

ORIGINALDecision No. 52232

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MYRTLE THEATRES, INC.,)	
)	
Complainant,)	
vs.)	Case No. 5588
SANTA BARBARA SPECIAL DELIVERY,)	
)	
Defendant.)	

Ezra E. Stern, for complainant.
Arlo D. Poe and Ivan McWhinney, for
 defendants.

O P I N I O N

By complaint, Myrtle Theatres, Inc., alleges that charges assessed by Rodney M. Adcox, a highway common carrier doing business as Santa Barbara Special Delivery, for the transportation of motion picture film and accessories from Los Angeles to San Luis Obispo on and after September 27, 1954, were excessive and prejudicial. Complainant seeks the establishment of a reasonable rate for the future and payment of reparation on the shipments involved.

The record discloses the following facts concerning the defendant carrier's rates and charges. Prior to September 27, 1954, defendant's rates for the transportation of motion picture film and accessories between Los Angeles and San Luis Obispo, as set forth in its Tariff No. 5-B, Cal. P.U.C. No. 23, were: \$6.60 for each of the first three changes of film per week and \$2.20 for the fourth and each successive change per week, with no minimum charge per week. Effective on the above-mentioned date the rates between Los Angeles and San Luis Obispo were increased to \$7.00 per change,

regardless of the number of changes, subject to a minimum charge of \$21.00 per week.^{1/}

Prior to the date in question, the applicable rates between Los Angeles and all points served by defendant, except San Luis Obispo, were subject to minimum charges per week, which were equivalent, or approximately equivalent, to the charge for three film changes per week.^{2/} The rate and minimum charge which became applicable from and to San Luis Obispo on the above-mentioned date were concurrently established between Los Angeles, on the one hand, and Santa Maria, Arroyo Grande, and Pismo Beach, on the other hand. These last three points are directly intermediate between Los Angeles and San Luis Obispo, via the carrier's route of operation.^{3/}

Complainant asserts that the minimum charge of \$21.00 per week on movements to San Luis Obispo is unreasonable because the Obispo Theatre, which it operates in that city, has only one or two program changes per week. Accordingly, it contends, the transportation

1/ The increases in question were authorized by Decision No. 50494, dated August 31, 1954, in Application No. 35450. The decision authorized increases in all of defendant's rates and charges, covering service between Los Angeles, on the one hand, and, on the other, Burbank, Morro Bay, Atascadero, and numerous points intermediate thereto. The rate increases were authorized pursuant to a showing of need for greater total revenues. The order in Decision No. 50494 contains the following provision: "That the authority herein granted is subject to the express condition that applicant will never urge before this Commission in any proceeding under Section 734 of the Public Utilities Code, or in any other proceeding, that the opinion and order herein constitute a finding of fact of the reasonableness of any particular rate or charge..."

2/ Prior to May 6, 1946, defendant's rates between Los Angeles and San Luis Obispo were subject to a minimum charge which was equivalent to three film changes per week, per Supplement 1 to Tariff No. 5-A, C.R.C. No. 2. Effective that date, the minimum charge was cancelled. Defendant is unable to explain why the minimum charge was dropped.

3/ In Appendix "A" of this decision are shown the rates and minimum charges on film and accessories applicable immediately prior to September 27, 1954; also, on and after that date, between all points served by defendant.

charge on film and accessories from Los Angeles to the Obispo Theatre were increased from \$6.60 or \$13.20 per week to \$21.00 per week when the general increase in defendant's rates took place in 1954. Assertedly, the financial position of the Obispo Theatre is so precarious that complainant cannot afford to pay the increased charges.

A public hearing on the complaint was held at Los Angeles on January 7, 1955, before Examiner Carter R. Bishop. However, no evidence was received at that time. Counsel for defendant stated that the latter would be willing to file with the Commission an application on the so-called "special docket" under which it would propose to cancel or reduce the weekly minimum charge on shipments to San Luis Obispo and would seek authority, under Section 460 of the Public Utilities Code, to maintain higher charges, namely, the existing minimum weekly charges, at intermediate points. In making this offer, counsel explained that defendant had established the minimum weekly charge at San Luis Obispo in order to eliminate existing violations of the long- and short-haul provisions of Section 460, and that defendant could not stand the loss of revenue which would result if he were to cancel the minimum charge both at San Luis Obispo and at the intermediate points. At the request of counsel for complainant, the matter was removed from the Commission's calendar pending the filing of, and action upon, the proposed special docket application.

