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ORIGINAL

Decision No. 60785

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PACIFIC SOUTHCOAST FREIGHT BUREAU for authority to publish classification exception ratings on various commodities.	Application No. 40562 (as Amended)

O P I N I O N

By application filed October 31, 1958, Pacific Southcoast Freight Bureau seeks authority to publish in its Tariff No. 255 exception ratings higher than those maintained in the Western Classification and in its Exception Sheet No. 1.

Public hearings were held and a proposed report was prepared and filed June 3, 1960, by Examiner Jack E. Thompson. Exceptions were filed by applicant, by protestants Tung Sol Electric, Inc., and Lavery & Company. A reply to the exceptions of protestants was filed by applicant. Replies to exceptions taken by applicant were filed by Larson Ladder Co. and other ladder manufacturers, and Rheem Manufacturing Company and other manufacturers of drums, protestants; and by California Manufacturers Association, interested party. The matter was taken under submission July 25, 1960, the last date for the filing of replies to exceptions.

The examiner recommended that the sought increases in carload ratings be denied and, with certain exceptions, the sought less-than-carload ratings be authorized.

Applicant's Exception No. 1 - Ladders.

The examiner recommended the following conclusion:

> "We are of the opinion that where an applicant in the past has established a lower exception rating, apparently for the purpose of developing an industry, and after maintaining said rating for a number of years seeks to increase the rating, it has a greater burden of proof in justification for an increase than might otherwise obtain. We believe that it is incumbent upon applicant to state the circumstances and conditions which led to the establishment of the lower exception rating and to show that those circumstances no longer obtain. To do otherwise would be to permit the possibility of the use of sand-bagging tactics. . . ."

Applicant takes exception to that statement as suggesting some theory of estoppel: that carriers having once established a low rating for the attraction of industry are stuck with it until they can somehow show some shifting in the equities of the situation. It cites Southern Pacific Co. vs. Interstate Commerce Commission, 219 U.S. 433 (1911) wherein an order of the I.C.C. prohibiting the Southern Pacific Company from increasing a lower than reasonable rate it had published on the grounds that it would not be equitable to those industries who had invested capital in reliance upon the depressed rate was annulled by the Supreme Court as an unlawful exercise of authority.

The powers of the Commission and the Interstate Commerce Commission regarding rate fixing, while similar, are not the same. Before any increased rate may become effective in California it must be approved by the Commission on a finding that the increase is justified. The finding of the Commission in that regard is not subject to review by any court except upon grounds of confiscation of property,(1) and will not be set aside except on a clear showing of confiscation. Increased interstate rates may be published by carriers and become effective unless the I.C.C. intervenes and, after investigation, cancels them on a finding that they are unreasonable or

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(1) Constitution of the State of California, Article XII, Section 20.

otherwise unlawful. The evidence of record does not show that a third class rating on stepladders is so low as to be confiscatory, or to be unreasonably low.

We have said that under ordinary circumstances carriers should be authorized to adjust their own rates within the zone of reasonableness so long as those rates are just, nondiscriminatory or otherwise not unlawful. This does not mean that carriers should be allowed to make those adjustments irresponsibly. When a carrier has singled out a particular commodity for special treatment or reduced rates it should have a reason for so doing. When thereafter that article is again singled out for special treatment in the form of increased rates, the carrier should have special reasons for doing that. The circumstances surrounding the special treatments are facts necessary to a determination of the justification for the increase. This should not surprise applicant. In J. P. Haynes, Agent, (1959) 57 Cal P.U.C. 10, applicant was authorized to cancel an exception rating on furniture and was denied authority to cancel an exception rating on household goods. We said there,

> "Nor has it been shown that the factors and considerations justifying the exception rating (on household goods) at the time it was established no longer are present or have diminished in importance. In the case of furniture it was shown that the exception rating was published to meet carrier competition and that such an exception is no longer necessary. . . ."

