

ORIGINAL

Decision No. 63774

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. P. HACKLER, Tariff Publishing Officer, for approval of changes in classification provision.

Application No. 44126  
(Filed January 24, 1962)

In the Matter of the Application of J. P. HACKLER, Tariff Publishing Officer, for approval of changes in classification provision.

Application No. 44197  
(Filed February 19, 1962,  
Amended April 11, 1962)

In the Matter of the Application of J. P. HACKLER, Tariff Publishing Officer, for approval of changes in classification provision.

Application No. 44225  
(Filed February 28, 1962)

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 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)

Cases Nos. 5432, 5435,  
5441 and 5603  
(Orders Setting Hearings  
dated February 13, 1962  
and March 13, 1962)

And Related Matters.

W. Harney Wilson and J. P. Hackler, for applicant.

Clifford J. Van Duker, for W. P. Fuller & Co.,  
protestant.

Eugene A. Read, for California Manufacturers Association; Pete J. Antonino, for Rheem Mfg. Co.;  
R. D. Toll, J. X. Quintrall and A. D. Poe, for California Trucking Associations, Inc., interested parties.

Henry E. Frank, for the Commission staff.

O P I N I O N

These matters were heard before Examiner J. E. Thompson at San Francisco on April 11, 1962, on which date they were submitted. Copies of the applications and orders setting hearings as well as the notice of the hearing were served in accordance with the Commission's procedural rules. W. P. Fuller & Co. protests the proposed changes in the ratings of mirrors as set forth in proposed Items 42570 and 69090 in Application No. 44126.

Applicant proposes a number of changes in the ratings, rules and regulations provided in Western Classification No. 77. At the hearing he amended Application No. 44197 so as to withdraw the proposed modification of Item 75215 which pertains to the ratings of pallets, platforms or skids made of paper or pulpboard, separate or combined with wood.

The Commission ordered hearings in several of the minimum rate cases be consolidated with hearings in the applications for the purpose of receiving evidence for the determination of whether any or all of the changes proposed by applicant should be adopted and approved for governing the minimum rates prescribed in the minimum rate tariffs now subject to the Western Classification. A number of issues of a general nature arose in these proceedings, some of which the Commission has already discussed in other proceedings of a similar nature, including Decision No. 63340 dated February 26, 1962 in Application No. 43600. Those issues, which involve questions concerning the application of the changed classification ratings to specific tariff situations, arise by reason of a number of circumstances. The Western Classification is prepared and issued by persons with railroad experience, employed by associations of railroads, who consider changes in ratings and rules

from the standpoint of the interests of the railroads in transporting traffic on a much broader geographical scope than within the boundaries of the State of California. The Commission has adopted the Western Classification to govern several of the minimum rate tariffs which, however, also contain exceptions to certain rules and ratings resulting in both higher charges and lower charges than those which would be applicable under the rules and ratings in the classification. The rates of highway carriers, certain city carriers, express corporations, freight forwarders and the less-than-carload rates of railroad corporations are subject to the minimum rates established by the Commission. The common carriers, for the most part, are participants in the Western Classification and maintain rates substantially the same as the minimum rates.

By reason of the circumstances outlined above, the following questions are posed: (1) Are the exceptions to the Western Classification prescribed in the minimum rate tariffs a proper issue in these proceedings, and (2) where authority is granted to applicant to change certain rules and ratings in the classification does that indirectly confer authority upon participants in the Western Classification to modify exception ratings and rules maintained by them in their common carrier tariffs? The answer to both of those questions must be in the

negative. Exceptions to the classification are exceptions whether they result in rates higher or lower than those which would otherwise be applicable. The public does not receive specific notice of any changes in exceptions that may be involved. It was argued that the orders of the Commission setting hearing in the minimum rate cases provide notice that any of the rules or ratings proposed by applicant may be adopted to supersede the minimum ratings, rates or charges which had been specifically prescribed by the Commission on different bases than those maintained in the classification. Acceptance of such argument would mean that every time applicant proposed a change in the ratings of certain articles for which the Commission had established exception ratings, commodity rates, special rates or even had exempted the article from the minimum rates, shippers, carriers and other interested parties would have to be prepared to present evidence, already given in prior proceedings in which the different ratings or rates were established, in order to assure the continuance of the exception ratings, commodity rates, special rates or exemptions. This would result in an intolerable situation. Changes in exception ratings, rules, regulations and

charges should be considered in proceedings separate from those involving changes in the Western Classification.

