

**ORIGINAL**Decision No. 71258

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of  
SIERRA DISTRIBUTING, LTD., for  
authorization to transport under  
authority of Section 3666 of the  
Public Utilities Code, sugar at rates  
below Minimum Rate Tariff No. 2.

Application No. 48166  
(Filed January 7, 1966)  
(Amended March 28, 1966)

In the matter of the application of  
JOHN T. LANE, for authorization to  
transport under authority of  
Section 3666 of the Public Utilities  
Code, sugar at rates below Minimum  
Rate Tariff No. 2.

Application No. 48215  
(Filed January 31, 1966)

Harold F. Culy, E. J. McSweeney and Herbert  
E. White, for Sierra Distributing, Ltd.,  
applicant in Application No. 48166.  
Maurice A. Owens and John T. Lane, for Lane  
Drayage, applicant in Application No. 48215.  
Karl L. Mallard for California and Hawaiian  
Sugar Refining Corp., Keith M. Brown for  
Spreckels Sugar Co., C. D. Gilbert, H. F.  
Kollmyer and Arlo D. Poe, for California  
Trucking Association, Francis X. Vierra,  
for himself, interested parties.  
R. J. Carberry and J. C. Matson for the  
Commission staff.

O P I N I O N

By Application No. 48166, Sierra Distributing, Ltd.,  
(Sierra) seeks authority as a highway contract carrier to assess rates  
three cents per 100 pounds less than the minimum rates on shipments  
of sugar in packages, minimum weight 40,000 pounds, from the  
California and Hawaiian Sugar Refining Corp. at Crockett to customers  
located at points not over 350 constructive miles from Crockett,  
when loading is performed by the shipper. By Application No. 48215,  
John T. Lane, doing business as Lane Drayage, (Lane) seeks the same  
authority but confined to shipments to the Coca-Cola Company at  
San Francisco.

The applications were consolidated and heard on a common record on April 1, 1966, at San Francisco before Examiner Turpen. Testimony was offered by both applicants and by a rate analyst of California and Hawaiian Sugar Corp., (C & H). Representatives of the California Trucking Association (C.T.A.) and of the Commission's staff assisted in developing the record.

The record shows that C & H has recently installed special mechanical loading equipment at one loading door at the Crockett refinery. This equipment enables the shipper's employees to load the trucks and trailers with no assistance from the carriers' employees. C & H intends to equip more loading doors with the same equipment. A rate analyst from C & H testified that his company is incurring this added expense as the refinery operation is highly automated and it is necessary to load vehicles as fast as possible.

The vice president and a terminal manager of Sierra described the operations at the C & H refinery. Sierra maintains a crew of lumpers and hostlers to move trailers of all carriers to the loading doors and to perform loading. Sierra then bills the other carriers for their share of the labor costs. The vice president introduced exhibits developing the costs incurred in hand loading based on actual operations performed during December, 1965, and January and February 1966. These studies showed that the average cost per 100 lbs. to Sierra for the hand loading operation for each month ranged from 4.7 cents to 6.8 cents. According to the witness, this is the amount Sierra's costs will be reduced by C & H doing the loading.

Lane, the other applicant, testified that hand loading of his shipments is performed by Sierra's employees, for which he pays Sierra 4 or 4-1/2 cents per 100 lbs. When loading is done by C & H, Lane does not pay any amount for loading.

Neither applicant presented any evidence as to their overall cost of transporting the sugar. They both said that they feel the present minimum rates are reasonable but include the cost of loading. Applicants here seek only to pass on to the shipper a portion or all of what they will save in costs by the shipper performing the loading.

The carriers have shown that there exists some cooperation between carriers and shippers, that all parties should benefit from increased efficiencies, and that the carriers may have their cost of operation reduced as a result of the apparent efficiencies. However, applicants have not shown that the sought rates are compensatory.

Notwithstanding potential economies shown by applicants, it is incumbent upon parties seeking authority to assess rates less than prescribed minimum rates to show that the resultant rates are compensatory (Paper Transport 63 Cal. P.U.C. 690, 694; Karl A. Weber 60 Cal. P.U.C. 59, 60). In view of the potential economies involved in the proposed operations the order which follows will grant the sought relief for a temporary period of ninety days to allow applicants an opportunity to develop and present at a public hearing evidence that the rates to be assessed for the transportation in question are compensatory.

Subject to further review upon consideration of such additional evidence as applicants may adduce at a public hearing, the Commission concludes that the sought relief should be granted for an interim period of ninety days, unless sooner canceled, changed or extended by order of the Commission.

O R D E R

IT IS ORDERED that:

1. Sierra Distributing, Ltd., a corporation, is authorized to depart from the minimum rates set forth in Minimum Rate Tariff No. 2, by charging rates three cents less than the Class C rates, for the

transportation of sugar, in packages, minimum weight 40,000 pounds, transported from the California and Hawaiian Sugar Corporation Refinery, at Crockett, to points not over 350 constructive miles from Crockett, when shipper loads without expense to carrier, and subject to conditions and limitations set forth in Appendix A attached hereto and by this reference made a part hereof.