It is not a matter of equities, it is a matter of the presentation of facts by applicant in justification for its proposal. Applicant presented evidence indicating that wooden ladders as shipped have a density of 4.3 pounds per cubic foot. Protestants offered evidence indicating that wooden stepladders have an average density of around 4 pounds per cubic foot and wooden extension ladders are

around 8 or 9 pounds per cubic foot. There is no indication in the record that the form of wooden stepladders has changed since 1932. Applicant in 1932 published an exception rating of Third Class applicable to wooden stepladders. The presumption is that the exception rating was reasonable then and in the absence of changes in circumstances or conditions is reasonable now. Applicant now wishes to remove the exception rating which is lower than the rating in the Western Classification and publish an exception rating higher than that in the classification. Surely the Commission is entitled to know, and indeed must know, in making a decision as to whether the increase is justified, the basis of the apparent reversal of rate treatment on stepladders and whether it is based on sound discretion or whimsy. Applicant will, as stated in its exception, "be stuck" with the reduced rating until such time as it presents a showing that an increase is justified. That showing has not been made here. The exception is overruled.

Applicant's Exception No. 2 - Carload Rates.

Applicant takes exception to the examiner's refusal to recommend approval of any of the proposed increases in the carload classification ratings. It cites the record as showing that transportation of commodities effected by this application under carload class rates is conducted at substantial out-of-pocket losses and urges the Commission to deliberate most carefully upon the recommended finding and, if it believes the sought increases to be too large, to state what increases the carriers may take without exceeding what the Commission believes to be just and reasonable.

The examiner's recommendation is based on two circumstances:

(1) Applicant, on behalf of the rail lines, also publishes carload class rates in Tariff No. 294 for trailer-on-flat-car service between points for which carload class rates are maintained in Tariff No. 255. By this application it seeks to maintain higher rates for carload rail car service than it does for trailer-on-flat car service between the same points. The examiner stated that the latter is not a lesser service than straight rail carload service and, in fact, is usually considered to be a superior service in that it is faster and more flexible and that while higher rates for a lesser service between the same points is not necessarily conclusive of unreasonableness it does cast some doubt which applicant should be required to dispel.

(2) Some of the increases in rates which would result from the establishment of the increased ratings are over 1,000 percent. This results from a rule in Tariff 255 which provides that "Any Quantity" rates shall apply on carloads when the minimum weight in connection with the rating is less than 20,000 pounds and is subject to Rule 34 of the Western Classification. On shipments not loaded to full visible capacity of the car and subject to the above-mentioned rule, the carload rates would exceed the rates applicable to the shipment tendered as a less-than-carload shipment.

Those findings are supported by the evidence of record. The circumstance regarding the differences in ratings governing rates in Tariff 255 and Tariff 294 concerns all of the ratings involved herein.

The evidence offered by applicant shows that the charges applicable under present ratings and rates for certain transportation are below out-of-pocket costs. For example, Exhibit No. 2 shows that 76 cars of steel drums moved from California points to points

in the State on the lines of the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company not more than 100 miles from the point of origin during the month of January 1959. The average revenue per car was $37.50. The preponderance of the shipments moved at the minimum charge of $35.94 per car. Some of those cars moved from Richmond to Oakland. A senior rate analyst of the Southern Pacific Company testified that the out-of-pocket cost per car of the Southern Pacific Company exclusive of line haul cost, of originating a car at Richmond and terminating it at Oakland is approximately $65. This out-of-pocket cost is applicable to all cars regardless of their lading. Such evidence is persuasive that increases in rates and ratings which result in charges lower than $65 for transportation of property from Richmond to Oakland may be justified and as the charges per car on carloads of steel drums average well below that amount some increase may be justified in connection therewith. However, as shown on Exhibit 42, under the proposed rating, and the rules which would govern the application thereof, a carload of steel drums weighing 19,200 pounds, not loaded to full visible capacity of the car, would be subject to a charge of $595 and if loaded to full visible capacity or shipped as a less-than-carload shipment would be subject to a charge of $88. A charge of $595 is clearly unreasonable for such transportation.

During the hearing, counsel for applicant stated that it would not be satisfied with anything less than it is seeking and that it intends to apply all of the rules involved which govern those ratings. The assistant freight traffic manager of Southern Pacific Company, speaking for applicant and in reply to questions concerning the application of "Any Quantity" rates stated,

> "It might be we might do as we did with the furniture, make those ratings apply to scales less than the any quantity. I am not in a position to say that here."

