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ORIGINAL

Decision No. 64452

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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).	Case No. 5432 Petition for Modification No. 190 Filed June 28, 1961

Additional Appearances

Dan T. Costello, for Oakland Chamber of Commerce, protestant.
Chas. F. McNamee, for Sunsweet Growers, Inc.; W. S. Follett, for Dried Fruit Association of California; William D. Wagstaffe, for California Packing Corporation, interested parties.

OPINION ON REHEARING

Rehearing was held before Examiner J. E. Thompson at San Francisco, on January 18 and 19, 1962. The matter was taken under submission on June 4, 1962 upon the filing of reply brief by petitioner.

Petition for Modification No. 190 was filed by the State of California on behalf of the San Francisco Port Authority, one of its agencies. By the petition, as amended and explained by counsel at the hearing, California requests the Commission to establish in Minimum Rate Tariff No. 2 rates and charges for the transportation of dried fruit in interstate or foreign commerce from San Jose to San Francisco no higher than those presently maintained from San Jose to Oakland. Briefly stated, petitioner's sole interest is to

have the rate to the Port of San Francisco lowered to the same rate that now exists to ports in the East Bay and it has restricted its petition accordingly.

In one sense, there is actually no real issue before the Commission here; Pacific Coast Tariff Bureau, C. R. Nickerson, Agent, maintains in its Local and Joint Tariff No. 16, Cal. P.U.C. No. 1, on behalf of Garden City Transportation Co., a rate of 17½ cents per 100 pounds, minimum weight 36,000 pounds, for the transportation of dried fruit in interstate or foreign commerce, between San Jose, Santa Clara and Sunnyvale, on the one hand, and San Francisco, Oakland and Richmond, on the other hand.[1] Under the provisions of Section 3663 of the Public Utilities Code, and pursuant to Item No. 200 of Minimum Rate Tariff No. 2, said rate may be used by highway carriers for such transportation.[2] Because there is some question concerning the lawfulness of that rate, and because the general issue herein has been before the Commission a number of times in the past two years, we deem it desirable to make a determination of the issue as though the 17½-cent rate does not exist. A brief summary of the circumstances and events which led to this matter will provide a better understanding of our reasons for so doing.

In 1935 Congress enacted the Motor Carriers Act (Part II of the Interstate Commerce Act) and the California Legislature enacted the Highway Carriers Act (Division 2, Chapter 1 of the Public Utilities Code). Those enactments resulted in more comprehensive rate regulation of motor carriers by the Interstate Commerce

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1 PCTB Tariff No. 16, Items Nos. 648 and 867.

2 The class rates provided in Minimum Rate Tariff No. 2 for the transportation of dried fruit from San Jose to San Francisco and to Oakland are 22 cents and 20½ cents, respectively, minimum weight 42,000 pounds.

Commission and by the Public Utilities Commission. Section 203(b)(6) of the Interstate Commerce Act excluded from rate regulation by the I.C.C. "motor vehicles used in carrying property consisting of .... agricultural commodities (not including manufactured products thereof), ..." Pursuant to the requirements of the Motor Carriers Act, carriers filed with the I.C.C. their schedules of rates for the transportation of property. A number of carriers filed tariffs naming rates for the transportation of dried fruit from San Jose to San Francisco ports.

In 1939, the Commission established Minimum Rate Tariff No. 2 (then called Highway Carriers' Tariff No. 2) under which dried fruit, other than dried fruit in the natural state which has not been cleaned, washed, steamed or otherwise prepared or partially prepared for human consumption, was made subject to the fifth class rates named therein. In 1951, by Decision No. 46434, the Commission ordered the fifth class rate between San Jose and San Francisco to be maintained at the same level as the fifth class rate between San Jose and Oakland. In said decision, the Commission found that there was a heavy movement of canned goods and dried fruit between San Jose, on the one hand, and San Francisco and Oakland, on the other hand; that there had been an equality of rates maintained by carriers for transportation of canned goods and dried fruit from San Jose to Oakland and San Francisco for a long time, and that such rate relationship should be maintained. At that time, however, the Commission had not expressly asserted jurisdiction over the movement of dried fruit from San Jose to San Francisco Bay ports for shipment by water in interstate or foreign commerce. Until 1951, and even thereafter, there was uncertainty as to whether dried fruit, prepared for human consumption, was within the unmanufactured agricultural commodities exemption in Section 203(b)(6) of the Interstate Commerce Act. Common carriers were still maintaining

rates on dried fruit in interstate tariffs. In 1951, the I.C.C. held that dried fruit was an agricultural commodity and motor vehicles engaged exclusively in the transportation of dried fruit were exempt from rate regulation.[3]