The three applications involve 33 changes in ratings and descriptions which would result in increases, 3 changes which would result in reductions, 4 changes which involve both increases and reductions, 16 changes which would not affect the level of rates or charges and 4 rule changes which, in the main, would not have any effect upon California intrastate traffic.

Applicant proposes to modify Rule 47 which sets forth the charges applicable to the handling of C.O.D. monies. The present charges for application in Western Classification Territory are subject to certain general increases in railroad freight rates (commonly called X-196, X-206, X-212 and X-223) prescribed for Western Territory. As a result of different increases being applicable in the areas east of the Mississippi River, the charges in Official Territory were somewhat higher than those in the Western Classification. Applicant proposes to eliminate the application of the above-mentioned increases and to maintain the same charges as prescribed for Official Territory.

For all practical purposes the present rule has no application to intrastate traffic moving in California. Minimum

Rate Tariff No. 2, and the other minimum rate tariffs prescribe C.O.D. charges somewhat lower than those in Rule 47. The railroads and other common carriers who are parties to the Western Classification maintain exceptions to Rule 47 which provide charges similar to those in the minimum rate tariffs. California Trucking Associations, Inc., requested the Commission to adopt the C.O.D. charges proposed by applicant as minimum. That would mean the cancellation of the exceptions in the minimum rate tariffs. For the reasons set forth hereinabove, the Commission will not consider that request in the instant proceedings.

The proposed change in Rule 47 would have no immediate effect upon charges assessed by carriers on California intrastate commerce. The question then occurs as to whether the Commission should concern itself with the proposal. The applicant encounters a problem in publication when the ratings and rules authorized by the Commission differ from the ratings and rules in effect on interstate commerce. The differences are flagged in the classification as "Not applicable in California intrastate traffic - Provisions of preceding issues of this Classification apply". Such procedure results in publications which have been canceled with respect to interstate commerce, and no longer printed, being continued in effect for the purpose of determining provisions relating to ratings and rules in effect in California. In the case of Rule 47, none of the issues of the Western Classification are applicable because of exceptions contained in the tariffs. Under the circumstances while a granting of the authority sought will not change the charges assessed or to be assessed on California traffic, it will obviate the complexities and needless work which would result from requiring applicant to flag the rule in the publication.

Applicant proposes changes in the ratings and description of articles shipped as mirrors. The present ratings are somewhat confusing in that there are three items in the classification providing ratings on mirrors. At present the Classification provides:

Item 42570

Furniture, (Subject to certain packing requirements)  
Mirrors, see Note 18, Item 42571, (in certain described packages):

Note 18 - Mirrors, actual value not exceeding 75 cents each may be shipped in Package 25F (in fibreboard box complying with all requirements of Rule 41)

Ratings: LCL, 1st; CL, 12,000R - 70

Item 69090

Mirrors, noibn, in boxes or crates:

Ratings: LCL, 1st; CL, 18,000R 3rd

Item 45960

Glass, ....., or plate glass  
silvered for mirrors, not framed:

Bent:	<u>LCL</u>	<u>Min Wt</u>	<u>CL</u>
Not exceeding 15 feet in length nor 7½ feet in breadth:	1	24,000R	3
Exceeding 15 feet in length or 7½ feet in breadth:	2½t1	24,000R	3
Not Bent:			
Exceeding 15 feet in length or 9 feet in breadth	D1	30,000	4
Exceeding 120 united inches but not exceeding 15 feet in length nor 9 feet in breadth	1	30,000	4
120 united inches or under	2	30,000	4

The present provisions are uncertain in many respects and also result in a number of anomalies, including the fact that a bent plate glass mirror, framed, presently has a lower rating than bent plate glass. The changes proposed by applicant would remedy some of those uncertainties and anomalies, including the one specifically

described above; however, they would not resolve some of the others. Applicant proposes changes in the less-than-carload ratings in Items 42570 and 69090. He does not propose changes in the carload ratings. The proposed less-than-carload ratings for furniture mirrors and mirrors, noibn, are:

