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ORIGINAL

Decision No. 56266

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. P. HAYNES, Agent, PACIFIC SOUTH-COAST TARIFF BUREAU, for authority to establish a tariff rule which would provide for increased charges on shipments between points in California for light density articles moving in less-than-carload or less-than-truckload service.	Application No. 38434
Investigation on the Commission's own motion into the rates, rules, charges, classifications and practices of common carriers of freight for the transportation of articles for which charges are assessed on the basis of volume.	Case No. 5840

(Appearances are listed in Appendix "A")

O P I N I O N

By Application No. 38434, as amended, J. P. Haynes, acting on behalf of most of the railroads operating within California, and of certain highway common carriers, seeks authority to establish a rule to govern the assessment of charges on so-called "light and bulky" traffic.[1] The proposed rule in essence would provide that shipments of articles subject to class rates shall be based on the gross weight of the shipment at the applicable rate, except that when the weight of the shipment is 18 pounds or less per cubic foot, the charges shall not be less than those computed on the basis of 18 pounds per cubic foot at the applicable fourth class rate.

The proposed rule would be restricted to apply only on less than carload shipments and only upon those which are accorded

1 The traffic in question is also sometimes designated as "low density" traffic or "balloon" freight. The type of rule here in issue is sometimes described as a "cubic foot" or "cube" rule.

pickup or delivery service, or as to which an allowance is made by the carriers in lieu of such service.[2] The proposed rule would be published in the statewide rail and joint rail-truck class rate tariff, Pacific Southcoast Freight Bureau Tariff No. 255-F, issued by applicant herein as publishing agent. The rule would also be published in Pacific Motor Trucking Company[3] Tariff No. 49-A and in Agent E. J. McSweeney's Tariff No. 1. These latter tariffs name class rates applicable via Pacific Motor Trucking Company, also jointly with certain connecting carriers, between points in this state.

Application No. 38434 was filed on September 24, 1956. Subsequently, on October 30, 1956, the Commission instituted Case No. 5840 on its own motion. That case is an investigation into the rates, rules, charges, classifications and practices of all highway common carriers, express corporations, freight forwarders and railroad corporations, to determine whether or not any provisions maintained in the tariffs of such carriers for the assessment of transportation charges on the basis of volume (cubic measurement rules) are unjust, unreasonable, discriminatory, or otherwise unlawful. If any such provisions are found to be unjust, unreasonable, discriminatory or otherwise unlawful, it is the purpose of the investigation to determine and prescribe provisions which will be just, reasonable, nondiscriminatory and lawful, and to issue any other order or orders which will be appropriate in the premises. All carriers of the

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2 The full text of the proposed rule, together with exceptions thereto, is set forth in Appendix "B" hereof. In Appendix "C" is reproduced Exhibit No. 66 of record, in which applicant's traffic witness set forth a suggested alternate tariff rule, designed to clarify the application of the rule as proposed in the amended application.

3 Pacific Motor Trucking Company, a highway common carrier, is a wholly owned subsidiary of Southern Pacific Company.

classes embraced by the investigatory order in Case No. 5840 are, by its terms, made respondents therein.

Public hearing of Application No. 38434 and of Case No. 5840 was held on a common record before Commissioner Rex Hardy and Examiner Carter R. Bishop at San Francisco on January 23, 1957. Adjourned hearings were held before Examiner Bishop at San Francisco on June 19, 20, 21, 24, 25 and 26 and July 11 and 12; and at Los Angeles on June 12, 13, 27 and 28 and July 15.[4]

A total of 109 individuals entered appearances in either or both of the proceedings involved herein and some of these represented two or more companies or organizations. Most of the parties represented shipper interests. Forty of the parties appeared as protestants in the application proceeding. In addition to evidence adduced by applicant's witnesses evidence was offered by 46 witnesses on behalf of various shippers and shipper organizations, and by witnesses for a chamber of commerce, for a carrier association and for the Commission's staff. Seventy-three exhibits were offered in evidence. As hereinbefore indicated, the carriers parties to the three tariffs involved in these proceedings are respondents in Case No. 5840. No evidence relative to existing "light and bulky" rules was offered on behalf of any respondent carriers other than said parties to the tariffs in issue.

APPLICATION NO. 38434

Applicant in Application No. 38434 offered evidence through five witnesses. Three of them were employed by Southern Pacific

4 Adjourned hearings had originally been scheduled for February and March 1957; however, due to conflicts with hearings then in progress in Case No. 5432, involving state-wide minimum rates on general commodities, it was necessary to reschedule the hearings in the instant proceedings for March and April, and again, for the same reason, for June, all in 1957. Many parties were vitally interested both in Case No. 5432 and in the proceedings herein.

Company: an assistant general freight agent, an assistant engineer in the carrier's bureau of transportation research, and the superintendent of stations and trailer-flat car operations. The other witnesses were the assistant to the general manager of Pacific Motor Trucking Company, and the chairman of the Western Classification Committee.

The purpose of the proposed rule, the assistant general freight agent[5] stated, is to assure the rail lines adequate compensation for the transportation services performed in connection with less than carload shipments of light and bulky freight. Assertedly, heavy losses are being sustained by those carriers in transporting such shipments. The engineer introduced an exhibit purporting to show the less than carload operating results of the Southern Pacific Company (lines west of El Paso, Texas) for the year 1955. According to the exhibit, revenues and out-of-pocket expenses amounted to $12,950,000 and $18,846,000, respectively, reflecting an out-of-pocket deficit of $5,896,000. Based on an analysis of all less-than-carload tonnage handled during a test month (October 1956), the witness estimated that 35 per cent of the company's total system[6] less-than-carload tonnage accrued from California intrastate shipments. Applying this percentage to the alleged system deficit, he calculated the California intrastate, less than carload, out-of-pocket deficit or loss for the Southern Pacific for the year 1955, to be $2,100,000. This, he asserted, would be a minimum figure.

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5 The assistant general freight agent will be hereinafter referred to as the "traffic witness."

