

**ORIGINAL**Decision No. 64012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 KARL A. WEBER for an order author- )  
 izing departure from the rates, )  
 rules and regulations of Minimum )  
 Rate Tariff No. 2, pursuant to the )  
 provisions of Section 3665 of the )  
 Public Utilities Code for the )  
 transportation of soda ash. )

Application No. 44207  
 (Filed February 21, 1962  
 Amended March 19, 1962)

Handler, Baker & Mastoris, by Daniel W. Baker,  
 for applicant.  
Chas. W. Burkett, Jr., for Southern Pacific Company,  
 protestant.  
R. D. Toll, J. X. Quintrall and A. D. Poe, for  
 California Trucking Associations, Inc.,  
 interested party.  
Henry E. Frank and Geo. Morrison, for the  
 Commission staff.

O P I N I O N

Public hearing in this application was held before  
 Examiner J. E. Thompson at San Francisco on May 14, 1962, on which  
 date the matter was submitted.

Applicant seeks authority to depart from the provisions  
 of Item 85 of Minimum Rate Tariff No. 2, which requires carriers  
 to pick up within two calendar days the component parts of shipments  
 transported in multiple lots. Applicant asks authority to make the  
 pickups of shipments of soda ash, subject to a minimum weight of  
 160,000 pounds, at West End for the account of Glass Containers  
 Corporation within four calendar days instead of the two days  
 prescribed.

By interim Decision No. 63480, dated March 27, 1962,  
 applicant was granted authority to transport soda ash for Glass

Containers Corporation from West End to Hayward at the rate of 30½ cents per 100 pounds, subject to a minimum weight of 50,000 pounds for each load transported. The interim authority expires July 27, 1962.

Southern Pacific Company protests the granting of the application and also protests the extension of the interim authority.

The circumstances surrounding the transportation by applicant of soda ash from West End to Hayward are set forth in said decision. Briefly stated, Southern Pacific Company maintains a rate of 30½ cents "on shipments in covered hopper cars, which carriers are not obligated to furnish, capacity not less than 3,200 cubic feet, loaded to full visible capacity, subject to minimum weight based on actual weight but not less than 160,000 pounds". Higher rates are maintained on shipments subject to minimum weights of 40,000 pounds and of 80,000 pounds. Glass Containers Corporation has engaged applicant to transport the soda ash upon condition that the 30½-cent rate be met. Applicant operates three units, each comprising a tractor and two trailers. With that equipment he cannot always pick up 160,000 pounds within the two calendar days prescribed in Minimum Rate Tariff No. 2.

The only traffic applicant receives from Glass Containers Corporation consists of the shipments of soda ash from West End to Hayward. The evidence shows that the cost of transporting said shipments exceeds the revenue which would accrue from the 30½-cent rate. Applicant estimated that the cost per mile of operating one unit of equipment is 27.21 cents per mile. The round-trip distance between West End and Hayward is 810 miles. Based upon applicant's estimate, the cost of providing the service is \$220.40, whereas the

revenue for an average load per trip of 51,000 pounds is \$155.55. Applicant contends that the revenue from traffic moving from the San Francisco Bay area to southern California points should be considered in determining the reasonableness of the proposed rate. The record shows that applicant transports shipments from northern California to southern points, principally as a subhauler. None of the southbound traffic is controlled by Glass Containers Corporation.

While the application purportedly seeks only a departure from a rule in Minimum Rate Tariff No. 2, the term rate includes not only the charge but the ratings, minimum weight, rules and regulations governing the same. The power of the Commission to authorize a highway permit carrier to depart from the established minimum rates is set forth in Section 3666 of the Public Utilities Code. In proceedings brought under that section, a showing that the transportation to be performed at the proposed rate is compensatory is indispensable to a finding that the proposed rate is reasonable. Normally only the transportation conditions and circumstances surrounding the traffic tendered by the shipper will be considered in the determination of whether the proposed rate is reasonable. Unrelated traffic expected to be received from other shippers, but not assured and not directly involved in the proceeding, does not afford a reasonable basis of offsetting revenue deficiencies which would result from the proposed less-than-minimum rate. It has not been shown that the transportation by applicant of property for Glass Containers Corporation is compensatory.

Applicant urges that other factors be considered, namely, that if he had additional equipment, 160,000 pounds could be picked up within the two calendar days prescribed in Minimum Rate Tariff

No. 2 and the 30½-cent rate could be applied; and, that he is performing the service with dump truck equipment and if the commodity transported was volcanic ash, which has characteristics similar to soda ash, the transportation would be subject to the provisions of Minimum Rate Tariff No. 7 which does not have the two-day pickup rule. With respect to his first contention, the Legislature has stated, in effect, that highway contract carriers may meet the rates of common carriers by land.<sup>1/</sup> If all of the conditions of the rate maintained by the common carrier are met, including conditions pertaining to the tender of the shipment, the reasonableness of the rate if assessed by the highway permit carrier is not an issue to be determined by the Commission. When all of the conditions are not met, the Commission may authorize the highway permit carrier to assess the rate only after finding that the rate is reasonable.

With respect to the second contention, soda ash is not one of the commodities named in Minimum Rate Tariff No. 7 and unless and until the rates in said tariff are made applicable to the transportation of soda ash, the rates, rules and regulations in Minimum Rate Tariff No. 2 are applicable. We believe it should be pointed out, however, in connection with the use of common carrier rates by highway permit carriers, that the applicable rate is the rate which would be applicable if the commodity were to be tendered to the

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<sup>1/</sup> Section 3663, Public Utilities Code, provides:

"In the event the commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

common carrier under the same circumstances and conditions. Southern Pacific Company maintains somewhat higher rates on carload shipments tendered in quantities less than 160,000 pounds subject to minimum weights of 40,000 pounds and of 30,000 pounds.

We find that the proposed rate has not been shown to be reasonable and that the application should be denied. In view of these findings it is unnecessary to discuss the evidence offered by protestant or its arguments concerning the issues.

ORDER

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

IT IS ORDERED that the application of Karl A. Weber, filed February 21, 1962, as amended March 19, 1962, is denied.

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

Dated at San Francisco, California, this 24th day of JULY, 1962.

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*Robert E. Mitchell*  
 President

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*E. J. Taylor*

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*Everett W. Boyd*

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 Commissioners

*I dissent.*  
*George H. Grover*

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.