

ORIGINALDecision No. 51017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of ARNOLD D. CHERRY and STANLEY)
CHERRY, copartners, doing business)
as ARNOLD D. CHERRY & SON, for an)
order authorizing departure from)
the rates, rules and regulations of)
Minimum Rate Tariff No. 2, under)
the provisions of Section 3666 of)
the Public Utilities Code.)

Application No. 36588

Daniel W. Baker, for applicants.
Russell Bevens, for Draymen's Association of
San Francisco; Maurice A. Owens, for Draymen's
Association of Alameda County; J. C. Kaspar
and R. D. Boynton, for California Trucking
Associations, Inc.; William F. McCann, for
Johnson and Johnson; and Phillip A. Winter,
for C. R. Becker, doing business as Delivery
Service Co.; interested parties.
A. R. Day, for the Commission's staff.

O P I N I O N

Arnold D. Cherry and Stanley Cherry, copartners doing business as Arnold D. Cherry & Son, operate as a highway contract carrier between points in this State.¹ By this application, as amended, they seek authority under Section 3666 of the Public Utilities Code to transport drugs, liquors and sundry articles for McKesson & Robbins, Inc., at rates less than those established as minimum. The transportation here in issue is between points in Alameda and Contra Costa Counties, and between points in those counties, on the one hand, and San Francisco, Vallejo and Benicia, on the other.

¹ They also hold city carrier and radial highway common carrier permits.

A public hearing of the application was held at San Francisco on February 16, 1955, before Examiner Carter R. Bishop/

Except as to transportation between points in the so-called East Bay drayage area, the applicable minimum rates are the class rates, stated in cents per 100 pounds in Minimum Rate Tariff No. 2.² They vary with the length of haul, the weight of the shipment, and the commodity transported. Applicants seek authority to apply, in lieu thereof, monthly vehicle unit rates as follows:

<u>Rated Capacity of Vehicle (Pounds)</u>		<u>Monthly Vehicle Unit Rate (Dollars)</u>	<u>Charge per Mile for Each Mile in Excess of 1,050 per Month (Cents)</u>
<u>Over</u>	<u>But Not Over</u>		
0	3,000	665	10
3,000	10,500	719	16

The proposed rates would include the services of the driver and all other operating expenses, except that all overtime wage payments and bridge toll expense would be borne by McKesson & Robbins. Additionally, it is proposed that the sought rates shall be subject to the rules and regulations set forth in Item No. 1100 series of City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A, which deals with similar rates in that tariff.

The record shows that applicants have previously been authorized to deviate from the provisions of Minimum Rate Tariff No.2 in the transportation of property for McKesson & Robbins between San Leandro, on the one hand, and Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, on the other. Under that authorization applicants are permitted to observe the monthly vehicle unit rates set forth in Item No. 1100 series of City Carriers' Tariff No. 2-A -

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Minimum rates, rules and regulations applicable within the East Bay drayage area are set forth in City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A.

Highway Carriers' Tariff No. 1-A, and the rules and regulations applicable in connection therewith.³ It is the purpose of applicants that the authority sought herein, if granted, shall supersede that now in effect between San Leandro and the other East Bay cities mentioned above.⁴

Evidence in support of the application was introduced by one of the partner applicants, by a public accountant, and by a vice president of McKesson & Robbins, Inc. The partner testified that applicants haul exclusively for McKesson & Robbins, and that they have been serving the latter concern in the San Francisco Bay area for approximately 26 years. The movements, he said, are generally between the shipper's Oakland and San Leandro warehouses, on the one hand, and points in Alameda and Contra Costa Counties, also Benicia, Vallejo and San Francisco, on the other hand.⁵ Assertedly, the shipments consist of pharmaceutical drugs, proprietary medicines, liquors and sundries,⁶ and the consignees are, in most instances, drugstores, liquor stores, hospitals and government institutions.

³ The deviation in question was first authorized by Decision No. 48217, dated January 27, 1953, in Application No. 33996. Extensions were granted by Decision No. 49551, dated January 12, 1954, in Application No. 33996 (First Supplemental), and by Decision No. 51123, dated February 23, 1955, in Application No. 33996 (Second Supplemental). The relief authorized by the last-named decision is scheduled to expire August 16, 1955.