6 The word "system" as used in this opinion in connection with Southern Pacific Company refers to its lines located in Oregon, California, Nevada, Utah, Arizona and New Mexico; also between El Paso, Texas and the Texas-New Mexico state line.

The engineer had not developed California intrastate expenses, either actual or estimated. Based on the above-mentioned test month of October 1956, he had calculated a figure of 23.8 per cent as the proportion of system less than carload revenues accruing from California intrastate shipments. He asserted that a more logical estimate of the loss than that shown above would be made by taking 23.8 per cent of system revenues and 35 per cent of system expenses, reflecting a California intrastate deficit figure of $3,082,100. The witness stated that this was true because expense varies more nearly with tonnage than with revenue.

The system revenue figures shown in the aforementioned exhibit were taken from the annual report filed with this Commission, as adjusted to include revenue from less than carload shipments weighting more than 10,000 pounds. The expense data were developed from various studies made by the company. They were broken down into various categories, including station clerical and supplies, platform, pickup and delivery, line haul truck, line haul rail and loss and damage expenses.

According to the record, Southern Pacific has been concerned for several years past with the problem of obtaining compensatory revenues from less than carload traffic, and particularly from shipments of light and bulky freight. Southern Pacific, the witnesses asserted, transports a far greater tonnage of low-density less than carload freight within California than all other rail lines combined. Only recently, the witnesses testified, has their company found out how much money it has been losing in handling the traffic in question. In this connection tests made by the road's research bureau indicate that the density, or weight per unit of space occupied, of less than carload shipments has been steadily decreasing. This has been due largely, the traffic witness said, to a gradual

changeover from heavier to lighter materials of manufacture and of packing. At the same time, this witness asserted, the ratings in the freight classification and exception sheet[7] have not been revised appreciably to give effect to these changed transportation conditions. He introduced an exhibit purporting to show the relative stability of the classification ratings.

It is, moreover, the position of the rail lines, as stated by the traffic witness, that the Western Classification, which has been in effect for many decades, is primarily designed for station-to-station movements and does not give due effect to the added costs of performing pickup and delivery service. This latter type of service, he pointed out, was first established by the California railroads about 1929, long after most of the present classification ratings were placed in effect. Most of the less than carload shipments moving over the rail lines, the record shows, are accorded pickup and delivery service.

Several plans, the record shows, have been considered as possible solutions to the light and bulky freight problem. The development by the California rail lines of a complete new classification with increased ratings for light and bulky freight would, in the opinion of the traffic witness, require a minimum of five years to complete. This same view was expressed by the chairman of the Western Classification Committee.[8] Apart from the objectionable

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7 California intrastate class rates are governed by the ratings set forth in Western Classification No. 76, issued by J. P. Hackler, Alternate Agent, and by exceptions thereto published in Pacific Southcoast Freight Bureau Exception Sheet No. 1-S of J. P. Haynes, Agent, or in other exception sheets, and in common carrier tariffs.

8 The chairman admitted that if only the ratings on light and bulky articles (approximately 4,000 out of 10,000 items) were reviewed, it would take something less than five years to build a California intrastate classification.

feature of the time element, the traffic witness pointed out that the rail lines do not make a practice of accumulating the information which would be necessary for the determination of ratings on the thousands of commodities which would be involved in the project. Moreover, these witnesses pointed out that it would be necessary for each individual increased rating to be justified before this Commission. Like objections were advanced to the establishment, on light and bulky articles, of exception ratings.

Another plan considered by the rail lines was to adopt one of the cubic foot rules now maintained by various highway carriers operating within California. These rules, which vary greatly in their terms as between different carriers, were found to be unsuitable for the purposes of the rail lines. However, it was concluded that publication of a cubic foot rule, such as is proposed in the application herein, would be the most practicable solution to the problem.

The proposed rule, the traffic witness explained, is designed to serve merely as a minimum revenue provision, without disturbing the existing classification or exception ratings on light and bulky freight. Revenue produced by a constructive weight of 18 pounds per cubic foot at the applicable fourth class, the witness stated, would be slightly in excess of out-of-pocket costs. He estimated that 80 per cent of Southern Pacific's less than carload traffic would be subject to the rule.

The engineer had made an extensive study to ascertain the out of pocket costs to Southern Pacific of transporting less than carload freight in California. The preliminary work was carried on over a period of several years, but the major portion of the study was begun in 1955 and the field studies were completed about the middle of 1956. The engineer introduced a series of exhibits in

which were set forth the various steps involved in developing the total out-of-pocket costs. These costs were made up of separately calculated elements, viz.: line haul and terminal expenses; the latter group included pickup and delivery (in transit),[9] shipper's platform, rail platform, clerical and billing, loss and damage, and switching expenses. The cost data purportedly reflect the expenses incurred in the transportation, handling and processing of less than carload shipments moving between seven principal California less than carload stations. In some cases system average unit costs were employed. Actual time studies were made in those instances where the particular expense item in question was a function of time. Where services of Pacific Motor Trucking employees were involved, as in picking up and delivering shipments of the parent company, the costs used were those incurred by the former.

The engineer explained that each element of cost was arbitrarily distributed between assumed density brackets, ranging from a minimum group of four pounds or less per cubic foot, to a maximum of over 50 pounds to and including 60 pounds per cubic foot. From the elements of cost thus developed for each movement included in the study, weighted average costs were calculated for use on a state-wide basis.[10] These average costs, in cents per 100 pounds, were then plotted on a graph and joined together by a curve, which reflected a gradual decrease in out-of-pocket cost per 100 pounds as the density of the freight increased. Thus for less than carload freight having a density of not exceeding four pounds per cubic foot

9 Pickup and delivery of practically all less than carload freight of Southern Pacific, the record shows, is performed by Pacific Motor Trucking Company under contract.

10 According to the witness, the cost figures were predicated on wage scales in effect in May 1956.

the engineer developed a cost of $4.66 per 100 pounds, whereas the corresponding figure for densities between 40 and 50 pounds per cubic foot was $1.02.

