

**ORIGINAL**Decision No. 50081

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 general commodities (commodities for which rates are provided in Highway Carriers' Tariff No. 2).

Case No. 5432  
(Petition No. 23)

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 in Los Angeles and Orange Counties (transportation for which rates are provided in City Carriers' Tariff No. 4 -- Highway Carriers' Tariff No. 5).

Case No. 5435  
(Petition No. 3)

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 in the City and County of San Francisco and Counties of Alameda, Contra Costa, Santa Clara, San Mateo, Marin, Monterey, Napa, Santa Cruz, San Benito, Solano and Sonoma.

Case No. 5441  
(Petition No. 8)

APPEARANCES

Robert M. Fisk, C. V. Dickinson, Donald E. Cobb, Dallas H. Briggs, Gustave D. Cederholm and Robert C. Morgan, for petitioners.

Arlo D. Poe and J. C. Kaspar for Motor Truck Association of Southern California; Marvin Handler and Robert D. Boynton for The Truck Owners Association of California; Marvin Handler and Russell Bevans for Draymen's Association of San Francisco; and W. F. McCann for Johnson & Johnson, interested parties.

Harold M. Brake for Brake Delivery Service, Edward P. White for C. A. Worth & Co., and A. L. Carley for United Transfer-Carley & Hamilton, Inc., respondents.

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Frank B. Austin, Clinton S. Abernathy, Leonard Diamond and John R. Laurie of the staff of the Public Utilities Commission of the State of California.

### O P I N I O N

By petitions filed in these proceedings on January 2, 1954, and amended on March 5, 1954, Warner-Hudnut, Inc. and approximately 37 other companies seek an order establishing reduced ratings to apply in connection with minimum class rates contained in Highway Carriers' Tariff No. 2 and in certain drayage tariffs for the transportation of drugs, medicines, toilet preparations and other related commodities.

Public hearings were held before Examiner Bryant at San Francisco and Los Angeles on various dates as stated in the margin below.<sup>1</sup> The matters were submitted on April 30, 1954, and are ready for decision.

The commodities herein involved fall into two groups. The first consists of drugs and related articles. It includes a number of specifically designated articles and also "Drugs or medicines, noibn".<sup>2</sup> This entire group will be referred to herein for convenience as "drugs". The second group, referred to herein after as "toilet preparations", includes such articles as tooth

<sup>1</sup> Los Angeles, March 30, April 2, and April 30, 1954; San Francisco April 6, 1954. The petitions are identified as Petition for Modification No. 23 in Case No. 5432, Petition for Modification No. 3 in Case No. 5435, and Petition for Modification No. 8 in Case No. 5441.

<sup>2</sup> "Drugs or medicines, noibn" means drugs or medicines not otherwise indexed by name and not more specifically provided for in Western Classification No. 75, Cal. P.U.C.-W.C. No. 8 of George H. Dumas, agent, supplements thereto or reissues thereof.

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brushes, bath salts, bay rum, perfumery, shampoo, and also other "Toilet preparations, noibn". The drugs are rated variously in the classification as first class, second class, one-and-one-half times first class, and double first class. The toilet preparations are all rated first class.<sup>3</sup>

What petitioners seek herein is the establishment of exceptions to the governing classification. Under petitioners' proposal all of the drugs and toilet preparations would be given a third class rating, subject to a released valuation of 50 cents a pound. The minimum class rates to which the reduced rating would be applied are those set forth in statewide Highway Carriers' Tariff No. 2 and in the drayage tariffs applicable in the San Francisco and Los Angeles areas.<sup>4</sup>

The petitioners do not attack the applicable minimum rates but assert that the present classification ratings are unjust and unreasonable. They declare that the drugs and toilet preparations are entitled to the sought third class rating on consideration of their transportation characteristics, including density, value, susceptibility to damage, type of packaging, ease of handling, ease of storage, and volume of traffic. It is the contention of the petitioners that all of the commodities under consideration are rated at third class or its equivalent almost universally outside of the State of California for movement by rail or truck on both intrastate and interstate traffic as well as on interstate shipments within California. They point out also

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<sup>3</sup> All ratings referred to in this opinion are less-than-carload and less-than-truckload ratings. No carload or truckload ratings are involved.

<sup>4</sup> The San Francisco rates are set forth in City Carriers' Tariff No. 1-A; the Los Angeles area rates are set forth in City Carriers' Tariff No. 4, Highway Carriers' Tariff No. 5.

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that this Commission heretofore has established a third class rating on some of the articles under some of its minimum rate tariffs.<sup>5</sup>

Evidence in support of the petitions was introduced through the testimony of many shippers and several carrier representatives, and through testimony and exhibits submitted by a consulting rate expert. The shipper witnesses testified that they ship various of the drug articles or toilet preparations. They identified in general terms the articles tendered, stated the size and character of their shipments and the annual tonnages involved, indicated the number and amount of their loss and damage claims, and in some cases testified to the high, low and average invoice values and densities of their commodities.