By Decision No. 50156, in Case No. 5432 (Petition No. 37), dated June 18, 1954, the Commission made its first formal declaration that the transportation of dried fruit in interstate or foreign commerce between points in California is subject to the provisions of the Public Utilities Code and to the minimum rates set forth in Minimum Rate Tariff No. 2. In Investigation of Valley Express Co., et al. (February 23, 1955), 54 Cal. P.U.C. 53, the Commission left no doubt that it had undertaken to regulate the transportation of dried fruit in interstate and foreign commerce between California points and that such transportation was subject to the minimum rates theretofore established.

On June 4, 1958, the Commission, on its own motion, ordered that hearings be held in Case No. 5432 for the purpose of receiving evidence on the matter of a general revision of the rates on dried fruit. At the hearings, the Commission staff recommended that dried fruit be subject to ratings of 90 percent of fourth class, carload, minimum weight 20,000 pounds; fifth class, carload, minimum weight 30,000 pounds; and Class B, carload, minimum weight 40,000 pounds. It was proposed that the parity of rates on dried fruit from San Jose to Oakland-San Francisco be maintained. The

3 It must be mentioned that this ruling by the I.C.C. was not universally accepted as conclusive. The agricultural commodities exemption clause has been interpreted by the I.C.C. and by the federal courts independently. Their decisions were often conflicting and were binding upon the litigants involved. In 1958 Congress amended Section 203(b)(6) in an effort to remedy that situation.

California Trucking Associations, Inc., and the Dried Fruit Association of California proposed the establishment of the ratings of 90 percent of fourth class and of fifth class as suggested by the staff, but instead of the Class B rating it proposed that the Commission establish a Class C rating, carload, minimum weight 42,000 pounds, and that the existing distance rates be made applicable to the traffic.[4]

The Commission adopted the proposal of the carriers and shippers in Decision No. 60129, dated May 17, 1960 and said: "It does not appear, however, that the circumstances which prompted the equality of rates established by Decision No. 46434 prevail in like degree." The San Francisco Port Authority was not a party to those proceedings; however, it subsequently filed a petition dated July 1, 1960, for revision of the rates asking "that parity be reestablished." After hearing, this petition was denied by Decision No. 60993, dated November 1, 1960. On June 28, 1961, petitioner filed a second "Petition for Modification." The Commission filed that document as a petition for rehearing and on July 25, 1961, ordered a rehearing of "that portion of Decision No. 60129 which prescribes an exception classification rating and mileage class rates for the transportation of dried fruit subject to a minimum weight of 42,000 pounds between San Jose, Santa Clara and Campbell, on the one hand, and San Francisco and Oakland, on the other hand."

Petitioner has categorically limited its pleading to the question of whether the rate for 42,000 pounds to San Francisco

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4 The relationships of the ratings as percentages of the first class rate are:

90% of	4th	63%
	5th	60%
	B	55%
	C	50%

should be reduced to the present rate for 42,000 pounds to Oakland. That issue, therefore, will be the only one considered by the Commission here.

The interests of the several participants are readily apparent. The San Francisco Port Authority is of the opinion that the rate differential is a reason for the greater amount of dried fruit tonnage moving over East Bay ports than over the Port of San Francisco. The City of Oakland, acting through its Board of Port Commissioners, is of the opinion that the rate differential is to its advantage and desires to see it maintained. Shippers of dried fruit, including members of the Dried Fruit Association of California, are interested in obtaining the lowest rates that may be authorized. The California Trucking Associations, Inc., is of the opinion that the cost of performing transportation of dried fruit to San Francisco docks is greater than to Oakland docks and contends that if rate parity is to be ordered, it should not be accomplished merely by reducing the San Francisco rate.

In their briefs, the parties called attention to provisions of the Public Utilities Code. The sections cited particularly were Sections 726, 727, 3661 and 3662.[5]

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5 Section 3661 and Section 726 (in part):
"It is the policy of the State to be pursued by the commission to establish such rates as will promote the freedom of movement by carriers of the products of agriculture, including livestock, at the lowest lawful rates compatible with the maintenance of adequate transportation service."
Section 3662 (in part): "In establishing or approving such /minimum/ rates the commission shall give due consideration to the cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed to, from, or beyond the regularly established termini of common carriers or of any accessorial service, the value of the commodity transported, and the value of the facility reasonably necessary to perform the transportation service."
Section 727 (in part): "It is the policy of the State that the use of all waterways, ports, and harbors of this State shall be encouraged, and to that end the commission is directed in the establishment of rates for water carriers applying to business moving between points within this State to fix those rates at such differential under the rates of competing land carriers that the water carriers shall be able fairly to compete for such business."

