AM

Decision No. 51392

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BENJAMIN S. GOLDBERG and W. EARL GOLDBERG, copartners, doing business as FILM TRANSPORT CO. OF CALIFORNIA for authority to increase their rates for the transportation of motion picture films, film accessories, and related articles pursuant to Section 454 of the Public Utilities Code.	Application No. 36205

Theodore W. Russell, for applicant.
Grant L. Malquist, for the staff of the Public Utilities Commission of the State of California.

O P I N I O N

Benjamin S. Goldberg and W. Earl Goldberg, copartners, doing business as Film Transport Co. of California, are engaged in the transportation of motion picture film, film accessories and confectionery between points in southern California as a highway common carrier. By this application filed November 17, 1954, they seek authority to increase certain of the rates for their film transport service on less than statutory notice.

Public hearing on the application was held before Examiner C. S. Abernathy at Los Angeles on February 18, 1955, and the matter was taken under submission for decision with the subsequent filing of certain exhibits on February 25, 1955.

Applicants serve approximately 120 theaters in that portion of Southern California lying generally south and east of Los Angeles to the Mexican Border. They deliver to the theaters from film exchanges and supply houses located in Los Angeles motion picture film and accessories which the theaters require for a motion picture showing and return the film to the exchanges after it has been shown. In conjunction with this service applicants transport confectionery and related articles to the theaters; they transport mail between San Diego and the Imperial Valley; and they perform contract carriage between Los Angeles and San Diego, and between San Diego and the Imperial Valley. In addition they operate within Los Angeles as an interstate freight forwarder of motion picture film and they provide certain incidental services in connection with the transportation of film in and around Los Angeles.

The rates and charges for the film delivery service which is involved herein are published in applicants' Local Freight Tariff Cal. P.U.C. No. 3. Generally speaking, they vary with the number of changes in program which the theaters require each week. In some instances they apply on a weekly basis. Representative examples of the present rates and those which applicants seek to establish are set forth in Table No. 1, below:

Table No. 1
Present and Proposed Rates for the Transportation of Motion Picture Film, Film Accessories and Advertising Material

Between Los Angeles and	Present Rates	Proposed Rates
Anaheim	$ 9.26 per week	$10.00 per week
Santa Ana	10.68 " "	11.00 " "
Laguna Beach		
1st change of program	6.06	7.00(a)
2nd and each successive change	3.56	4.00
Oceanside, San Diego		
1st change of program	9.62	11.00(b)
2nd " " "	4.28	5.00
3d and each successive change	3.56	5.00
El Centro, Holtville		
Each change	7.50(c)	9.00(c) 1st change
		9.00 2d and each successive change

(a) Minimum charge, $11.00 per week
(b) Minimum charge 13.00 per week
(c) Minimum, 2 changes of program per week

NOTE: Rates per change of program apply to changes made in one week.

Percentagewise, the rate increases which applicants seek to establish range from 3 per cent to more than 60 per cent. The amount of revenue increase which is expected therefrom is about 20 per cent. According to testimony of one of the applicant partners, the objective in proposing rate increases of the different amounts is to bring about a rate scale which is sufficiently compensatory for the service that is now being performed and which will correct certain rates which heretofore have been unduly low. Assertedly, establishment of the sought increases will result in a just, reasonable and nondiscriminatory rate structure.

In justification of the proposals, applicants' witness testified that with minor exceptions the present rates became effective more than seven years ago, and that in the meantime his company's costs of operations have increased greatly, particularly those which have been incurred for labor, gasoline, tires and replacement of equipment. He said, moreover, that during the past year there have been material changes in the service requirements of the theaters and that these changes have resulted in a substantial decline in his company's revenues. Allegedly, since 1953 the theaters have enjoyed an increase in patronage and have not found it necessary to make as frequent changes in program to maintain their business at a satisfactory volume. With the reduction in program changes — in the number of units upon which the charges largely are based — applicants' revenues have declined correspondingly. The witness said that although there are now fewer program changes, the amount of service which his company is called upon to provide is virtually the same as it was formerly. He explained that with the longer intervals between program changes the theaters require changes of newsreels, short subjects and advertising in order to keep their programs current, and that in order to meet these requirements frequent pickups and deliveries at the theaters are necessary. He said that this additional service has been provided without charge inasmuch as charges therefor are not provided in his tariff.