The carrier witnesses testified that their companies handle various of the commodities herein involved, that the packages load well, that they have experienced few loss or damage claims, and that their companies would have no objection to the establishment of the proposed third class rating. One of the carrier witnesses was a highway permit carrier operating principally within the Los Angeles Drayage Area, and specializing primarily in the transportation of drugs and toilet preparations. This witness said that although the proposed reduction in ratings would decrease the revenues of his company in the first instance he expected that the lower rates would make the traffic less

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<sup>5</sup> A third class rating on toilet preparations was established in Highway Carriers' Tariff No. 2 by Decision No. 48402, infra. A third class rating is applicable on certain drugs and toilet preparations in City Carriers' Tariff No. 2-A, Highway Carriers' Tariff No. 1-A, which names minimum rates applicable within and between the cities of Albany, Alameda, Berkeley, Emeryville and Oakland.

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desirable to his competitors and thereby would reduce competition.

Both the shippers and the carriers testified that there is keen competition among the carriers for shipments of drugs and toilet preparations. The witnesses were in agreement that drugs and toilet preparations are not particularly susceptible to loss or damage, and that the claim experience has been favorable.

The consulting rate witness introduced and explained numerous exhibits which may be grouped into three general categories. The first group refers to ratings and rates on drugs and toilet preparations applicable in other areas of the United States or upon interstate traffic within California. The second group of exhibits consists of statements compiled from information supplied by various of the petitioners concerning the invoice value per pound, the weight per cubic foot, the loss and damage experience, and the total tonnage of drugs and toilet preparations shipped by each of the companies during the year 1953. These exhibits purport to show the high, low, and weighted average value and density of the traffic of each of the reporting petitioners.<sup>6</sup> The third group of exhibits submitted by this witness consists of comparisons between the commodities herein involved and various other articles as to their values, densities and class ratings. He did not show the value or density of individual articles, but used the "mean average" figure for all commodities in each of the two lists.

The petitions were opposed by the Motor Truck Association of Southern California, The Truck Owners Association of

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<sup>6</sup> Information was not included for all of the petitioners.

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California, and the Draymen's Association of San Francisco. Representatives of these associations participated actively in the proceedings, particularly through cross-examination of the petitioners' witnesses. The Motor Truck Association of Southern California also offered affirmative evidence through one witness, and its counsel made closing oral argument in opposition to the granting of the petitions.

The association witness was the director of research for the Motor Truck Association of Southern California. He testified particularly concerning the necessary relationship between classification ratings and class rates, and introduced an exhibit showing the possible effect of the proposed reduced ratings upon carrier revenues. The exhibit does not purport to show the revenue reductions with accuracy. It shows only what the revenue reductions would be under certain assumptions as to the weight blocks in which the traffic would move, and as to the percentage of traffic under each of the present classification ratings. The witness explained that it was necessary to make such assumptions inasmuch as the actual facts were not available to him, and were not of record in this proceeding. He stated that the purpose of his exhibit was to show that the reduction in carrier revenues would be real and substantial, although the actual amounts were unknown.

Representatives of the Commission staff participated in the proceeding through the examination of the witnesses. The staff representatives did not state any position for or against the granting of the petitions.

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The evidence shows that the commodities herein involved, considered as a whole, constitute freight which is desirable to the carriers, is readily and conveniently transported, and is relatively free from loss or damage. However, it appears from the evidence that many hundreds or thousands of different articles and commodities are embraced within the descriptions of drugs, medicines and toilet preparations upon which the reduced exception ratings are proposed. The commodities are heterogeneous and include a wide range of transportation characteristics. As shown by the petitioners' exhibits, the drug items range in value from 9 cents a pound to \$70 a pound, and the toilet preparations range from 8 cents to \$60 a pound. The densities of the drug items range from four pounds a cubic foot to 60 pounds a cubic foot, and the toilet preparations range from 15 to 90 pounds a cubic foot. Indeed, the extremes may be even greater, since detailed information concerning particular commodities is lacking.

The petitioners did not attempt to show the transportation characteristics of any of the articles in the drug group or in the toilet preparations group, but undertook only to show some of the factors for each group as a whole. It is clear that the differences within each group are so great as to make a showing of average transportation characteristics virtually meaningless. The average density of such dissimilar commodities, whether weighted according to the relative frequency or extent of their movements or otherwise, can have little meaning for the purpose of showing the transportation characteristics of any of the articles in the

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lists. Moreover, the comparisons offered by the petitioners between these and other commodities show only that many other articles of commerce, rated third class or lower in California, have values and densities within the range of the values and densities of the drugs and toilet preparations. This fact of itself is of no evident significance. In short, the value and density comparisons as submitted by the petitioners, although extensive in some respects, do not serve to establish any impropriety in the present classification ratings.

