

ORIGINALDecision No. 60491

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BRUNO MALUCCHI, doing business under
the firm name and style of A. M.
DEVINCENZI COMPANY for an order
granting permission to charge less
than the minimum rates for the trans-
portation of flour for certain cus-
tomers located at points outside the
City and County of San Francisco.

Application No. 41696

In the Matter of the Application of
BRUNO MALUCCHI, doing business under
the firm name and style of A. M.
DEVINCENZI COMPANY for an order grant-
ing permission to charge less than
the minimum rates for the transporta-
tion of flour for certain customers
located at or near 1598 Carroll
Avenue, in the City and County of
San Francisco.

Application No. 41697

Bruno Malucchi, applicant.
Elmer P. Delany and Edward P. O'Haire, for
applicant.
F. W. Fuller, for Fisher Flouring Mills Co., Inc.;
M. A. Kasen, for Centennial Mills, Inc.; David
Rubinstein, for Retail Bakers' Association of
San Francisco; J. C. Kaspar, Arlo D. Poe and
James Quintrall, for California Trucking
Associations; Russell Bevans, for Draymen's
Association of San Francisco; Ralph Hubbard,
for California Farm Bureau; interested parties.
Grant L. Malquist, A. R. Day and Edward E. Tanner,
for the Commission's staff.

O P I N I O N

By Application No. 41696, as amended, Bruno Malucchi, doing business as A. M. Devincenzi Company, seeks authority to deviate from the established minimum rates in the transportation of flour from San Francisco to numerous points of destination ranging from Healdsburg and Napa on the north, and Pittsburg and Tracy on the east, to Greenfield and Carmel on the south. Transportation to some of these destinations is performed under applicant's highway common

carrier certificate, while that to the remainder is under his highway contract carrier permit.

By Application No. 41697, Malucchi seeks authority as a city carrier to transport flour for ten flour companies, within the City and County of San Francisco at rates less than the established minimum rates.¹ By Decision No. 59414, dated December 21, 1959, the authority sought in Application No. 41967 was granted on an interim basis pending the appraisal of evidence to be received at a public hearing. That authority is now scheduled to expire on August 31, 1960.

Public hearing of Applications Nos. 41696, as amended, and 41697 was held on a consolidated record before Examiner Carter R. Bishop at San Francisco on January 12 and 13, February 29, April 19 and May 9, 1960. On the last-named date Application No. 41697 was submitted. Application No. 41696 was submitted with the filing of an additional amendment thereto on June 10, 1960.

Application No. 41696

The filing of this application was prompted as a result of the following circumstances:

Prior to October 30, 1959, the Commission's Minimum Rate Tariff No. 2 contained so-called distance scales of commodity rates on grain, flour, and other grain products, state-wide in application, for each of the following weight brackets: any-quantity, 2,000, 4,000, 10,000, 20,000 and 30,000 pounds.² Effective on the above-mentioned

¹ The companies are Monarch Flour Company, Fisher Flour Mills, Centennial Mills, Inc., Cook Flour Co., Coast Dakota Flour Co., General Mills, Terminal Flour Mills Co., Blue & Gold Sales Service, Joe Lowe Corporation and Pillsbury Mills.

² The rates in question were published in Item No. 654-F of the tariff.

date, however, the any-quantity, 2,000 and 4,000 pound commodity rate scales were cancelled, allowing class rates or the 10,000 pound lot commodity rates to apply in lieu thereof. This revision in the minimum rate structure was made by Decision No. 59084, dated September 29, 1959, in Case No. 5432 (Order Setting Hearing dated June 17, 1958).

The effect of the above-mentioned cancellation was to increase the applicable minimum rates on the so-called "small lot" shipments of flour (those which fell in the any-quantity, 2,000 and 4,000 pound categories) by varying amounts. According to the record, these increases, reflecting the differences between the prior commodity rates and the present fourth class rates, range as high as 104 percent, if not higher.

