

ORIGINAL

Decision No. 53153

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 GEORGE POTIGIAN, doing business as)
 POTIGIAN TRANSFER, for authority to) Application No. 36612
 charge less than minimum rates under) (First Supplemental)
 the provisions of the Public Utilities)
 Code.)

A. R. Kerstetter; and Crossland & Crossland & Richardson, by Robert S. Crossland, for applicant.
Orville A. Schulenberg, for Lonnie Case Trucking, Inc., Lonnie Case, doing business as Lonnie Case Trucking, and Zoven Melikian, doing business as Melikian Trucking Company; John MacDonald Smith, for Southern Pacific Company; J. C. Kaspar and Arlo D. Poe, for California Trucking Associations, Inc.; protestants.
F. J. Wright, for The Atchison, Topeka and Santa Fe Railway Company, interested party.
John W. Mallory, for the Commission's staff.

FIRST SUPPLEMENTAL OPINION
AND ORDER

Applicant operates as a highway contract carrier between points in this state. By Decision No. 51017, dated January 25, 1955, he was authorized to transport packaged raisins for Tusan Packing Co., Chooljian Bros. Dehydrator, and The Crosby's Fruit Packers from their packing plants located in the vicinity of Sanger and Del Rey to the Port of Stockton and to San Francisco Bay area ports at the rates that would be applicable under the provisions of Minimum Rate Tariff No. 2 if such plants were located at railhead at said origin points. That authority expired with February 14, 1956. By First Supplemental Application No. 36612, as amended, filed on December 29, 1955, applicant seeks a one-year extension of the authority, for Tusan Packing Company and Chooljian Bros. Packing Company only.¹

¹ Since the authority granted by Decision No. 51017 has expired, First Supplemental Application No. 36612 is, in effect, a request for reinstatement of such authority for a one-year period. According to the record, The Crosby's Fruit Packers is no longer in business.

The original authority was granted ex parte in the absence of protests and on the basis of what was deemed to be adequate justification, as set forth in the original application. Subsequent to the issuance of Decision No. 51017, however, Southern Pacific Company and California Trucking Associations, Inc., requested that any application for extension of the relief beyond February 14, 1956, be made the subject of a public hearing. Accordingly, such hearing of the first supplemental application was held before Examiner Carter R. Bishop at Fresno on February 6, 1956.

Minimum rates for the transportation in question are provided in Minimum Rate Tariff No. 2. Under the provisions of that tariff carload rail rates may be assessed by highway carriers for movement between points served by rail. Additionally, under said provisions shipments originating at off-rail points are subject to the rates set forth in the minimum rate tariff, or to combinations of highway carrier rates, applicable from the shippers' facilities to railhead, with rail rates from railhead to points of destination. The record discloses that the plants of the two shippers involved herein are located off-rail in the vicinity of Sanger and that as a consequence the applicable minimum rates for the transportation of raisins from such plants to Stockton and the San Francisco Bay ports are higher than those enjoyed by shippers who are served by rail spur at Sanger or at other San Joaquin Valley points from which the same rail rates are applicable.²

Applicant testified that the traffic involved in this proceeding moves from the packing plants to the above-mentioned

² In Appendix A hereof the minimum rates applicable from the Tusan and Chooljian plants are compared with those applicable from railhead at Sanger.

ports for transportation beyond via steamship. Some of the traffic is destined to foreign countries, while the balance moves to ports on the Atlantic seaboard. None of the shipments here in issue are intrastate in character.³ Assertedly, the traffic constitutes from ten to fifteen per cent, on a tonnage basis, of the total traffic handled by applicant. According to the record, applicant has been transporting raisins to the ports for Tusan and Chooljian for many years. The movement is seasonal, the bulk of the shipments taking place from fall to early spring.

The witness explained that the market for so-called "bulk" raisins is highly competitive. He stated that the lower alternative rates enjoyed by packers located on rail spur at Sanger and other San Joaquin Valley shipping points place Tusan and Chooljian at a serious competitive disadvantage in the market. Prior to June, 1954, when the Commission assumed jurisdiction of this interstate and foreign traffic, the witness said, a blanket export and interstate rate was applicable via highway carriers on movements to Stockton and San Francisco Bay ports from all raisin packing plants in the Sanger-Fresno area, regardless of whether such plants were located on-rail or off-rail. The competitive equality with other packers which Tusan and Chooljian had thus formerly enjoyed was temporarily restored by the authority herein sought to be renewed.

