

Decision No. 52510

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations, )  
rates and practices of FORTIER )  
TRANSPORTATION COMPANY, a corpora- )  
tion. )

Case No. 5658

Edward M. Berol, for respondent;  
Elbert J. Sheffield, for Market Wholesale  
Grocery Company, interested party;  
Luther H. Gulick, for the Commission staff.

O P I N I O N

The order instituting investigation in this case was issued by the Commission on June 7, 1955. The principal matters to be investigated are the rating practices of respondent with special reference to alleged misapplication of its split pickup rule. Public hearings were held before Commissioner Rex Hardy and Examiner John Power at San Francisco on September 29 and 30, 1955. The matter concluded on the latter date with statements of counsel and was thereupon submitted and is ready for decision.

Respondent will sometimes be referred to herein as Fortier; Better Buy Wholesale Grocery Company of Fresno as Better Buy and Market Wholesale Grocery Company of Los Angeles as Market. Market owns Better Buy which is actually a department of Market, not a separate company. Better Buy was the customer for whom Fortier provided the transportation discussed in the evidence.

At the two hearings the staff presented two witnesses from its Field Section and one from its Rate Section. Through them the results of an extensive investigation by the staff were introduced into the record. The staff exhibits were voluminous and its oral testimony was considerable. Fortier's only witness was its executive vice president, through whom it introduced a set of exhibits covering the same transactions as the staff rate statement exhibits. Market's

counsel presented no evidence of his own but assisted in developing the record.

The Fortier operating authority with which we are here concerned is a certificate of public convenience and necessity as a highway common carrier created by Decision No. 42405, dated January 4, 1949, as amended by Decision No. 42508, dated February 15, 1949, in Application No. 27278. This authority contained a restriction against transportation by respondent of shipments of less than 5,000 pounds unless the charges applicable to a 5,000-pound shipment were collected. Among other points, this certificate authorized transportation between several San Francisco Bay area cities and Fresno. Fortier had had Better Buy's business for many years prior to such certification. The evidence indicates that, after the certificated operation commenced, respondent sought to retain this traffic through application of its so-called split pickup rules, quoted in the margin.<sup>1</sup>

<sup>1</sup> The rules and definitions involved as they appeared in "Fortier Transportation Company Local Freight Tariff No. 1, Cal.P.U.C. No. 1" are:

First Revised Page 8

Definition of Technical Terms

(g) SPLIT PICKUP SHIPMENT means a shipment consisting of several component parts tendered at one time and received during one day and transported under one shipping document from (a) one consignor at more than one point of origin, or (b) more than one consignor at one or more points of origin, the composite shipment weighing (or transportation charges computed upon a weight of) not less than 5,000 pounds, said shipment being consigned and delivered to one consignee at one point of destination and charges thereon being paid by the consignee when there is more than one consignor.

Sixth Revised Page 21, Rule No. 260-F

Split Pickup .....

- (b) For each split pickup shipment a single bill of lading or other shipping documents shall be issued; and at the time of or prior to the initial pickup the carrier shall be furnished with written instructions showing the name of the consignor, the point or points of origin and the description and weight of the property in each component part of such shipment.
- (c) If split delivery is performed on a split pickup shipment or component part thereof, or if shipping instructions do not conform with the requirements of paragraph (b) hereof, each component part of the split pickup shipment shall be rated as a separate shipment under other provisions of this tariff.

Respondents did not raise an issue concerning the actual violations. Its series of exhibits (6-1 to 6-12 inclusive) and the oral testimony of its sole witness concede the staff's contention on this point. It was also conceded in the argument of its counsel.

The rules quoted in the margin are standard ones found in all tariffs. There is, however, a typographical error in one of them which must be noted. In Rule No. 260-F the fourteenth word, "documents", should have been in the singular and should have read "document". This defect was apparently unnoticed by either respondent or the Commission until developed at the hearing. It has since been corrected. However, at the times considered here, the word "documents" was still in the plural form. This results in eliminating the requirement of a single shipping document found in other tariffs. All of the other requirements were present in respondent's tariff.

The evidence showed that each of the 12 master freight bills involved in this proceeding consisted of several shipments originating from more than one consignor at more than one point of origin. They were all delivered to one consignee at one point of destination. It is clear also that freight charges were paid by Better Buy, the one consignee. Thus far these composite shipments conform to the rule as it appeared in the respondent's tariff. Three important requirements remain; first, the component parts must be tendered at one time; second, all must be picked up on the same day; third, at or prior to the initial pickup, detailed written instructions must be supplied by the shipper to the carrier.

The staff presented exhibits showing the underlying documents of master Freight Bill No. 204422. The dates on the supporting shipping documents vary all the way from February 10 to 18, 1955. It therefore appears that the shipments were tendered on different days

and picked up on different days. The whole tenor of the evidence tends to support this conclusion.

Respondent's witness stated that the practices of Fortier were corrected beginning in April of 1955. In the course of his testimony he indicated that, since then, all pickups are made on the same day. He also conceded that the rule requirement for written instructions directing that certain shipments be consolidated had been ignored. It is clear that the three requirements of tender at one time, pickup during one day and prior written instructions were not met as to such shipments.

The Commission finds and concludes that these 12 groups of shipments do not fall within Fortier's split pickup rule. Since they did not, Rule No. 260-F, paragraph (c) (see footnote No. 1 supra) of respondent's tariff became applicable. The components were not rated as paragraph (c) requires and therefore the tariff was not followed. Since the tariff was not followed Section 494 of the Public Utilities Code was violated.