Applicant has, for some years past, handled the shipments of flour of a limited group of San Francisco wholesalers, whose consignees are largely bakeries and restaurants scattered throughout the area embraced by Application No. 41696. On learning of the drastic increases in the small shipment rates, these shippers complained to applicant. In many cases it was found cheaper, under the revised minimum rate structure, to assess charges on a 4,000 pound shipment of flour on the basis of the 10,000 pound commodity lot rate, at the minimum weight of 10,000 pounds, than to apply the 4,000 pound fourth class lot rate. The reasonableness of this situation, according to the record, was particularly difficult for applicant's shippers to comprehend.

Following receipt of the complaints of the small lot flour shippers, applicant filed Application No. 41696. The basis for the proposed rates, according to his testimony, is as follows: the proposed rates reflect the former small lot commodity minimum rates increased by 25 percent, and in some cases 30 percent, to reflect increased operating costs of applicant. Additionally, applicant proposes that the rates so constructed shall be subject to the

per-shipment surcharges set forth in Supplement No. 47 of Minimum Rate Tariff No. 2, applicable to shipments originating or terminating within the so-called "Central Coastal Territory". Applicant further proposes that the sought rates shall be subject to any modification in said surcharges which may be made as the result of Petition for Modification No. 178 in Case No. 5432, now pending before the Commission, or of any other proceeding.

The record shows that all of the ten wholesalers who utilize applicant's services in the transportation of their consignments store their flour at applicant's warehouse.³ This facility is located on the carrier's premises adjacent to his truck terminal. Because of these circumstances, applicant testified, the transportation here in issue is accomplished with unusual efficiency. No time is consumed and no expense incurred by the carrier's equipment in movements from the terminal to points of pickup. Moreover, shipments from different consignors can be so loaded at applicant's warehouse on a particular truck as to promote the most economical routing in accomplishing deliveries.

Witnesses presented by applicant included, among others, persons associated with four of the flour companies, respectively, named in Footnote 1, supra.⁴ The evidence adduced through these witnesses may be summarized as follows:

The preponderance of the flour shipments of two of these companies falls in the small lot weight brackets here in issue. In the case of a third company, prior to the cancellation of the commodity rates a third of its shipments were in the small lot category; as of May 1960, the number had declined to about 10 percent of the

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The record indicates that the flour moves inbound to the warehouse by rail in carload lots.

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One of the shipper witnesses is the proprietor of his organization, Monarch Flour Company.

total. The fourth dealer is mostly concerned with lots weighing 10,000 pounds or more.

The cancellation of the small lot commodity rates has resulted in exorbitant increases in transportation charges. As a consequence, the flour dealers in many instances have not been able to absorb the rate increases and have had to advise their customers to get their flour from other sources. Assertedly, certain large flour companies, which do not utilize applicant's services, make deliveries to the communities here involved in their own vehicles and are not affected by the flour rate increases. A further effect of the loss in business experienced by applicant's shippers has been that, at least in two instances, salesmen employed by the latter had to be released.

The adverse effect of the rate increases in the small lot brackets has been to some extent offset by the practice of consolidating individual consignments into large split-delivery shipments weighing 10,000 pounds or more. These shipments are assessed the 10,000 pound commodity lot rates plus the applicable split-delivery charges. However, one of the principal shipper witnesses stated that there are some undesirable features attendant upon this practice, and that, if the rates sought herein are authorized, his company in many instances would revert to the practice of making straight shipments in the lower weight brackets. The shipper witnesses were particularly exercised over the present rate situation wherein frequently the lowest charge on a 4,000 pound shipment of flour is determined by charging for 10,000 pounds at the commodity rate applicable to the latter quantity.

The shipper witnesses were generally of the opinion that if the sought rates are authorized their companies will be able to regain at least a portion of the small lot traffic which they have lost and to continue to enjoy the business in that category which they have been able to keep. As hereinbefore stated, the proposed

rates are somewhat higher than the former commodity rates. In some instances the proposed rates, although lower than the presently applicable class rates, may, according to shipper testimony, be too high to be acceptable.