Applicant in its exceptions stated that there should be no misunderstanding that the railroads are determined to place their unreasonably low carload charges on a compensatory basis and will not pause until those charges are brought above the out-of-pocket cost point. The Commission commends this attitude and, from as long ago as 1939, has urged the railroads to do just that.(2) Applicant now suggests that if the Commission finds that the proposed carload ratings are unreasonable, that it specify the ratings which would be reasonable.

First of all, until such time as applicant can satisfactorily show why carload rates in Tariff 255 should be greater than those in Tariff 294 for the transportation by the same carrier of the same kind and quantity of property between the same points, the Commission is unable to specify what increases are justified. However, setting that aside for the moment, as shown in the illustration above concerning the transportation of steel drums between Oakland and Richmond, a determination of a just and reasonable carload rating will in large measure be governed by the rules governing its application. Applicant appeared to be uncertain regarding possible rule changes. We suggest that in carrying out their determination to increase noncompensatory charges to a point no lower than out-of-pocket costs that the applicant pause momentarily and examine the effect that the rules will have upon proposed increased ratings.

Applicant's exceptions are overruled.

Tung-Sol's Exception No. 1 - Density of Lamps.

Exception is taken to the proposed finding that the average density of miniature incandescent lamps is 6 pounds per cubic foot.

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(2) In re Minimum Rates (1939) 41 CRC 671, 716; In re Rates on Acid (1959, D. 59184, C.6296), 57 Cal. P.U.C. 397.

A review of the record shows that while the transcript discloses that witness Hensley stated that the average density of miniature lamps is 6.06 pounds per cubic foot, this statement was obviously in error and Exhibit No. 25 shows that the weighted average density of 99.4 percent of all lamps shipped by Tung-Sol Electric Inc.'s Culver City warehouse for three months ended January 1959 was approximately 15 pounds per cubic foot. The exception is granted and Tung-Sol's proposed finding that the average density of the miniature lamps manufactured by it is 14.9974 pounds per cubic foot is adopted.

Tung-Sol's Exception No. 2 - Miniature vs Larger Lamps.

Exception is taken to the recommended conclusion that there is no material dividing line which would clearly separate miniatures from other types of incandescent lamps.

The record shows that the New England Motor Carrier Classification prescribes separate ratings for incandescent lamps, other than photoflash, not larger than 3 inches in greatest dimension and that the largest lamp manufactured by Tung-Sol is 2-3/8 inches in greatest dimension. That comprises the evidence which would support the proposal that 3 inches in greatest dimension is a reasonable delineation between so-called miniature bulbs and larger bulbs.

Westinghouse Electric Corporation manufactures a complete line of incandescent lamps. It does not favor a differentiation. One need only look about to see that incandescent lamps are manufactured in a wide range of sizes, shapes, styles and wattages, including flashlight bulbs, automobile light bulbs, Christmas tree lights of various sizes and shapes, refrigerator and oven lights, tubular shapes, walnut shapes and candle flame styles. The lamps manufactured by Tung-Sol are primarily automobile accessory types but also include flashlight and radio panel lamps. Bulbs of that type seldom if ever would exceed 3 inches in greatest dimension. However, lamps of other types and shapes mentioned above appear to be both over and under 3

inches. Upon consideration, we find that the fact that the New England Motor Carrier Classification chooses 3 inches in greatest dimension as a dividing line between miniature bulbs and other lamps, and that Tung-Sol manufactures lamps no greater in largest dimension than 2-3/8 inches is not sufficient evidence upon which we can conclude that rating on bulbs less than 3 inches in greatest dimension should be different than the ratings on larger size bulbs. Exception is overruled.

Tung-Sol's Exception No. 3 - Reasonableness of Rating.

Exception is taken to the proposed finding that a less-than-carload rating of 1½ times First Class is not greater than a maximum reasonable rating for incandescent lamps to the extent that said finding encompasses incandescent lamps, other than photoflash, less than three inches in the greatest dimension.

As stated above, the evidence does not warrant a finding of a reasonable delineation between so-called miniature bulbs and larger ones. According to the traffic supervisor of the Sunnyvale Division of Westinghouse Electric, the so-called miniatures represent less than 5 percent and probably around 2 to 3 percent of the movement of incandescent lamps.