The evidence conclusively established another point; namely, that Better Buy was able to purchase the transportation billed for in these 12 master billings at far less than the Commission's minimum rates, not to mention the Fortier tariff rate when correctly calculated. One example will illustrate the point. On Freight Bill No. 198158 the charge actually billed was \$350.75. If each component had been rated as a separate shipment under Minimum Rate Tariff No. 2 the total billing would have been \$579.37, and the aggregate billing under the Fortier tariff would have been \$1,575.57. Thus the amounts saved were \$228.62 in the first instance and \$1,224.82 in the second.<sup>2</sup>

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<sup>2</sup> These figures are taken from respondent's Exhibit No. 6-1 with transportation taxes omitted.

While not identical with these, the other 11 master bills reveal like undercharges.

It is clear that Fortier was not merely mistaken. Fortier's responsible officers and employees knew what they were doing both in legal contemplation and in actual fact. It appears, in fact, from respondent's own evidence that, prior to the present series of violations, the Fortier split pickup rule had been correctly applied by respondent.

It is equally clear that a share of responsibility for these departures from tariff rates must fall on the shipper. Here again the legal presumption of notice is backed up by some evidence of actual knowledge. The very cheapness of this transportation might properly warn a prudent person that something was amiss.

Fortier will be directed to cease and desist from the collection of charges not authorized by its filed rates. Fortier's authority to transport groceries and grocer's supplies will be suspended for five days between the points involved in this transportation, and Fortier will be directed to collect the charges based upon its filed rates without application of its split pickup rule.

O R D E R

The Commission having instituted investigation herein, public hearings having been held, the matter having been submitted and basing its opinion upon the findings and conclusions contained in the foregoing opinion; therefore,

IT IS ORDERED:

1. That Fortier Transportation Company cease and desist from charging, demanding, assessing, collecting or receiving a different compensation for the transportation of property than the applicable rates and charges specified in its schedules filed and in effect at

the time upon any shipment carried under authority of any certificate of public convenience and necessity held by it.

2. That the operating authority of Fortier Transportation Company, a corporation, existing under any certificate or certificates of public convenience and necessity as a highway common carrier, now held by said company, in so far as the same authorize the transportation of groceries and grocer's supplies, as presently defined in Item No. 360-E series and canned goods, as presently defined in Item No. 610-L series, both in Minimum Rate Tariff No. 2 of this Commission between San Francisco, South San Francisco, Oakland, Alameda, Albany, Berkeley and Piedmont, on the one hand, and Fresno, on the other hand, is hereby suspended for a period of five days beginning March 5, 1956.

3. That all rates and charges filed with the Commission by Fortier Transportation Company for the transportation of groceries and grocer's supplies and canned goods between the points stated in paragraph (2) hereof are hereby suspended for the five-day period of suspension of authority.

4. That Fortier Transportation Company shall, not less than five days prior to the beginning of the suspension period, file suspension supplements to its tariffs on file with the Commission stating that their rates and charges for the transportation of groceries and grocer's supplies and canned goods are under suspension and may not be used for the five-day period.

5. That Fortier Transportation Company shall also post in their terminal and station facilities used for receiving property from the public for transportation in Fresno and Richmond, not less than five days prior to the beginning of the suspension period, a notice to the public stating that its operating authority to transport groceries and grocer's supplies and canned goods has been suspended by the Commission for the period of five days.

6. That Fortier Transportation Company is directed within twenty days after the effective date of this order:

- (a) To institute and diligently prosecute proceedings to collect the amounts indicated upon Appendix A attached hereto from Better Buy Wholesale Grocery Company of Fresno, California, and from Market Wholesale Grocery Company of Los Angeles, California, or from either of them;
- (b) To notify the Commission in writing upon the consummation of said collections.

7. In the event that the charges to be collected as provided in paragraph (6) of this order, or any part thereof remain uncollected eighty days after the effective date of this order, Fortier Transportation Company shall submit to the Commission on Monday of each week, a report specifying the action taken to collect said charges and the results of said action, until said charges have been paid in full or until further order of this Commission.

8. The secretary is directed to cause personal service of this order upon Fortier Transportation Company, Better Buy Wholesale Grocery Company and Market Wholesale Grocery Company and this order shall be effective twenty days after the completion of said services.

Dated at San Francisco, California, this 23<sup>rd</sup> day of January, 1956.

Arthur E. Mitchell  
President

Justin J. Casmen

Ralph W. [unclear]

[unclear]

B. Hardy  
Commissioners

## APPENDIX A

<u>Master Freight Bill No.</u>	<u>Correct Total Charge for Freight Bills Grouped Under Master Bill</u>	<u>Amount Actually Collected Under Master Freight Bill</u>	<u>Amount to be Collected</u>
198158	\$ 1,575.57	\$ 350.75	\$ 1,224.82
198837	655.51	187.08	468.43
198581	1,034.50	198.71	835.79
198765	950.90	251.30	699.60
199428	1,669.80	234.11	1,435.69
200080	1,279.16	203.32	1,075.84
203288	608.48	190.80	417.68
202727	1,597.50	290.89	1,306.61
203178	1,148.00	200.61	947.39
204422	1,078.19	196.23	881.96
204517	1,321.55	374.94	946.61
205090	<u>1,596.18</u>	<u>206.49</u>	<u>1,389.69</u>
Total	\$14,515.34	\$ 2,885.23	\$11,630.11

Transportation taxes omitted from the above figures. Proper amounts for such taxes shall be calculated and collected by Fortier Transportation Company.