The engineer had also calculated an average, any quantity, fourth class rate, predicated on the fourth class rates in effect on June 12, 1956 between the seven cities utilized in the cost study, and weighted according to the actual movement of all tonnage between those points during certain periods in 1955 and 1956. This average rate was found to be 148.7 cents per 100 pounds. The rate was plotted on the aforementioned cost graph and the witness found that it coincided with the out-of-pocket cost, as reflected by the cost curve, of transporting 100 pounds of freight having a density of approximately 16.5 pounds per cubic foot. Thus, he asserted, the "breakeven" point in the transportation of less than carload, pickup and delivery shipments via Southern Pacific for the average haul within California is the charge based on fourth class as the above-mentioned constructive weight. The proposed rule, he indicated, by specifying a constructive density of 18 pounds would give the carrier a return of something in excess of the out-of-pocket cost of performing the transportation service.

The record indicates that the fourth class rate is proposed in the rule because, assertedly, that is the lowest rating applicable to less than carload shipments. First, second or third class, the engineer stated, might just as well have been employed, using correspondingly lower densities as reflected by the cost curve.

In the opinion of the traffic witness the proposed rule is practicable. He pointed out that various highway carriers have, for many years, maintained rules of a similar character in their tariffs. He cited also trans-Pacific tariffs of certain steamship lines in which alternative bases of rates on weight and volume, respectively, are provided.

The superintendent of stations and trailer flat car service of Southern Pacific and the assistant to the general manager of Pacific Motor Trucking also testified regarding the practicability of putting the proposed rule into effect. The superintendent testified regarding certain platform tests which had been made by his department on the basis of which he had concluded that the proposed rule would be workable and that it would not entail a disproportionate amount of additional expense for the carriers.[11] The Pacific Motor Trucking witness concurred in these views, although his company had made no platform study such as that of the Southern Pacific. Both witnesses were questioned at some length by the shipper interests concerning the practical problems which would be involved in implementing the proposed rule.

As to the effect of the proposed rule on the traffic to which it would apply, the traffic witness expressed the view that, if the rule were to be established, there would be some diversion of light and bulky freight to other means of transportation. He asserted, however, that the carriers had no intention of discouraging shippers or of driving traffic away. The carriers, he said, were simply attempting to place the transportation in question on a more nearly compensatory basis.

The evidence adduced by applicant's witnesses related entirely to operations of Southern Pacific and Pacific Motor Trucking. The member lines of the Pacific Southcoast Freight Bureau, the traffic witness testified, decided, at one of their rate meetings, to file the application herein. He had no specific knowledge of cost or other studies having been made by member rail lines other than Southern Pacific. He stated that the Bureau members had concluded that, since the Southern Pacific movements covered a large

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11 On the basis of the above-mentioned platform tests, the engineer witness estimated that the additional cost which would be incurred in applying the proposed rule would be approximately 7 cents per 100 pounds.

area of the state and included both the larger and the smaller stations, the studies of that road would be representative of conditions prevailing on all member lines. Accordingly, the members concluded that additional cost studies on the part of other member lines would not have an appreciable effect on the final results as developed by Southern Pacific.

Position of Shippers

As hereinbefore mentioned, 46 witnesses testified on behalf of individual shippers or of shipper associations. Although many of these witnesses were introduced by parties who designated their appearances merely as "interested party", all 46 witnesses testified in opposition to the rule proposed in Application No. 38434. Many went farther, and opposed the maintenance of cubic foot rules in tariffs of any and all common carriers. Many reasons were given by the shipper witnesses for their opposition. These included, among others, the following:

1. The rule would nullify the long-established and widely recognized principles of freight classification.

2. It would place an undue burden on shippers, in measuring packages and making computations. This would entail additional dock space, delays in moving freight from shippers' premises, and additional wage expense. (One witness estimated for his company $350 per month, or $1,000 per month if a similar rule were put in effect via all carriers).

3. The rule would make it almost impossible for shippers to determine the delivered cost of merchandise in advance of shipment.

4. It would cause deterioration of service of the carriers involved. Shipments would be delayed by the necessity of carriers' measuring packages on their docks during the heavy influx of shipments in late afternoon.

5. The rule would be difficult to police. Failure to enforce consistently would result in unjust discrimination.

6. The rule is vague and uncertain. (By the alternate suggested rule in Appendix "C" hereof applicant attempted to eliminate this objection).

7. The rule is impractical because of the extreme difficulty of "cubing" certain kinds of freight. Also platform workers of the calibre usually employed are not sufficiently intelligent to cube shipments correctly.

8. Experience with similar rules presently maintained by highway carriers shows that such rules are impracticable and are not observed.

9. The resultant increases in freight charges would be exorbitant. This, in turn, would: (a) encourage a greater use of proprietory transportation; (b) cause diversion of light and bulky traffic to other carriers, and in many cases the desirable, high-density traffic as well; (c) give an unfair advantage to out of state competitors; (d) eliminate protestants from some of their present markets (if the rule were adopted generally), or, even put protestants out of business.

Many of the shipper witnesses augmented their testimony with exhibits. Most of these showed the increases in freight charges which the witnesses had found would result under the proposed rule. Assertedly, the shipments utilized in the exhibits were representative of those customarily made by the concerned shippers. The increases covered a wide range; many were in excess of 200 per cent and ran as high as 1,100 per cent. Other exhibits reflected the additional time shippers had found would be involved in cubing shipments if the proposed rule were established.

Several of the shipper witnesses expressed the view that the proper solution to the problem of light and bulky traffic would be to seek revision of classification ratings which the carriers deemed to be unduly low. This could be accomplished either through changes in the Western Classification, or by the establishment of exception ratings. One witness thought the rail lines should make a study to develop more efficient methods of handling less than carload shipments.

The position of the Los Angeles Chamber of Commerce, expressed by its traffic commissioner, paralleled that of the shippers in opposing the proposed rule and in suggesting that relief be sought through adjustment in classification ratings.

