

ORIGINALDecision No. 53265

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 TED PETERS TRUCKING COMPANY, INC.,)
 for authority under Section 3666 of)
 the Public Utilities Code to assess) Application No. 37675
 and collect transportation charges)
 based on rates lower than the minimum)
 rates heretofore established by the)
 Commission.)

Willard S. Johnson and Fred H. Chesnut, for
 applicant.

Walter Dennison, for Merrifield Trucking Company,
 protestant.

A. P. Davis, Jr., for Carnation Company; Donald
 Murchison and Joseph Gould, for Gould Trans-
 portation Co.; C. A. Millen, for Kings County
 Truck Lines; J. C. Kaspar and Arlo D. Poe, for
 California Trucking Associations, Inc.; and
James Quintrall, Western Motor Tariff Bureau;
 interested parties.

A. R. Day and Alan Silvius, for the Commission's
 staff.

O P I N I O N

Ted Peters Trucking Company, Inc., operates as a highway
 contract carrier between points in this State.¹ By this application,
 as amended, it seeks authority under Section 3666 of the Public
 Utilities Code to transport frozen pies, frozen cakes, frozen cookie
 rolls, fresh frozen fruits and fresh frozen berries for Carnation
 Company at rates less than those established as minimum.

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Applicant also possesses a permit to operate as a radial highway
 common carrier between points in this State and has a certificate
 under authority of Decision No. 48780 of June 30, 1953, to operate
 as a highway common carrier between points in the central part
 of the State, bounded by Modesto and Dos Palos on the south and by
 San Francisco Bay points and Stockton on the north. By Application
 No. 36145, now pending before the Commission, applicant seeks
 authority to operate as a highway common carrier between the San
 Francisco Bay area and Sacramento, on the one hand, and the Los
 Angeles area on the other; also between those areas, on the one
 hand, and intermediate points, on the other.

A public hearing of the matter was held before Examiner Carter R. Bishop at San Francisco on February 20, 1956. Evidence in support of the request was adduced by applicant's president, by a consulting transportation engineer, and by the assistant general traffic manager of Carnation Company.

More specifically, the transportation involved herein is, northbound, of frozen pies, frozen cakes and frozen cookie rolls from Los Angeles Territory to San Francisco Territory, Fresno, Sacramento and Chico and intermediate points north and west of Fresno on State Highway 33 and U. S. Highways 99, 99-E, 40, 50 and 101 (between San Francisco and Gilroy).² The southbound movement for which minimum rate relief is sought is of frozen fresh fruits and frozen fresh berries to Los Angeles Territory from the points generally which constitute the points of destination of the northbound movement and, in addition, from points within ten miles of Watsonville, from points south of Fresno to and including Bakersfield on U. S. Highway 99, and from points within 25 miles of Fresno.

It is proposed to transport both the northbound and southbound traffic at three rates, 39 cents, 51 cents and 65 cents per 100 pounds, depending upon the length of haul. The minimum weight would in all cases be 36,000 pounds. According to the record, the presently applicable minimum rates for the transportation in question range from 55 cents to 90 cents per 100 pounds. The sought rates would include refrigeration service, whereas under the provisions of Minimum Rate Tariff No. 2 the minimum rates are subject to additional charges for that service.

The record discloses that applicant and its predecessor company have been engaged in for-hire trucking operations since 1920, and have been hauling for Carnation Company for the past nine

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San Francisco and Los Angeles Territories are defined in Minimum Rate Tariff No. 2.

years. For most of that period applicant's services for account of Carnation were confined to the movement of evaporated milk from Gustine, where Carnation operates an evaporating plant, to various points in California. Beginning in the summer of 1955, when Carnation acquired the facilities of a manufacturer of frozen pies, applicant began transporting for that company the frozen commodities involved in this proceeding. The facilities in question, the record shows, are located at Los Angeles and at Torrance. For this transportation applicant assesses the established minimum rates.