2. John T. Lane, doing business as Lane Drayage, is authorized to depart from the minimum rates set forth in Minimum Rate Tariff No. 2, by charging a rate three cents less than the Class C rate, for the transportation of sugar, in packages, minimum weight 40,000 pounds, transported from the California and Hawaiian Sugar Corporation Refinery, at Crockett, to the Coca-Cola Company, San Francisco, when shipper loads without expense to carrier, and subject to conditions and limitations set forth in Appendix B attached hereto and by this reference made a part hereof.

3. The authorities granted herein will expire ninety days after the effective date of this order, unless sooner canceled, changed or extended.

4. A further public hearing will be scheduled in this proceeding at such time as applicants are prepared to proceed for the receipt of additional evidence and final disposition of these applications.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of SEPTEMBER, 1966.

[Signature]  
President  
[Signature]  
[Signature]  
Commissioners

-4- Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.

DISSENTING OPINION OF COMMISSIONER GROVER

I dissent.

The authority should be granted for the customary period of one year, without requiring a further showing.

The minimum rates have been fixed, presumably, on the basis of the costs of a representative group of reasonably efficient carriers. The showing in this case is persuasive that, with loading by the shipper, these costs will be substantially reduced. We are asked to make a simple offset in the minimum rates. Equals minus equals are equal. The request is mild compared to the substantial wage offsets which we have regularly authorized for many years; the theory, however, is the same.

There is no reason to require the additional showing that the proposed rates are compensatory to these particular carriers. We do not care whether minimum rates are compensatory to a particular carrier; the idea behind these rates is rather that they should be compensatory to the reasonably efficient carriers whose costs have been used as the basis for calculating them.

There may be cases where a deviation from the minimum rates can be most easily justified by a showing that a particular operation is compensatory; thus, an unusually efficient carrier might be given a deviation on such a showing, the point being that he can make a profit at the lower rates even though the "representative" carriers considered when we fixed the minimum rates could not. But where, as here, the deviation is fully and logically justified by simpler means, an overall showing that the proposed rates are compensatory will be irrelevant - and a waste of time.

In addition to everything else, the staff effort which will now be wasted on the proposed inquiry could well be used on more pressing matters.



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George G. Grover, Commissioner

San Francisco, California

September 6, 1966

APPENDIX A  
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Carrier: Sierra Distributing, Ltd.

Shipper: California and Hawaiian Sugar Corp.

Commodity: Sugar, in packages  
Minimum weight 40,000 pounds

Conditions: Subject to Notes 1 and 2, below

Note 1: Rates named are subject to the Central Coastal Territory surcharges named in Supplement No. 66 to Minimum Rate Tariff No. 2, where applicable, also all other applicable provisions shown in Minimum Rate Tariff No. 2 will apply except that Items Nos. 200 to 240 will not apply.

Note 2: When palletized shipments of sugar are transported under rates named herein, the empty pallets, platforms or skids may be transported to the point of origin of the palletized shipment without charge subject to the following terms and conditions:

- (1) Shipment must be loaded into carrier's equipment by the consignor and/or unloaded by the consignee with power equipment, furnished and used without expense to the carrier and when no services are performed at carrier's expense or by carrier personnel.
- (2) Shipper must indicate the number of pallets and weight thereof on bill of lading covering the loaded movement, and must show reference to the Shipping Document and date of shipment of the inbound movement on the outbound Shipping Document.
- (3) Shipper must indicate on shipping documents that palletized shipments were loaded directly onto trailers by power-loading equipment operated by personnel furnished by shipper; and/or receivers must show on carrier's delivery receipt that shipments were removed by power-loading equipment operated by personnel furnished by receiver.

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- (4) Carrier will assess applicable tariff charges on empty pallets under the following conditions:
  - (a) If consignee immediately upon receipt of shipment fails to provide carrier with up to a like number of pallets, either for a return movement, or loaded for a beyond move by carrier, or
  - (b) for any empty pallets tendered in excess of the number of loaded pallets transported by carrier on said shipment.
- (5) The constructive mileage from point of origin to point of destination of the shipment shall not exceed 350 constructive miles.
- (6) For the purpose of this Item, empty pallets, platforms or skids shall be as described in Item No. 150370, Sub 1, or Items Nos. 150380, 150390, 150410 or Item No. 150430, Sub 2, of the GC; six inches or less in height or nested solid (as defined in Rule 5 of the GC), and of wood, metal or wood and metal construction.

End of Appendix A

APPENDIX B

Carrier: John T. Lane

Shipper: California and Hawaiian Sugar Corp.

Commodity: Sugar, in packages,  
Minimum weight 40,000 pounds

Conditions: Subject to Notes 1 and 2, below

Note 1: Rates are subject to Central Coastal Territory Surcharges named in Supplement No. 66 to Minimum Rate Tariff No. 2. All other applicable provisions shown in Minimum Rate Tariff No. 2 will apply except that Items Nos. 200 to 240 will not apply.

Note 2: Empty pallets, returning, will be transported without charge.

End of Appendix B