CASE NO. 5840

A senior transportation rate expert, of the Commission's staff, testified concerning the results of a study which the staff had made of the cubic foot rules currently published in California common carrier tariffs and of the practices of carriers in applying such rules. As a result of a survey of the Commission's tariff files it had been found that, as of the date of the survey, a total of 153 highway common carriers and express corporations maintained cubic foot rules. In some instances the rules apply over only a part of the carrier's service area; some carriers have two or more different rules, which apply to different segments of their operations.[12]

The staff study discloses that the cubic foot rules applicable to California intrastate traffic are many and varied. They fall into two general groups: those that apply to all low-density shipments regardless of size, and those that apply only to low-density shipments occupying at least a specified minimum space. As an example, a minimum space of 64 cubic feet is required before application of certain cubic foot rules. The minimum densities range from 8 to 20 pounds per cubic foot. Most of the cubic foot rules refer to the term "space occupied" in connection with

12 In one exhibit introduced by the staff all of the cubic foot rules, in effect as of February 1, 1957, are reproduced. The results of the staff's investigation, together with its recommendations, are set forth in a second exhibit.

determination of constructive weight. Many of the rules leave the precise meaning of this term up to the imagination of the tariff user. Some of the rules are relatively short and are contained in one or two sentences; other rules are quite elaborate and attempt to explain how "space occupied" is to be determined. Some of the rules define "space occupied" as that amount of space encompassed by the extreme outer boundaries or dimensions of an article or shipment. The more complex cubic foot rules contain special provisions for measuring cylindrical, spherical and other irregular-shaped articles and packages. Some of the rules exempt certain commodities from the prescribed weight penalties. Notably among these commodities are empty shipping containers returning from a pay load or being forwarded empty to be loaded.

The rate expert asserted that, to the extent that cubic foot rules have been used in the determination of freight charges, carriers usually have made references thereto on freight bills. He stated, however, that only a relatively insignificant number of shipping documents checked by staff members, which documents have been issued by common carriers maintaining cubic foot rules, have shown information indicating application or attempted application of these rules. He pointed out that the staff reviews many thousands of shipping documents per year in connection with its rate enforcement program and has, in the postwar period alone, reviewed many more thousands of freight bills as a part of special freight bill studies.

The staff study further indicated that where freight bills show that a cubic foot rule has been used in the determination of freight charges, but no package or shipment dimensions are shown, there can be no determination of whether charges are correct. Once a shipment has been delivered there seldom is a practical way to ascertain package and shipment dimensions to determine whether the

actual weight or some constructive weight should have been used as the basis for the computation of charges.

According to the staff study, carriers have regularly called to the attention of staff members that cubic foot rules are not a source of any significant revenue; that they are seldom used; and that they are retained in tariffs principally as a protection in case the carriers should encounter new and unusual shipments or other unforseeable problems with respect to light and bulky shipments.

In connection with Case No. 5840 the Commission staff commenced an investigation in December, 1956, into the application of the various cubic foot rules maintained in California common carrier tariffs. For the purpose of this investigation members of the Commission's staff visited the offices and terminals of highway common carriers, express corporations, railroads, and steamship lines.

The terminals of 17 highway common carriers and affiliated express corporations known to be engaged in the transportation of general commodities in California were visited. These carriers all maintain cubic foot rules in their tariffs. Spot checks were made of tariff application with respect to specific light and bulky shipments moving through the carriers' terminals. The terminals were visited between the hours of 4 and 9 p.m. Those hours were selected because a large number of shipments are handled across the terminal platforms at that time. The large common carriers each handle several thousand shipments across their terminal platforms in a day. The staff observed that shipments are generally handled quite rapidly across truck terminal platforms. In the course of one evening at any one of the carriers studied, a large proportion of the shipments received during the day was handled across terminal platforms and dispatched in line-haul or delivery equipment. Some shipments were handled between pickup equipment and line-haul or delivery equipment in a

relatively few minutes. It was necessary for staff members in some cases to stop the normal process of handling certain shipments for the purpose of measuring them. The witness also pointed out that some light and bulky shipments are loaded directly into the line-haul equipment without crossing the carriers' docks (so-called "loaded-to-go" shipments). Such shipments are not measured by the carriers' pickup drivers.

Shippers are not in the habit of recording package or shipment dimensions on bills of lading or elsewhere. The staff found that only in a few instances were dimensions printed on the packages. Carrier personnel determined package measurements for only a very few other shipments. Accordingly it was necessary for staff members to measure shipments suspected of having low density. This was done while the shipments were stacked on terminal platforms or while in trucks prior to unloading at terminal platforms. Many hundreds of such shipments were checked by staff members to determine the volume of space occupied by each. Many of the shipments were passed over, however, because it could quickly be seen that specific cubic foot rules would not apply. Actual measurements were recorded for 158 shipments. From office calculations by the staff it was determined that 76 of these shipments required constructive weight determination under minimum density provisions of governing cubic foot rules.

On one of the days following the platform study of each carrier a staff member visited that carrier's office and reviewed the freight bills for each of the shipments checked at the terminal. This was done in order to determine what disposition carriers had made of the light and bulky problems in computing freight charges. After checking the freight bills involved it was found that carriers had applied cubic foot rule provisions to only 7 of the 76 shipments. The constructive weights determined by the carriers for 6 of the 7

shipments were different from those ascertained by the staff. Calculations by the staff disclosed that on the 76 shipments subject to provisions of cubic foot rules carriers should have assessed transportation charges on 69,936 pounds more weight than was actually used.

The great majority of shipments observed by the staff were in rectilinear containers. The measurement of even such shipments presented problems, particularly in the disposition of fractions. Errors in measurement, the rate expert pointed out, are cumulative; the larger the shipment, the greater the error in computing space occupied and the constructive weight. The problem of measurement, the staff found, becomes much more difficult when such containers are bulged, broken, or otherwise distorted. When odd-shaped packages or articles are involved the difficulties of measurement are compounded.

In addition to the study of specific shipments at the carriers' terminals, the staff analyzed the freight bills of each carrier covering shipments transported in the recent past. This was done in order to determine the incidence of use of cubic foot rules. It was found that out of a total of more than 27,600 freight bills checked, only 30 contained information indicating use of cubic foot rules.