⁴ The rates proposed herein for vehicle capacities of over 3,000 pounds to and including 10,500 pounds are the same as those published in Item 1100-A of the East Bay drayage tariff, supra, for vehicles of all capacities not in excess of 10,500 pounds.

⁵ The witness stated that consignees in San Francisco are ordinarily served from McKesson's San Francisco warehouse but that occasionally it is necessary to call on the Oakland or San Leandro warehouse for deliveries to San Francisco.

⁶ The record shows that the term "sundries" embraces a wide variety of articles, such as are customarily offered for sale in drugstores.

According to the partner, the carrier's equipment during working hours is completely under McKesson's control, the dispatching being handled entirely by that company's employees. This arrangement, he said, is necessitated by the requirements of McKesson's customers. It was explained that the nature of the commodities handled by McKesson is such that expeditious deliveries and special dispatching are frequently necessary.

The accountant testified regarding a study which he had made of the costs incurred by applicants in the transportation of property for McKesson. He had calculated the costs separately for vehicle units of 3,000 pounds or less carrying capacity and for those having a capacity of over 3,000 pounds but not over 10,500 pounds.⁷ The costs so developed are predicated on 21 working days, and 1,050 miles, per month. According to an exhibit of record the monthly vehicle unit costs, expanded for revenue expense and for an operating ratio of 93 per cent before provision for income taxes, amount to \$665.70 for the lighter vehicles and \$719.72 for vehicles of over 3,000 pounds carrying capacity.

The unit costs utilized by the accountant for vehicles having carrying capacities of over 3,000 pounds but not over 10,500 pounds were, in most instances, based upon the carrier's book records. In some instances, however, the accountant employed unit costs which had been developed in Commission staff studies of record in other proceedings. Assertedly, these studies related to transportation in the same general area as that served by applicants. Since the carrier does not operate trucks having capacities of 3,000 pounds or less, the accountant stated, the operating costs for such equipment were predicated upon his own estimates and upon the aforesaid staff

⁷ According to the partner's testimony, all of applicants' vehicles have carrying capacities in excess of 3,000 pounds. Assertedly, rates are proposed for vehicles having capacities of 3,000 pounds or less because McKesson had requested that such rates be included in the application.

studies. In his study the accountant made provision for drivers' wages, vehicle operating and maintenance expenses, depreciation, insurance, taxes other than income taxes, and overhead expenses, with appropriate adjustments for current cost levels.

Certain items in the cost study require comment. In his calculation of indirect expense the accountant employed a ratio of indirect to direct expense of 11.5 per cent. This figure he obtained from one of the Commission staff studies mentioned above. However, an exhibit which the accountant prepared subsequent to the hearing indicates that the ratio of applicants' indirect to direct expense for the year ending August 31, 1954 was 13.4 per cent. Moreover, in expanding applicants' unit costs for revenue expense the accountant failed to provide for the State Board of Equalization transportation tax. He could not state what proportion of the carrier's revenues was subject to that tax.⁸

On substituting an indirect expense ratio of 13.4 per cent and a revenue expense factor of 2.5 per cent⁹ for the figures used by the accountant the full monthly vehicle unit cost per 1,050 miles, without provision for profit, is calculated as \$632.10 for vehicles of not over 3,000 pounds capacity, and \$690.27 for vehicles of more than 3,000 pounds but not more than 10,500 pounds capacity. On the basis of these costs the sought rates of \$665 and \$719 would reflect operating ratios of 95 and 96 per cent, respectively, before provision for income taxes.

⁸ The accountant used a revenue expense factor of one per cent ($\frac{1}{2}$ of one per cent Cal. P.U.C. tax and $\frac{3}{4}$ of one per cent for cargo insurance).

⁹ This figure includes an estimate of 1.5 per cent for Board of Equalization tax. Since a part of the carrier's revenues are derived from intracity operations, and are, therefore, not subject to that tax, the amount of the latter is something less than 3 per cent of the carrier's revenues.

McKesson's vice president testified that the nature of his company's operations is such that expedited deliveries are generally required. These can best be accomplished, he said, under an arrangement whereby the carrier's equipment is devoted to McKesson's exclusive use and the dispatching and routing are under its complete control. Such an arrangement is now in effect, the witness stated, in connection with transportation currently rendered by applicants for McKesson in the East Bay area where monthly vehicle unit rates are applied.

