

Decision No. 58732**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into
the rates, rules and regulations, charges,
allowances and practices of all common
carriers, highway carriers and city
carriers relating to the transportation
of any and all commodities between and
within all points and places in the State
of California (including, but not limited
to, transportation for which rates are
provided in Minimum Rate Tariff No. 2).

Case No. 5432
Petition for Modification
No. 140

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 property in Los Angeles and Orange
Counties (transportation for which rates
are provided in City Carriers' Tariff
No. 4 - Highway Carriers' Tariff No. 5).

Case No. 5435
Petition for Modification
No. 18

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 property within San Diego County
(including transportation for which rates
are provided in Minimum Rate Tariff No.
9-A).

Case No. 5439
Petition for Modification
No. 6

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 property in the City and County of
San Francisco and the Counties of Alameda,
Contra Costa, Santa Clara, San Mateo,
Marin, Monterey, Napa, Santa Cruz,
San Benito, Solano and Sonoma.

Case No. 5441
Petition for Modification
No. 34

A. L. Russell, for Sears, Roebuck and Co., petitioner.
Joseph Robertson, for Robertson Drayage Co.;
Roger Ramsey, for United Parcel Service, respondents.
Carl C. Sheets, for Montgomery Ward & Co.; J. C. Kaspar,
A. D. Poe and J. X. Quintrall, for California
Trucking Associations, Inc., interested parties.
Edward E. Tanner, for the Commission staff.

O P I N I O N

Sears, Roebuck and Co. operates retail stores at a number of points and places in California and also conducts a mail-order business in the sale of goods at retail. At thirty-one places where it operates retail stores, Sears performs the delivery of goods sold in its own trucks. In Los Angeles, San Diego and the San Francisco Bay Area, deliveries are made by for-hire carriers. The individual carriers performing this transportation have received authorization from the Commission to deviate from the minimum rates. By these petitions, Sears seeks to have a provision incorporated in Minimum Rate Tariff No. 2 and the several drayage tariffs which would exempt the transportation from the application of the minimum rates.

Public hearing was held on the petitions May 19, 1959 before Examiner J. E. Thompson at San Francisco.

The language proposed by Sears which would exempt the traffic from the provisions of the several minimum rate tariffs is:

"Commodities which have been sold at retail by a retail merchant, and transported from a retail store or retail store warehouse to residences of retail customers, or transported from residences of retail customers to retail stores or retail store warehouses, and such transportation is performed in vehicles in the exclusive use of the retailer and providing no shipment exceeds 2,000 pounds in weight. Further that the merchandise is for the use or consumption of retail customers and is not for use in the furtherance of an industrial or commercial enterprise; and provided that the retailer shall certify on the shipping document for each delivery that the merchandise was sold at retail to a retail customer."

Sears, in the course of its business, sells many types and kinds of merchandise at retail. A substantial portion of this merchandise is delivered to the home or place of residence of the purchaser. Appliances and home furnishings, for the most part, are delivered uncrated set up and are installed ready for use. Robertson

Drayage Co. performs delivery service for Sears in an area extending about 45 miles about San Francisco. Signal Trucking Service performs the deliveries to points generally within a radius of 60 miles of Los Angeles. The type of service performed by Robertson is substantially the same as that performed by Signal. Sears provides Robertson with about 5,000 square feet of dock space at its warehouse. Sears' employees assemble the goods to be delivered on this dock space. Robertson has one or more supervisors at the dock and provides between 12 and 25 trucks which are used exclusively during any one day for the delivery of Sears' merchandise. The trucks are loaded by Robertson's employees. Each truck has a driver and a helper who are furnished with detailed written instructions by Sears of the manner in which deliveries are to be effected. Robertson enforces these instructions. Two of the instructions as set forth in Exhibit No. 140-5 are indicative of the nature of the services performed:

"Home Furnishings

Place merchandise in room indicated by the customer. Assemble beds and place mattresses and box springs on bed. Attach mirrors to the furniture on which they belong; do not hang on walls. Lay rugs and pads when requested by customer."

"Appliances

Place all appliances in exact spot indicated by the customer. If requested, move old appliance to indicated place in customer's home. Unpack and dispose of material. Plug in appliance and operate to see if functioning properly. Instruct customer in use. Appliances must be leveled in the home and any finger marks or other dirt wiped off."

As we stated in Robertson Drayage Co., 55 Cal. P.U.C. 60 (1956), the delivery service Robertson performs for Sears is entirely different from the transportation service usually and ordinarily performed by common carriers. Robertson received authority to deviate from the minimum rates in the transportation of property

for Sears in 1948 by Decision No. 41952 in Application No. 29587. As is the usual practice in connection with the granting of such authority, it was limited to a period of one year. Since 1948, Robertson has filed some thirteen supplemental applications for renewal of the authority. The supplemental applications have been granted, usually without hearing.

