

ORIGINAL

Decision No. 52870

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	Application No. 36857
of Western Classification com-)	and
mittee for approval of changes)	Application No. 36857
in classification provisions.)	(First Supplemental)

Charles W. Burkett, Jr., and Wm. Meinhold,
for George H. Dumas, Agent, Western
Classification Committee, applicant.
J. Richard Townsend, for Lane Publishing Co.,
intervenor.

Arlo D. Poe, and J. C. Kaspar, for California
Trucking Associations, Inc., Herman C.
Kuhnert, for Western Motor Tariff Bureau;
Leo V. Cox for Barclay Traffic Service;
Willard S. Johnson, for Hills Transportation
Co., and Ford C. Neumuth, for Time, Incor-
porated; interested parties.
Robert A. Lane, for the Commission's staff.

O P I N I O N

George H. Dumas is the chairman of the Western Classification Committee which is appointed by the Executive Committee of the Western Traffic Association. The latter comprises the principal railroads operating west of the Mississippi River. George H. Dumas as chairman of the Western Classification Committee holds power of attorney from railroads, highway common carriers, express corporations and other common carriers operating in California, to act as agent in the publishing of classification ratings applicable to their California intrastate operations. By this application George H. Dumas, as agent, seeks authority to make applicable on intrastate commerce within California a number of changes in the Western Classification No. 75, Cal. P.U.C. - W.C. No. 8. The proposed changes in ratings, which are presently effective on

interstate commerce, involve increases, reductions and technical adjustment.

By an interim order in Decision No. 51405 dated May 3, 1955, applicant was granted authority to publish and file in his Western Classification No. 75 the proposed changes except as to Items Nos. 13557-B (aluminum pipe and ducts), 14670.1-A (Christmas decorations), 18422-A (foodstuffs), 32022-C (television antenna masts) and 37410-A (printed matter). The sought changes with respect to these items were not authorized pending further consideration upon receipt of additional evidence.

Public hearing was held in this application together with other applications^{1/} of George H. Dumas on October 13 and 14, 1955 before Examiner J. E. Thompson in San Francisco. The matter was submitted on November 3, 1955 following the filing of memoranda of points and authorities by California Trucking Associations, Inc., Lane Publishing Co., and the applicant.

At the hearing and in the memoranda filed by the parties, important issues were raised regarding the elements and factors to be shown by the applicant and considered by the Commission in a matter involving a change in rating in the Western Classification. The issues arise by reason of the Commission having established the Western Classification as the governing classification for the minimum rates, rules and regulations prescribed in Minimum Rate Tariff No. 2 and in the various drayage tariffs.^{2/} Because of

^{1/} Applications Nos. 36619, 36745, 36999, 37075 and 37238.

^{2/} The drayage tariffs are: City Carriers' Tariff No. 1-A (San Francisco) City Carriers' Tariff No. 2A-Highway Carriers' Tariff No. 1-A (East Bay Cities), Minimum Rate Tariff No. 5 (Los Angeles) and City Carriers' Tariff No. 7 - Highway Carriers' Tariff No. 9 (San Diego).

their importance, the issues thus raised will be discussed prior to consideration of the evidence directed towards the proposed changes of particular items.

The California Trucking Associations, Inc., states that in so far as railroads and highway common carriers are concerned a change in the classification ratings, carload minimum weights, or rules or regulations, resulting in an increase in rates requires justification under Section 454 of the Public Utilities Code. It asserts that changes resulting in reductions in rates do not require such carriers to obtain authority prior to filing except to the extent that minimum rates prescribed by the Commission may be affected; but as all class rates of highway common carriers, radial highway common carriers, highway contract carriers and city carriers are subject to the minimum rate tariffs mentioned above, changes in ratings affecting such minimum rates requires the Commission to proceed pursuant to the provisions of Sections 726, 3662, 4011 and 4012 of the Public Utilities Code.

