JM

ORIGINAL

Decision No. 56151

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of CROW TRANSPORTATION COMPANY.	)	Case No. 5669

Harold J. McCarthy and Robert A. Lane, for the staff of the Public Utilities Commission of the State of California.

Arlo D. Poe and E. J. Hunter, for respondent.

Arlo D. Poe, for California Trucking Associations, Inc.; W. G. O'Barr, for the Los Angeles Chamber of Commerce; L. E. Osborne, for California Manufacturers Association; Sid B. Levine and Harry M. Schafer, for H. Levine Cooperage; Paul H. Moore, for General Petroleum Corporation; W. Y. Boll and A. E. Patton, for Richfield Oil Corporation; W. H. Adams, M. S. Housner, and William S. Haener, for Shell Oil Company; J. E. Hale, by Brian Pierce, for Standard Oil Company of California; J. M. Connors, by Walter Bousfield and Ted Grace, for Tidewater Oil Company; Sheldon C. Houts, L. C. Monroe, Clarence R. Hand, and James A. Gayle, for Union Oil Company of California; Donald E. Cantlay, for Western Truck Lines, Ltd.; B. F. Bolling, for Pioneer Division of The Flintkote Company; and A. P. Davis, Jr., for the Carnation Company; interested parties.

OPINION ON REHEARING

Windsor O. Crow and Ellis J. Hunter, a copartnership doing business as Crow Transportation Company, are charged with having assessed a lesser rate than that which applied as minimum under the provisions of Minimum Rate Tariff No. 2 in connection with the transportation of a shipment of empty, secondhand iron barrels from Ventura to the Union Oil Company, 5400 Soto Street, Los Angeles. These same barrels, filled, had previously been transported by respondents to Ventura from the Union Oil Company, 6th and Mateo Streets,

Los Angeles.

Minimum Rate Tariff No. 2 provides two scales of rates for the transportation of empty, secondhand iron barrels. Rates of one-half of 4th class apply for the return of barrels from an outbound, loaded movement, or for transportation of barrels for a return pay load. Otherwise, higher, 3d-class rates apply. For the transportation of the barrels involved in this prodeeding Crow Transportation assessed the lower scale of rates. The question here presented is whether the barrels were "returning" within the meaning of the governing tariff provisions. The question arises from the fact that the barrels were not returned to the same point from which they moved filled.

A public hearing on the matter was held before Examiner Mark V. Chiesa in Los Angeles on January 25, 1956. On June 12, 1956, the Commission issued Decision No. 53234, finding that the barrels were not "returning" within the meaning of the tariff and ordering Crow Transportation to collect an additional charge of $10.80 for the transportation. Subsequently, in response to petitions for rehearing, the matter was reheard on April 30, 1957, before Examiner C. S. Abernathy at Los Angeles. An examiner's report was issued recommending that Decision No. 53234 be affirmed and recommending also that further investigation be had to determine to what extent, if any, the tariff provisions pertaining to empty containers returning should be amended to conform to present needs of commerce. Replies and exceptions to the replies to this report have been filed. On the basis of this fuller record the examiner modified his recommendations and the matter is now ready for decision.

The contentions of the parties to this proceeding revolve about the meaning to be given the words "return", "returning", and "returned" as used in Item No. 300 and in Rule No. 180 of Exception Sheet No. 1-S, Cal. P.U.C. No. 193. Minimum Rate Tariff No. 2 is subject to these provisions of the Exception Sheet. Item No. 300, which provides a description of commodities and rules applicable to transportation of empty containers, secondhand, returning or shipped for a return paying load, states that such ratings apply only when the "return movement is over the same line or lines as outbound movement .. subject to Rule 180 .." Rule 180 reads in part as follows:

> "Empty Packages or Carriers, secondhand, empty, returned: The Agent must satisfy himself that such packages were moved filled and are being returned over the same line or lines to consignor of the original filled package."

The Commission's staff contends that these provisions are to be applied in the light of the rates, rules and regulations in Minimum Rate Tariff No. 2; that the rates in Minimum Rate Tariff No. 2 are for transportation between precise points; and that empty containers must therefore be returned to the same location as from which they were shipped filled in order to qualify as returned shipments. On the other hand, respondent and various of the other parties argue that the above-quoted provisions of the Exception Sheet themselves specify the conditions under which the rating of one-half of 4th class may be applied; that whether the containers are returned to the same location is not a consideration; and that the provisions have been so applied by shippers and carriers over the years.

On the more extensive record which has now been developed, it appears that the historical aspects of the Exception Sheet provisions herein involved have an important bearing on the interpretation to be placed on said provisions as they apply in conjunction with the rates, rules and regulations in Minimum Rate Tariff No. 2. The Commission's tariff files, of which official notice is taken, show that the Exception Sheet provisions were established in their present form more than 30 years ago and more than 15 years before Minimum Rate Tariff No. 2 was established. Insofar as these provisions are concerned, there seems to be no dispute that they do not impose the requirement that empty, secondhand containers be returned to the same address as from which the containers were shipped filled in order that the return movement be ratable as "returning". It appears that to the extent that there may be such a requirement, it exists by reason of the rules and regulations in Minimum Rate Tariff No. 2. However, it also appears that with the establishment of Minimum Rate Tariff No. 2 and the adoption for minimum rate purposes of the Exception Sheet provisions pertaining to used empty containers returning there was no undertaking to change then existing practices.

In the examiners' report of August 10, 1938, of Examiners Howard G. Freas and William H. Gorman, which report was followed by Decision No. 31606 establishing Minimum Rate Tariff No. 2, the ratings for used, empty containers returning was discussed. The examiners stated that the Exception Sheet provisions did not apply to minimum rates then in effect; that the application of the provisions to the minimum rates would be a new addition, and that the "only change from a similar provision already contained in Pacific

Freight Tariff Bureau Exception Sheet No. 1 series is that the minimum is reduced from 15 cents per 100 pounds to '15 cents per 100 pounds or actual fourth class rate, whichever is lower.'" It is evident that in proposing the adoption of the Exception Sheet provisions without further qualification the examiners were proposing the adoption of the practices which prevailed thereunder. The item which the examiners recommended in this respect was included in Minimum Rate Tariff No. 2 without change. Nor has any essential change in the application of the item been made since. Thus, notwithstanding the interpretation which the Commission's staff now urges be placed upon the Exception Sheet provisions by reason of the rules and regulations in Minimum Rate Tariff No. 2, it appears that the evident interpretation which was placed upon the provisions when they were adopted for minimum rate purposes should still control. In the circumstances it is concluded and found that application of the provisions of Item No. 300 and of Rule 180 of Exception Sheet 1-S to empty, secondhand containers returning or shipped for a return pay load does not require that the containers be returned to the same point of origin as that from which the outbound shipment was made in order to qualify for the reduced rating set forth in Item No. 330 series of Minimum Rate Tariff No. 2. It is concluded and found that respondents Windsor O. Crow and Ellis J. Hunter, doing business as Crow Transportation Company, did not assess a lesser rate than the applicable minimum for the transportation involved in this proceeding. Decision No. 53234 dated June 12, 1956, will be rescinded and this proceeding will be terminated.

O R D E R

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

IT IS HEREBY ORDERED that,

1. Decision No. 53234, dated June 12, 1956, be and it hereby is rescinded.

2. This proceeding, Case No. 5669, be and it hereby is terminated.

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

Dated at San Francisco, California, this 21st day of January, 1958.

President

Commissioners