Aside from the comparisons the evidence offered in support of the petitions rests in large part upon the showing that in other areas and other jurisdictions the drugs and toilet preparations commonly move at third class or at ratings which may be equivalent to third class. The record shows, however, that the class ratings applicable in other jurisdictions and in other areas in most cases were established voluntarily by rail or motor carriers. What considerations may have influenced the establishment of the lower rating elsewhere is not a matter of record here. The petitioners did not undertake to show the similarity or dissimilarity of classification practices, rates, or transportation circumstances and conditions in California on the one hand, and in any of the other areas on the other hand. The existence of lower ratings elsewhere would have some persuasive effect if

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Since the petitioners' rate witness gathered the figures through questionnaires and was not familiar with the methods by which they were compiled it cannot be said that the weighted average figures were satisfactorily established in any event. A number of errors or probable errors in the value and density figures were disclosed through cross-examination.



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accompanied by a showing that the present classification ratings are unreasonable or in any respect improper for application in connection with minimum class rates in the State of California. In the absence of such a showing this Commission will base its determinations upon the facts as they are shown to exist within the area of its jurisdiction.

It has been noted that under petitioners' proposal the third class rating would apply only when the commodities are shipped under declared or released valuation not exceeding 50 cents a pound. The evidence does not show whether or not such a limitation would have any effect upon the carriers' claim expense, but the indications are that any such effect would be negligible.

Counsel for the petitioners cited decisions of this Commission establishing reduced exception rating on various commodities, and in particular two decisions by which this Commission established a third class exception rating on toilet preparations subject to the valuation not exceeding 50 cents a pound.<sup>8</sup> These prior decisions cannot be taken as precedent for the establishment of the reduced exception ratings herein sought. In many respects the present record is more extensive and more complete than the earlier ones. In particular the protestants

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<sup>8</sup> Decision No. 48402 in Case No. 4808, dated March 24, 1953, (52 Cal. PUC 443); and Decision No. 49624 in Case No. 5432 (Petition No. 19) dated Feb. 2, 1954.

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developed weaknesses and fallacies in the petitioners' showing which were not made to appear in the prior records cited by the petitioners.<sup>9</sup>

The assignment of classification ratings to articles of commerce is not an exact science nor has it been reduced to any recognized or accepted formula. Nevertheless, in the establishment and application of minimum class rates, the distribution of the transportation burden is particularly important. The witness for the Motor Truck Association of Southern California testified correctly that one of the factors in the development of the minimum class rates applicable within this state is the distribution of tonnage between the classes as determined by an analysis of the traffic flow. Any material disturbance of the ratings on a substantial segment of the traffic would necessitate reappraisal and probably revision of the rates. This circumstance is not controlling if classification ratings are improper and changes are necessary, but nevertheless is a fact to be recognized and understood by the proponents of classification changes to be applied in connection with minimum class rate in this state.

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<sup>9</sup> The counsel for the Motor Truck Association of Southern California, in arguing for the denial of the present petitions and in explaining the intensive participation of his association in this proceeding, stated that the carriers had heretofore been inclined to view classification adjustments as merely corrective action of minor consequence. Now, he said, they were convinced that adjustments such as herein proposed on an extensive group of commodities would have a substantial effect upon carrier revenues and probably would invite further whittling away at the class rate structure.

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The record does not support the proposed reduction in rating on the general groups of commodities as advocated by the petitioners, nor does it show what the facts may be with respect to any of the particular commodities within the groups. If density and value were the controlling consideration it would appear that the "Drugs or medicines, noibn", now rated second class in the governing classification, should be identified more specifically and rated variously. The same would be true of "Toilet preparations, noibn", now given a first class rating in the classification and lower exception ratings in some of the minimum rate tariffs. If difficulties of identification or other conditions or circumstances make desirable a single classification rating for commodities of dissimilar transportation characteristics, the rating necessarily will be higher as to some of the commodities than otherwise would be suitable if the commodities were separately classified. If the petitioners or other parties are of the opinion that there are classification maladjustments within the groups, the matter may be brought to the Commission's attention.

Upon careful consideration of all of the evidence of record we are of the opinion and hereby find that the existing ratings applicable upon the drugs, medicines, toilet preparations, and related articles referred to in the present petitions have not been shown to be unreasonable, and that the proposed reduced exception ratings sought in lieu thereof have not been shown to be reasonable. The petitions will be denied.

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O R D E R

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

IT IS HEREBY ORDERED that petition for Modification No. 23 in Case No. 5432, Petition for Modification No. 3 in Case No. 5435, and Petition for Modification No. 8 in Case No. 5441, all filed on January 2, 1954, and amended on March 5, 1954, be and they are hereby denied.

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

Dated at San Francisco, California,  
this 25<sup>th</sup> day of May, 1954.

John E. Mitchell  
President  
Justus F. Calmes  
Bennett Potter  
Jerne Roggins

Commissioners