Revenue and expense data were submitted and explained by the applicant partner to show: (a) the financial operating results which were achieved from his company's several services during the first and second six-month periods of 1954; and (b) the results anticipated from the film delivery service involved herein if the sought rates are established. In Table No. 2 below are shown the operating data which were thus developed for the second six months of 1954 (the period said to be the more representative).

Table No. 2
Gross Operating Revenues, Expenses and Net Operating Revenues
(Before allowance for income taxes)
For Six Months Ending With December 31, 1954

	Gross Revenues	Expenses	Net Revenues	Operating* Ratio (percent)
Highway Common Carrier Film Service				
Theater (Other than Navy)	$ 45,032	$ 47,539	($ 2,507)	105.6
Theater (United States Navy) (a)	6,627	5,051	1,576	76.2
Highway Common Carrier Freight	6,576	5,852	724	89.0
United States Mail	4,673	3,321	1,352	71.1
Contract Freight	8,034	6,685	1,349	83.2
Other Special and Local	3,767	2,841	926	75.4
Interstate Freight Forwarder	67,303	51,959	15,344	77.2
Total	$142,012	$123,248	$18,764	86.8

(______) Indicates loss

* Calculated by Commission's staff

(a) Applicants' highway common carrier film delivery services include transportation of film and accessories to and from installations of the United States Navy within and in the vicinity of San Diego. This service is performed at special rates which are not involved herein.

Establishment of the increased rates, applicants estimated, would result in a revenue increase of $18,800 over a twelve-month period. Gross annual operating revenues from the theater film service (other than Navy) would be $108,882, and net operating revenues, before allowance for income taxes, would be $12,812.(1)

Regarding the propriety of the net revenues anticipated from the sought rates, the applicant partner declared that from the carrier's point of view the transportation of film is a particularly hazardous service because exacting delivery schedules must be maintained and because of liability for damages which the carrier is subject to when the film is not delivered to the theaters in time for a scheduled showing. He asserted that in these circumstances the sought earnings are reasonable. As to the reasonableness of the rates themselves, he submitted comparisons to show that the resulting charges are about half of those that would apply were the shipments to be transported by the Railway Express Agency, Inc., and that they are generally less than two-thirds of the charges that would apply under Minimum Rate Tariff No. 2 were motion picture film and accessories subject to the rates therein.(2)

The Commission's staff questioned the propriety of the volume of the charges to operating expense which were listed in applicants' showing for salaries and expenses of the partners. For the year 1954 these charges totalled $32,200 and were divided as follows: salary, $24,000; expenses, $8,231. A staff transportation engineer compared these charges with officers' salaries and expenses which were reported for the year 1953 by 19 other California carriers having annual revenues ranging from $323,000 to $1,647,000 and

(1) The corresponding operating ratio would be 88.2 per cent.

(2) Minimum Rate Tariff No. 2 contains rates, rules and regulations which the Commission has prescribed on a statewide basis for the transportation of general commodities. However, motion picture film and accessories are exempted from the minimum rate provisions.

having employees ranging in number from 34 to 156. The engineer's data showed that officers' salaries and expenses of these carriers were about four per cent of the carriers' revenues.(3) It was his conclusion that in relation to the total number of persons in applicants' organization (12 employees in addition to the two partners) applicants' charges to operating expense for their own salaries and expenses are excessive.

Notices of the hearing in this proceeding were sent by the Commission's secretary to persons and organizations believed to be interested and were published also in the Commission's calendar. None of applicants' patrons appeared at the hearing to oppose establishment of the sought rates.

