

Decision No. 52390**ORIGINAL**

## 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 fresh or green )  
 fruits and vegetables and related )  
 items (commodities for which rates )  
 are provided in Minimum Rate Tariff )  
 No. 8).

Case No. 5438

(Petition for Modification  
No. 7)(Petition for Modification  
No. 10)

Glanz & Russell by Theodore W. Russell for Smith  
 Transportation Co., petitioner.  
 Andrew David for Arroyo Grande Truck Company;  
 A. S. Fitzgerald for Fitzgerald Bros.; Grove G.  
 Lautzenhiser for Orange Empire Truck Lines,  
 Inc., and Polar Lines, Inc.; Ray E. Magness  
 for Imperial Truck Lines, Inc.; George K.  
 Oliver for George K. Oliver Trucking; respond-  
 ents opposing the petition.  
 H. J. Bischoff for Southern California Freight  
 Lines and Charles C. Wilson for Fred C. Wilson  
 and Sons, respondents.  
 J. J. Deuel for California Farm Bureau Federation;  
 J. C. Kaspar and Arlo D. Poe for California  
 Trucking Associations, Inc.; and William J.  
 Knoell for Pacific States Motor Tariff Bureau;  
 interested parties.  
 Leonard Diamond and R. A. Lubich for the Commission's  
 staff.

O P I N I O N

George C. Smith, Jr., an individual doing business under  
 the name of Smith Transportation Co., transports property as a  
 highway common carrier between Los Angeles and points generally  
 along U. S. Highway 101 in San Luis Obispo and Santa Barbara  
 Counties.

By Petition for Modification No. 7 filed June 28, 1955,  
 he sought the establishment of commodity rates in Minimum Rate

Tariff No. 8 for the transportation of certain fresh fruits and vegetables, commonly called produce, from packing sheds, processing plants and coolers, and in the case of lettuce, in shipments subject to a minimum weight of 10,000 pounds, from roadside at points and places in the general vicinity of Lompoc, Santa Maria, Guadalupe, Oceano and Arroyo Grande, hereinafter termed the northern area, to Los Angeles. The rates sought are lower than those presently prescribed as minimum in Minimum Rate Tariff No. 8.

By Petition for Modification No. 10 filed September 2, 1955, petitioner seeks authority under the provisions of Sections Nos. 452 and 726 of the Public Utilities Code to publish the same rates as those proposed in Petition No. 7.<sup>1</sup>

Public hearing was held September 27, 1955, before Examiner J. E. Thompson at Los Angeles. At the hearing petitioner was granted leave to amend Petition No. 10 so as to clarify description of service areas and to make a correction in the rates set forth in Exhibit "A" of the petition. Petitioner was also granted leave to amend the petition so as to request authority to depart from the long and short haul requirements of the Constitution and the Public Utilities Code in publishing the rates. The matters were taken under submission on October 6, 1955, upon the filing of the amendment to the petition.

Minimum Weight	Proposed Rate From Northern Area	Present Minimum Rate	
		From Lompoc	From Arroyo Grande
A.Q.	70	103	107
2,000	50	78	81
4,000	45	68	71
10,000	40	57	60
18,000		45	50
24,000		38½	42
36,000	35		

At the outset, petitioner stated that he would prosecute the matters set forth in Petition No. 10. He made a motion that Petition No. 7 be dismissed. ✓

In justification of the authority sought petitioner alleges that by reason of his insistence upon the levying and assessment of the minimum rates prescribed by the Commission that he has steadily lost traffic to proprietary operators or to non-certificated carriers operating into and out of the northern area only sporadically. Exhibit No. 2 offered by petitioner shows that he earned \$70,006 for transportation of produce in 1946, such amount constituting 56 per cent of his total revenue for that year, whereas in 1954 he earned \$71,337 which was 11 per cent of his total revenue.

Petitioner testified that he can make a profit at the proposed rates and that if he is authorized to charge the lower rates, the increased tonnage that he could expect would provide a more efficient and economical operation by reason of a better balance with the present volume of traffic he transports into the northern area out of Los Angeles. He introduced a cost study upon which he bases his conclusion that the proposed reduced rates would

return a profit. The cost study shows full costs lower than the proposed rates in all instances. The line haul cost factors and the ratio of indirect expense to direct expense were taken from the operating experience of petitioner as shown by his books of accounts. Pickup and delivery costs for handling truckload shipments were also developed from petitioner's operating experience. Because he had little recent experience in transporting less-than-truckload shipments of produce, the petitioner adopted those cost factors developed by the Commission's staff and reflected in Exhibit No. 1006 presented September 3, 1952, in Case No. 4808. Billing and collection costs were also taken from Exhibit No. 1006.

*GM* Some very substantial discrepancies in the petitioner's cost study were pointed out. The cost figures taken from Exhibit No. 1006 are outdated and as indicated in Decision No. 52143 dated October 25, 1955, do not reflect the current cost of labor. In light of the fact that petitioner ~~relied~~ relied upon such data in estimating the cost of pickup and delivery of less-than-truckload shipments, his estimates cannot be deemed to accurately portray the current cost of providing transportation service of less-than-truckload shipments.

