing the goods to the aforesaid warehouses. Substantial quantities shipped by eastern sources, for example, are consolidated at eastern points and moved to the California warehouses in rail pool cars. These cars include merchandise billed to the warehouses in question but marked for and to be reforwarded to the various individual retail stores. In the last six months of 1953, this traffic amounted to about 5½ million pounds. The eastern consignments are tendered to applicant on new shipping documents together with other goods from the warehouse stocks for delivery to the retail stores. Applicant's president and the traffic manager considered the eastern consignments still to be in the course of interstate commerce during applicant's haul to the stores.

In the past, applicant assessed the transportation charges on the mixed consignments of interstate and intrastate tonnage handled by it based upon a rule in Item No. 90 series of Highway Carriers' Tariff No. 2.² As determined from the rule, the charges on the intrastate portions of the mixed deliveries made by applicant

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The portion of the rule in question contained in Item No. 90 series of Highway Carriers' Tariff No. 2 prior to April 1, 1954, reads as follows:

"3. Intrastate and Interstate Tonnage:

(a) When property consisting of part intrastate and part interstate tonnage is received as a single shipment, the intrastate portion may be charged for at the rate which would be applicable on such portion were the entire quantity intrastate in character. In no event shall the aggregate charge on the intrastate and interstate portions be less than the charge herein provided for an intrastate shipment of the same combined quantity."

were lower than would have been applied in the absence of the interstate tonnage. The traffic manager pointed out that effective April 1, 1954, however, these provisions were eliminated from the tariff rule in question by Decision No. 49681 of February 16, 1954, in Case No. 5432, and that thereafter the intrastate portion became subject to higher rates involving an increase of from \$40,000 to \$60,000 per year in the charges paid to applicant.³ It was pointed out, however, that no change had resulted in the basis of charge on the interstate portions of the movements because applicant's interstate tariff contained mixed tonnage provisions similar to those eliminated from Highway Carriers' Tariff No. 2. The witness asserted that the increased cost of handling the intrastate tonnage under the changed rule was burdensome to his company and that proprietary operations would be undertaken unless it were possible to rearrange the shipping practices to advantage.

In the circumstances, applicant seeks authority under Section 3666 of the Public Utilities Code to observe for a period of ninety days the basis of charge on the intrastate tonnage that was discontinued. It was explained that extensive studies were being undertaken by applicant and Montgomery Ward in the meantime for the purpose of revising the shipping practices and of developing a suitable basis of rates therefor which the Commission would be asked to authorize prior to the expiration of the temporary authority in question. It was explained also that orders for merchandise stocks ordinarily were placed from sixty days to ninety days in advance of shipment and that it was not practicable to issue changes now in forwarding directions for the large number of such orders outstanding.

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The decision in question was based upon the evidence received during two days of public hearing of carrier proposals to discontinue the provisions in question.

Applicant's president asserted that his company had performed the delivery services in question for about 25 years, that about 90 per cent of its total revenues were derived from such services and that loss of the business would seriously impair the company's ability to continue operations. An exhibit offered by the witness showed that the over-all earnings for the year 1953 amounted to \$30,912 after provision for income taxes. The revenues were \$1,370,135, the expenses including income taxes amounted to \$1,339,223 and the corresponding operating ratio was 97.7 per cent.

In this proceeding, applicant seeks authority to deviate from the established minimum rates by observing temporarily a basis of charge identical with that which was eliminated from the minimum rate structure by Decision No. 49681, supra, upon findings that it was inherently unsound in theory and in fact and not productive of just, reasonable and nondiscriminatory minimum rates. The decision shows also that in taking such action the Commission gave due consideration to the fact that many substantial shippers and industries had based their shipping practices in varying degrees upon the provisions in question and that elimination thereof from the minimum rates would affect many carriers and shippers, some favorably and others adversely. No evidence has been introduced in the instant proceeding establishing that findings different from those in Decision No. 49681 relative to the propriety of the basis of charge in question are warranted in connection with the Montgomery Ward traffic involved herein.

Upon careful consideration of all of the facts and circumstances of record, we are of the opinion and hereby find that the rates proposed in this proceeding have not been shown to be reasonable within the meaning of Section 3666 of the Public Utilities Code. The

application will be denied without prejudice to the consideration of any other proposal on a basis different from that sought herein which applicant may present as a result of the studies it is conducting.

O R D E R

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

IT IS HEREBY ORDERED that the above-entitled application of Blankenship Motors, a corporation, be and it is hereby denied without prejudice as indicated in the foregoing opinion.

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

Dated at San Francisco, California, this 20th day of April, 1954.

R. F. [Signature]
President
Justin J. [Signature]
Bennett [Signature]
[Signature]
[Signature]
Commissioners