

Decision No. 54210**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 into the rates, rules, regulations,)
 charges, allowances and practices)
 of all common carriers, highway)
 carriers and city carriers relating)
 to the transportation of general)
 commodities (commodities for which)
 rates are provided in Minimum Rate)
 Tariff No. 2).)

Case No. 5432
 Petition No. 32
 (Third Supplemental)
 and
 Order Setting Hearing
 Dated 6/26/56

Daniel W. Baker and Marvin Handler and William B. Nystrom, for Winans Bros. Trucking Co., petitioner.

J. J. Deuel and Joseph Q. Jovnt, for California Farm Bureau Federation; J. C. Kaspar and Arlo D. Poe, for California Trucking Associations, Inc.; J. X. Quintrall, for Western Motor Tariff Bureau, interested parties.

J. W. Mallory and Albert R. Day, for the Commission's staff.

O P I N I O N

Winans Bros. Trucking Co., a corporation, is a highway common carrier engaged in the transportation of lumber and forest products between points in California, including, among others, Hayfork and Redding. By Decision No. 51989 in this proceeding a predecessor partnership was authorized to publish a rate of 18 cents per 100 pounds, minimum weight 30,000 pounds, for the transportation of lumber and forest products from Hayfork to Redding. This rate is lower than the otherwise applicable minimum rate for the transportation.

By Third Supplemental Petition filed June 11, 1956, the corporation seeks authority to maintain this rate for a one-year period. By interim order in Decision No. 53284, the authority was granted for a 120-day period so that the rate would not lapse

pending consideration of the matter by the Commission after hearing. It was extended by Decision No. 53966 and is scheduled to expire December 15, 1956.

On June 26, 1956, the Commission ordered that hearings be held in Case No. 5432 on a common record with the supplemental petition for the purpose of determining whether Minimum Rate Tariff No. 2 should be amended to include the rate proposed by the petitioner for the transportation of lumber and forest products from Hayfork to Redding.

Public hearings were held in these proceedings before Examiner J. E. Thompson on August 28, 29 and 30, 1956, at San Francisco. Evidence was presented by the president of petitioner and an accountant employed by it, the attorney for American Forest Products Corporation and its subsidiary Trinity Alps Lumber Company, the traffic manager of Tarter, Webster and Johnson, and an engineer and a rate expert of the Commission's staff.

The transportation involved herein is the movement of lumber from the mill of Trinity Alps Lumber Company at Hayfork to places in Redding. The distance between the point of origin and Redding is 67 actual highway miles and 93½ constructive miles.¹ The distance rate in Minimum Rate Tariff No. 2 for the transportation of lumber, minimum weight 30,000 pounds, for 93½ constructive miles is 21 cents per 100 pounds, subject to a surcharge of 7 per cent.

The petitioner is engaged by the Trinity Alps Lumber Company to transport almost all of its entire production from its mill at Hayfork to places in Redding. The production of the mill for the most part is sold f.o.b. Redding. The destinations at Redding include B & D Lumber Company, Coast Pacific Company, Redding

¹

Mileage computed for rate purposes in accordance with the provisions of the Commission's Distance Table No. 4.

Manufacturing Co., and the yard terminal of petitioner. Shipments are loaded at origin and unloaded at destination by fork lift truck. The preponderance of traffic moves to B & D Lumber Company where the lumber is loaded into rail cars for consignment to points and places within and outside California. Trinity Alps Lumber Company pays the freight charges for the transportation from its mill to Redding where all shipments are unloaded from the trucks. It appears that in connection with the movement of the lumber to points beyond Redding, Trinity Alps Lumber Company does not engage the carriers performing the beyond movement nor does it pay the transportation charges for such movements. From the testimony it appears that the sales of lumber and the arrangements for transportation beyond Redding are made by Tarter, Webster and Johnson, another subsidiary of American Forest Products Corporation.