The line haul costs estimated by petitioner also appear to be understated. In developing the average weight used to convert costs in terms of cost per one hundred pounds, petitioner apparently assumed he would have a load of produce southbound for every schedule he would have northbound and vice versa. Such assumption might have been valid if it had been shown that there is an equal and constant amount of traffic available to petitioner flowing in both directions, but the evidence of record shows that such is not the case here. The southbound produce traffic is very seasonal

with a heavy volume in the summer and a dearth of movement in the winter. Petitioner's exhibit shows that there is a daily fluctuation in the number of northbound schedules. If under the reduced rates petitioner handled the volume of produce traffic he expects to secure, it would appear to be a happenstance that he would on any succession of days have no empty schedules in one direction or the other.

It also appears that while petitioner based the cost estimates upon a round-trip operation, he considered only performance factors in the handling of truckload shipments of produce and did not give recognition to performance or cost factors involved in the handling of less-than-truckload shipments of general freight which constitutes his main northbound traffic.

In support of his allegations that the competitive situation justifies the lower rates, petitioner testified that the competition takes three forms. One type is the highway common carrier or permitted carrier which, like petitioner, is engaged in performing a year around service to shippers in the northern area. He stated that he did not consider the prospect of diverting traffic from such carriers by charging lower rates because he anticipates they would correspondingly reduce their rates. A second type is what petitioner termed the "in and outer" who is a permitted carrier that follows the harvests throughout the state. This type of carrier, according to petitioner, contracts with the growers at the beginning of the harvest, obtaining the patronage by various means which almost always involve the assessment of charges less than those prescribed as minima. Illustrative of the means used

is the charging of the truckload minimum rate for all shipments whether or not the shipment contains the prescribed minimum weight. Petitioner stated that at the peak of the harvest, because of the volume of traffic, substantial profits can be made by carriers at rates lower than the presently established minima. When the peak has passed and the volume of traffic dwindles, the "in and outer" leaves and the highway common carriers are tendered the less profitable traffic. Petitioner stated that the proposed low rates would discourage the "in and outer" competition in the area and he would be able to participate in the volume traffic that moves during the harvest season.

The third type of competition is what petitioner terms the "grower-controlled carrier". He stated that with a heavy volume of traffic there are substantial profits to be made in transporting produce. A number of persons who are primarily interested in the growing or marketing of produce have found ways in which a portion of those profits can be retained. One method is for a grower or a person controlling the traffic from a grower company to obtain for hire carrier permits from the Commission and employ subhaulers to perform actual transportation. The difference between the charges computed at the minimum rates and what the "grower-carrier" pays the subhauler may be between 10 to 25 per cent of the revenue. Another arrangement is that whereby a grower or person controlling the traffic will sell motor vehicle equipment at an amount above the market price of such equipment with the understanding that all or a substantial portion of the grower's traffic will be tendered

to the purchaser of the equipment. Petitioner states that the proposed reduction in rates will reduce the amount of gain to be derived by growers through such means and will thereby remove the incentive of the growers to engage in such practices. He believes that the traffic would then revert to the regular for hire carriers and that he would obtain a fair share of it.

The general manager of Arroyo Grande Truck Company, a highway common carrier engaged in transporting produce from a portion of the northern area to Los Angeles, testified that it competes with the petitioner at the same rates as those published by the petitioner. Since May, 1952, it has experienced an increasing volume of traffic rather than a decrease as experienced by the petitioner. He stated that it has not encountered serious competition in the forms alleged by petitioner and has not lost traffic because of rate cutting practices of other carriers. He testified that he has actively solicited the produce traffic and has found that shippers desire that their produce be transported in insulated equipment. He attributes the increasing volume of Arroyo Grande Truck Company's traffic and petitioner's decrease in traffic to the fact that the former has acquired insulated motor vehicle equipment whereas petitioner has not done so.

A number of respondents, including Arroyo Grande Truck Company, opposed the granting of Petitions Nos. 7 and 10. They argued that petitioner does not provide a service which meets the desires of shippers and that if the rates sought were approved, the petitioner could not expect to acquire traffic because they,

as competitors, would continue to provide service in insulated equipment at the reduced rates and would thereby retain their traffic.

Conclusions

Petitioner testified in general terms that certain competitive transportation conditions exist. There was testimony by an opposing party that such conditions do not exist. Under such circumstances and where the petitioner has not been specific in identifying the alleged competitors he has not sustained the burden of proof in the showing of transportation conditions which would justify the establishment of a lower than maximum reasonable rate. Because of deficiencies in petitioner's cost study, it cannot be deemed adequate as a basis for determining reasonable minimum rates for the transportation services involved.

Upon careful consideration of all of the facts and circumstances of record, the Commission is of the opinion and hereby finds that petitioner has not shown that the presently effective minimum rates are unreasonable or that the proposed rates are reasonable or justified by transportation conditions.

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 Petition for Modification No. 7 filed June 28, 1955, in this proceeding be and it is hereby denied.



IT IS HEREBY FURTHER ORDERED that Petition for Modification No. 10 filed September 10, 1955, in this proceeding be and it is hereby denied.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of December, 1955.

[Signature]  
President

[Signature]

[Signature]

[Signature]

[Signature]  
Commissioners