The assessment of charges on a weight basis, the vice president testified, is impractical and unsatisfactory for the transportation services here in issue. The use of vehicle unit rates, he said, is essential for the type of service which McKesson is required to accord its customers. This witness further stated that, in the event of denial of the application herein, McKesson will terminate its contract with applicants and will itself perform the transportation services in question. In order to do this, the witness stated, it will be necessary for suitable equipment to be purchased or leased.¹⁰

No one opposed the granting of the application.

As stated above, the record discloses that applicants do not operate trucks having a capacity of 3,000 pounds or less, and that the operating costs for such equipment, as developed by the accountant, are based entirely upon estimates and upon figures taken from Commission staff studies. The record fails to establish the reasonableness of the rates sought herein for equipment having a capacity of 3,000 pounds or less. However, in the order which follow the rates authorized in connection with vehicles having a

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According to the witness, McKesson now owns some trucks, with which it engages in proprietary operations in Fresno and Sacramento.

capacity of more than 3,000 pounds but not more than 10,500 pounds will also be authorized for vehicles having a capacity of 3,000 pounds or less.

While there appear to be some infirmities in that part of applicants' cost study relating to transportation in equipment of capacity exceeding 3,000 pounds, the record is convincing that applicants will be able to render service on a compensatory basis at the rates sought herein in connection with such equipment. As hereinbefore noted, these rates are the same as those in the East Bay drayage tariff for like service. Also, the record is clear that those rates are necessary to retain the traffic for for-hire carriage.

The Commission is of the opinion and hereby finds that the proposed reduced rates, to the extent provided in the order which follows, are reasonable.¹¹ In all other respects the application will be denied. Because the conditions under which service is performed may change at any time the authority will be made to expire at the end of one year, unless sooner canceled, changed or extended by order of the Commission. No action herein is necessary in regard to the present authority held in the limited territory referred to hereinbefore. It will be allowed to expire as scheduled.

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In order to avoid possible violation of the provisions of Section 3542 of the Public Utilities Code a limitation will be placed upon applicants' service as a radial highway common carrier during the existence of the authority hereinafter granted. Section 3542 states that "No person or corporation shall engage or be permitted by the Commission to engage in the transportation of property on any public highway, both as a common carrier and as a highway contract carrier of the same commodities between the same points."

O R D E R

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

IT IS HEREBY ORDERED that Arnold D. Cherry and Stanley Cherry, copartners doing business as Arnold D. Cherry & Son, operating as a highway contract carrier, be and they are authorized to transport property for McKesson & Robbins, Inc., within an area consisting of Alameda and Contra Costa Counties, also between points in those counties, on the one hand, and the cities of Vallejo and Benicia and the City and County of San Francisco, on the other hand, at rates and charges which differ from those established as minimum rates and charges, but not lower than the following:

<u>Rated Capacity of Vehicles (Pounds)</u>	<u>Monthly Vehicle Unit Rate (Dollars) (See Note)</u>	<u>Charge per Mile for Each Mile in Excess of 1,050 per Month (Cents)</u>
10,500 or less	719	16

- Note: (a) Rates include driver and all operating expenses, except bridge tolls and drivers' overtime wages.
- (b) Vehicle will be operated during regular working hours, except on Saturdays, Sundays and holidays.
- (c) Operations shall be subject to the rules, regulations and restrictions set forth in Item No. 1100 series of City Carriers' Tariff No. 2-A - Highway Carriers' Tariff No. 1-A.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall expire one year after the effective date of this order unless sooner canceled, changed or extended by order of the Commission.

IT IS HEREBY FURTHER ORDERED that during the period that the authority herein granted is in effect the aforesaid applicants shall not engage in the transportation of the same commodities between the points involved in this authority as a radial highway common carrier, and that any such transportation which applicants may perform in violation of these provisions shall be cause for revocation of the authority herein granted.

IT IS HEREBY FURTHER ORDERED that in all other respects Application No. 36588, as amended, be and it is hereby denied.

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

Dated at San Francisco, California, this 12th day of April, 1955.

John E. ...
President
Justin J. ...
Raymond ...
...
Commissioners