A five-year average of the farm value of California dried fruits is $103,584,000, and the processed value is approximately $150,000,000. During that same five-year period the average annual production was 375,000 tons. About 30 percent of the production is exported requiring water transportation from California ports. California dried fruits encounter competition from products of Australia, Greece, Turkey, Iran, Spain, and other countries. A large portion of the dried fruit production is raisins which are packed principally in the San Joaquin Valley. The packing of dried fruits other than raisins is concentrated in the San Jose area. There are 11 packers in the San Jose area, seven of whom are on railhead and whose shipments therefore may be transported by highway carriers at rail rates under the provisions of Item 200 of Minimum Rate Tariff No. 2. The freedom of movement of dried fruits from the San Jose area to California ports at the lowest possible rates is of importance to California agriculture.

The property controlled by the San Francisco Port Authority extends roughly from Aquatic Park to Hunter's Point Naval Shipyard. Except for facilities owned and operated by the United States, Port Authority controls all wharves, piers and docks in San Francisco as well as the State Belt Railroad and the highway (Embarcadero) serving the piers. The piers and docks are operated by various terminal and steamship companies under license from the Port Authority. There are some 43 piers and ordinarily vessels of the different steamship companies use different piers.

The ports on the eastern side of San Francisco Bay, referred to as East Bay ports, which receive shipments of dried fruit for export are Encinal Terminal, Howard Terminals and Parr-Richmond Terminal. Encinal, however, receives by far the majority of the traffic. The United States Military maintains a port facility

in its supply base; however, the movement of dried fruit for the United States is not relevant to this proceeding.

Certain steamship lines will receive freight only at San Francisco, other vessels receive freight only at one of the East Bay ports, while still others, and perhaps the majority, will receive freight at San Francisco and an East Bay port. More vessels transporting dried fruit dock at San Francisco than at the East Bay ports; however, in recent years there has been a tendency of the steamship lines to make more use of the facilities of the latter. It is the practice of some of the vessels to discharge cargo at San Francisco and to load cargo at Oakland. From the evidence, we find that while some shipments are required to be placed at the Port of San Francisco and others are required to be placed at East Bay ports, there are others which may be consigned to a vessel at either San Francisco or at the East Bay ports. We further find that there is competition between the ports to have their port facilities made the port of call of vessels to the exclusion of the others. In addition, where vessels call at ports on both sides of the bay, the ports compete to have cargo loaded or discharged at their facilities.

While the statistics offered concerning the volume of movement of dried fruits through the ports include raisins from the San Joaquin area and shipments to the military, the evidence as a whole indicates that San Francisco receives less than one-sixth of the export tonnage from San Jose.

At present, the Port of San Francisco is at a disadvantage in competing for the dried fruit traffic for a number of reasons. It would appear, however, that the difference in rates in Minimum Rate Tariff No. 2 from San Jose to Oakland and to San Francisco is not a significant factor even excluding consideration of the 17½-cent rate mentioned earlier. Seven of the packers at San Jose

are at railhead. In connection with straight shipments of 36,000 pounds or more consigned to a particular vessel, the rates and charges for those shipments transported by highway carrier are the same whether consigned to San Francisco or to Oakland. Packers receive a number of orders for export lots of less than 36,000 pounds. It is their practice, except in unusual cases of urgency, to pack all of the lots at one time and to consolidate the lots insofar as possible for shipment. Because a number of steamship lines receive freight at Encinal Terminal, for example, the shipper may be in a position to consolidate lots consigned for reshipment by different vessels into one shipment subject to the carload rate which, in the cases of the seven shippers at railhead, would be the rail rate. Lots consigned to vessels at San Francisco may be consolidated, but, because vessels receive at different docks in San Francisco, the shipment probably would be subject to additional charges for split delivery. Even if the rate in cents per 100 pounds to San Francisco were lowered to the rate to Oakland, there would be a difference in charges because of the necessary split deliveries. From the facts, we find in the cases of the seven shippers at railhead that there is very little possibility that any of the traffic now going to East Bay ports would be diverted to San Francisco if the rate parity sought were to be established.

