

ORIGINALDecision No. 55634

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WALKUP DRAYAGE & WAREHOUSE COMPANY,)
 a corporation, for authority to de-)
 part from the rates, rules, and regu-) Application No. 37490
 lations of Minimum Rate Tariff No. 2,) (2nd Supplemental)
 for transportation service rendered)
 S & W Fine Foods and Equitable Cash)
 Grocery.)

(Second Supplemental)

Edward M. Berol and Douglas Brookman,
 for Walkup Drayage and Warehouse
 Company, applicant.
James L. Roney, for S & W Fine Foods,
 Inc., interested party.
J. C. Kaspar and Arlo D. Poe for
 California Trucking Associations, Inc.,
 interested party.
J. X. Quintrall, for Western Motor Tariff
 Bureau, interested party.
Mary Moran Paialich, for the Commission's
 staff.

O P I N I O N

Walkup Drayage and Warehouse Company, hereinafter called Walkup, is a city carrier and a highway contract carrier. Continuously since 1922 Walkup has been providing service for S & W Fine Foods, Inc. and Equitable Cash Grocery.^{1/} Since the establishment of minimum rates for the transportation of property in San Francisco, Walkup has had authority to deviate from the established minimum rates in transporting property within San Francisco for S & W.

In December 1955, S & W moved its warehouse from the Grocers Terminal Building, Berry Street, San Francisco, to 333 Schwerin Street, San Francisco. The new warehouse is partially in San Francisco and partially in San Mateo County.

^{1/} Equitable Cash Grocery is a division of S & W Fine Foods, Inc. For convenience hereinafter they will be called S & W.

By this application, Walkup seeks authority to deviate from the established minimum rates for the transportation of commodities between the new warehouse of S & W and points and places in San Francisco. By Decision No. 52343 dated December 12, 1955 in this proceeding, interim authority was granted pending a final determination after hearing. Upon supplemental application the interim authority has been extended from time to time. On April 27, 1957, Walkup filed amendment to its second supplemental application seeking higher rates than had been authorized. By interim order in Decision No. 55328 dated July 30, 1957, such authority was granted for a sixty day period. It is scheduled to expire September 30, 1957.

Public hearings were held before Examiner Jack E. Thompson on March 29 and April 29, 1957 at San Francisco. The matter was taken under submission July 1, 1957 upon the filing of concurrent briefs.

Oral and documentary evidence adduced in this proceeding shows in detail the manner in which operations are conducted. Some fifteen to twenty units of equipment are utilized. Revenues are approximately \$10,000 per month and represent about 10 per cent of Walkup's revenues. Three different types of service are performed; one, called "city delivery", is the transportation of shipments from the warehouse to grocery stores; a second, called "shipping" is the transportation of shipments to docks for movement by vessel or to depots for movements by rail; the third, called "inhaul" is the transportation of shipments from docks, depots or warehouses to S & W warehouse. Most of the shipments are city deliveries. These shipments are loaded at night. Marking and stenciling of packages is largely eliminated. Shipping documents consist of copies of the order forms of S & W. In general the entire operation closely approximates the manner in which operations would be conducted if S & W were conducting the operations with its own equipment.

Applicant presented testimony and exhibits showing that it has an operating ratio of 92 per cent for the transportation involved herein.

There was no controversy respecting the reasonableness of the rates. The Commission's staff contends that the transportation is a highway carrier operation; that Walkup's authority to conduct such an operation is a highway contract carrier permit; that Merchants Express Corporation is the alter ego of Walkup and/or Ward G. Walkup, Sr.; and that since Merchants Express Corporation is a highway common carrier between points in San Mateo County on the streets traversed by Walkup on the one hand and San Francisco on the other, the operation as conducted is in violation of Section 3542 of the Public Utilities Code. Said section provides:

"No person or corporation shall engage or be permitted by the Commission to engage in the transportation of property on any public highway, both as a common carrier and as a highway contract carrier of the same commodities between the same points."

This issue was briefed extensively by Walkup and by the Commission's staff and the matter appears to center about the fact that while the present warehouse is partially within San Francisco and partially within San Mateo County, the route actually traversed by Walkup involves the movement over streets, roads and highways in San Mateo County.


The warehouse of S & W faces on Schwerin Street and is between Sunnydale Avenue, which is a city street in San Francisco and MacDonald Avenue which is a street in the unincorporated community of Bayshore, San Mateo County. The rear of S & W's property is on Allan Street, an undedicated street which is in San Mateo County and extends only as far as the county line. The warehouse has 33 shipping doors facing Allan Street. Approximately 5 of the doors are in San Francisco and the remainder in Bayshore. There is a

paved area on S & W property between the warehouse and the property line on the side facing Allan Street and on the north side of the warehouse which is wholly within San Francisco.

Trucks are loaded at almost all of the shipping doors. The route presently traversed is from the shipping door to Allan Street, southerly to MacDonald Avenue, easterly one block to Bayshore Highway and thence northerly along such highway. The county line intersects Bayshore Highway just south of Sunnydale Avenue. The facts clearly show that the operation as actually conducted is highway carrier transportation.

The record shows that there is another route which is wholly over streets in San Francisco. This route is from the shipping doors via the paved area and ramp on the north side of S & W property to Schwerin Street, thence to Sunnydale Avenue and then eastward to Bayshore Highway. Essentially the MacDonald Street route is a circling of a block to the southward to Bayshore Highway and the Sunnydale Avenue route is a circling of the block to the northward.

The Sunnydale Avenue route is inconvenient to S & W because it curtails the amount of parking area for automobiles at the plant and provides for more movement of vehicles on its property. The MacDonald Street route is more convenient to Walkup because it is the more direct route to Bayshore Highway, the streets are wider and there are comparatively few residences on the streets enroute. The Sunnydale Avenue route goes through a residential and school area, the streets are narrow and therefore there is more danger of accident and injury to children and the traveling public.



The facts here clearly show that the operation may be conducted under Walkup's city carrier permit. If the authority sought here is denied there is a probability that such would be done. The traffic manager of S & W testified that while the use of the Sunnydale Avenue route would inconvenience them, they would have it utilized if it were to their advantage. It would appear that if the authority sought here were denied the same rates could be obtained under the provisions of the City Carriers Act. The rates sought for the transportation are reasonable and under Section 4015 of the Public Utilities Code the Commission would be required to authorize such rates.

It would appear that the invoking of the doctrine of alter ego in this case would not cause the discontinuance of the transportation by Walkup at the sought rates but would merely cause the transportation to be performed over a distance of approximately two city blocks in one direction instead of two blocks in another direction.

The conditions under which the corporate entity may be disregarded, or the corporation may be regarded as the alter ego of the stockholders, necessarily vary according to the circumstances in each case inasmuch as the doctrine is essentially an equitable one and for that reason is particularly within the province of the trial court (Stark vs. Coker, 1942, 20 Cal. 2d 839, 846; 12 Cal. Jur. 2d 606). Upon consideration of all of the facts and circumstances, the Commission is of the opinion that the invoking of the doctrine of alter ego is not required in this proceeding by reason of the principle of *de minimus non curat lex*.

The Commission finds that the proposed rates are reasonable. The authority sought will be granted.

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 that the expiration date of the authority granted by Decision No. 55328 in this proceeding is extended to July 31, 1958.

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

Dated at San Francisco, California, this 1st day of October, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]
[Signature]
Commissioners