Bent:	<u>Rating</u>
Exceeding 15 feet in length or 7½ feet in breadth	3t1
Not exceeding 15 feet in length nor 7½ feet in breadth	1½
Not Bent:	
Exceeding 15 feet in length or 7½ feet in breadth	2½t1
Exceeding 120 united inches but not exceeding 15 feet in length nor 7½ feet in breadth	1½
120 united inches or under	1

Evidence offered by applicant to justify the increased ratings consisted only of the statement that the proposed change contemplates making the rail LCL ratings correspond to those in the National Motor Freight Classification, and that the handling of bent mirrors is more difficult than the handling of flat mirrors and is no less difficult for the railroads to handle than the motor carriers. It was also pointed out that the proposal does not provide a change in ratings of flat mirrors measuring 120 united inches or under.

Evidence was offered by protestant W. P. Fuller & Co. Protestant is one of the larger, if not the largest, manufacturers of mirrors in the Western United States. Prior to 1945 most mirrors were manufactured by the so-called hand method. After 1945 most of the protestant's production has been by automatic machinery and at the present time the percentage of custom mirrors made by the hand method is very small. The automatic process consists of placing



plate glass, double strength window glass, or window glass as it comes from the glass manufacturer onto conveyor belts where it is fed automatically into a machine which heats the glass and applies chemical compounds to the surface. Depending upon the compound applied, the glass is "silvered", "bronzed" or colored on one side and is sometimes processed with a material similar to lacquer. The product, which is then a mirror, is cooled by an automatically controlled process. It is sometimes shipped in the form in which it has come from the processing machinery, and is the same size and shape as the original glass, or it may be cut and beveled to specified sizes. Some of the mirrors have an applied backing of plywood or sheets of material made of compressed sawdust or ground wood and are shipped in that state while others are framed and are shipped as framed mirrors. Framed mirrors ordinarily do not have a backing. The preponderance of the mirrors shipped by protestant are unframed, either with or without backing. The value of the mirrors is between 15 and 30 percent greater than the value of the glass used.

Protestant contends that while the present provisions of the classification are confusing in the application of ratings to the products shipped by it, the proposed changes would not materially lessen that confusion but would provide additional anomalies. Under the classification as proposed, a sheet of plate glass with a breadth of eight feet would be rated first class less carload and fourth class carload, subject to a minimum weight of 30,000 pounds; double strength window glass and single strength window glass with breadths of eight feet would be rated third class less carload and fifth class carload, subject to a minimum weight of 40,000 pounds. If the aforementioned sheets were processed as described above and shipped as they came from the machine, the rating on the plate glass

would be unchanged, i.e., first class less carload; the single strength mirror would be rated under Item 46080 as second class less carload, fourth class carload subject to a minimum weight of 30,000 pounds and the double strength glass mirror would be subject to a rating of  $2\frac{1}{2}$  times first class less carload, third class carload subject to a minimum weight of 13,000 pounds. The order of the value and the inverse order of susceptibility to damage of the glass products are plate glass, then double strength window glass and then single strength window glass.

If a plywood or similar backing is glued to the mirrors, then all of them would be rated as  $2\frac{1}{2}$  times first class less carload, third class carload, subject to a minimum weight of 13,000 pounds.

If the glass and the resulting mirrors do not exceed 15 feet in length and are 6 feet in breadth, the ratings on the glass would be the same as that for sheets of 8 feet in breadth. The ratings on the plate glass mirrors and single strength glass mirrors would also be the same as described above for eight-foot mirrors. The double strength glass mirror, however, would be subject to a rating of  $1\frac{1}{2}$  times first class, less carload. If the six-foot mirrors described above are shipped with a backing of plywood, the ratings on all of the mirrors would be  $1\frac{1}{2}$  times first class, less carload. The backing on the mirror acts as a support and is a protection from the scratching or marring of the "silvered" side of the mirror which therefore makes the article less susceptible to damage. It is doubtful that such backing increases the value per pound of the article as shipped.

While applicant does not propose to change the carload ratings in Items 42570 and 69090, those carload ratings are

different. Neither applicant nor the witness for W. P. Fuller was able to explain satisfactorily when a mirror is subject to the ratings for furniture mirrors or mirrors, noibn. Applicant stated that if the article were shipped to a business engaged in the wholesale or retail marketing of furniture it is probable that the mirror should be rated as a furniture mirror. Although the carload ratings are not in issue herein, and the present and proposed less-than-carload ratings are the same, the above points out one of the uncertainties in the classification of mirrors.