Applicant's president testified that the traffic for which rate relief is sought herein represents approximately 10 per cent of its total revenues, and that the revenues received on the movement of frozen pies, cakes and cookie rolls account for over 75 per cent of the revenues received on all of its traffic from Los Angeles to northern points. He testified that the handling of Carnation traffic constituted an efficient operation, reflecting high load and use factors. Applicant's trucks, he said, are on the road seven nights per week, between the northern and southern parts of the State, hauling from two to three loads per week of the frozen bakery products from the Los Angeles area, with traffic hauled for the other shippers and loads subhauled for other carriers comprising the balance of the northbound movements. According to the witness, every night several loads of condensed milk are hauled from Gustine to Los Angeles and whenever a consignment of frozen fruits or berries for the southbound movement amounts to less than a full load the equipment is filled out with condensed milk. The average weights of the loads of frozen bakery goods northbound and of frozen fruits and berries southbound, he said, are approximately 38,000 and 40,000 pounds respectively. The record discloses that applicant's equipment is predominantly modern, the vans being well insulated and equipped with mechanical refrigeration units.

Applicant's president stated that the instant application had been filed at the request of Carnation Company, which had informed applicant that if the sought rate relief should be denied the latter company would transport the frozen bakery products, fruits and berries in its own equipment, and that in addition it would divert from applicant so much of the southbound condensed milk traffic as would be necessary to fill out the load of frozen fruits and berries. The adverse effect of such an eventuality, the witness asserted, would not be confined to the actual loss of a substantial part of applicant's traffic, but would also upset the existing balance of tonnage as between northbound and southbound movements. This, he indicated, would in turn hamper the efficiency of the carrier's operations and would jeopardize its net revenue position.³

The engineer testified concerning a study which he had made of the cost of rendering the transportation services involved herein, between the principal points of origin and destination. These estimated costs, together with the corresponding proposed rates and operating ratios, are set forth in the following table:

Comparison of Estimated Full Costs and Proposed Rates, Per 100 Pounds; Also Operating Ratios (Before Provision for Income Taxes).

<u>Between</u>	<u>And</u>	<u>Proposed Rate (In Cents)</u>	<u>Estimated Cost (In Cents)</u>	<u>Operating Ratio (Per Cent)</u>
Los Angeles	Fresno	39	34.77	89.2
" "	Berkeley	51	46.14	90.5
" "	Sacramento	51	46.32	90.8
" "	Chico	65	58.07	89.3

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An exhibit of record purports to show the financial results of applicant's over-all operations for the first 11 months of 1955. This exhibit shows for that period, after certain adjustments, operating revenue and operating expenses of \$698,594 and \$659,795 respectively. After provision for income taxes the net operating revenue was \$26,974 and the operating ratio 96.1 per cent.

The estimated costs were developed on a one-way basis. That is, they purport to reflect the full cost, including refrigeration expense, of transporting either the frozen bakery goods northbound or the frozen fruits and berries southbound between the designated points.

The assistant general traffic manager of Carnation Company testified that his company had made a study of the costs of performing the transportation services involved herein. As a result of that study, he said, Carnation has concluded that it could perform those services with its own equipment at costs which would be even less than the rates proposed in this proceeding, and that if the relief sought herein should be denied it will no longer utilize the services of applicant for the transportation of the frozen foods, but will move those commodities in its own equipment, and will also withhold from applicant as much of the evaporated milk traffic as may be necessary to assure full loads in the movement of frozen fruits and berries southbound to Los Angeles.⁴

The northbound movement of frozen bakery goods, according to the traffic manager, amounts to approximately 6,000,000 pounds per year and the southbound movement of frozen fruits and berries is in excess of that figure. Carnation expects the volume of this traffic, which is in the nature of an interplant movement, to increase. The traffic is divided, the record discloses, between applicant and another for-hire carrier.⁵ Carnation, the witness

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According to the record, Carnation has an extensive fleet of motor vehicles, some of which are utilized in California. It also has its own maintenance facilities and dispatching personnel. Assertedly, some additional equipment will have to be purchased if Carnation takes over the movement of the traffic in question.