The president of petitioner testified that a review of freight bills covering transportation performed during the past two years disclosed that the shipments from Trinity Alps Lumber Company ranged in weight from 34,000 pounds to 50,000 pounds and that the average of the loads transported was approximately 41,000 pounds. He stated that between 70 and 75 per cent of its total revenue is derived from the transportation of lumber produced by the Trinity Alps Lumber Company. The movement between Hayfork and Redding produces approximately 20 per cent of its revenue; however, the president was of the opinion that if it lost this business it would also lose a substantial portion of the traffic to points beyond Redding.

Petitioner's accountant testified respecting an analysis he had made of the operating results for the transportation involved herein performed during the period April 1, 1955, through March 31, 1956. The analysis indicates that the operation at the 18-cent rate has been profitable.

The engineer of the Commission's staff introduced a study he had made of the cost of transporting lumber by petitioner between Hayfork and Redding. He estimated that the average weight of the shipments transported is 41,600 pounds. He developed a cost per 100 pounds of 13.6 cents for a shipment weighing 41,600 pounds and a cost per 100 pounds of 18.8 cents for a shipment of 30,000 pounds.

A rate expert of the Commission's staff testified that he had spent two days in the field observing the operation here involved. He stated that at the time he was at the B & D Lumber Company he observed tags affixed to the piles of lumber in the yard. The tags showed that the lumber was destined to points outside California.

The attorney for Trinity Alps Lumber Company and the traffic manager of Tarter, Webster and Johnson testified that other subsidiaries of the American Forest Products Corporation owned and operated motor vehicles in the transportation of lumber and that the parent company is prepared to acquire trucks to be used in transporting lumber from the mill at Hayfork to Redding. In such event, it was stated, in order to make optimum use of the vehicles, they would probably also be used to transport shipments to points beyond Redding so that petitioner could lose the substantial portion of the traffic that it now enjoys. It was stated that such action would not be taken if petitioner continued to transport shipments at the 18-cent rate. The traffic manager also testified that while the rate expert may have observed shipments at B & D Lumber Company that were consigned to points outside the State, it should not be concluded that all or most of the lumber produced by Trinity Alps Lumber Company is moved outside the State. Tarter, Webster and Johnson sells lumber to the best available market. Sometimes the best market is within California, other times it is without. At

least a portion of the monthly output of the mill goes to points in California for replenishment of inventory of other subsidiaries such as Stockton Box Company and approximately one shipment is sent each month to the Redding Manufacturing Company.

Conclusions

The record shows that the revenue from shipments of 30,000 pounds at the 18-cent rate would not return the cost of performing the service. The circumstances and conditions surrounding the transportation do not appear to be such as to justify a rate which is below the full cost of performing the service. The evidence, however, indicates that the minimum weight of shipments actually transported has been 34,000 pounds. The revenue derived for transporting a shipment of 34,000 pounds at the 18-cent rate would be \$61.20. The cost data of record shows that the cost of transporting a 34,000-pound shipment would be approximately \$57.00.

The staff contended that the evidence indicates that a substantial portion of the traffic moving from Hayfork to Redding may be subject to regulation by the Interstate Commerce Commission and that the showing made by petitioner and the cost data submitted by the engineer may be based to a large extent upon traffic that is not subject to regulation by the Commission. From the record it is clear that a portion of the traffic is in intrastate commerce. With respect to the remaining portion, the record does not permit a determination of the character of the traffic. In this case the issue does not appear to be material to a determination of the petition. The lumber is transported from Hayfork to Redding in the same vehicles and in the same manner regardless of the character of the commerce. Insofar as the petitioner is concerned the cost of providing the service is identical whether or not rail cars are consigned to points within California or without. The issue here is

whether transportation conditions justify the establishment of a lower than maximum reasonable rate for the transportation from Hayfork to Redding of the traffic that is in intrastate commerce.

Upon consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds that the establishment by petitioner of a rate of 18 cents per 100 pounds, minimum weight 34,000 pounds, for the transportation of lumber and forest products is justified by transportation conditions; in other respects the sought rate has not been shown to be justified by transportation conditions.

