

Decision No. 63233

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of) L. V. ABBOTT (ACE CITY DELIVERY) and) 225 other applicants, to publish) classification exception ratings on) various commodities.) | Application No. 40351 |
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| In the Matter of the Application of) PACIFIC SOUTHCOAST FREIGHT BUREAU for) authority to publish classification) exception ratings on various) commodities.) | Application No. 40562 |
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| In the Matter of the Application of) certain highway common carriers and) express corporations for authority to) publish classification exception) ratings on various commodities at) levels provided by Decision No.) 59289.) | Application No. 42204 |
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J. C. Kaspar, A. D. Poe and J. X. Quintrall, for applicants in Applications Nos. 40351 and 42204, and for same as interested parties in Application No. 40562.

Charles W. Burkett, Jr. and Frederick E. Fuhrman, for applicant in Application No. 40562 and for same as interested party in Applications Nos. 40351 and 42204.

K. Paul Thorpe, for Eldon Industries, Inc.; A. E. Norrbom, by K. Paul Thorpe, for West Coast Traffic Committee of Toy Manufacturers of America, protestants.

Pete J. Antonino and Marion O. Wood, for Rheem Manufacturing Company; C. H. Costello, for Continental Can Company, Inc.; Jefferson H. Myers, for San Francisco Port Authority; Eugene A. Read, for California Manufacturers Association, interested parties.

John R. Laurie, for the Commission staff.

SUPPLEMENTAL OPINION

By Decision No. 59289, dated November 24, 1959, in Application No. 40351 and by Decision No. 60780, dated September 27, 1960, in Application No. 42204, some 379 highway common carriers

were authorized to publish in their tariffs, or in tariffs published for their account, classification exception ratings on numerous commodities higher than those theretofore applicable under the provisions of the Western Classification or exceptions thereto. By Decision No. 60785, dated September 27, 1960 in Application No. 40562, similar authority was granted to Pacific Southcoast Freight Bureau for account of the railroads which are parties to its Tariff No. 255 series.

By petitions for modification filed on June 5, 1961 in Applications Nos. 40351 and 42204, and on September 8, 1961 in Application No. 40562, applicants seek modification of the respective above-mentioned decisions to permit publication, in connection with the aforesaid exception ratings, of a rule reading as follows:

"Ratings and minimum weights apply only when such ratings and minimum weights are higher than those otherwise applicable in the governing classification and exception sheet."

According to the aforesaid petitions, the request is prompted by the following circumstances: By Decision No. 60820 dated October 4, 1960, in Application No. 41933, the Commission authorized certain changes in Western Classification ratings and related provisions. The decision also approved the classification revisions to govern the class rates set forth in the Commission's Minimum Rate Tariff No. 2 and certain other minimum rate tariffs. Some of the changes in question resulted in increases in ratings, commodity descriptions, or minimum weight provisions, over those authorized by Decisions Nos. 59289, 60780 and 60785, above. Thus, the carriers parties to the proceedings herein were, under the terms of the aforesaid Decision No. 60820, directed to make such further increases

in the affected ratings and related provisions as were necessary to comply with the Commission's outstanding minimum rate orders.^{1/}

In the petitions here in issue it is alleged that the increases which would result under Decision No. 60820 are minor, that the tariff adjustments necessary to comply with said decision would involve difficult technicalities and costly duplication in tariff publication and would create unnecessary tariff complexities, making the use and interpretation of the tariffs difficult both for carriers and shippers. Assertedly, these undesirable consequences can be avoided by the publication of the tariff rule, hereinabove set forth, which petitioners herein propose.

Public hearing of the petitions was held on a common record before Examiner Carter R. Bishop at San Francisco on November 6, 1961.

At the hearing, the petitioning carriers offered no evidence. A representative of the highway carriers pointed out that the bases for the higher classification ratings approved by Decision No. 60820 were already of record in other proceedings, recounted the reasons for the present proposal as set forth in the petitions for modification, and added that said proposal is designed to reduce tariff publication expense. In his closing statement the representative enlarged upon the complexities involved in complying with the order in Decision No. 60820 which arise from differences in details of particular commodity descriptions, as between those published in connection with the aforesaid exception ratings, on the

^{1/} It is here pointed out that, under the terms of the common carrier tariffs in which the exception ratings authorized by Decisions Nos. 59289, 60780 and 60785 were published, said ratings supersede those published in the Western Classification.

one hand, and those approved by the Commission in connection with the increased classification ratings, on the other. Concurrence in the foregoing expression was voiced by counsel for petitioner in Application No. 40562 with respect to the rail tariff publications here in issue.