On March 3, 1955, defendant filed Application No. 460-691 on the special docket, seeking authority to maintain for a period of one year a reduced minimum charge per week of \$14.00 on shipments of motion picture film from Los Angeles to San Luis Obispo, and to maintain concurrently at certain intermediate points the existing charge of \$21.00. In the application it was asserted that due to

a marked reduction in personnel at the military camps in the vicinity of San Luis Obispo the theaters in that city had suffered a decline in patronage. Although the currently applicable minimum charge of \$21.00 was reasonable and necessary to meet the costs of providing service, the application stated, applicant was willing to make the proposed reduction in order to assist the theaters. On March 15, 1955, the Commission denied special docket Application No. 460-691 for lack of sufficient justification, and without prejudice to further consideration in any formal proceeding which might arise. Following this action, the instant proceeding was, at the request of complainant, scheduled for an adjourned hearing on August 10, 1955.

At the adjourned hearing, evidence on behalf of complainant was introduced through the owner of the Obispo Theatre and through the manager of Gamble and O'Keefe Theatres, of which Myrtle Theatres is a part. The testimony of these witnesses was to the following effect: San Luis Obispo has two indoor theaters and one drive-in theater. The Obispo Theatre is not a first-run theater. It has had, for some time past, an average of one and one-half program changes per week. Due to the closing of a nearby army camp and the "piping-in" of television from Santa Barbara, complainant's theater has suffered a decline in gross revenues of from 40 to 50 per cent. As a consequence, the theater is being operated at a loss.

According to these witnesses, not all of the components of a particular program are customarily delivered to the Obispo Theatre at one time. The accessories, such as advertising matter, and the "trailers"^{4/} are ready for transportation in advance of availability of the main feature and frequently are delivered

^{4/} According to the record a trailer is an excerpt of a picture shown in advance of the date on which the complete feature is shown.

to the theater on days when no main feature is delivered. The witnesses asserted that it would be possible to consolidate deliveries and thus cut down the number of trips made by defendant's equipment.

The theater owner further testified that he had investigated other means of transportation and understood that lower rates were available via other carriers.

The defendant testified regarding the special character

of the service which he renders. He explained that deliveries are made on a daily basis six days per week to the various theaters which are his customers and that most deliveries are made at night after the theaters are closed. He asserted that sometimes he is requested to deliver films to complainant's theater "out of order" and that this necessitates special delivery service. He admitted that the Obispo Theatre had never requested daily service.

This witness introduced an exhibit on which were listed all of the shipments transported by defendant from Los Angeles to the Obispo Theatre during the period from June 30, 1954, to December 29, 1954, inclusive. The dates of shipment and the contents of each shipment are shown. The exhibit does not show the dates on which the various items in the shipments were required nor whether consolidation of any of the shipments was practicable.

The defendant pointed out that the minimum charge of \$21.00 here under attack also applies on shipments to Santa Maria, Arroyo Grande and Pismo Beach, all of which communities are directly intermediate between Los Angeles and San Luis Obispo. According to this witness, the highway distances from Los Angeles to the four points of destination in question are 134, 182, 186 and 203 miles, respectively.

Conclusions

In support of its allegations that the minimum weekly charge under attack is unreasonable and prejudicial, complainant relies primarily on the fact that, because it is losing money in its theater

operations, it cannot afford to pay the increased transportation charges which have resulted from the establishment of the minimum charge. It also urges that by better grouping of program components the carrier could reduce the frequency of deliveries to the Obispo Theatre and thus reduce his operating costs. Aside from the conflicting testimony of record concerning the frequency of deliveries necessary to serve the theater's requirements, the evidence adduced by complainant, as outlined above, is not sufficient to support a finding that the charge in question is unreasonable or discriminatory. While one of complainant's witnesses asserted that the charges of other available carriers, applicable from Los Angeles to San Luis Obispo, were lower than those of defendant, no attempt was made by complainant to adduce evidence as to what those charges actually are, the carrier via which each applies, nor whether the services rendered in connection therewith are comparable to those maintained by defendant between the same points.