The California Trucking Associations, Inc., contends that this proceeding involves the establishment of minimum rates and under the controlling statutes in this state, the cost of transportation must be a primary consideration in determining whether the rates which would result from the proposed change in classification would be reasonable minimum rates.^{3/} It is alleged that material

^{3/} Sections 3662 and 4012 provide that in establishing minimum rates the Commission shall give due consideration to the cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers or of any accessorial service, the value of the commodity transported, and the value of the facility reasonably necessary to perform the transportation service.

disturbances of the classification ratings of a substantial volume of traffic has an effect upon the reasonableness of the entire minimum rate structure. This results, it is said, because in the development of the class rates in the minimum rate tariffs prescribed by the Commission the distribution of tonnage between classes as determined by analysis of the flow of traffic is an important consideration. The California Trucking Associations, Inc., contends that in order to satisfy the burden of proof it is incumbent upon the applicant in these cases to show that: (1) the existing classification is improper and unreasonable with respect to the transportation of each commodity involved within California, (2) the existing minimum rates applicable to the commodity are unreasonable and (3) the rates which would result from the proposed change in classification rating would be reasonable minimum rates. It is further alleged that a proper showing of the latter under Section 726 requires evidence of the type or class of carrier actually performing the transportation of the commodities involved and the volume and the character of the movement. Essentially all of these contentions support a proposition that evidence of cost of operation and of the effect the proposed change would have upon carrier revenues is indispensable evidence in this type of proceeding.

Applicant on the other hand contends that the determination of a classification rating is a matter which precedes, but is completely separate and apart from consideration of rates and that while cost of operation and carrier revenues are pertinent in proceedings involving the level of rates, they are remote and have no place in proceedings involving individual classification ratings. In support of this contention the applicant cited numerous decisions of the Interstate Commerce Commission.

It is well settled that the work of classification should be confined to classification as such, entirely apart from the question of the level of rates.^{4/} Classification is the process of dividing the many different varieties of freight into a number of classes or groups for rate purposes. In the exercise of its minimum rate-making power, the Commission determines whether a particular article should be placed in one class or group or another after weighing all of the known elements of rate making which bear upon (1) the cost burden arising from the inherent nature of the article in its shipping form and (2) the ability of the article to contribute towards the aggregate transportation burden. In a classification proceeding where minimum rates are involved, the issues are reasonableness and nondiscrimination within the rate structure itself and not the adequacy of revenues produced by the rate structure.

Consideration will now be given to the proposals in the instant application. The applicant testified that with respect to rail movements the sought changes in classification are presently in effect on shipments in interstate commerce throughout Western Classification Territory and also in effect on intrastate commerce in all states in the territory except California. He stated that while the Western Classification Committee considered the proposed

^{4/} Decision No. 42740 in Case No. 4808 (1949) 48 Cal. P.U.C. 647-649.

changes only from the standpoint of rail transportation, he was of the opinion that the proposals would also be reasonable for transportation by motor vehicle. He also said that the Committee, in considering the proposals gave effect principally to the elements of density, value per cubic foot and shipping form. The evidence presented by the applicant consisted generally of testimony respecting these elements together with comparisons of the articles under consideration with others having similar ratings as proposed herein.

Item 13557-B

It is proposed to amend the descriptions of articles in that item and to provide ratings of 1-1/2, L.C.L. and 75, C.L., subject to a minimum weight of 14,000 pounds, for aluminum double-wall pipe or duct. The double-wall pipe or duct is not presently specifically designated in the item and is subject to the same ratings as aluminum single-wall duct or pipe, namely, DI, L.C.L. and 2, C.L. minimum weight 10,000 pounds. The evidence shows that the density of the double-wall pipe is almost twice that of the single-wall type and its value per pound is somewhat less than half that of the single-wall pipe. The proposed change appears to be reasonable.

Item 14670.1-A

It is proposed to reduce the ratings on fibreboard Christmas or holiday decorations from 1, L.C.L. and 3, C.L. minimum weight 24,000 pounds, to 2, L.C.L. and 4, C.L. minimum weight 24,000 pounds. To be subject to the proposed ratings the article must be folded flat in boxes. The articles, which consist of designs printed upon fibreboard or wallboard, are similar to store and window displays and printed paperboard, which latter articles are subject to the same ratings as proposed for Christmas decorations. The proposal appears to be reasonable.

Item 18422-A

It is proposed to reduce the carload minimum weight from 36,000 pounds to 30,000 pounds on frozen foodstuffs which have been cooked, cured or otherwise preserved. The reduction is specifically designed to accommodate one particular type article, to wit, "T.V. Dinners" made by C. A. Swanson and Sons. Applicant testified that when 36,000 pounds of these articles are placed in a standard refrigerator car the space occupied by the lading will not permit the necessary circulation of air to prevent spoilage. The rail carriers propose the change in minimum weight in the interest of prevention of loss and damage claims. The "T.V. Dinners" were stated to have similar packaging, density and value as do frozen pies which have the same ratings and the same minimum weight as proposed herein for the "T.V. Dinners". The proposal appears to be reasonable for rail transportation. While the minimum rates are not applicable to rail lines in the transportation of carload traffic, it appears just and reasonable that the reduction should be adopted in the minimum rates prescribed for other transportation agencies.