The rates charged for these services are negotiated from time to time by Sears and Robertson. Each month Robertson prepares a summary of revenues and expenses covering the operation and furnishes a copy to Sears. The general level of the rates negotiated is based upon those summaries. Because of rising costs of operations, the negotiations have resulted in increases in rates rather than downward adjustments. In at least one instance, the adjustment in rates was made retroactive because of retroactive wage increases required to be paid by Robertson.

Signal Trucking Service received authority from the Commission in 1941 to deviate from the minimum rates in the transportation of property for Sears. Since that time there have been twelve supplemental applications seeking to extend the authority. In every instance the authority sought has been granted. The operations of Signal are of the same type and character described above as being performed by Robertson. Signal also prepares a monthly summary of revenue and expense and the rates are negotiated in the same manner as described above.

The carrier performing service at San Diego did not testify in the proceedings as did the managements of Robertson and Signal. A representative for Sears stated that the type of service performed and the operations conducted at San Diego are similar to those described above and that the carrier performing the service

is one which the Commission exempted from minimum rates in Finding No. 14 in Decision No. 31606, as amended.

It was established that the proposed exemption is designed solely for the transportation problems of Sears and that, under present circumstances and conditions, the only retailer that could engage carriers under the proposed exemption would be Sears.^{1/}

While the deliveries from Sears' retail stores presently move at rates other than the minimum rates, it seeks an exemption in the several tariffs for a number of reasons. Under the present scheme of things, if Sears desires to engage a for-hire carrier to replace its proprietary trucking operations at one or more of its retail stores, the carrier it engaged would be required to obtain authority to deviate from the minimum rates. In order to obtain that authority from the Commission, it would be necessary to furnish cost data showing the proposed rates would be reasonable. The data could be developed only from experience in conducting the operation. While the carrier was obtaining the experience, it would be required to assess rates no lower in volume or effect and in the same form as the minimum rates. Under such circumstances, Sears is reluctant to change from its proprietary operations, not because the minimum rates might exceed the negotiated rates, but because the form of the minimum rates with respect to accessorial services is not suitable to their internal business procedures. As was pointed out in

^{1/} Montgomery Ward & Co. is a large concern operating retail stores as well as a mail-order house. It uses other media of transportation and, under present circumstances and conditions, the manner in which its traffic moves is not adaptable to operations within the proposed exemption.

Robertson Drayage Co., mentioned hereinabove, the application of that carrier, for the most part, sought authority to deviate from the rules respecting the application of rates rather than authority to charge rates lower in volume than the minimum rates established for the transportation services involved.

Sears also desires greater flexibility in negotiating with its present carriers regarding charges for new or expanded services. Under present conditions when Sears desires Robertson or Signal to inaugurate a different type of service with respect to a particular article or a new product at a rate based upon the service to be rendered, the carrier must first obtain authority from the Commission. It was stated that while the authority has been forthcoming in the past, the delay involved in the preparation of a petition by the carrier and the issuance of an order by the Commission is undesirable.

Robertson and Signal support the petitions herein. No one opposed the granting of the petitions. United Parcel Service objected to one phrase of the suggested exemption,

"...and is not for use in the furtherance of an industrial or commercial enterprise...."

on the grounds that the retailer is in no position to police the use of the goods that it has sold at retail. The California Trucking Associations, Inc., does not oppose the sought exemption as proposed by petitioner. Its counsel stated that they were opposed to the deleting of any of the restrictive language, including that portion to which United Parcel objects. Apparently the provision has some significance with respect to the business conducted by Sears. It has a commercial sales department which it calls Division 400 in which goods are apparently sold in quantities and in packaged or

unassembled form. The transportation of such goods to the purchasers is not performed by Robertson or Signal under the special rates.

We have considered all of the evidence. In the past we have found that the rates negotiated by Sears and Signal and Robertson have been reasonable, and, in light of the unique circumstances and conditions surrounding the operations, more suitable in their application than the minimum rates for the transportation. From the actions of Sears in the past with respect to its carriers and from the fact that for the past seventeen years the negotiated rates have been found by the Commission to be reasonable, it is highly improbable that the earnings of the carriers will be dissipated as a result of future negotiated rates. In any event, examinations of the operations may be made periodically by the Commission's staff so that the Commission may be informed at any time that it may appear that the operations of the carriers in the transportation of property for Sears are a burden upon other operations conducted by said carriers. In the circumstances, the granting of the petitions is not adverse to the public interest and would be of benefit to Sears and to the carriers engaged by it. Upon consideration of all the facts and circumstances of record, we are of the opinion and find that the petitions should be granted. The order herein will provide for the amendment of Minimum Rate Tariff No. 2. The other minimum rate tariffs will be amended by separate orders in order to avoid duplication of tariff distribution.

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 Minimum Rate Tariff No. 2 (Appendix D of Decision No. 31606, as amended) is further amended by incorporating therein, to become effective July 31, 1959, Thirty-ninth Revised Page 14, which revised page is attached hereto and by this reference made a part hereof.