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The other carrier is Gould Transportation Co., Inc. In Application No. 37702, now pending, it seeks authority to assess on the frozen foods traffic of Carnation rates the same as those sought herein.

stated, is entirely satisfied with the service rendered by applicant and will continue to utilize that carrier for the transportation here in issue if the application is granted.

The granting of the application was opposed by Merrifield Trucking Company, a permit carrier engaged in the transportation of commodities requiring refrigeration. According to the record, Merrifield does not handle any of the Carnation traffic involved in this proceeding. Participation of that carrier was confined to a statement by counsel at the close of the hearing. He drew attention to the statutory requirements to be met in establishing the propriety of minimum rate relief, and expressed the view that applicant in its showing had failed to sustain the burden of proof.

The director of research of California Trucking Association, Inc., appearing on behalf of that organization as an interested party, requested that any relief which might be authorized pursuant to the record herein be restricted to the origin and destination areas, routes and accessorial services actually needed. He further requested that, since the traffic in question is interplant in character, the minimum weight be made as high as legally possible.

Conclusions

It is clear from the record that, unless the rates sought herein are authorized, applicant will lose not only the traffic involved in the instant application but also other traffic which it has long transported for Carnation. It is also clear that the loss of the Carnation traffic will have an adverse effect on the efficiency of applicant's operations, with the possibility of curtailment of schedules and reduction of revenues. While there appear to be some infirmities in the engineer's cost study, the record is convincing that applicant will be able to render service on a compensatory basis

at the rates sought herein. It appears, however, that the rendition of split pickups and split deliveries both at points on U. S. Highways 33 and 99 north of U. S. Highway 152 and at points on U. S. Highway 101 on a single shipment would involve undue circuitry.⁶ It further appears that the average weight of the shipments of frozen fruits and frozen berries is sufficiently high to justify a minimum weight on those commodities of 38,000 pounds.

The Commission is of the opinion, and hereby finds, that the proposed reduced rates, minimum weights and rules and regulations, to the extent provided in the order which follows, are reasonable.⁷ In all other respects the application will be denied. Because the conditions under which service is performed may change at any time the authority will be made to expire at the end of one year, unless sooner canceled, changed or extended by order of the Commission.

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 Ted Peters Trucking Company, Inc., operating as a highway contract carrier, be and it is authorized

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Counsel for applicant stated at the hearing that there would be no objection to a limitation in the sought authorization prohibiting split deliveries of this character.

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In order to avoid possible violation of the provisions of Section 3542 of the Public Utilities Code a limitation will be placed upon applicant's service as a radial highway common carrier during the existence of the authority herein granted. Also, the granting of the relief herein sought will be made subject to the condition that, in the event that applicant shall be granted a highway common carrier certificate pursuant to Application No. 36145, supra, the authority herein granted, in so far as it shall apply on the same commodities from the same points of origin to the same points of destination as provided by said certificate, shall expire effective with the effective date of tariffs filed pursuant to the acceptance of said certificate.

to transport frozen pies, frozen cakes, frozen cookie rolls (in straight or mixed shipments), fresh frozen fruits and fresh frozen berries as described in Appendix "A" hereof, which, by this reference is incorporated in and made a part of this order, from the points of origin to the points of destination shown in connection with each such commodity in said Appendix "A", for Carnation Company, at rates less than the minimum rates but not less than those shown in connection with said respective points of origin and of destination in said Appendix "A", subject to the provisions of Notes 1 to 5, inclusive, of said Appendix "A".

IT IS HEREBY FURTHER ORDERED that during the period that the authority herein granted is in effect the aforesaid applicant shall not engage in the transportation of the same commodities between the points involved in this authority as a radial highway common carrier, and that any such transportation which applicant may perform in violation of these provisions shall be cause for revocation of the authority herein granted.

