

ORIGINAL

Decision No. 66540

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA FREIGHT FORWARDERS, VALLEY EXPRESS CO., VALLEY MOTOR LINES, INC., R. C. ELLIS, AGENT, INTERSTATE FREIGHT CARRIERS CONFERENCE, INC., PACIFIC COAST TARIFF BUREAU, WESTERN MOTOR TARIFF BUREAU, INC., MERCHANTS EXPRESS OF CALIFORNIA,

Application No. 43836
Filed December 28, 1961;

Second Amended
Application Filed
November 30, 1962.

for authority to cancel certain rates on commodities exempt from the provisions of the minimum rate tariffs.
(AMENDED TITLE)

In the Matter of the Application of E. J. McSweeney, Agent, for authority to cancel certain commodity rates on commodities exempt from the provisions of the minimum rate tariffs, published in E. J. McSweeney, Agent, Local and Joint Freight and Express Tariff No. 1, Cal. P.U.C. No. 1.

Application No. 43895

Filed November 1, 1961;
amended December 22, 1961.

(Appearances are Listed in Appendix "A")

O P I N I O N

By these applications approximately sixty highway common carriers, railroad corporations, express corporations and freight forwarders (identified hereinafter in Appendix "B") seek authority to effect increases in certain of their rates for the transportation of freight within California on less than statutory notice.¹

¹ The applications were filed by and in the name of tariff agents for the carriers involved with the exception of Merchants Express of California, Southern California Freight Forwarders, Valley Motor Lines, Inc., and Valley Express Co. The carriers, instead of their tariff agents, will be considered as the real applicants in these matters.

Public hearings on the applications were held before Examiner Abernathy on a combined record on January 9, 10, 11 and 16, 1962, and on May 20 and 21, 1963. Late-filed exhibits were received on May 22, 1963. The matters are ready for decision.

In general, the rates which applicants seek to increase are those which they maintain for the transportation of so-called exempt commodities -- transportation which is not subject to minimum rate regulation under the Commission's minimum rate orders.² The rates which applicants maintain and assess at present for such transportation are specific commodity rates. Applicants seek to cancel the commodity rates and to assess class rates instead. The class rates which applicants publish in their tariffs are at a higher level than the commodity rates. Hence, the changes which are sought would result in increases in applicants' rates and charges for the aforesaid transportation.

According to testimony of witnesses who presented evidence on behalf of applicant carriers, the commodity rates which are in issue have been maintained at substantially the same levels as at present for many years. During this same time the carriers' costs of service have increased materially. Increases have been made in the Commission's minimum rates to reflect the increases in operating costs, and corresponding increases have been made in the carriers' rates for other than the exempt commodities. Applicants

² Specifically, the transportation which is involved is that of commodities which are exempted from the rates, rules and regulations of the Commission's Minimum Rate Tariffs Nos. 2 and 8. Examples of such commodities are set forth in Appendix "C" hereto. A complete listing of these commodities is shown in Items Nos. 40 and 41 of said tariffs.

allege that in relation to present costs of service their rates for the transportation of the exempt commodities are unreasonably low and cast an undue burden upon their other operations.

The increases in rates for the exempt commodities which would result under applicants' proposals would be quite substantial in numerous instances. Comparisons of the present and proposed rates which applicants' witnesses submitted show that the increases would range as high as several hundred percent. Applicants state, however, that the transportation which is involved comprises but a very small part of their total services. Hence, the increases in rates would have only a small effect upon their total revenues. Figures which applicants' witnesses submitted indicate that the resulting increases in total revenues would be only a fraction of one percent.³

Although applicants' proposals in general are to cancel the commodity rates and to assess class rates for the transportation of the exempt commodities, exceptions would be made in connection with certain commodities. In some instances the rates would be retained at their present level. In other instances the commodity rates would be retained but would be increased to amounts less than the class rates which otherwise would apply. The testimony of applicants' witnesses indicates that the exceptions are intended to apply in instances in which a material volume of

³ Applicants' witnesses stated that in numerous instances there no longer is any utilization, or there is virtually no utilization, of applicants' services for the transportation for which the exempt commodity rates have been maintained. Hence, to a considerable extent the rates are "dead" rates.