Applicant attempted, through two accountant witnesses, to show that his intercity operations in the transportation of flour are profitable and that the proposed rates will be reasonable. One accounting witness testified concerning a financial statement attached to the application, which statement purported to show results of applicant's highway operations for the 12-month period ending December 31, 1958. However, by an amendment this statement was deleted from the application, apparently because of certain infirmities in it which were brought out through examination of the witness. According to a subsequent financial statement introduced at an adjourned hearing, applicant received from all his transportation operations for the year 1959 revenues of \$239,223 and incurred operating expenses of \$214,726. The net transportation operating revenue reflected thereby amounted to \$24,497, before income taxes. No segregation was made between the intercity flour hauling and applicant's other traffic.

At adjourned hearings the second accountant testified concerning a study which he had made of the costs incurred by applicant in transporting shipments of flour on four actual selected runs. The estimated costs so developed were compared with the charges collected, and what they would be if all lots had been treated as separate shipments under present (class) rates and the sought rates, respectively. In this connection, it develops that with the exception of a portion of one load, all shipments studied reflected consolidations into split-delivery shipments of 10,000 pounds or more, on which 10,000 pound lot commodity rates were assessed. According to the record, most of applicant's intercity loads of flour shipments

include, on the same truck, other commodities which he also transports. It was difficult, therefore, to find representative runs consisting wholly of flour shipments, for the purposes of the study.⁵

Apart from certain weaknesses in the cost study which were brought out in examination of the witness, it is obvious that estimated costs of transporting flour from San Francisco to the limited number of destinations included therein⁶ is insufficient to establish the reasonableness of rates proposed to the more than 50 points of destination involved in the instant request.

Representatives of California Trucking Associations, the Draymen's Association of San Francisco, and of the Commission's Transportation Engineer and Rate Branch staffs assisted in the development of the record. Although California Trucking Associations appeared as an interested party, its representative, in argument at the close of the hearings, expressed the opinion that applicant had failed to justify the sought relief, particularly as to the certificated carrier operations in issue, and urged that Application No. 41696 be denied. The representative supported his position with citations of pertinent decisions of this Commission.

Conclusions

As hereinbefore stated, this application had its genesis in the cancellation, in the Commission's Minimum Rate Tariff No. 2,⁷ of the commodity rates on flour in the any-quantity, 2,000 pound and 4,000 pound weight brackets. It is, therefore, pertinent for the purposes of the instant proceeding to inquire into the reasons for said cancellations. They are found in the Examiner's Proposed Report

⁵ One of the trips studied included some other commodities in addition to flour.

⁶ Fourteen destination points were included in the study. However, the costs developed were not to individual destinations but were costs per trip, each involving several points of destination.

⁷ Corresponding cancellations were, under the Commission's order, made in the common carrier tariff published and filed for applicant's account.

which preceded the issuance of the aforesaid Decision No. 59084 in Case No. 5432.⁸ At Page 12 the following statements appear:

"The rate expert stated that movements of less than 10,000 pounds is relatively insignificant. He therefore recommended that commodity rates for less than 10,000 pounds be canceled."

The rate expert in question is the Commission's staff member who proposed the revised commodity rate scales which were subsequently adopted in Decision No. 59084. According to the proposed report, the rate recommendations of the witness were predicated on his study of the volume of movement of grain and grain products, as well as upon other rate-making considerations. The above-cited testimony relates not only to flour, but to the entire range of grain and grain products.

The record in the instant proceeding has brought to light that there is, or at least was, prior to the aforesaid rate cancellations, a substantial movement of flour shipments embraced by the aforesaid weight brackets, from San Francisco to the points of destination involved in Application No. 41696. Additionally, the record herein shows that such movement has prevailed for many years. The commodity rates in question have been in effect (subject to various horizontal increases to offset rising costs) since 1939. Shipper witnesses testified that they had enjoyed the flour business of some customers for as many as 40 years, and that in connection with such business the services of applicant have been used continuously over correspondingly lengthy periods.