Discussion and Conclusions

Applicants have undertaken to show that of their several services their highway common carrier film operations (other than those involving transportation to and from installations of the United States Navy) are resulting in losses and that the rates which they seek are necessary to provide reasonable compensation for the services performed.

With respect to the earnings under present rates, the record is convincing that they are insufficient and that increased rates for the future are justified. Whether the amounts of the increases that should be authorized should be as great as those sought, or whether lesser increases would be reasonable, appears dependent upon several factors including (a) the propriety of the expense items questioned by the Commission's staff; (b) the relationship of applicants' other services to those involved herein; and (c) the amount of earnings commensurate with the liability applicable to the

(3) The amounts claimed by applicants for their salaries and expenses are eleven per cent of their revenues.

services performed. These factors will be considered in the order indicated.

Officers' Salaries and Expenses

Although the ratio of applicants' charges for officers' salaries and expenses to gross revenue is considerably higher than corresponding ratios which were developed by the Commission's staff with respect to other carriers, that fact alone does not establish the impropriety of the expense items. Improper entry to the wrong accounts of reasonable operating expenses may give rise to misleading ratios. In this instance it appears that applicants have followed the practice of apportioning all of their own salaries and expenses to administrative expense; whereas, a more correct allocation would have resulted in partial apportionment of their salaries and expenses to traffic expense. What would be the precise adjustment of the administrative account to allocate the expenses properly is not determinable from the data of record. It appears, nevertheless, that the adjustment would substantially reduce the charges in question and that in so far as applicants' public utility services are concerned the adjusted expense for officers' salaries is not an excessive charge to operations.

Somewhat different comment must be made with respect to an amount of $4,636 which was charged to applicants' operations within California for officers' expenses during 1954. A substantial part of this amount assertedly represents expenditures which were incurred in necessary entertainment of the theater owners. Reasonable amounts for solicitation expense are a proper charge to operations. However, in this instance the claimed expenditure appears unusually high, particularly since applicants admittedly enjoy a virtual monopoly in their field of operations, since they have been serving the same theaters over a period of many years, and since the area they service is relatively restricted in size. In rate increase proceedings it is incumbent upon the applicants to establish by sufficient probative evidence the reasonableness and propriety of their claimed charges. Applicants have not fully done so herein. This deficiency will be taken into account in our conclusions hereinafter regarding the volume of the increases shown to be justified.

Relationship of Applicants' Other Services to Those Involved Herein

It appears that bearing upon the amount of the rate increases which may be found justified for applicants' highway common carrier theater film services are the results of operations of the other highway common carrier services which applicants perform; namely, the delivery of film to installations of the United States Navy and the delivery of confectionery and related articles. As has been pointed out hereinbefore, the service for the naval installations is performed as part of the highway common carrier film operations. The confectionery deliveries are integrated with the film operations and are limited to theaters in applicants' film service territories. In view of the interrelationship of the three services and the identity of patronage the results of the operations should be considered in arriving at the revenue needs of the theater service. The patrons should not be expected to pay in total more than a reasonable amount for the facilities and services by which the combined operations are conducted.

Amount of Earnings Commensurate with the Liability Applicable to the Services Performed

Applicants' assertions that relatively high earnings for their operations would be reasonable because of unusual liability for damages to which they are subjected were largely unsupported allegations. Their testimony shows that in some instances some liability for special damages may attach for failure to deliver film in time for a scheduled showing. Applicants provided no measure, however, of the extent that allowance for this liability should be reckoned with as a specific rate factor. It appears that the volume of the liability, if incurred, may vary over a wide range, depending upon whether the delivery involved were to be made to a large metropolitan theater showing first-run films at premium prices or to a small neighborhood theater showing second or third-run films at reduced prices. In the circumstances it may be questioned whether a single rate factor would result in appropriate and reasonable charges or whether the remedy should be found in rates which vary with released valuations. Pending further showings in these respects, applicants' claims concerning the propriety of relatively high earnings for their operations will be largely disallowed.