traffic is involved and where the lower rates are necessary to the retention of the traffic by the interested carrier.⁴

Another exception to applicants' general proposals, not mentioned heretofore, consists of revisions which are proposed in a few instances in connection with exception ratings for exempt commodities which are maintained by some of the applicant carriers. Pacific Motor Trucking Company and Pacific Motor Transport Company, for example, publish exception ratings of 4th class, less carload, and 5th class, carload, for eggs other than shelled, dessicated or frozen. They seek to increase these ratings to 3d class, less carload, and 4th class, carload. The increases which applicants propose in classification or exception ratings are sought for the same purposes as those of the proposed increases in rates, namely, for the additional revenues that would result thereunder. In some instances, the changes in ratings would result in rate reductions.

Notices of applicants' proposals in these matters and of the hearings thereon were sent to shippers, shippers' organizations and other persons believed to be interested. Several shippers registered appearances as protestants. A representative of the Ferry-Morse Seed Co. requested that decision on Second Amended Application No. 43836 be postponed until after the issuance of decision on Petition No. 233 in Case No. 5432 by which applicant

⁴ For example, the rates which applicants Pacific Motor Trucking Company and Pacific Motor Transport Company seek to establish for the transportation of dressed poultry are a result of modification of initial proposals, and were reached after negotiations with producers and shippers of dressed poultry.

carriers and other carriers seek increases in the minimum rates in Minimum Rate Tariff No. 2. This request was made in order that the proposals in Application No. 43836 might be evaluated by Ferry-Morse Seed Co. in light of such changes as are prescribed in Minimum Rate Tariff No. 2 and that a determination be made thereafter as to what action or position the company should take with respect to said proposals. No evidence was submitted by any protestant in opposition to either application.⁵

Essentially, what applicants are seeking to obtain in these matters is authority to charge rates which correspond with rates they maintain and assess pursuant to minimum rate orders of the Commission for transportation services which are not subject to said minimum rate orders. Insofar as the costs of applicants' services generally are concerned, the Commission takes judicial notice of the fact that such costs have increased materially during the past several years. Recognition of the cost increases has been given through compensating increases which have been prescribed in the minimum rates. In the circumstances we find that, subject to the exceptions indicated below, the increases which applicants seek to make in their rates for the transportation of exempt commodities have been shown to be justified to the extent that the rates for said commodities would be increased to the level of the minimum class or commodity rates, whichever are lower.

⁵ The decision on Petition No. 233 in Case 5432 has since been issued - Decision No. 66453 dated December 10, 1963.

In some instances the rate increases which applicants would make exceed those which we find to be justified. For example, the class rates which various of applicants seek to assess for the transportation of fresh or green fruits and vegetables to canneries, accumulation stations, precooling plants and wineries exceed those rates which applicants maintain and assess in conformity with the Commission's minimum rate orders for the transportation of these same commodities to other destinations. The record does not show any difference in transportation circumstances which would justify the differential in rates which would be established under applicants' proposals. The assessing of class rates in these and similar circumstances will not be authorized.

The increases in classification or exception ratings, which are sought in some instances also will not be authorized. The evidence with respect thereto does not establish the reasonableness of the increases which are sought.

We find that the increases in applicants' rates and charges which are authorized in the following order have been justified. The authority to effect said increases will be directed to the carriers who are the real parties in interest in these matters, rather than to their tariff agents, the nominal parties.

O R D E R

IT IS ORDERED that:

1. Except as is otherwise provided herein, the applicant carriers in Second Amended Application No. 43836 and in Application No. 43895, as amended, are authorized to effect increases in their rates by canceling the commodity rates hereinafter specified and thereafter assessing class rates which, in accordance with their tariffs, otherwise apply to said transportation. ✓

2. The commodity rates (and related ratings) to which reference is herein made are those published in the tariff items designated in Exhibits A, B, C, D, E, F, G, H and I appended to second amended Application No. 43836 and in Item No. 1055 of Local, Joint and Proportional Freight Tariff No. 18-B, Cal. P.U.C. No. 17 (J. L. Beeler Series), Western Motor Tariff Bureau, Inc., Agent. ✓

EXCEPTIONS: Said commodity rates (and related ratings) do not include the rates or ratings contained in the following tariff items: ✓