In all other respects, Decision No. 31606, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 7th
day of July, 1959.

Ernest R. Page
President
John E. Dettmer
William H. Gable
E. L. Fox
Theodore J. Jenner
Commissioners

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	<p data-bbox="627 433 1139 509" style="text-align: center;">APPLICATION OF TARIFF-COMMODITIES (Items Nos. 40 and 41)</p> <p data-bbox="297 522 1305 598">Rates in this tariff apply for the transportation of all commodities, except the following:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p data-bbox="289 611 817 879">Accessories, motion picture, Automobiles, set up, Automobile parts, accessories, and related articles in secondary movement by Truckaway Service when subject to the rates, rules and regulations set forth in Minimum Rate Tariff No. 12, Baggage, Butter, dairy (Subject to Note 8), Buttermilk, liquid (Subject to Note 2), Carriers (used packages, as de- scribed in Item No. 300 of Ex- ception Sheet, empty returning or forwarded for return loads (Subject to Note 1), Cement, hydraulic, masonry, natural or Portland--also lime, common (including magnesium lime, hy- drated or hydraulic lime, quick or slaked), cement flue dust, and/or limestone, powdered, shipped in mixed shipments with cement--when transported in shipments of 40,000 pounds or more, or when transported in shipments of lesser weights subject to the rates, rules and regulations, including the minimum charge computed on a minimum weight of 40,000 pounds, which are set forth in Minimum Rate Tariff No. 10, Cement Clinker, Cheese (including cottage cheese and pot cheese) (Subject to Note 8), Commodities transported under the vehicle unit rates, rules and regulations of Minimum Rate Tariff No. 5, applicable within Los Angeles and Orange Counties, Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low- bed trailers, Commodities when transported in dump trucks, for which rates are provided in Minimum Rate Tariff No. 7,</p> </div> <div style="width: 48%;"> <p data-bbox="842 611 1387 853">Directories, telephone, Eggs (other than shelled, desiccated or frozen), Fertilizers, as described in Items Nos. 535, 540 and 550 of the Exception Sheet, Film, motion picture, Fruit, dried, unmanufactured and unprocessed (Subject to Note 4), Fruit, fresh or green (not cold pack nor frozen), Fungicides, agricultural, Furniture, household appliances and other home furnishings which have been sold at retail by a retail merchant, transported from retail stores or retail store warehouses, or transported from retail custo- mers to retail stores or retail store warehouses (Subject to Note 3), Furniture, uncrated, new, as described in and for which rates are provided in Minimum Rate Tar- iff No. 11-A, and furniture, un- crated, new, of state, county or municipal governments, or transpor- ted under an agreement whereby the governments contracted for the carrier's services, Hops, House Trailers, set up, Ice Cream Mix, unflavored, Insecticides, agricultural, Jewelry transported from or to wholesale houses in packages weighing 10 pounds or less, Liquids, compressed gases, commo- dities in semi-plastic form and com- modities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles, Livestock, Logs (wood) Margarine (Subject to Note 8), Milk, liquid (Subject to Note 2), Newspapers; newspaper supplements, sec- tions or inserts; (not scrap or waste),</p> </div> </div>

*40-MM
Cancels
40-LL

Commodities which consist of or contain materials essential to National Defense and which have been donated to and are transported for the United States Government, governmental agencies, or nonprofit organizations acting for or in behalf of said government in the collection, assembly or transportation of said commodities in connection with the recovery of said essential materials from the commodities transported,

#o Commodities which have been sold at retail by a retail merchant, and transported from a retail store or retail store warehouse to residences of retail customers, or transported from residences of retail customers to retail stores or retail store warehouses, and such transportation is performed in vehicles in the exclusive use of the retailer and providing no shipment exceeds 2,000 pounds in weight. Further, that the merchandise is for the use or consumption of retail customers and is not for use in the furtherance of an industrial or commercial enterprise; and provided that the retailer shall certify on the shipping document for each delivery that the merchandise was sold at retail to a retail customer,

Concrete transported in motor vehicles equipped for mechanical mixing in transit,

Cotton,

Cream (Subject to Note 2),

Nuts, edible, in the shell,
Optical goods transported from or to wholesale houses in packages weighing 10 pounds or less,

Pits, fruit,

Poultry, live or dressed,

Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services,

Property shipped to or from producers of motion pictures or television shows when transported subject to the rates, rules and regulations provided by Decision No. 33226, in Cases Nos. 4246 and 4434, as amended,

Property transported to a United States Post Office for mailing and United States mail transported from a post office to the addressee thereof (Subject to Note 11).

(Continued in Item No. 41)

* Change)
o Reduction)
Addition)

Decision No. 58732

EFFECTIVE JULY 31, 1959

Issued by the Public Utilities Commission of the State of California;
Correction No. 927
San Francisco, California.