Management and dock personnel of carriers were questioned by the staff with respect to the application of cubic foot rules. They stated almost without exception that cubic foot rules are difficult to understand, difficult and time-consuming to apply, and for the most part are not observed. It was stated that from time to time attempts are made to apply cubic foot rules to shipments generally but that such programs soon break down. Carriers' personnel said that the application of cubic foot rules can cause extended discussions and correspondence with shippers.

Staff members visited the freight terminals of two of the major railroads serving California. Since the rail lines do not maintain cubic foot rules, investigation was limited to observing specific light and bulky shipments and the freight handling operations and procedures at the terminals. Railroad terminal operations were found to be very similar to motor carrier terminal operations. Less than carload freight is picked up and delivered by motor vehicle. Transportation between railroad terminals is performed by use of both rail cars and motor vehicles. Railroads substitute motor vehicles of subsidiary companies for certain transportation which would otherwise be performed with rail cars. The staff measured a number of packaged and unpackaged commodities at railroad terminals. The problems with respect to measuring such freight were found to be no different from those encountered in connection with measuring freight at motor carrier terminals.

The staff survey of operations at steamship docks and offices disclosed conditions quite different from those which surround the handling and processing of shipments at motor carrier and railroad terminals.[13] It is the practice of steamship lines, the staff found, to require that freight be received at docks sufficiently in advance of the time of loading so that the dimensions of shipments, where required, and the weight can be carefully checked. Steamship personnel responsible for measuring shipments have ample opportunity to determine measurements and compute freight charges while the freight is resting on the dock. Shippers frequently deliver freight to steamship docks as many as 10 days before scheduled loading time. Steamship lines generally try to resolve as many

13 Cubic foot rules of steamship companies do not come within the scope of Case No. 5840.

controversies as possible with respect to weight, measurement, and freight charge computations before cargo is loaded on a ship.

A rule for the computation of freight charges based on volume is contained in the California intrastate tariff of the Air Express Division of the Railway Express Agency, Inc. Although this tariff provision comes within the announced scope of this proceeding, it governs only air transportation. Staff members visited the Air Express Division terminal in Los Angeles for the purpose of observing application of the tariff rule involved. A large preponderance of the shipments were in single packages. Most of the shipments were in interstate commerce. The practices and procedures observed by this carrier in the handling of air express at the terminal were substantially different in many respects from those employed by motor carriers in the terminal handling of freight. Carrier personnel had ample time to measure all shipments suspected of coming within the scope of the rule. Spaces for package dimensions and dimensional weight are provided on all shipping documents. No important problems in connection with the assessment of air express charges under the rule involved were noted.

The staff exhibit includes excerpts from three decisions in which this Commission has looked with disfavor upon cubic foot rules.[14] Decisions in which the Interstate Commerce Commission has expressed like views are also cited.[15]

The rate expert testified that, from the current staff investigation and from previous studies and analyses of shipping

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14 They are: Decision No. 29991 of July 27, 1937 in Case 4088; Decision No. 39796 of December 23, 1946 in Application No. 27829; and Decision No. 46022 of July 31, 1951 in Case No. 4808 (51 Cal PUC 3).

15 The principal case cited was that of Bell Potato Chip Company v. Aberdeen Truck Line, et al. (43-MC-6337, of April 4, 1944).

documents, the staff concludes that cubic foot rules maintained in tariffs of highway common carriers and affiliated express corporations in California are impractical to apply in ordinary intrastate transportation, are productive of results which either are unreasonable or otherwise highly undesirable, and are difficult of enforcement. Also, it is the staff's opinion that most of the undesirable situations which have been referred to also would occur if cubic foot rules were published by the railroads in California. Less than carload services of the rail lines, and of their highway carrier subsidiaries, the witness pointed out, are, to a large degree, integrated. The general problems of these two carrier groups in the handling and billing of light and bulky freight, he said, are similar to those of motor common carriers generally.

In the staff study the view is also expressed that the desirable and logical method to pursue in adjusting tariff provisions to meet carrier revenue requirements on low density traffic, where such action is deemed necessary, is through changes in basic freight classifications. The staff, in expressing this view, is aware of the difficulties involved in such a course of action.

Based on its investigation, the staff recommends that the Commission issue an order requiring that all highway common carriers and their affiliated express corporations cancel tariff rules which require to any extent that charges be assessed upon the volume of space occupied by the shipment.[16]

16 By its terms, the recommendation excludes such rules as that hereinbefore mentioned of Air Express Division of Railway Express Agency, and those of freight forwarders. The rate expert testified also that it does not embrace rules of highway common carriers which utilize length and girth dimensional maxima, such as those contained in regulations of the United States Post Office Department.

The staff recommendations were strongly supported by many of the shipper witnesses. The position of the California Trucking Associations, however, as stated by its director of research, is that the Association is unalterably opposed to the cancellation of existing cube foot rules. While the Association readily admits that there are many instances when such rules are not observed by the carriers, nevertheless, the rules serve as a practical protection to the carriers. If the rules are canceled, the director indicated, the effect on carrier revenues will be deleterious.

The Association does not maintain that cube foot rules are the proper solution to the problem of adequate revenues for low density traffic, but contends that until the Commission is in a position to investigate the problem in all of its aspects and to consider more appropriate avenues of relief to the carriers, and of protection as between shippers, the rules in question should not be canceled. The Association's rate committee, the director stated, has been engaged for the past three years gathering information as to classification factors relating to individual commodities. That Committee does not consider that it is ready to proceed with any reclassification proposals at this time.[17]

Conclusions

It is apparent from the record in these proceedings that so-called cube foot rules have, for many years, been maintained in the tariffs of many California intrastate highway carriers. The problems arising in connection with the application and interpretation of such rules have long engaged the attention of the Commission

17 Since submission of these proceedings, California Trucking Associations, Inc., has filed Petition No. 104 in Case No. 5432, seeking increased ratings on new furniture and used household goods, in packages.

staff. As previously stated, the staff has found that at least 153 highway common carriers and express corporations maintain such rules in connection with movements between points in California. Occasionally, the staff has been called upon to determine the correctness of charges that have been assessed under such a rule, and has often been asked to interpret, for inquiring shippers or carriers, the provisions of cube foot rules. Thus, its conclusions and recommendations of record, stem not only from the results of its recent extensive study and investigation in Case No. 5840, but also from a long experience with the problems involved in their application.