Item No. 4415, California Common Carrier Motor Freight Local and Joint Tariff No. 10, Cal. P.U.C. No. 2, Interstate Freight Carriers Conference, Inc., Agent,

Item No. 955, Pacific Coast Tariff Bureau Local and Joint Tariff No. 16, Cal. P.U.C. No. 1, C. R. Nickerson, Agent,

Items Nos. 80, 1655 and 1980, Merchants Express of California Local and Joint Freight Tariff No. 2,

Item No. 1020, Local, Joint and Proportional Freight Tariff No. 18-B, Cal. P.U.C. No. 17 (J. L. Beeler Series) Western Motor Tariff Bureau, Inc., Agent.

- b. Said commodity rates are also those published in the following tariff items contained in Local and Joint Freight and Express Tariff No. 1, Cal. P.U.C. No. 1, of E. J. McSweeney, Agent:

1046	1160
1055	1220
1060	1225
1140	

2. The authority to increase rates which is granted by the above Paragraph 1 (including the subparagraphs thereto) may not be exercised by any of applicant carriers to result in any of such carriers assessing class rates which, for the transportation of the commodities listed below, are (a) higher in volume or effect than rates which are maintained by such carrier or carriers for transportation of the same commodities which is subject to the minimum rates prescribed in the Commission's Minimum Rate Tariffs Nos. 2, 3-A, 4-B, 8, 12 and 14, or (b) are higher in volume or effect than the minimum rates that apply for the transportation of said commodities pursuant to the provisions of the Commission's Minimum Rate Tariffs Nos. 2, 3-A, 4-B, 8, 12 and 14.

- a. Fruits, fresh or green (not cold pack nor frozen),
Mushrooms, fresh,
Nuts, in the shell,
Nuts, field shelled,
Vegetables, fresh or green (not cold pack nor frozen).
- b. Containers, empty, second-hand, returning from an outbound paying load or forwarded for an outbound paying load of the commodities designated in subparagraph 2-a, above.
- c. Automobiles, set up.
- d. Uncrated property, as follows:
- (1) Used household goods, viz.: household or personal effects such as furniture, furnishings, clothing, radios, musical instruments, stoves and refrigerators;

(2) Used office and store fixtures and equipment, viz.: furniture, furnishing, and equipment such as is used in an office, store, hospital, library, museum, place of learning, or other institution.

e. Fodder (bean, cane, corn or pea), hay, straw, in machine pressed bales.

f. Livestock.

3. In any instance or instances where the authority to assess class rates which is granted by the above Paragraph 1 (including the subparagraphs thereto) may not be exercised because of the limitations prescribed in the above Paragraph 2, applicant carriers are authorized in such instance or instances to increase their commodity rates for the commodities listed in Paragraph 2

a. To the levels of the rates which they respectively maintain in their tariffs for transportation of the same commodities which is subject to the minimum rates prescribed in the Commission's Minimum Rate Tariffs Nos. 2, 3-A, 4-B, 8, 12 and 14, or

b. (In the event that they do not otherwise maintain in their tariffs commodity rates for said commodities) to the levels of the minimum rates for said commodities which are published in Minimum Rate Tariffs Nos. 2, 3-A, 4-B, 8, 12 and 14.

4. The authority which is granted by the above Paragraph 1 (including the subparagraphs thereto) may not be exercised by any of applicant carriers to result in the carriers' assessing class rates for the transportation of dairy butter, cheese (including cottage cheese and pot cheese) and margarine in straight shipments which are higher in volume and effect than the class rates which the carrier maintains for the transportation of said commodities in mixed shipments of like weight.

5. Tariff publications authorized to be made as a result of the order herein may be made effective not earlier than thirty days after the effective date hereof on not less than thirty days' notice to the Commission and to the public.

6. The authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

7. Except as is otherwise provided herein, the authority which is sought by applicants in Second Amended Application No. 43836 and in Application No. 43895, as amended, to effect increases in rates through the cancellation of commodity rates and/or the establishment of increased ratings is denied.

This order shall be effective twenty days after the date hereof.

Dated at San Francisco, California,
this 17th day of DECEMBER, 1963.