While the sought rate relief has not, in our opinion, been justified by the cost evidence of record, it appears from applicant's testimony and that of the shipper witnesses, considered in the light of the facts surrounding the cancellation of the aforesaid commodity rates, that applicant should be authorized to charge less than minimum rates on the traffic here in issue. The sought rates reflect the

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The proposed report in question is that of Examiner William E. Turpen, dated May 22, 1959.

former commodity rates increased by 25 or 30 percent to offset increases in operating costs incurred by applicant up to the time of the filing of the original application. They will be subject to the Central Coastal Territory surcharges now in effect and as such may be adjusted by future order of the Commission. We also bear in mind that in transporting the flour here in issue applicant does not incur the pickup costs which are normally encountered in highway carrier operations.⁹

Upon careful consideration of the record as a whole we are of the opinion and hereby find that the rates and charges proposed in Application No. 41696, both for contract carrier and certificated carrier movement, are reasonable, and are justified by transportation conditions. The application will be granted. At the hearing, applicant proposed that the sought rates be made applicable to "Flour with not to exceed 6% chemical ingredients." The order which follows will so provide. Applicant also requests that the rates to be published in his common carrier tariff be made nonintermediate in application. However, no evidence was offered in support of the proposed relief from the long-and-short-haul provisions of the Constitution of the State of California and of the Public Utilities Code. The request is hereby denied.

The authority to deviate from minimum rates as a contract carrier will be restricted, as proposed in the application as originally filed, to transportation to be performed for the ten flour companies specified in Footnote 1.

Since the circumstances may change, the authority to be granted pursuant to the foregoing findings and conclusions will be made to expire at the end of one year, unless sooner cancelled, changed or extended by order of the Commission.

⁹The proposed rates for certificated operations would apply from all points within applicant's pickup and delivery limits for San Francisco. Any common carrier shipments tendered by, and at the premises of shippers other than those specified in Note 1, supra, would, of course, entail the costs of pickup service.

Application No. 41697

Applicant herein was initially authorized to deviate from the minimum rates in the transportation, as a city carrier, of flour between points in San Francisco by Decision No. 50786, dated November 23, 1954, in Application No. 35575. That temporary authority was extended in successive years and expired on August 1, 1959. By Application No. 41697, Malucchi seeks a reinstatement of the former relief at substantially higher rates than those authorized in 1954. As previously stated, the relief sought herein was granted ex parte on an interim basis by Decision No. 59414 of December 21, 1959, and is now scheduled to expire August 31, 1960. Specifically, we stated in that decision, "Subject to review upon consideration of additional evidence which may be adduced at public hearing, it appears, and the Commission finds, that the proposed rates and charges are reasonable and consistent with the public interest."

The evidence adduced in support of Application No. 41697 at the public hearing shows that applicant's operations in the transportation of flour within San Francisco are substantially the same as they were in 1954 and as hereinbefore described in connection with applicant's highway carrier operations; that said city carrier operations are unusually efficient; and that the rates herein sought are highly desirable in order to maintain a competitive relationship between the flour dealers who utilize applicant's services and those who perform their own transportation of flour within San Francisco, provided such rates were compensatory.

A statement attached to the application purported to show the gross revenues, expenses and net revenue of applicant's city carrier operations in the transportation of flour only, for the year 1958. However, the accountant who prepared the statement was unable to explain satisfactorily certain discrepancies therein. These defects were not resolved during the hearings, and at the closing

session, on motion of the representative of the California Trucking Associations, said statement was excluded from the evidence. No other evidence was offered by applicant to show that operations under the rates sought in Application No. 41697 would be compensatory.

In the absence of some evidence indicative of the compensatory nature of the proposed rates in the light of current operating costs the record will not support a finding that the sought rates are reasonable. Application No. 41697 will be denied and the current temporary authorization will be cancelled.

