

ORIGINAL

Decision No. 64013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of E. J. McSWEENEY, Agent, for authority to amend Item 185 of E. J. McSweeney, Agent, Local and Joint Freight and Express Tariff No. 1, Cal. P.U.C. No. 1, as to tender of split delivery shipments by consolidators occupying leased premises on carrier's property at Los Angeles, Calif.

Application No. 44205
(Filed February 20, 1962)

J. MacDonald Smith and E. J. McSweeney,
for E. J. McSweeney, applicant.

Arlo D. Poe, James Quintrall and J. C. Kaspar,
for California Trucking Associations, Inc.,
protestant.

Anthony J. Konicki, for Pacific Motor Trucking
Company, interested party.

R. J. Staunton, for the Commission's staff.

O P I N I O N

Applicant, E. J. McSweeney, is tariff publishing agent for various highway common carriers and express corporations. By this application he seeks authority to publish a tariff rule providing that at the Los Angeles terminal of Pacific Motor Trucking Company components of certain split delivery shipments may be progressively tendered for transportation. "Progressive tender", as used herein, means the tender of the components of the split delivery shipments involved at various times over a specified period.

The Commission's Minimum Rate Tariff No. 2 requires that all of the components of a split delivery shipment be tendered to the carrier at one time.

Public hearing on the application was held before Examiner C. S. Abernathy at Los Angeles on April 11, 1962. Evidence in support of the proposed rule was presented by applicant and by a representative of Pacific Motor Trucking Company. The California Trucking Associations, Inc., participated in the proceeding as protestant. A representative of the Transportation Division of the Commission also participated in the proceeding. The matter was taken under submission on April 23, 1962, upon the filing of briefs by applicant and by the California Trucking Associations, Inc.

The shipments which are involved in this matter are those of Freight Builders, Incorporated (FBI), an association of shippers of such commodities as chemicals, candy, hardware, paper and rubber. FBI's operations consist of the receipt of less-carload quantities of freight from its members; the consolidation of such freight into carload lots, and the subsequent shipment of the consolidated lots as split delivery shipments to various destinations in central and northern California.

This application has been prompted by the fact that FBI has recently leased a portion of the Los Angeles terminal of Pacific Motor Trucking Company (PMT), and will use the leased area as the site of its operations in the future. Were FBI to conduct

its operations at this new location in the same manner as it has elsewhere heretofore, it would tender its shipments to PMT for transportation toward the close of each business day -- after the day's receipt of freight from its members and the subsequent consolidation of said freight into one or more split delivery shipments. According to the witness who testified for PMT, such time of tender comes within the period of peak freight-handling activity at PMT's terminal. What PMT seeks to accomplish through this application is a reduction of the peak demands upon its facilities by the receipt of much of FBI's freight earlier during the day as FBI receives the freight from its members. Assertedly, the following advantages would result:

- a. More efficient handling of FBI's freight by PMT employees.
- b. More efficient loading and dispatch of PMT's vehicles.
- c. A saving of about \$200 a week in PMT's labor costs.

Under applicant's proposals herein, the tariff provisions which govern PMT's operations at Los Angeles would be modified to permit the progressive tender of FBI's freight to PMT throughout the day under an arrangement whereby at the close of the day the total freight so tendered would be billed and treated as one or more split delivery shipments. The tariff rule which applicant seeks to establish in order to accomplish these results is set

forth in the margin below.¹ The rule is the same as various rail carriers have been authorized to establish in connection with split delivery shipments subject to less-carload or any quantity ratings (Decision No. 58730, July 7, 1959, Case No. 5432).

The granting of the application was opposed by the California Trucking Associations, Inc. (CTA), for three main reasons:

- a. The proposed rule would permit a substantial deviation from prohibitions in Minimum Rate Tariff No. 2 against a carrier's consolidation of shipments.
- b. The proposed rule is discriminatory and preferential per se.
- c. The proposed rule is unlawful because it does not comply with the statutory requirements of tariff publication.

In its brief CTA argues that if PMT's consolidation of the involved shipments is reasonable, the consolidation of shipments by other carriers would also be reasonable; that the proposed rule is discriminatory and preferential per se because it is conditioned

¹ (Applies only at Pacific Motor Trucking Company Terminal in Los Angeles.) A carrier shall accept on written instructions from the shipper component parts of a split delivery shipment being progressively received and handled on a leased portion of its freight house platform during any one calendar day, prior to being furnished with manifest or written delivery instructions covering the entire split delivery shipment. In such event shipments shall not be considered as tendered and no rating or billing in connection therewith shall be done by carrier until after shipper has signified to carrier that shipment is complete by furnishing manifest or written delivery instructions covering the entire split delivery shipment. Such document must be furnished to carrier before the end of its regular business day and no additions thereto may be made after its receipt by carrier who will then issue master bill of lading covering the complete split delivery shipment. In event shipper does not submit manifest or written delivery instructions before the end of the business day, each component part shall be considered as a separate shipment and carrier shall issue bills of lading accordingly.

upon a private transaction between PMT and FBI, namely FBI's leasing of a portion of PMT's terminal; and that the proposed rule is unlawful because it does not comply with the tariff publishing requirements of Sections 486 and 487 of the Public Utilities Code by setting forth PMT's terms for leasing portions of its terminal to shippers.

Applicant argues in his brief that no new issue is presented in this matter, and that since the same rule as that which is proposed has heretofore been approved for various common carriers by rail, the rule could be established for PMT's benefit without specific authority.² Applicant asserts that the rule does not create undue differences between shippers or consignees. He states that PMT is willing to extend to other shippers than FBI the privilege of leasing portions of its terminals on like terms. Hence, he further argues that there is no issue of undue discrimination as between shippers.