William M. Beum
President

Walter A. Boy

George J. Hoover

Frederick B. Halaloff

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

APPEARANCES

(Unless otherwise indicated, the appearances shown were entered both in Application No. 43836 and in Application No. 43895.)

Frank Loughran, (a) W. J. Knoell, C. R. Nickerson, for applicants in Application No. 43836.
John McDonald Smith, (b) Frank D. Francis, Steven P. Simonian, for applicants in Application No. 43895.
E. E. Rowland, for Delta Lines, Inc., applicant in Application No. 43836.
J. C. Kaspar, A. D. Poe, J. Quintrall, for California Trucking Association, interested party.
E. R. Chapman, for Foremost Dairies, Inc., interested party.
Matthew Clarke, for The Borden Company, protestant.
Arthur J. Hirt, for Ferry-Morse Seed Co. and California Seed Association, protestants in Application No. 43836.
Ralph Hubbard, for California Farm Bureau Federation, interested party.
Albert Kesenheimer, for Stauffer Chemical Company, interested party.
L. F. Mezzera, for Atlas Fish Fertilizer Co., protestant in Application No. 43836. (a)
Leo M. Norris, for Anderson, Clayton & Co., interested party.
L. H. Stewart, for J. G. Boswell Co. and California Cotton Oil Corporation, interested parties.
Edward H. Telaneus, for National Storage Co., interested party.
Arden Riess and George C. Weatherill, for Northrup King & Co., interested party and protestant.
George C. Weatherill, for California Seed Association, interested party.
R. L. Whitehead, for Kraft Foods, protestant in Application No. 43836.
Henry E. Frank, for the Commission's staff.

(a) Also interested party in Application No. 43895.

(b) Also interested party in Application No. 43836.

(End of Appendix "A")

A. Applicant Carriers in Application No. 43836

Anaheim Truck & Transfer Co.,
Antoni Truck Lines,
Arroyo Grande Truck Co.,
Associated Freight Lines,
Bisher Truck Line,
Bonded Draying Service
California Cartage Company, Inc.,
California Motor Express, Ltd.,
California Motor Transport Co.,
Callison Truck Lines, Inc.,
Cascade Drayage & Warehousing, Inc.,
Coast Drayage,
Coast Line Truck Service, Inc.,
Consolidated Freightways Corporation of Delaware,
Constructors Transport Co.,
Delta Lines, Inc.,
Desert Transfer & Storage,
Di Salvo Trucking Co.,
Fortier Transportation Company,
Garden City Transportation Co.,
Gonzalez Drayage Co.,
Haslett Warehouse Company,
Howard Terminal,
Interlines Motor Express,
Marine Transport Company, Inc.,
Merchants Express of California,
J. A. Miller Trucking Company,
Mueller Truck Co.,
Nielsen Freight Lines,
Oregon-Nevada-California Fast Freight, Inc.,
Owens Valley Freight Lines,
Pacific Intermountain Express Co.,
Pacific Motor Express,
Pacific Motor Trucking Company,
Peters Truck Lines,
Sacramento Auto Truck Co.,
Joe Saia Freight Line,
Shippers Express Company,
Southern California Freight Forwarders,
Southern California Freight Lines,
Stapel Truck Lines,
Tesi Drayage Co.,
Thompson Truck Lines,
Valley Express Co.,
Valley Motor Lines, Inc.,
Victorville Barstow Truck Line,
West Berkeley Express and Draying Company,
Western Truck Lines, Ltd.,
Willig Freight Lines.

(Concluded)

B. Applicant Carriers in Application No. 43895

Antoni Truck Lines,
Associated Freight Lines,
Callison Truck Lines,
Culy Transportation Company, doing
business as Cal-Canadian Express,
Delta Lines, Inc.,
Fortier Transportation Company,
Griley Security Freight Lines,
Haslett Warehouse Company,
Howard Terminal,
Interlines Motor Express,
Marysville-La Porte State,
McCloud River Railroad Company,
Merchants Express of California,
Oregon-Nevada-California Fast Freight,
Pacific Motor Trucking Company,
Pacific Motor Transport Company,
Peters Truck Lines,
Joe Saia Freight Lines,
Sacramento Auto Truck Co.,
Santa Fe Transportation Company,
Sierra Railroad Company,
Southern California Freight Forwarders,
Southern California Freight Lines,
Southern Pacific Company,
Transcon Lines,
Willig Freight Lines.