O R D E R

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

IT IS ORDERED that:

1. Bruno Malucchi, operating as a highway contract carrier, is hereby authorized to transport flour, with not to exceed 6 percent chemical ingredients, for Monarch Flour Company, Fisher Flour Mills, Centennial Mills, Inc., Cook Flour Co., Coast Dakota Flour Co., General Mills, Terminal Flour Mills Co., Blue & Gold Sales Service, Joe Lowe Corporation and Pillsbury Mills from his terminal and warehouse in San Francisco to Boulder Creek, Carmel, Felton, Gilroy, Greenfield, Half Moon Bay, Hollister, Los Gatos, Monterey, Morgan Hill, Pacific Grove, Pinole, Pleasanton, Salinas, San Juan, Santa Cruz, Soquel, Watsonville, Corte Madera, Eldridge, Fairfax, Tiburon, Healdsburg, Livermore, Mill Valley, Napa, Novato, Petaluma, Pittsburg, San Anselmo, San Rafael, Santa Rosa, Sausalito, Sebastopol, Sonoma, Tracy and Vallejo, at rates less than the minimum rates but not less than those set forth in Appendix A of Application No. 41696 opposite said destination points, respectively.

2. Bruno Malucchi is hereby authorized to publish and make effective on not less than five days' notice to the Commission and to

the public, rates on flour, with not to exceed 6 percent chemical ingredients, from San Francisco to the points listed in Appendix A of Application No. 41696 other than those specified in paragraph 1 of this order, which rates may be less than the minimum rates but not less than those set forth in said appendix opposite said points.

3. The rates authorized in paragraph 1 of this order shall be subject to the rules and per-shipment surcharges set forth in Supplement 47 of Minimum Rate Tariff No. 2, and the rates authorized in paragraph 2 of this order shall be subject to corresponding rules and surcharges provided in the common carrier tariff or tariffs published and filed for applicant's account. The rates authorized in paragraphs 1 and 2 of this order shall be subject to the aforesaid rules and surcharges as they may be modified by this Commission's order pursuant to Petition for Modification No. 178 in Case No. 5432 or to any other proceeding.

4. In publishing the rates authorized by paragraph 2 of this order, applicant is hereby authorized to make such adjustments in his published rates on flour from San Francisco to points not named in said Appendix A as may be necessary to avoid unauthorized deviations from the long-and-short-haul provisions of the Constitution of the State of California and of the Public Utilities Code.

5. The rates authorized in paragraphs 1 and 2 of this order shall be subject to the "Any-Quantity", 2,000 pound and 4,000 pound weight brackets, respectively, and shall not prevent the maintenance and observance of lower rates subject to higher weight brackets under outstanding minimum rate orders of the Commission.

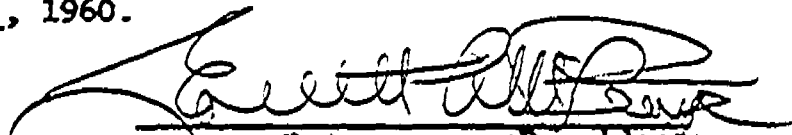
6. The authority granted in paragraphs 1 and 2 of this order shall expire one year after the effective date of this order unless sooner cancelled, changed or extended by order of the Commission.

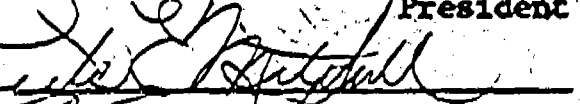
7. The authority granted in paragraph 2 of this order shall expire unless exercised within ninety days after the effective date of this order.


8. Application No. 41697 is hereby denied and the temporary authority granted by Decision No. 59414, as amended by Decision No. 59403, in that application, is hereby cancelled effective with the effective date of this order.


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


Dated at San Francisco, California, this 2nd day of August, 1960.



President








Commissioners