It appears also from the record that, for the most part, the carriers who maintain such rules ignore them in determining transportation charges. There is shipper testimony to the effect that the carriers have used the rules in some instances as a threat in order to discourage the tender of light and bulky property for shipment, and that when the rules have been invoked, carriers have often failed to apply their provisions consistently, even as between like shipments of a single shipper.

The objections of the shippers to the proposed establishment of such a rule by the rail lines, as hereinbefore set forth were based, to a considerable extent, on the experience which the shippers had had with existing cube foot rules of highway carriers. In most instances, the objections were supported by concrete illustrations and by full explanations of the basis for the objections. It is significant that not a single shipper witness testified in support either of the proposed rail rule or of continuing in effect the cube foot rules presently maintained by highway common carriers and their affiliated express corporations.

It is also noteworthy that, with the exception of Pacific Motor Trucking Company, not a single carrier whose presently

published cube foot rule or rules is under formal investigation in Case No. 5840 offered evidence in defense thereof.[18] Counsel for California Trucking Associations, Inc., expressed the view that such lack of participation on the part of the individual carriers affected should not compel the conclusion that such carriers are in favor of the staff recommendation that the rules be canceled. Nevertheless, the fact remains that this record contains no evidence, other than that adduced by the Association's witness, in support of any of the presently published cube foot rules embraced in the investigation, and, in fact, the record contains very substantial conflicting evidence as to the practicability of cube foot rules.

The staff, based on its investigation and past experience, is of the opinion that such rules are impracticable. This position is supported by the shipper witnesses. The rail lines, on the other hand, offered evidence to the contrary. Their witnesses were of the opinion that the rule proposed in Application No. 38434 was clear and easy to apply, that their platform personnel had the intelligence necessary to cube the shipments, and that the rule could be placed in operation without delaying the movement of freight across the docks,[19] and with only slight added cost to the carriers. The rail witnesses, however, were questioned at great length by other parties concerning these points, and the effect of the cross-examination was to raise serious doubts as to the practicability of the proposed rule.

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18 Counsel for an air freight forwarder and for a parcel delivery carrier, respectively, developed from the staff witness that the staff recommendation did not embrace rules of freight forwarders or rules which utilize length and girth dimensional maxima, such as those of the United States Post Office Department.

19 Under the proposed rule shippers would not be required to cube their shipments, but the rail witnesses asserted that it would be to the shippers' advantage to do so, and expected that many shippers would, for their own protection, cube all shipments suspected of being subject to the rule.

(a) CASE NO. 5840

The record is convincing and we hereby find that existing cube foot rules of highway common carriers and their affiliated express corporations are objectionable for many reasons, the more important of which are as follows:

1. They are impracticable under current operating conditions. It would be impossible for motor carriers to obtain accurate measurements of all packages and shipments which might be subject to cubic foot rules without slowing down the handling and billing operations, particularly during the peak period of the day.

2. They place an unreasonable burden on shippers in the added expense, and sometimes added facilities, which would be necessary for the shippers' own protection if the rules were to be consistently applied.

3. They are in most, if not all, cases ambiguous. For example, they are not sufficiently clear with respect to the space which is to be measured. Thus they lack that definiteness which is required by the Public Utilities Code and the Commission's tariff circular and general orders.

4. They cannot be uniformly applied because of different results obtained by different individuals in measuring the same object.

5. They are particularly difficult to apply to objects which are of irregular or unusual shape or are shipped loose.

6. As applied to shipments which are subject to class rates, they nullify established principles of freight classification, on the basis of which the class ratings which would normally apply were established.

7. They make it extremely difficult for consignors and consignees to know in advance of shipment what the transportation charges will be on shipments subject to the rules.

8. To the extent that cubic foot rules are not applied to shipments which are subject thereto, common carriers receive a different compensation from that required under their tariffs.

9. To the extent that the rules are applied to shipments of certain corporations or persons and are not applied to shipments of others, discrimination and undue preferences result.

10. They are unreasonably discriminatory against commodities and shipments affected by the rules and unreasonably preferential to those not subject thereto.

11. Charges assessed under tariffs containing cubic foot rules cannot be audited conclusively by third parties, including the Commission staff, unless package dimensions are recorded on each freight bill issued.

Based upon the foregoing, we further find, subject to the exception hereinafter stated, that any and all rules presently maintained in tariffs of highway common carriers or of express corporations, which provide for the assessment of transportation charges on the basis of volume (cubic measurement rules) are unjust, unreasonable, discriminatory, unduly preferential, and ambiguous, in violation of the Public Utilities Code. We conclude, therefore that all such rules, except as noted below, should be required to be canceled. The order which follows will so provide.

The foregoing findings and conclusions do not apply to rules and regulations of so-called parcel carriers which employ "length and girth" dimensional limits.

The record shows that the transportation service performed by the Railway Express Agency, Inc., - Air Express Division, and Emery Air Freight Corporation, a freight forwarder, is substantially different from that performed by surface carriers of property. The record does not establish that the cubic foot rules maintained by the air carriers are unreasonable or discriminatory.

(b) APPLICATION NO. 38434

The record is convincing, and we so find, that substantially the same objections which we have found to obtain in connection with presently published cubic foot rules of highway common carriers apply also to the proposed rule, including the suggested alternative, which the rail lines by Application No. 38434, as amended, seek to establish. The conditions under which the rule would be administered are substantially the same as those encountered by highway carriers and like difficulties would arise in attempting to enforce the rule.

