ET

Decision No. 53205

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Thomas E. Gilboy, Patricia Gilboy Shortall, the estate of Thomas W. Gilboy, a copartnership doing business as GILBOY COMPANY OF SAN FRANCISCO, for authority to increase rates.	)	Application No. 37929

Thomas E. Gilboy, Richard C. Shortall, and Daniel W. Baker, for applicants.
Grant L. Malquist and B. A. Peeters, for the Commission staff.

O P I N I O N

Thomas E. Gilboy and Patricia Gilboy Shortall, as surviving partners, are carrying on the operations of the partnership of which Thomas W. Gilboy, deceased, was a former partner and his estate now includes his interest therein. The partners are engaged in the transportation of motion picture film and film accessories between Los Angeles and San Francisco and between San Francisco and certain points to the east and south thereof and points in California as far north as Eureka and Redding. Applicants also transport newspapers between San Francisco and points in northern California as a highway contract carrier (Permit No. 38-6448), and transport motion picture films, theatre supplies and newspapers as a city carrier (Permit No. 38-6117). By this application filed April 13, 1956, they request:

(1) That an ex parte order of the Commission be issued authorizing the establishment of a fifteen per cent surcharge applicable to all rates and charges set forth in Local Freight Tariff No. 6, Cal. P.U.C., No. 3, of Thomas W. Gilboy Series, on file with the Commission, for the transportation of shipments between San Francisco and points located outside San Francisco and the East Bay Drayage Zone, and that the increases be made effective on five days' notice to the public and the Commission.

(2) That the Commission hold a formal hearing as soon as practicable for the purpose of receiving evidence relative to establishing a permanent surcharge increasing all rates and charges applicable to the transportation between said points by twenty-five per cent.

No order prior to hearing has been issued. Public hearing was held in San Francisco on May 11, 1956, before Examiner Rowe, at which time evidence both oral and documentary was adduced and the matter was submitted for decision with provision for the subsequent filing of an exhibit to prove rate base, not later than May 15, 1956. Although applicants' customers were notified of the proposed rate increases none appeared in protest. The Commission staff assisted in the development of the record through examination of the witnesses.

The rates in applicants' tariff were originally established in 1935 and since then have been raised, twice in 1946, once in 1952, and once in 1953. These raises were 12, 14, 6, and 20 per cent respectively.[1/] Applicants allege that the above increases aggregate approximately 50 per cent as compared to the cost-of-living index for the San Francisco area, as maintained by the Bureau of Labor Statistics, which increased 100.3 per cent since 1935. During the last several years the volume of applicants' traffic has substantially decreased. This is asserted to be due to the increase in television viewing as compared with theatre attendance.

Effective October 1, 1953, applicants' contract with the Teamsters' Union, renewed on that date, carried an increase of 4 cents per hour covering drivers and platform men. On

1/ Decision No. 39004, dated May 21, 1946; Case No. 4808, Decision No. 39696, dated December 10, 1946; Application No. 27977, Decision No. 46781, dated February 19, 1952; and Decision No. 48914, dated August 4, 1953, in Application No. 34227.

October 1, 1954, applicants' contract with the Teamsters Union, renewed on that date, carried an increase of 50 cents per day per man for a pension plan. Effective October 1, 1955, the contract with the Teamsters Union, again renewed, carried an increase of 20 cents per hour for each driver and platform man. Corresponding increases have been made in other labor costs consisting of office employees and employees of the Machinist Union, and of the Garage and Service Station Employees' Union. In addition there has been an increase in the cost of parts for applicants' equipment of approximately 10 per cent each year and there has been an increase in the cost of gasoline since the last rate increase of approximately 20 per cent.

Evidence in support of the application was offered by applicants' manager, their attorney and by their accountant. The evidence includes a series of exhibits designed to show the earning position for over-all operations consisting of the highway common carrier, contract and city carrier services. The contract carriage of newspapers is handled in the same vehicles and over the same routes used for the highway common carrier shipments of motion picture films and supplies. The city carrier or local service seems to be handled more as a separate operation.

The revenue during 1955 from the three services were as follows: $350,632 from highway common carriage; $115,718 from highway contract carriage, and $40,161 from local service. The Commission has not been furnished with adequate means for the separating of the costs of the two highway services. The operation is geared primarily to the common carrier movement of motion picture film and supplies and about 75 per cent of this revenue is earned from the film traffic and 25 per cent from newspaper traffic. The contract carrier movement of newspapers is shown to require much less handling.

Applicants' Exhibit No. 1 requires a brief discussion. Applicants conclude therefrom that an increase of 15 per cent will result in an operating ratio of 98 per cent before taxes. This contemplates additional salaries to partners of $15,000 annually. These additional salaries do not appear to be justified by the present record. The item of $18,000 deducted from the 1955 actual revenue in the projection for 1956 based upon anticipated decrease in common carrier revenue due to theatre closings has not been proved and cannot be accepted especially in view of the testimony of applicants' expert witness that the tendency of theatre closings due to television had reached a leveling-off stage. With these modifications the operating ratio indicated should be more nearly 95 per cent.

The late-filed exhibit of applicants shows a rate base of $151,193.67 for the year 1956. This exhibit fails to include any provision for working capital.

According to the allegations of the application their rates are based on a complete change of program and it is asserted that as a result their gross income has been materially reduced. The regular attorney for applicants testified that many theatres have reduced their program changes to one per week while previously they had two or three such changes per week. The trucks make calls at these theatres five or six times per week but applicants impose only the one charge.

From this evidence it is obvious that applicants have not been charging for their services according to their filed tariff as to articles included in Item No. 15 as to transportation under their certificated rights except as to shipments between Los Angeles and San Francisco. Service as defined by Item No. 25C of their tariff "means the transportation from San Francisco at

one time to one theatre of any of the articles named in Item No. 15 Series, and includes the transportation back to San Francisco from such theatres at one time of any of the articles named in Item No. 15 Series". The tariff further states "service" will include a total weight of not to exceed 200 pounds. Any amounts over 200 pounds are charged one half more for each 100 pounds or fraction. Shipments of 35 pounds or less are to be charged for on the basis of 33-1/3 per cent of the service charge.

If charges were properly assessed under this tariff applicants' revenue should be materially increased. Applicants should understand that they must abide by their tariffs as filed. Failure to do so makes them liable for penalties. More important, however, in this proceeding, the Commission has no evidence to support a finding of what applicants' rates have in the past produced or in the future should produce in revenue.2/

The Commission must insist that applicants charge and collect the full amount of their rates as set forth in their tariff. If after operation pursuant to such tariff it appears that a reasonable return is not realized applicants will be in a position to prove by such experience that an increase in rates should be authorized.

Upon the evidence of record the Commission lacks the means for determining what the level of applicants' rates should be. It may be that should applicants revise their tariff so as to impose charges upon some different basis, a showing could be made as to the level of rates they require. The denial of this application will consequently be made without prejudice to their filing a new request upon any revision of their tariff. Applicants must charge for their services the rates in their tariff until such a revised tariff has been found justified.

2/ The evidence justifies the conclusion that applicants' failure to assess and collect the proper tariff rates was either inadvertent or through a misinterpretation of the tariff provisions.

O R D E R

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

IT IS ORDERED that Application No. 37929 is denied without prejudice as to the filing of an application for increases based upon a revised tariff.

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

Dated at San Francisco, California, this 26 day of January, 1956.

President

Commissioners