In the cases of the four shippers not at railhead, it was testified that every one of them engages in proprietary trucking. Some of the traffic from those shippers to the ports goes by for-hire carrier but the record is silent regarding the amount. As indicated above, most of the traffic now goes to Oakland. There is little reason to believe that the lowering of the San Francisco rate would cause those shippers to cease their proprietary trucking operations or to change their shipping practices.

Under present shipping practices and circumstances surrounding the receipt of freight at the respective ports, it would appear that the only diversion of traffic to San Francisco that might result from the establishment of rate parity would be where there is a less-than-carload lot consigned to a vessel that receives freight only at San Francisco. The shippers may consolidate that lot with others that could go to either port into a shipment for San Francisco. Occasionally that is done today, depending upon the weight of the first lot, and it is possible with the establishment of rate parity there might be more consolidations of that type. The amount of traffic involved, however, would not appear to be significant.

In accordance with agreement among the parties, the examiner ruled that those portions of the record in the proceedings resulting from the order setting hearing, dated June 4, 1958, specified by exhibit number or transcript reference by the parties would be received in evidence by reference. The portions of the record so specified show that the cost of transporting dried fruit by highway carrier from San Jose and vicinity to the Port of San Francisco is greater than the cost of transporting said commodity to ports in Oakland. In Decision No. 60129 in that proceeding the Commission found:

> "Although the associations' proposals concerning the rates for shipments of about 42,000 pounds or more would result in lower rates from those recommended as reasonable by the Commission's staff, it appears that the margin of the lower rates over the costs of service is adequate to provide reasonably sufficient earnings. In view of this fact and for the reasons that it appears that the lower basis of rates would promote more efficient usage of carriers' equipment and would avoid substantial diversion of traffic to proprietary transportation operations, the lower basis should be adopted."

There is nothing in the record herein, other than the evidence showing that the four shippers not on railhead are engaged in proprietary transportation operations, which is inconsistent with those findings. After giving due consideration to the cost of performing the transportation service, the Commission in said decision found that rates less in volume or effect than those established by the order therein were unreasonable and insufficient. The evidence herein is not inconsistent with that finding.

Where there is a difference in the cost of transportation from one point to two or more points, in the absence of special circumstances or conditions, a difference in minimum rates is reasonable. Where there are special circumstances and conditions which necessitate the establishment of rate parity, the cost to be considered in minimum rate making is the cost of performing transportation to all of the points involved and not merely the farthest point or the nearest point.[6] In the circumstances here, giving due consideration to the difference in the cost of performing the services, it necessarily follows that the minimum rate established for the transportation of dried fruit in shipments of 42,000 pounds from San Jose to Oakland would be insufficient and unreasonable for the transportation of dried fruit from San Jose, on the one hand, to San Francisco ports and East Bay ports, on the other hand.

If rate parity is to be established, it also follows that a reasonable and sufficient rate would be higher than the minimum reasonable rate to Oakland.

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6 There is parity of distance rates to Oakland and San Francisco from points 70 miles or more distant but those rates are based upon the average of the distances from point of origin to San Francisco and to Oakland (Item No. 110 of Minimum Rate Tariff No. 2).

The Class C rates are not the rates under which the majority of traffic moves, but, taking into consideration that the preponderance of the dried fruit traffic involved moves to East Bay ports, we believe that the policy of this State set forth in Sections 726 and 3661 of the Public Utilities Code would not best be served by increasing the rate to Oakland.

With respect to Section 727, considering all of the ports as a whole, the granting or denying of this petition would neither encourage nor discourage the use of the ports. It was clearly shown that very little, if any, dried fruit traffic from San Jose destined to points in continental United States moves by vessel and that almost all of the dried fruit moving through the ports is for export. The grant or denial of this petition would in no way divert traffic to the intercoastal steamship trade and to the ports as a whole. Assuming for the moment that, as contended by petitioner, said section also requires the Commission to establish rates for highway carriers which will not encourage the use of one port to the disadvantage of another, the facts show, and we find, that the present differential in the Class C rates has no significant effect upon the movement of dried fruit through the Port of San Francisco or the East Bay ports.

After giving full consideration to all of the facts, we conclude that the petition herein should be denied.

ORDER ON REHEARING

Rehearing having been held, and based on the evidence and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that the orders in Decisions Nos. 60129 and 60993 are affirmed.

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

Dated at San Francisco, California, this 23rd day of OCTOBER, 1962.

George G. Grover
President

E. Lynn Fox

Frederick B. Holoboff
Commissioners

I dissent.
In my opinion this decision perpetrated an unjust discrimination against the City of San Francisco.
Everett C. Haggerty
Commissioner