In the light of our discussion of the foregoing factors, we advert now to consideration of the anticipated operating results under the proposed rates in terms of rate of return and operating ratio. Applicants did not undertake to show the rate base applicable to their public utility services nor to show the rate of return that would be realized under the sought rates. They argued strongly that rate of return is not a proper yardstick for measuring earnings of their operations and that the sole measure should be the relationship of expenses to revenues (operating ratio). In reply to applicants' contentions it is pointed out that this Commission has repeatedly held that in reaching its conclusions in rate increase proceedings it will not be limited to a single formula; that it considers all available data; and that in justifying rate increases applicants should supply data from which a reasonable determination of the propriety of increases can be made.

On the basis of the financial data which were set forth in the exhibits of record it appears that the rate base which would apply to applicants' total operations is as follows:

Land		$11,250
Operating Equipment	$67,644	
Less Depreciation	24,069	43,575(a)
Materials and Supplies		1,500
Working Cash		20,000(b)
Rate Base		$76,325

(a) Depreciated value of the operating equipment as of December 31, 1954. Assertedly, additions and betterments during the coming year will offset reductions due to depreciation.

(b) Applicants claimed $30,000 for working cash. This amount appears unduly high in relation to the flow of revenues and the cash demands for expenses.

Because of the meager showing which was made with respect to rate base, accurate determination of the portion assignable to the public utility services is not possible. It appears, however, that a reasonable approximation can be made on the basis of the manner in which the various services are conducted and that for the purposes herein a valuation of $50,000 may be assigned to the portion of applicants' rate base used in their public utility operations. In Table No. 3 which follows are shown estimated results of applicants' public utility services under the sought rates, together with the applicable operating ratio and the rate of return computed in relation to the rate base of $50,000.

Table No. 3
Estimated Operating Results of Public Utility Services
Under Proposed Rates for Ensuing 12 Months

	Revenues	Expenses	Net Revenues
Theater Film Service	$108,882	$ 96,070	$12,812
Navy Film Service	13,255	10,102	3,153
Freight (Confectionery)	13,152	11,705	1,447
Total	$135,289	$117,877	$17,412
Allowance for Income Tax(a)			$ 4,564
Net Income			$12,848
Rate Base			$50,000
Rate of Return			25.7%
Operating Ratio			90.5%

(a) The tax allowance for each partner's share of the net revenues computed at rates applicable to an individual without deduction for personal and dependent exemptions.

It appears from the data in the foregoing table that the earnings which would result under the sought rates would be excessive. From an earnings standpoint it appears that those which would result from an increase of 11 per cent in the revenues from applicants' theater film service would be more consistent with the showing which has been made. The estimated results from such an increase are as follows:

Table No. 4
Estimated 12-Months' operating Results of Public Utility Services Under Rates Yielding an 11 Per cent Increase in Revenues from Theater Film Service

	Revenues	Expenses	Net Revenues
Theater Film Service	$ 99,970	$ 95,500	$ 4,470
Navy Film Service	13,255	10,102	3,153
Freight (Confectionery)	13,152	11,705	1,447
Total	$126,377	$117,307	$ 9,070
Allowance for Income Tax[a]			$ 2,024
Net Income			$ 7,046
Rate Base			$50,000
Rate of Return			14.1%
Operating Ratio			94.4%

(a) The tax allowance for each partner's share of the net revenues computed at rates applicable to an individual without deduction for personal and dependent exemptions.

Although the rate of return which is shown in Table No. 4, above, is somewhat greater than would ordinarily appear necessary, consideration being given to the relationship of the revenues and expenses of the theater film service and to the desirability of maintaining a sufficient margin between the two to assure the continuance of the service, it is concluded that the operating results indicated in that table should be adopted as reasonable for prescribing rates herein.

In view of the evidence relating to the changes in service requirements of the theaters — to the additional deliveries between program changes — it appears that the increases in rates which should be authorized herein should be primarily in applicants' minimum charges. Such increases would largely assign to those theaters the costs of the additional service which those theaters require and which applicants have been providing without charge. As to applicants' basic rate structure, it appears to be generally adequate except that some increases should be made therein to compensate for increases in operating costs which applicants have experienced. Rate increases as indicated will be authorized to result in an increase of about 11 per cent in revenues from the theater film service.