The movement of raisins from the Tusan and Chooljian plants, applicant testified, is a highly efficient operation. At shipper's dock the loading is accomplished by means of lift trucks

³ Certain agricultural commodities, including raisins, moving in interstate or foreign commerce are exempt, under the provisions of Section 203(b)(6) of the Interstate Commerce Act, from federal rate regulation. They are subject to the provisions of the Public Utilities Code and of Minimum Rate Tariff No. 2 (See Decision No. 50156, in Case No. 5432, of June 18, 1954).

and pallets.⁴ Assertedly, this method of loading is substantially faster than that in vogue at other packing plants served by applicant, where loading is accomplished by conveyer belt. Delays, the witness said, are rarely encountered at the Tusan and Chooljian plants. This, he said, is true even in rainy weather, since overhead shelters permit the prompt loading of trucks regardless of weather conditions. At other plants, according to the witness, delays are frequently experienced, in both wet and dry weather. Apparently unloading conditions at the ports are the same with respect to the traffic here in issue as are encountered in the handling of other highway traffic at the same ports.

Applicant testified that his trucks are nearly always loaded to capacity, amounting to 45,000 pounds, and that any trucks leaving the Tusan or Chooljian plant with less than a full load are filled out to capacity with other freight before leaving applicant's Fresno terminal for Stockton or the Bay ports.

No evidence was offered by applicant regarding the costs incurred in the performance of the services for which minimum rate relief is sought herein. Applicant explained that his records were not maintained in sufficient detail to enable him to segregate such costs from those of his other transportation services. Likewise, no evidence was adduced by applicant relative to revenues obtained and expenses incurred in his over-all operations or any part thereof.⁵ He was satisfied that the rates which he assessed on the

⁴ The shipments are not palletized through to destination. Applicant's drivers transfer the boxes of raisins from the pallets to the truckbed at point of origin.

⁵ At the close of the hearing on February 6, 1956 the matter was temporarily removed from the calendar to enable applicant to determine whether financial statements or cost data could be developed for introduction at an adjourned hearing. On February 21, 1956 the Commission was informed that applicant desired that the matter be submitted on the record as it then stood, without additional hearing.

traffic here in issue under the authority conferred by Decision No. 51017 were compensatory. Moreover, he asserted that costs incurred in the movement of raisins from the Tusan and Chooljian plants were no greater than the costs of handling traffic from plants located on-rail at Sanger to the same destination.

The proprietor of Tusan Packing Company and one of the partners of Chooljian Bros. testified in support of the supplemental application. They described the operations and plant facilities of their respective companies.⁶ They corroborated applicant's testimony regarding the high degree of efficiency in loading conditions at their plants. According to the record, Tusan ships in excess of 1,000 tons of raisins per year to the port of Stockton and to San Francisco Bay ports, all of which moves via applicant's trucks. The corresponding movement from the Chooljian plant in 1955 totaled approximately 1,000 tons, all of which likewise was handled by applicant. Assertedly, 90 per cent and 60 per cent of the total tonnage shipped to all points of destination by Tusan and Chooljian, respectively, are involved in the instant application.

According to the shipper witnesses, the highly competitive nature of the raisin market makes it imperative that the delivered prices of their product be no higher than those of their competitors. They testified further that the differences between the minimum rates applicable from their plants, on the one hand, and the rates enjoyed by shippers located on rail facilities at Sanger and other points as far south as Exeter, on the other hand, are too great for the witnesses to absorb such differences and still sell their raisins at a profit. Assertedly, if the relief sought herein should be denied, Tusan and Chooljian will have no market for

⁶ In addition to packing raisins Chooljian operates a dehydrater and engages in farming activities.

the raisins now handled by applicant to the California ports and they will be forced out of business. ✓

A tariff consultant, appearing on behalf of applicant, and the commerce agent of Southern Pacific Company testified regarding the rates applicable, under the provisions of the minimum rate tariff, from the various points of origin under consideration to the above-mentioned ports. They also testified regarding the unloading charges for trucks and rail cars applicable at the ports.

The granting of the application was opposed by Southern Pacific Company, by California Trucking Associations, Inc., and by three highway carriers.⁷ Except for the testimony of the commerce agent, supra, protestants supported their positions entirely by argument. They asserted that applicant's failure of evidence relative to the cost of performing the services in question had resulted in his not sustaining his burden of showing that the sought rates would be reasonable and compensatory. They argued further that the situation of Tusan and Chooljian is no different from that of innumerable other shippers of commodities for which minimum rates have been prescribed who are similarly located off-rail; that the granting of the sought relief would in effect give Tusan and Chooljian the advantage of spur track facilities, without undergoing the expense of installing such facilities which is incurred by shippers who are served by spur track; that although highway permit carriers may as a matter of statutory right provide the same transportation as railroad companies at the same rates it does not follow that a competitively induced rate is reasonable per se where the force of carrier competition is not present; and that it is not the province of the Commission so to prescribe or adjust rates as to ✓

⁷ California Trucking Associations, Inc., is a nonprofit organization of highway carriers. At the close of the hearing its appearance was changed from that of an interested party to protestant.

enable shippers to overcome natural disadvantages of location. Protestants supported their arguments by citing several decisions of the Commission deemed to be pertinent to the matter in issue.