Applicant has not shown that the proposed ratings are reasonable or that the increases are justified. It appears that the present ratings on mirrors in some respects do not adequately reflect the differences in the transportation characteristics of the articles described and in other respects are uncertain of application. Consideration of what changes, other than those proposed by applicant, would be justified or reasonable is not a proper subject of this proceeding because of the peculiar circumstances under which the Western Classification is published. The Consolidated Classification, which includes three other classifications as well as the Western Classification is not conducive to the publication of separate ratings applicable only to California intrastate traffic. To the extent that ratings different from those proposed and those presently maintained in the classification are justified the exception sheets or tariffs published by the common carriers or their authorized agents appear to be the proper vehicle in which to establish such rates. Such consideration, however, is not within the scope of these proceedings.

Applicant presented evidence concerning all of the proposed changes. California Trucking Associations, Inc., presented data concerning the densities and values of a number of the articles involved. Other than in the instances mentioned above concerning Rule 47 and Items Nos. 42570 and 69090 protestant and interested parties made no representations concerning other proposed changes. The Commission's staff pointed out that the applicant proposes the elimination of the so-called ex parte increases in connection with changes prescribed in Rules 5, 15 and 41 in the same manner as that mentioned in connection with Rule 47; that is to say, by the establishment of the charge applicable in Official Territory rather than the charge provided under the increases applicable in Western Territory. The minimum rate tariffs are not governed by the aforementioned rules and the tariffs of common carriers, including the railroads, contain exceptions to most of the provisions here involved. The increases which result from the proposed charges would be very small. As mentioned above in connection with Rule 47 a granting of the proposed changes would not have any substantial effect upon California traffic and would obviate certain tariff publishing problems which would result if the authority is denied.

Further discussion of the evidence offered in these proceedings would unduly lengthen this opinion to no apparent useful purpose.

After consideration of all of the facts and circumstances, we find that the proposed changes in Items 42570 and 69090 have not been shown to be reasonable or justified, and except for said items, proposed changes in ratings, rules and regulations are reasonable and the increases resulting thereupon are justified.

The circumstances surrounding the approval and adoption of changes in ratings and rules in the classification to govern the minimum rates established by the Commission have been fully discussed in Decision No. 63340, dated February 26, 1962, in Application No. 43600 and need not be repeated herein. Except to the extent that exception ratings, rules, regulations, commodity rates and other special rates have been established or approved by the Commission which supersede the ratings, rules and regulations prescribed in the Western Classification, we find that the proposed ratings, rules and regulations are reasonable, suitable and proper to govern the minimum rates established by the Commission.

O R D E R

Based on the evidence and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that:

1. J. P. Mackler, Tariff Publishing Officer for carriers participating in the Western Classification, is authorized to establish the ratings, rules and regulations proposed in his applications herein, as amended, except the changes in Items Nos. 42570 and 69090 proposed in Application No. 44126.

2. The authority to establish the changes in Items Nos. 42570 and 69090 as proposed in Application No. 44126 is denied.

3. The changes in the classification ratings, rules and regulations hereinabove authorized are approved and adopted to govern minimum rates, rules and regulations promulgated by the Commission in City Carriers' Tariff No. 1-A, City Carriers' Tariff

No. 2-A - Highway Carriers' Tariff No. 1-A, Minimum Rate Tariff No. 2, Minimum Rate Tariff No. 5 and Minimum Rate Tariff No. 11-A.

4. Common carriers in establishing and maintaining the ratings prescribed hereinabove are authorized to depart from the provisions of Article XII, Section 21 of the Constitution of the State of California, and Section 460 of the Public Utilities Code, to the extent necessary to adjust the long- and short-haul departures now maintained under outstanding authorizations and that such outstanding authorizations are modified only to the extent necessary to comply with this order.

5. The tariff publications authorized to be made as a result of the order herein may be made effective not earlier than the tenth day after the effective date hereof, and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date hereof.

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

Dated at San Francisco, California, this 4<sup>th</sup> day of June, 1962.

[Signature]  
President

[Signature]

[Signature]

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Commissioners