(End of Appendix "B")

APPENDIX "C" TO DECISION NO. 66540Examples of Commodities Exempted from the Provisions of Minimum Rate Tariffs Nos. 2 and 8Commodities Exempted from Minimum Rate Tariff No. 2

Accessories, motion picture,
 Automobiles, set up,
 Buttermilk, liquid,
 Cement Clinker,
 Cheese, including cottage cheese and pot cheese (Exemption does not apply to transportation for which rates are provided in Items Nos. 315 and 605),
 Cotton,
 Cream,
 Directories, telephone,
 Eggs (other than shelled, desiccated or frozen),
 Film, motion picture,
 Fruit, dried, unmanufactured and unprocessed,
 Fruit, fresh or green (not cold pack nor frozen),
 Fungicides, agricultural,
 Hops,
 Ice Cream Mix, unflavored,
 Insecticides, agricultural,
 Logs (wood),
 Newspapers; newspaper supplements, sections or inserts; (not scrap or waste),
 Nuts, in the shell,
 Pits, fruit,
 Poultry, live or dressed,
 Seed, cotton,
 Seeds to be sown or planted, viz.:

Adzuki,	Fenugreek,	Popcorn,
Alfalfa,	Fescue grass,	Proso,
Bahia grass,	Foxtail, meadow,	Redtop,
Bean, field, horse,	Guar,	Reed canary grass,
lima, mat or mang,	Guinea grass,	Rescue grass,
Beet, field or sugar,	Harding grass,	Rhodes grass,
Bentgrass,	Kudzu,	Ryegrass,
Bermuda grass,	Lespedeza,	Sainfein,
Bluegrass,	Lupine,	Sand dropseed,
Bluestem,	Medic, black,	Sesbania,
Brone, bunch or	Molasses grass,	Soybean,
smooth,	Mustard (except	Sudan grass.
Carpet grass,	wild mustard),	Sweet vernalgrass,
Chick pea (garbanzo),	Napier grass,	Timothy,
Clover (except sweet	Oatgrass, tall,	Velvet bean,
clover),	Orchard grass,	Velvet bent,
Creeping bent,	Pea, Austrian	Velvet grass,
Dallis grass,	winter, Canadian	Wheatgrass,
Dog's-tail, crested,	field, tangier	crested or
Doliches,	or wedge,	slender.

Sulpher,
 Vegetables, fresh or green (not cold pack nor frozen),
 Vegetables, dried, viz.: Beans (except Mesquite),
 Lentils, Onions, Peas (except Cow Peas), Pepper Pods.

APPENDIX "C" TO DECISION NO. _____

(Concluded)

Commodities Exempted from Minimum Rate Tariff No. 8

Fresh or green fruits, nuts (in the shell or field shelled), fresh or green vegetables, or mushrooms, as described herein, when the point of destination of the shipment is a cannery, accumulation station, precooling plant, or winery; nor to the empty containers used or shipped out for use in connection with such transportation,

Fresh or green fruits, fresh or green vegetables, or mushrooms, as described herein, moving to a cold storage plant to be held for interim storage for a subsequent movement to a cannery,

Note: Exemption applies only when shipper certifies on the shipping document covering the transportation that the ultimate destination of the shipment is a cannery.

Fresh or green fruits, nuts (in the shell or field shelled), fresh or green vegetables or mushrooms, as described herein, when transported from the field or point of growth to a packing plant, cold storage plant, or a packing shed; nor to empty containers used or shipped out for use in connection with such transportation,

Note: Except for the transportation of citrus fruits in field boxes or in bulk, carrots, avocados, or nuts (in the shell or field shelled), exemption does not apply when the distance between point of origin and point of destination exceeds 50 constructive miles.

Citrus fruits when the point of destination of the shipment is within the Los Angeles Drayage Area, as described in Minimum Rate Tariff No. 5; nor to the empty containers used or shipped out for use in connection with such transportation,

Sugar beets when the point of destination of the shipment is a beet sugar factory or a railroad loading dump,

Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services.

(End of Appendix "C")