Counsel for applicant argued that the incorporation in the minimum rate tariff of the above-mentioned alternative rate provision is a finding of reasonableness of the lower rail rates as applied to movement via highway carrier; and that it is not reasonable to require the assessment from the Tusan and Chooljian plants of rates that are considerably higher than the rates applicable via highway carriers under such alternative provision from points, such as Exeter, which are much more distant from the ports. He also drew attention to Section No. 3661 of the Public Utilities Code. In this section is announced the policy of the state to the effect that the Commission shall establish such rates as will promote the freedom of movement by carriers of the products of agriculture at the lowest lawful rates compatible with the maintenance of adequate transportation service.

Conclusions

Section 3666 of the Public Utilities Code, under which the application herein was filed, provides that in authorizing relief from the established minimum rates the Commission shall find that the proposed rate is reasonable. This in turn necessitates a determination that such rate will be compensatory. There is no probative evidence in the record before us that would enable such a determination to be made. As previously stated, applicant made no showing as to the actual or estimated costs of rendering the transportation services involved, the lack of sufficient detail in his records having made such a showing impracticable. Moreover, the record does not contain any other evidence which tends to establish that the particular rates here in issue would be

compensatory. Under the circumstances we are not in a position to accord applicant the relief sought.

With reference to the alleged unreasonableness of minimum rate provisions under which higher rates are applicable from the Chooljian and Tusan plants than from more distant locations served by rail spur, suffice it to say that this situation is the result of compliance, by the Commission, with the provisions of Section No. 3663 of the Public Utilities Code. Under those provisions minimum rates for highway permit carriers shall not exceed the current rates of common carriers by land for the transportation of the same kind of property between the same points. The fact that the Tusan and Chooljian plants were not established adjacent to the rail lines where they could be reached conveniently by spur track facilities and thus receive the benefit of rail rates under the alternative rate provisions operates to the disadvantage of the owners of these plants.⁸

Upon consideration of all the facts of record, the Commission is of the opinion and hereby finds that the authorization sought in First Supplemental Application No. 36612, as amended, has not been shown to be reasonable. The application will be denied. In reaching this conclusion the Commission is aware of the fact that the original authorization, in Decision No. 51017, supra, was granted ex parte on the basis of a showing which did not include cost evidence. That authorization was predicated upon an emergency situation and was made in the absence of protests. Upon the fuller showing now before us the conclusions reached herein are inescapable.

⁸ As hereinbefore stated, the Tusan and Chooljian witnesses asserted that, if the relief sought herein should be denied, their companies would be forced out of business. The record shows, however, that at least one of these shippers possesses trucks, with which the raisins might be transported to rail-head, one mile distant from its plant, for movement thence to the ports via rail or highway permit carrier at the rail rates.

O R D E R

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

IT IS HEREBY ORDERED that First Supplemental Application No. 36612 of George Potigian 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 28th day of May, 1956.

President
Justin D. Galmer
Paul L. Green
William D. ...
P. Hardy
Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Dried Fruit, viz.: Raisins

Comparison of Applicable Minimum Rates under Provisions of
Minimum Rate Tariff No. 2
(Rates in Cents per 100 lbs.)

<u>From</u>	<u>To</u>	<u>Rate</u>	<u>Minimum Weight (Pounds)</u>	<u>Basis</u>
Tusan Packing Co.	Stockton (railhead)	(28.875	30,000	Distance rate in Minimum Rate Tariff No. 2
Chooljian Bros.	Stockton (railhead)	(x25.875	85,000	
<hr/>				
Sanger (railhead)	Stockton (railhead)	25 x18	30,000 85,000	#Rail rate #Rail rate
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Tusan Packing Co.	S.F. Bay Ports	(39.875	30,000	Combination truck and rail rate made over Sanger
Chooljian Bros.	S.F. Bay Ports (railhead)	(x30.875	85,000	
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Sanger (railhead)	S.F. Bay Ports (railhead)	32 x23	30,000 85,000	#Rail rate #Rail rate
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x Applies on export traffic only.

Includes increases under Tariffs of Increased
Rates and Charges Nos. X-175-C and X-196-A