IT IS HEREBY FURTHER ORDERED that, if, during the period that the authority herein granted is in effect, the aforesaid applicant should be granted a certificate of public convenience and necessity the authority herein granted, in so far as it shall apply on the same commodities from the same points of origin to the same points of destination as provided by said certificate, shall be canceled, said cancellation to be effective as of the effective date of the rates on the commodities, and applicable between the points, involved herein, filed pursuant to the acceptance of said certificate.

IT IS HEREBY FURTHER ORDERED that, subject to the provisions of the immediately preceding ordering paragraph herein, the authority granted herein shall expire one year after the effective date of this order unless sooner canceled, changed or extended by order of the Commission.

IT IS HEREBY FURTHER ORDERED that in all other respects Application No. 37675, as amended, 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 19th day of January, 1956.

[Signature]
President
Justin J. Grewer
Ralph W. [unclear]
[Signature]

Commissioners

Commissioner Rex Hardy, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX "A"
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(Rates are in cents per 100 pounds)

1. Fruit pies, frozen, as described in Item No. 18708, Meat pies, frozen as described in Item No. 18707, and cream pies, cakes, cookie rolls, frozen, as described in Item No. 18422, of Western Classification No. 75, Cal. P.U.C. No. 8 of George H. Dumas, Agent, in straight or mixed shipments, minimum weight 36,000 pounds.

From Los Angeles Territory, as defined in Minimum Rate Tariff No. 2, to:

	Rate
(a) Fresno and intermediate points on U. S. Highway 99	39
(b) San Francisco Territory, as defined in Minimum Rate Tariff No. 2, and intermediate points between Fresno and San Francisco on U. S. Highways 99 and 50, and State Highway 33 and intermediate points between Gilroy and San Francisco on U. S. Highway 101	51
(c) Sacramento and intermediate points between Fresno and Sacramento on U. S. Highway 99 and State Highway 33	51
(d) Chico and intermediate points between Sacramento and Chico on U. S. Highways 40, 99-E and 40 Alternate	65
2. Fresh Frozen Fruit and Fresh Frozen Berries, minimum weight 38,000 pounds.	

To Los Angeles Territory, from:

(a) Fresno and points and places within 25 miles thereof except points on U. S. Highway 99 north of Fresno, and intermediate points between Fresno and Bakersfield, on U. S. Highway 99	39
(b) San Francisco Territory, and intermediate points on U. S. Highway 99 and State Highway 33 north of Fresno, on U. S. Highway 101 between San Francisco and Gilroy, and off-route points within 10 miles of Watsonville	51
(c) Sacramento and intermediate points between Sacramento and Fresno on U. S. Highway 99 and State Highway 33	51
(d) Chico and intermediate points between Chico and Sacramento on U. S. Highways 40, 99-E and 40 Alternate	65

NOTES:

1. All of the foregoing rates are intended to include refrigeration service without additional charge.

APPENDIX "A"
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NOTES (Continued)

2. All of the foregoing rates are intended to include an allowance for loading at points of origin of one man for 4 hours per shipment of 36,000 pounds or more. When additional loading time is required, additional charges on the basis of those provided in Minimum Rate Tariff No. 2 will be assessed.
3. All of the foregoing rates are intended to include split pickup or split delivery service, subject to the additional split pickup or split delivery charges provided in Minimum Rate Tariff No. 2.
4. No shipment of fresh frozen fruits or of fresh frozen berries, transported under any of the rates authorized herein, shall be accorded split pickup service both at a point or points specified in Note A and at a point or points specified in Note B, below.
5. No shipment of frozen pies, frozen cakes or frozen cookie rolls transported under any of the rates authorized herein shall be accorded split delivery service both at a point or points specified in Note A and at a point or points specified in Note B, below.

Note A

San Francisco Territory as defined in Minimum Rate Tariff No. 2; points on U. S. Highway 101, Gilroy to, but not including, said San Francisco Territory; points within 10 miles of Watsonville.

Note B

Points on U. S. Highway 99 north of State Highway 152; points on State Highway 33 north of State Highway 152.