Discussion and Findings

It is clear from the record in this matter that the rule which applicant seeks to establish would enable PMT to receive, sort and load in its vehicles much of FBI's freight during hours other than those when PMT's freight-handling activities are at a peak; that as a consequence the establishment of the sought rule

² This argument overlooks the fact that the rule which applicant proposes is broader in application than that which has been published for the rail carriers. The rule which applicant proposes would apply both to less-truckload and truckload shipments, whereas the rule which has been published on behalf of the rail carriers applies only to split delivery shipments subject to less-carload or any quantity ratings.

would enable PMT to achieve substantial economies and efficiencies in its handling of FBI's shipments, and that except for the fact that the rule would apply to carload shipments as well as less-carload shipments the rule is the same as that which has been authorized heretofore by Decision No. 58730 in connection with the receipt of split delivery shipments by various common carriers by railroad. Although it might be concluded that these circumstances justify the granting of the sought authority, the record which has been developed in this matter shows that there are other factors which also bear upon applicant's proposal and which must be considered.

Since the proposed rule deals with the progressive tender of split delivery shipments which are received and handled over a leased portion of PMT's terminal, it is evident that the operation of the rule is contingent upon a shipper's entering into a lease agreement with PMT for the terminal facilities involved. Applicant does not propose to publish, as a tariff item, the terms under which PMT will lease portions of its Los Angeles terminal to shippers. Although, allegedly, the leases would be executed on the basis of the same terms for all, applicant's position with respect to the nature of the leases is clear, namely, that the leases are private agreements for the use of property which is not, and never has been, dedicated to public utility use.³

³ Whether all of the leases would be on equal terms, as alleged, is open to question. It appears that the negotiation of leases is not within the purview of applicant's duties or those of the representative of PMT who testified, and that neither witness could state authoritatively what PMT's leasing policies are or what they will be.

In seeking to subject the rules and regulations which govern PMT's public utility services to private agreements, applicant is endeavoring to follow a course that is closed by law. The provisions of Sections 486 and 487 of the Public Utilities Code bar the proposed procedure.⁴ A purpose of these provisions is the avoidance of discrimination and preference from special agreements outside of a carrier's tariff structure. The provisions deal with the fact of tariff publication to the end that by

⁴ "Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges, and classifications for the transportation between termini within this State of persons and property from each point upon its route to all other points thereon; and from each point upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate has been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges, and classifications applicable to the through transportation."

Section 486, Public Utilities Code

"The schedules shall plainly state the places between which property and persons will be carried, and the classification of passengers or property in force, and shall state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and all rules which may in any wise change, affect, or determine any part, or the aggregate of, such rates, fares, charges, and classifications, or the value of the service rendered to the passenger, shipper, or consignee. Subject to such rules as the commission prescribes, the schedules shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of the carrier where passengers or property are respectively received for transportation, when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets or tickets for sleeping, parlor car, or other train accommodations are sold or bills of lading, waybills, or receipts for property are issued."

Section 487, Public Utilities Code

publication of a carrier's rates, rules, regulations and charges, said rates, rules, regulations and charges may and will be applied uniformly and inflexibly to all while in force. On this record we find that the tariff rule which applicant proposes does not meet the requirements of Sections 486 and 487 of the Public Utilities Code. It should not be approved.

The critical issue upon which this decision turns, that is, the status of the leases of dock space as to whether such leases are subject to the Commission's jurisdiction was not reached in/nor was it passed upon or decided by Decision No. 58730, in Case No. 5432. That decision did not hold that leases of the type herein involved are not subject to the jurisdiction of the Commission and are not required to be filed with the Commission as a part of a carrier's tariff. That decision held that any discrimination, preference or prejudice which might arise from the authority therein granted could be remedied by the Commission. Said decision is clearly distinguishable on the facts from the decision herein. We hold that these leases of dock space are subject to the Commission's jurisdiction and must be filed as a part of the carrier's tariff.

Although the rule which applicant seeks may not be authorized for the reason set forth above, the showing which applicant has made in this matter is nevertheless convincing that the progressive tender of split delivery shipments at a highway common carrier's terminal is an avenue to economies in the carrier's operations. It is evident that the economies emanate from the more effective utilization of the carrier facilities which the progressive-tender provisions would permit. It is also evident that said economies

are not contingent upon a prior movement of the freight involved across dock space which the shipper may have leased from the carrier, but are the result of a shipper's making its freight available to the carrier at times other than during the peak periods of the carrier's activity in the receipt, loading and dispatching of shipments.

As has been stated above, the present rules in Minimum Rate Tariff No. 2 do not provide for the progressive tender of split delivery shipments. However, the authority which was granted by Decision No. 58730 to various rail carriers (and connecting motor carriers) constitutes, in effect, a substantial modification of Minimum Rate Tariff No. 2, since the same authority may be exercised by other carriers also pursuant to the so-called alternative provisions of Item No. 200 of the minimum rate tariff. In view of this fact, and in view of the showing herein, we conclude that consideration should now be given to the matter of whether a progressive-tender rule of general application should be established in Minimum Rate Tariff No. 2. Institution of a proceeding for that purpose may be desirable. If commenced, such matter should include consideration of whether and the extent to which the establishment of a progressive-tender rule in Minimum Rate Tariff No. 2 will require amendment of other provisions of the tariff and supersedure of the authority granted by Decision No. 58730.

On this record the authority which applicant seeks will be denied. Should a proceeding be instituted respecting the inclusion of a progressive-tender rule in Minimum Rate Tariff No. 2, applicant may wish to renew his proposals at that time.

ORDER

Based on the evidence of record and on the findings contained in the preceding opinion,

IT IS HEREBY ORDERED that Application No. 44205 be, and it hereby 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.

George E. Grover
President

John R. Russell

F. L. Fox

Robert H. Page

Commissioners

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