As hereinbefore stated, the purpose of the rail lines in attempting to establish the proposed rule is to curtail the losses which the carriers are allegedly sustaining in the handling of light and bulky traffic in less than carload service. The research bureau of Southern Pacific carried on extensive studies over a considerable period of time in attempting to develop the average out-of-pocket cost per 100 pounds of transporting such traffic. The engineer witness also attempted to estimate the California intrastate less than carload out of pocket deficit of Southern Pacific for 1955. We find some drawbacks in these two studies which cast a doubt on the validity of the end results thereof. Among these are the following:

1. Without going into the merits of the means, in the revenue and expense study, by which the alleged system loss of $5,896,000 for the year 1955, was developed, it is pertinent that no estimate of California intrastate less than carload expenses was made. In the absence of such a figure to compare with the intrastate revenues, we are unable to estimate what the intrastate loss was, for the selected period. In our opinion, the deficit figure of $2,100,000, reflecting the same proportion (35 per cent) of the alleged system deficit as the estimated California intrastate tonnage was of the total

system tonnage, for a subsequent period, is not reliable.[20] Moreover, the record does not disclose, and the carrier witnesses were unable to state, what proportion of the alleged deficit is attributable to light and bulky traffic.

2. In the cost study, estimated costs are developed only for movements in expedited merchandise cars between a limited number of selected points. No consideration is given to other less than carload traffic handled by Southern Pacific between points in this state.

3. Many of the cost elements are based on system averages which may or may not reflect the situation in California.

4. Line-haul rail costs are based on estimates of the average number of cars moving daily in the service and of the average haul involved.

5. The calculated costs are predicated on an average occupancy of only slightly more than half the space capacity of a merchandise car.

6. The cost curve developed by the engineer is based on a hypothetical distribution of costs over a wide range of densities rather than on actual experience in each density bracket.

7. While the cost witness indicated that the same charge per 100 pounds would result by applying weighted average first, second or third class rates to the corresponding densities reflected by the cost curve which resulted by taking the fourth class rate, tests with

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20 In a hearing held on April 18, 1956, another proceeding, Case 5432 (Petition No. 74) another rail line's witness estimated, on the basis of studies he had made, the annual less than carload deficit of Southern Pacific, for movements between principal California points, to be $110,600. Counsel for applicant herein insisted that the 1956 estimate is not comparable with the above-mentioned figure of $2,100,000. However, the wide discrepancy between the two estimates raises a further question as to the validity of the latter.

specific point-to-point rates, such as between San Francisco and Los Angeles, produce far from uniform results as between the various classes.

A major deficiency in the entire presentation of the applicant is that the evidence relates entirely to operations of the Southern Pacific and Pacific Motor Trucking (the latter only to the extent of its services for the parent company). The record contains nothing of the less than carload operating results, costs or practices of any of the other carriers affected by the proposed rule.

As previously mentioned, witnesses for applicant testified that, to solve the problem of adequate revenues for light and bulky traffic by a general revision of classification ratings applicable thereto, would take several years. They asserted that the problem is acute and requires prompt relief; hence, the proposed minimum revenue rule. Nevertheless, it is the Commission's view that the proper solution lies in adjustment of classification ratings, either through revision of the Western Classification itself, or by the publication of exceptions thereto. It is well established that exception ratings higher than those set forth in the Western Classification are proper where adequate justification therefor is presented. It is suggested that the carriers involved in Application No. 38434 herein initiate a program of developing the facts necessary for justification, in a subsequent proceeding before this Commission, of increases in classification ratings in those instances where the present ratings are deemed to be inadequate. This same suggestion is directed also to the carriers whose cube foot rules are under investigation in Case No. 5840.[21]

21 Attention is directed to Decision No. 55994, dated December 16, 1957, in Application No. 38839, in which Southern California Freight Lines and Southern California Freight Forwarders were authorized to establish increased ratings on various articles of low density.

Based on the foregoing considerations, we conclude and hereby find as a fact that the relief sought in Application No. 38434, as amended, has not been justified. The application will be denied.

Two motions were made during the course of the hearings but the findings and conclusions herein and the order which follows make it unnecessary to rule thereon.

O R D E R

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

IT IS ORDERED:

1. That Application No. 38434, as amended, be and it is hereby denied;

2. That, except as otherwise provided in paragraph 3 below, all highway common carriers and express corporations (except Railway Express Agency, Inc., - Air Express Division), as defined in the Public Utilities Code, which maintain in their published and filed tariffs with this Commission, applicable to California intrastate traffic, provisions for the assessment of transportation charges on the basis of volume (cubic measurement rules) shall, upon not less than five days' notice to the Commission and to the public, cancel said rules or regulations from any and all of said tariffs, such cancellation to be made effective not later than sixty days after the effective date of this order;

3. That the provisions of paragraph 2 above shall not apply to rules or regulations of so-called parcel carriers which are stated in terms of "length and girth" limits;

5. That Case No. 5840 be and it is hereby discontinued.

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

Dated at San Francisco, California, this 18th day of January, 1958.

President

Commissioners

PETER E. MITCHELL
President
RAY E. UNTERMAN
MATTHEW J. DOOLEY
REX HARDY
Commissioners

A P P E A R A N C E S

Charles W. Burkett, Jr. and John Macdonald Smith, by J. M. Smith, for applicant in Application No. 38434.

H. J. Bischoff; Preston W. Davis and Roger Ramsev by Roger Ramsey; Newlin, Tackabury & Johnston, by David H. Massey; Richard C. Schach; and Dudley A. Zinke; for various carriers, respondents in Case No. 5840.

Charles W. Dullea, Harold M. Hays, Armand Karp, Melvin A. Pixley, and Harlan M. Richter; for various carriers, respondents in Case No. 5840 and interested parties in Application No. 38434.

G. R. Arvedson, Robert Burns, and William Davidson; for various shippers, protestants in Application No. 38434.

Frank E. Ashton, Clark O. Bender, W. M. Cheatham, Norbert R. Coffrain, C. H. Costello, Avery M. Cloninger, A. P. Davis, Jr., Stanley R. Duncan, A. T. Echo, Frank A. M. Eggleston, D. E. Emory, Ernest E. Esaw, Robert J. Healy, A. L. Hillman, William G. Jackson, Calhoun E. Jacobson, Donald E. Kane, Theodore J. Label, Fred Langford, Gordon Larsen, D. R. MacDonald, H. L. Marshall, James C. McQuaid, Walter R. Merryman, Lloyd L. Miller, A.E. Norrbom, W. G. O'Barr, L. E. Osborne, John R. Reed, H. T. Stoddard, Elmer E. Streib, J. A. Sullivan, Clifford J. Van Duker, Milton A. Walker, Cromwell Warner, Florence C. Williams, K. Wilson; for various shippers, shipper organizations and chambers of commerce, protestants in Application No. 38434 and interested parties in Case No. 5840.