Item 32022-C

It is proposed to change the description of television antenna masts from "tubular, steel" to "tubular metal" so as to include within the item television antenna masts made from aluminum and alloys. The applicant testified that because the television industry is comparatively new, design and construction of the apparatus, particularly masts, are constantly being changed. Manufacturers are now making masts made principally of aluminum which are now rated as aluminum articles, NOIBN, which articles take a rating of 1, L.C.L. and 75, C.L. minimum weight 14,000 pounds. The aluminum masts have parts and fittings made of steel so that the

average density is 54 pounds per cubic foot. The articles have a value of 62 cents per pound. Under the proposed amendment the articles, like those made wholly of steel, will be rated 3, L.C.L. and A.C.L. minimum weight 36,000 pounds. The proposal appears to be reasonable.

Item 37410-A

It is proposed to reduce the ratings on magazines and periodicals from 2, L.C.L. and 4, C.L. minimum weight 36,000 pounds, to 4, L.C.L. and 5, C.L. minimum weight 36,000 pounds. Evidence in support of the proposal was offered by the applicant, the Western traffic manager and production manager of Time, Incorporated, the subscriber fulfillment manager of the Lane Publishing Company and a traffic consultant employed by the Lane Publishing Company.

In so far as minimum rates are concerned, the presently effective less than carload rating is fourth class as set forth in Item 820 of Pacific Southcoast Freight Bureau Exception Sheet No. 1-S, Cal. P.U.C. No. 193, J. P. Haynes, agent. The issue here, therefore, is whether the carload rating should be reduced from fourth class to fifth class.

The evidence shows that there is a substantial intrastate movement of magazines in California. The predominance of the traffic appears to be the transportation by truck in carload quantities from the printing plants to certain distribution points where the magazines are delivered to news service agencies for newsstand sales or delivered to the post office for mailing to subscribers. When shipments are made for newsstand sales the average density is about 55 pounds per cubic foot. When consigned to post offices for mailing the average density is about 41 pounds per cubic foot because the magazines are tendered in mail bags. The testimony shows that the

claim factor on magazines for loss or damage is very small. The evidence as a whole shows that magazines have favorable transportation characteristics comparable to other articles subject to a fifth class carload rating. The favorable transportation characteristics are exemplified by the presently effective fourth class less than carload rating. In rate making, articles shipped in carload quantities ordinarily are accorded a lower rating than the same articles shipped in less than carload quantities.

Upon consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds that the changes in classification sought herein are justified and that the proposed ratings provide reasonable, just and nondiscriminatory minimum rates for the transportation by common carriers, highway carriers and city carriers within this state.

The applicant on August 8, 1955 filed a first supplemental application seeking the same authorities as had been requested in the original application but not acted upon by the Commission in its Decision No. 51405. A granting of the original application therefore also results in a granting of the first supplemental application.

FINAL ORDER

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

IT IS ORDERED:

1. That the authorities requested as to Items Nos. 13557-B, 14670.1-A, 18422-A, 32022-C and 37410-A as set forth in the application filed April 5, 1955 and in the first supplemental application filed August 8, 1955 by George H. Dumas, agent, be and they are hereby granted.
2. That the ratings, rules and regulations authorized in paragraph 1 of this order be and they are hereby approved to govern minimum rates established by the Commission in Decisions Nos. 31606, 41362, 41363, 32504 and 35055, as amended.

3. That the applicant be and he is hereby authorized to depart from the provisions of Article XII, Section 21 of the Constitution of the State of California and from the provisions of Section 460 of the Public Utilities Code with respect to the ratings, rules and regulations authorized in paragraph 1 of this order in so far as said ratings, rules and regulations govern nonintermediate rates.
4. That supplements containing the changes authorized herein shall bear a notation that they are issued under authority of this decision.

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

Dated at San Francisco, California, this 10th day of April, 1956.

Arthur E. Mitchell
President
Justice J. Casper
Ralph V. Tamm
J. Hardy
Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.