A traffic official, testifying on behalf of Continental Can Company, protestant, asserted that petitioners herein are seeking blanket authority to make unspecified increases which may subsequently be established by a rail classification board (The Western Classification Committee) based on circumstances and conditions incidental to nationwide rail transportation. His company, he said, was concerned solely with possible future increases in classification ratings, since none of its products were affected by the aforesaid Decision No. 60820.

Representatives of California Manufacturers Association, Eldon Industries, and the West Coast Traffic Committee of Toy Manufacturers of America made statements in opposition to the proposal herein.

A statement on behalf of the Commission's staff was made by an associate transportation rate expert. He had made a comparison of the exception ratings and related provisions established pursuant to the above-mentioned decisions in the instant proceedings with the Western Classification changes approved by Decision No. 60820 or other decisions.^{2/} He had found a total of eight instances in which some upward adjustment of exception rating provisions is

^{2/} The rate expert had ascertained that changes in Western Classification provisions approved by Decisions Nos. 60785 and 61828, dated September 27, 1960 and April 11, 1961, respectively, also necessitate adjustment of the exception rating provisions here in issue.

necessary by reason of the mandatory provisions of the decisions which authorized the aforementioned changes in the Western Classification.^{3/}

The rate expert pointed out the difficulties which would be faced by the tariff user in attempting to apply the proposed rule. He drew attention particularly to the lack of uniformity in commodity descriptions as between those published in connection with petitioners' exception ratings, on the one hand, and those set forth in the corresponding provisions of the Western Classification, on the other hand. Under the present circumstances, the exception ratings take precedence over those in the Western Classification. If the desired rating is found in the carrier's tariff, the user need look no farther. If the proposed rule is established, it will be necessary, the rate expert pointed out, to ascertain the rating which would apply, first under the tariff exceptions, then under the Western Classification, and apply the higher of the two. By way of illustration, the staff representative showed that in some instances, particularly those where involved and divergent commodity descriptions came into play, the determination of the applicable ratings, together with related provisions, would present major difficulties to the tariff user.

The record clearly indicates the difficulties faced by the petitioning carriers in attempting to comply with the minimum rating features of Decision No. 60820 and the other Western Classification decisions hereinbefore mentioned. Their problem is to so revise their exception rating provisions as to clear the Commission's

^{3/} The proposed rule is designed, of course, to take care also of situations in which further upward revision of the exception rating provisions here in issue may be necessary by reason of future changes in the Western Classification.

minimum rate orders without sacrificing the advantages which they secured by the establishment of said exception rating provisions. At the same time, it should be borne in mind that the exception ratings were established voluntarily by the carriers. The latter cannot, therefore, well complain if changes in the Western Classification affecting the Commission's minimum rate orders require modification in the exception rating provisions. This is all the more true, since the Classification changes in question, being upward, accrue to petitioners' advantage.

The record further indicates that the establishment of the proposed tariff rule would enable the petitioning carriers to avoid the expense and responsibility of maintaining tariff and classification provisions which are clear, unequivocal and unambiguous, while at the same time it would place an undue burden upon the tariff user in his efforts to ascertain the applicable ratings and related provisions for particular movements.

Upon careful consideration, we find as follows:

1. The task of revising petitioners' exception rating provisions here in issue, while involving some difficulties, is not insurmountable.
2. Establishment of the tariff rule proposed by petitioners would place an undue burden on tariff users.
3. The proposed tariff rule would result in tariff provisions lacking that clarity required by the statutes and by the Commission's General Order No. 80 and its Tariff Circular No. 2.

Based upon the foregoing findings, we conclude that the proposed tariff rule has not been justified. The petitions will be denied.

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 the petitions for modification dated June 5, 1961 in Applications Nos. 40351 and 42204, and September 8, 1961 in Application No. 40562, are hereby denied.

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

Dated at San Francisco, California, this 6th day of FEBRUARY, 1962.

Robert W. Ray
President

W. L. Mitchell

E. J. Fox

George J. Hoover

Fredrick B. Holshoff
Commissioners