At the hearing in this proceeding applicants asked that, in addition to being authorized to establish increased rates, they be permitted also to make certain adjustments in some of their tariff rules for the purpose of clarification and in order to define more precisely the services which they have been performing and which they will continue to perform. The adjustments which are involved relate to the time of presentation and payment of freight bills and to the definition of the additional service hereinbefore discussed. The adjustments appear reasonable for the purposes stated and will be authorized.

Upon careful consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds as a fact that the increased rates and the rule changes which are specified in the order which follows have been shown to be justified and that establishment of said increased rates and rule changes on less than statutory notice is also justified. To this extent the application will be granted. In other respects it will be denied.

ORDER

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

IT IS HEREBY ORDERED that

1. Benjamin S. Goldberg and W. Earl Goldberg, doing business as Film Transport Co. of California, be and they hereby are authorized to amend their Local Freight Tariff Cal. P.U.C. No. 3, on not less than ten days' notice to the Commission and to the public, to establish the increased rates and revised rules set forth in Appendix "A" attached hereto, which appendix by this reference is made a part hereof.

2. That the authority herein granted shall expire unless exercised within sixty days after the effective date of this order.

3. That in all other respects Application No. 36205 be and it is hereby denied.

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

Dated at San Francisco, California, this 26th day of April, 1955.

Peter E. Mitchell
President

Justus F. Craemer

Rex Hardy / Kenneth Potts

Marvin L. Dooley

COMMISSIONERS

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Appendix A to Decision No. 51392

Sheet 1 of 2

Authorized Rates for Transportation of Motion Picture Films and Film Accessories, Including Only Projecting Machinery and Parts Therefor, Advertising Matter, Electrical Lighting Effects, Bulbs, Advertising Slides and Tickets (Rates subject to Note 1)

Rate Basis	Changes (See Note 2)	Rate Per Change	Rate Per Week
1	1st 2nd 3rd	(6) $10.10 4.50 (2) 3.75	
2	1st 2nd	(1) 8.25 (4) 8.25	
3	1st 2nd 3rd	(5) 7.15 4.50 (2) 3.75	
4			(3) $ 9.50
5			(3) 8.00
6			(3) 9.50
7	1st 2nd	(5) 6.50 (4) 3.75	
8			(3) 8.50
9			(3) 11.00

NOTE 1: Subject to Items 100, 110, 120, 140 and rate base numbers in Section 1.

NOTE 2: Rates apply to changes made in a period of one week, each week starting at 12:01 a.m. Monday and ending at 12 midnight the following Sunday.

(1) Minimum of 2 changes per week.
(2) Rate also applies to fourth change and each successive change in the same week. (See Note 2)
(3) Subject to Item 120.
(4) Rate also applies to third change and each successive change in the same week. (See Note 2)
(5) Minimum charge $11.00 per week.
(6) Minimum charge $12.50 per week.

(Continued to Sheet 2)

Appendix A (continued) to Decision No. 51332
Sheet 2 of 2

Authorized Rule Changes

1. Amend Item 100 (f) (Application of Rates) to provide that

   a. Freight bills for all transportation and accessorial charges shall be presented to the shippers within seven calendar days from the first 12 o'clock midnight following the delivery of freight.

   b. Freight bills shall be due and payable within seven calendar days from the first 12 o'clock midnight following presentation.

2. Amend Item 110 (change of program, explanation of) by the addition of paragraph 4 and Note 2 as follows:

   4. Five or more short subjects in any one day when not accompanying a feature picture.

   NOTE 2: Provided no special trip of carrier is required (for which rates are specified in Section 3), motion picture short subjects and news reels (not exceeding a total of four in any one day) and/or film accessories as described in Item 100 above will be delivered on days between changes of program without extra charge.

(End of Appendix)