Pete J. Antonino, Clark O. Bender, Lawrence E. Binsacca, B. F. Bolling, A. D. Carleton, Theron L. Carothers, E. R. Chapman, Elmer C. Cochrane, Morton S. Colegrove, Anthony V. Danna, Harry W. Dimond, Eddy S. Feldman, Scott D. Flegal, J. D. Gaynor, Nile O. Greer, H. W. Hoage, R. J. Healy, Charles E. Houlihan, Joseph Q. Joynt, William F. Krause, Meyer L. Kapler, William M. Larimore, Harold A. Lincoln, C. B. Lippert, Robert N. Lowry, W. F. McCann, John F. McMahon, Charles C. Miller, M. A. Neuberger, John F. Newby, Rex M. Nielson, Allen K. Penttila, Omar E. Pullen, C. G. Rickenbaugh, L. J. Rowley, A. L. Russell, A. F. Schumacher, Robert G. Steele, Howard R. Stocking, Harry Streit, Arthur P. Stromberg, W. Paul Tarter, Harry Timmerman, G. C. Turner, Clifford J. Van Duker, W. R. Walker, M. O. Wood; for various shippers, shipper associations and chambers of commerce, interested parties.

Russell Bevans, J. C. Kaspar, A. J. Mateik, J. X. Quintall, Arlo D. Poe; for various carrier associations, interested parties.

W. R. Roche, Grant Malquist, Robert A. Lane, and John W. Mallory; for the Commission's staff.

APPENDIX "B"

Rule Proposed in Application No. 38434,
as amended (as Reproduced in Exhibit No. 1 of Record)

ARTICLES, LIGHT AND BULKY (Applies only on shipment subject to LCL ratings accorded store-door pickup or delivery service or upon which allowance is made by carriers in lieu thereof).

Except as otherwise specifically provided, (subject to Notes 1 to 5 shown below) charges on shipments of articles subject to class rates governed by ratings in the Western Classification, exceptions thereto in PSFB Exception Sheet 1-S, or in exceptions provided in this tariff, shall be based on gross weight and applicable rate except that when weight of shipment is 18 pounds or less per cubic foot charges shall not be less than those computed on basis of 18 pounds per cubic foot at the applicable 4th class rate.

NOTE 1: Minimum weights apply to each article in the shipment *and not to the shipment as a whole, except as follows:*

(1) Where volume of all or any portion of a group of identical articles as a unit would be the same as the sum of the individual articles, such articles may, for convenience, be measured as a unit;

(2) Where volume of all or any portion of a group of identical articles as a unit would be less than the sum of the individual articles, such articles shall be piled or stowed to occupy the least space feasible and measured as a unit.

NOTE 2: Cubic measurement for the application of this item shall be that for the smallest rectangular space within which the extreme dimensions of the article or articles can be contained. Fractions of inches under one half inch will be dropped and fractions of one half inch or over will be increased to the next full inch.

NOTE 3: Where this rule is used to determine freight charges, measurement of the articles so affected must be shown on the freight bill.

NOTE 4: This rule will not apply on shipments of empty carriers returning as described in and subject to the provisions of Item 300 of PSFB Exception Sheet 1-S. (In Agent E. J. McSweeney's Tariff No. 1 (Cal. P.U.C. No. 1), also refer to Item 590.)

NOTE 5: Applicable tariff or W. C. minimum charge provisions will apply in lieu of provisions of this rule if their application results in higher charge.

APPENDIX "C"

Rule (as Set Forth in Exhibit No. 66 of Record)
Suggested by Applicant as an Alternate to
That Proposed in Application No. 38434 and
Reproduced in Appendix "B" hereof

ARTICLES, LIGHT AND BULKY (Applies only on shipment subject to LCL ratings accorded store-door pickup or delivery service or upon which allowance is made by carriers in lieu thereof).

Except as otherwise specifically provided, (subject to Notes 1 to 9 shown below) charges on shipments of articles subject to class rates governed by ratings in the Western Classification, exceptions thereto in PSFB Exception Sheet 1-S, or in exceptions provided in this tariff, shall be based on gross weight and applicable rate except that when weight of shipment is 18 pounds or less per cubic foot charges shall not be less than those computed on basis of 18 pounds per cubic foot at the applicable 4th class rate.

NOTE 1: Minimum weights apply to each described article in the shipment and not to the shipment as a whole,

NOTE 2: Where volume of all of a group of identical pieces of each described article as a unit would be the same as the sum of the individual pieces, such pieces may, for convenience, be measured as a unit;

NOTE 3: Except as provided in Note 8, where volume of all of a group of identical pieces of each described article packaged as a unit would be less than the sum of the individual pieces, such pieces shall be measured as a unit.

NOTE 4: Cubic measurement for the application of this item shall be that for the smallest rectangular space within which the extreme dimensions of the article can be contained. Fractions of inches under one half inch will be dropped and fractions of one half inch or over will be increased to the next full inch.

NOTE 5: Where this rule is used to determine freight charges, measurement of the articles so affected must be shown on the freight bill.

NOTE 6: This rule will not apply on shipments of empty carriers returning as described in and subject to the provisions of Item 300 of PSFB Exception Sheet 1-S. (In Agent E. J. McSweeney's Tariff No. 1 (Cal. P.U.C. No. 1), also refer to Item 590).

NOTE 7: Applicable tariff or W.C. minimum charge provisions will apply in lieu of provisions of this rule if their application results in higher charge.

NOTE 8: In measuring rolls or cylindrical articles, use the square of the mean diameter.

NOTE 9: When pallets are part of a package, measurements will exclude the pallet.