The evidence shows that the 100-watt household lamp is the one most frequently shipped by Westinghouse. Its greatest dimension is 4-7/16 inches. The value per pound and density of this lamp is not of record in this proceeding. The weighted average density of all lamps shipped by Westinghouse, of which the 100-watt bulb is the greatest single item, is 5.55 pounds per cubic foot and the weighted average value per pound is $1.40. Next to the 100-watt bulb, the principal movements are household bulbs ranging from 25-watts to 75-watts which are of uniform size and are slightly smaller than the 100-watt bulb. The following table gives a comparison of the

approximate densities and values of bulbs of various sizes:

Greatest Dimension	Average Pounds per cubic foot	Average Value per pound
4½ inches	5.5	$1.40
*2-3/8 inches	7.8	3.91
*1 inch	15.2	4.23
*½ inch	24.5	9.02

*Displayed by witness Hensley in connection with Exhibit 25.

As may be seen, the density and the value per pound increases substantially as the bulb size decreases. We find that a rating of 1½ times First Class is not greater than a maximum reasonable rating for incandescent lamps, including the so-called miniatures. Exception is overruled.

Lavery & Co. Exception No. 1 - Minimum Rates.

Exception is taken to the statement of the examiner that minimum rates are not involved in this proceeding.

It is clear from the application, where the issues are set forth, and from the record (3) that minimum rates are not in issue in this proceeding. Except to the extent that rates lower than the otherwise established minimum rates may be published in Tariff 255, said tariff has no bearing upon the minimum rates to be assessed by highway permit carriers. Exception is overruled.

Lavery & Co. Exceptions Nos. 2 and 3 - Lamps.

Exception is taken to the recommended findings that the evidence offered by applicant is sufficient to support a prima facie case that a rating of Double First Class is not greater than a maximum reasonable rating for lamps with globes or shades not exceeding 21 inches in diameter or other dimensions at widest part.

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(3) Transcript at pages 171 and 172.

Evidence of the transportation characteristics of lamps, electric, gas or oil, noibn, consists of a report by witness Kaspar of the densities and values of these articles based upon observations of 77 shipments, photographs of the articles on the platforms of the Southern Pacific Company, and the testimony of witness Sjostrand. From that evidence we find that lamp standards and shades are packed in separate cartons of different sizes and the weight densities of the packages are different. Such shipments are not as easily stowed or handled as shipments of packages of uniform size and weight. Exhibit No. 8 shows a shipment of 2 packages containing electric lamps with shades, nested, not exceeding 21 inches. One package with a volume of 5.58 cubic feet weighed 6 pounds, the other with a volume of 5.14 cubic feet weighed 29 pounds. The density of the shipment was 3.26 pounds per cubic foot. Exhibit No. 9 shows a shipment of 76 cartons of electric lamps with nested shades not exceeding 21 inches. The packages are of 4 different sizes with some over 5 feet high and others only 12½ inches in extreme dimension. The shipment, which weighed 1,500 pounds occupied sufficient space so as to constitute almost a full load for a pickup truck. The density of the shipment, without any allowance for air space caused by stowing different size cartons, was 2.76 pounds per cubic foot. Exhibit No. 11 depicts a shipment of 3 cartons of lamps and 2 cartons of shades. Each carton is a different size and one has a protrusion which looks like a small carton attached to it. Witness Sjostrand testified that more pictures could have been taken of shipments of lamps and shades inasmuch as Southern Pacific Company has a substantial number of those shipments. We find that a rating of Double First Class is not greater than a maximum

reasonable rating for lamps, electric, gas or oil, noibn with globes or shades, including globes or shades not exceeding 21 inches in greatest dimension. Exception is overruled.

O R D E R

Public hearings having been held on the application herein, the presiding officer having made and filed a report containing proposed findings of fact and conclusions of law, and exceptions and replies to said proposed report having been considered and ruled upon, IT IS ORDERED that as modified by the foregoing opinion, the findings of fact and conclusions of law set forth in the proposed report filed June 3, 1960, in this proceeding by Examiner Jack E. Thompson are adopted and approved and that the recommended order in said proposed report is adopted, approved and entered as the order of the Public Utilities Commission of the State of California in this application.

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

Dated at San Francisco, California, this 27th day of September, 1960.

President

Commissioners