The general position of the Commission's staff with respect to the Commission authorizing highway common carriers to publish rates lower in volume or effect than the established minimum rates is that where the showing by the highway common carrier justifies a finding by the Commission that the reduced rate is just, reasonable, nondiscriminatory and otherwise lawful, the rate should be incorporated into the appropriate minimum rate tariff for general distribution to all affected carriers and other interested parties. They support this position by pointing out that under the provisions of the minimum rate tariffs and of Section 3663 of the Public Utilities Code, the reduced rate published by a highway common carrier may be met by every other carrier and so in effect becomes a minimum rate for the transportation to which it is applicable. It urges in this proceeding that if the application is granted by the Commission the reduced rate be incorporated into Minimum Rate Tariff No. 2.

The California Trucking Associations, Inc., opposed the recommendation. It contends that while reduced rates of highway common carriers become minimum rates by operation of law, a number of problems would be encountered if the Commission adopts and promulgates such rates in its minimum rate tariff as just, reasonable

and nondiscriminatory minimum rates. A number of situations involving application of such rates to intermediate points and combinations of the reduced rate with other rates at intermediate points were described. It was also contended that there is doubt as to whether the guides prescribed by the Legislature that the Commission must follow in establishing minimum rates would be met if the Commission established minimum rates solely upon the evidence covering the transportation by a single carrier for a single shipper, and where the movement involved is extraordinarily efficient because of unusually favorable transportation conditions. It moved, because the principle involved in the recommendation affects carriers throughout the State, that the Commission make no decision respecting the incorporation of the rate authorized herein into Minimum Rate Tariff No. 2 until a decision is issued in another proceeding where this issue is involved.²

Counsel for petitioner joined in the motion and stated that while he was not opposed to the incorporation into Minimum Rate Tariff No. 2 of the rate involved herein, he was opposed to the principle involved if applied generally because of the problems which, although not apparent in the instant case, would no doubt arise if the principle was followed in other cases. He urged that the Commission view the principle in its broadest aspects rather than decide the issue in this case because a decision herein could be construed as a precedent.

Whenever the published rate of a common carrier by land is lower than the rate contained in a minimum rate tariff for the same kind of property between the same points, such lower rate becomes a rate that may lawfully be published or charged by highway carriers. If there is no lower common carrier rate then the aforesaid rate is the minimum rate for the transportation involved.

² Case No. 5438, Order Setting Hearing dated May 8, 1956.

The contentions of the parties appear not to be concerned with the establishment of minimum rates but whether or not a rate which is a minimum rate should be published by the Commission in its minimum rate tariffs with particularity rather than be referred to by rule in the tariffs as at present. This issue concerns the form in which the minimum rates should be prescribed which is a matter of policy rather than a determination of just, reasonable and nondiscriminatory minimum rates. In its Decision No. 31606, dated December 27, 1938, the Commission decided that minimum rates be promulgated in tariff form. The original tariff (Appendix D to Decision No. 31606) contained substantially the same rules respecting the alternative application of common carrier rates as are presently contained in Minimum Rate Tariff No. 2. The policy of referring by rule in the tariff to common carrier rates which are minimum rates is one of long standing. We are persuaded that a change in this policy should be viewed in a perspective broader than the transportation of lumber between Hayfork and Redding. There are a number of proceedings presently before the Commission involving the general policy recommended by the staff. Disposition of the phase of this proceeding related to the Order Setting Hearing, dated June 26, 1956, will be deferred until the Commission has assembled additional facts from those proceedings and otherwise so that the staff's proposal may be considered in a broader perspective. The proceeding will be kept open pending further order of the Commission.

O R D E R

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

IT IS ORDERED:

1. That Winans Bros. Trucking Co. be and it is hereby authorized, on not less than one day's notice to the Commission and

to the public, to publish and file a rate of 18 cents per 100 pounds, minimum weight 34,000 pounds, to expire July 4, 1957, for the transportation of lumber and forest products from Hayfork to Redding.

2. That in all other respects, Third Supplemental Petition filed June 11, 1956, in this proceeding be and it is hereby denied.

3. That the phase of Case No. 5432 initiated by the Commission in its Order Setting Hearing, dated June 26, 1956, is continued.

The effective date of this order shall be December 13, 1956.

Dated at Los Angeles, California, this 4th day of September, 1956.

[Signature]
President
[Signature]
[Signature]
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Commissioners