While evidence of lower charges via competing carriers might have lent some measure of support to the allegation of unreasonableness, the minimum charge to San Luis Obispo, here in issue, when compared with the corresponding charges maintained by defendant from Los Angeles to other points served by him, does not appear to be unreasonable. It is the same as the minimum weekly charge to Pismo Beach, Arroyo Grande and Santa Maria, deliveries to which involve shorter hauls than is the case with movements to San Luis Obispo. Moreover, as hereinbefore indicated, the establishment of the minimum charge to San Luis Obispo in 1954 served to eliminate a previously existing violation, in defendant's tariff, of the long- and short-haul provisions of the State Constitution and of the Public Utilities Code. That violation resulted from the maintenance at Pismo Beach and other intermediate points of minimum weekly charges equivalent to the charge for the delivery of three program changes, while at the same time the rate to San Luis Obispo was not subject to a minimum charge.

With reference to the allegation of prejudice, we find no evidence in the record in support thereof. Moreover, complainant failed to indicate in what way the application of the minimum charge under attack was alleged to be prejudicial to Myrtle Theatres.

Upon careful consideration of all the evidence of record, the Commission is of the opinion and hereby finds that the minimum weekly charge of \$21.00 involved herein has not been shown to be unreasonable or unduly prejudicial. The complaint will be dismissed.

O R D E R

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

IT IS HEREBY ORDERED that this complaint be and it is hereby dismissed.

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

Dated at Los Angeles, California, this 14th day of November, 1955.

John E. Mitchell
 President

Justice J. Craven

Roy E. Hutten

Thomas J. ...

R. Hardy
 Commissioners

APPENDIX "A"

Santa Barbara Special Delivery
Motion Picture Film, Advertising Matter and Accessories

Between	Los Angeles				
	In Effect Immediately Prior to Sept. 27, 1954		In Effect On and After Sept. 27, 1954		
And	Rate per Change (First Three Changes)	Rate per Change (Fourth and Succeeding Changes)	Minimum Charge per Week	Rate per Change	Minimum Charge per Week
* Burbank	1.40	1.40	4.48	2.50	7.50
* North Hollywood	1.40	1.40	4.48	2.50	7.50
* Canoga Park	2.24	2.24	6.72	2.66	8.00
* Oxnard	2.52	2.52	7.84	2.80	8.40
* Fillmore	2.80	2.80	8.96	3.20	9.60
* Santa Paula	3.08	3.08	9.52	3.40	10.20
* Ventura	3.64	3.64	10.92	3.90	11.70
* Santa Barbara	4.09	4.09	12.32	4.40	13.20
# Goleta	-	-	-	4.40	13.20
# Lompoc	6.60	2.20	20.90	7.30	21.85
# Camp Cooke	6.60	2.20	20.90	7.30	21.85
# Santa Maria	6.60	2.20	19.25	7.00	21.00
# Guadalupe	8.10	2.20	24.20	8.40	25.30
# Arroyo Grande	6.60	2.20	19.80	7.00	21.00
# Pismo Beach	6.60	2.20	19.80	7.00	21.00
# San Luis Obispo	6.60	2.20	-	7.00	21.00
# Morro Bay	8.00	2.20	22.00	8.40	25.30
# Atascadero	7.00	2.20	20.00	7.65	23.00

* Rates shown apply, or applied, on motion picture film and advertising matter.

Rates shown apply, or applied, on motion picture film and motion picture theatre accessories and supplies, viz.: advertising matter, crayons, brushes, poster paper, display cards, electric lighting effects, tickets, ticket choppers, and motion picture machinery and parts.

Note: This statement excludes certain reduced rates for the Red Cross, formerly in effect.

Authorities: Santa Barbara Special Delivery Local Freight Tariff No. 5-B, Cal. P.U.C. No. 3, and Supplement No. 1 thereto.