

Decision No. 73023**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 H-P PRODUCE COMPANY, a corporation,)
 under Section 3666 of the Public)
 Utilities Code of the State of)
 California, for authority to charge)
 rates less than those prescribed in)
 Minimum Rate Tariff No. 2 for the)
 transportation of freight, regard-)
 less of classification, from Fresno)
 to Yosemite Village, California,)
 for the account of YOSEMITE PARK &)
 CURRY CO.)

Application No. 48417
 Filed April 21, 1966;
 amended August 30, 1966 and
 July 26, 1967.

OPINION AND ORDER ON REHEARING

Decision No. 72212, dated March 28, 1967, in Application No. 48417, as amended August 30, 1966, denied H-P Produce Company authority, as a highway contract carrier, to charge less than the minimum rates on freight transported from Fresno to Yosemite Park & Curry Co. (Curry) and to Degnan Donohoe, Inc., both located at Yosemite Village in Yosemite National Park. Applicant proposed to charge a flat rate of 80 cents per 100 pounds, regardless of the classification rating or size of shipment. In denying the sought relief the Commission explained that "applicant has not shown that the proposed rate will exceed the cost of providing the service and therefore has not sustained the burden of proof that the proposed rate is reasonable."

The Commission's order in Decision No. 72366, dated May 2, 1967, in the instant application, granted H-P Produce Company's petition for rehearing of Decision No. 72212.¹ The rehearing was

¹ The petition of H-P Produce Company for rehearing and reconsideration of Decision No. 72212 was filed April 5, 1967.

granted in order to give the applicant an opportunity to present additional evidence.

Application No. 48417, as amended on July 26, 1967, substantially limits the initial relief sought by applicant. Authority is now requested to deviate only from the shipping document provisions of Section 1(e) and Section 2 (f) of Item 255 of Minimum Rate Tariff No. 2. The tariff provisions in question require the shipping documents issued by the carrier to describe the property constituting the shipment to be in terms of the governing classification, Exception Ratings Tariff or as provided in the minimum rate tariff. In lieu of such descriptions, applicant proposes to describe articles rated "first class or lower" on the shipping document issued to cover certain Curry shipments as follows: "Merchandise Rated First Class or Lower." For the transportation of articles so described, applicant plans to assess the first class rates applicable to the respective weight of such merchandise. Whenever articles rated higher than first class are received for the account of Curry, such articles will be described, rated and charged for according to the provisions of the governing minimum rate tariff.

As justification for the July 26, 1967 amended request for authority to deviate from the documentary requirements of Minimum Rate Tariff No. 2, applicant relies upon the following circumstances and conditions:

1. Because of the highly seasonal character of the traffic and the wide fluctuation in volume, it is necessary for applicant to maintain one employee during the tourist season for the sole purpose of billing the Curry traffic. Billing in accordance with the provisions of Item 255 of Minimum Rate Tariff No. 2 not only

requires applicant to incur the expense of one extra employee during the tourist season, but it also involves the additional expense of training a new employee each year.

2. Describing Curry shipments as proposed by applicant will not only save billing time and expense but the resulting freight charges will exceed those otherwise applicable under Minimum Rate Tariff No. 2.

3. The proposed relief is limited to Curry traffic received during a single day by its agent or representative at Fresno who, in turn, consolidates such traffic and tenders it to applicant at its Fresno terminal, with a single bill of lading, as a volume collect shipment for subsequent delivery to Curry at Yosemite Village, Yosemite National Park.

4. Applicant states that it is the sole purveyor of produce to Curry, and the latter demands that applicant transport, in for-hire service, all merchandise obtained from other suppliers from Fresno to Yosemite Village. Applicant further explains that Curry receives the preponderance of all merchandise consumed or sold in Yosemite National Park and that there is no common carrier service available between Fresno and the Park.

5. Applicant will continue to observe the minimum rates, rules and charges in connection with all Curry prepaid shipments and any shipments for Curry containing articles subject to ratings higher than first class.

6. Since the revenues to be received by applicant for the transportation involved, under the proposed amended relief, will be the same or exceed that which would be earned under the governing minimum rates, applicant did not deem it necessary to submit the additional cost evidence referred to in its petition for rehearing.

The transportation characteristics of the movement in question are as previously described in Decision No. 72212. The amended relief which applicant now seeks no longer involves a request to assess charges less than those resulting under the application of the governing minimum rates. Applicant now seeks authority only to deviate from the technical tariff rules governing the description of commodities on the shipping documents issued by the carrier to the shipper for each shipment received for transportation. In view of the rather favorable circumstances and conditions surrounding the transportation in question and the seasonability of the movement involved, it is clear that the restricted amended relief now sought by applicant would redound to the mutual benefit of the Yosemite Park & Curry Co. and the H-P Produce Company and would not be adverse to the public interest.

The certificate of service shows that a copy of the latest amendment to the application was served on all appearances of record. The amendment of July 26, 1967 was also listed on the Commission's Daily Calendar. No objections have been received to the granting of the sought relief as finally amended.

We find that:

1. Applicant has the equipment, facilities and financial ability to perform the proposed service.
2. Under the sought authority, as finally amended, potential cost savings and efficiencies will accrue to the mutual benefit of the shipper and H-P Produce Company.
3. The rates to be assessed for the transportation involved are the same as or higher than the rates named in Minimum Rate Tariff No. 2.

4. The limited authority to deviate from the technical documentary requirements of Item 255 of Minimum Rate Tariff No. 2 is, in this particular instance, reasonable and justified by transportation conditions.

We conclude that the sought amended authority should be granted. Since transportation conditions are subject to change, the authority should be limited for a period of one year. A public hearing is not necessary.

IT IS ORDERED that:

1. H-P Produce Company, a corporation, operating as a highway contract carrier, is authorized to deviate from the provisions governing the issuance of shipping documents named in Section 1(e) and Section 2(f) of Item 255 of Minimum Rate Tariff No. 2 when transporting property for the Yosemite Park & Curry Co. from Fresno to Yosemite Village in Yosemite National Park, subject to the following conditions:

- a. All articles included in the shipment rated first class or lower shall be described on the shipping document as "Merchandise Rated First Class or Lower."
- b. "Merchandise Rated First Class or Lower" shall be subject to the first class rates, applicable to the respective weight of such merchandise, named in Minimum Rate Tariff No. 2.
- c. All merchandise rated first class or lower, consigned to Yosemite Park & Curry Co. at Fresno, will be consolidated by its agent or representative each day and tendered to applicant at its Fresno terminal, with one bill of lading, as a single collect shipment for subsequent delivery to Yosemite Village, Yosemite National Park.

2. The authority granted in paragraph 1 hereof shall expire November 1, 1968, unless sooner modified, extended or canceled by order of the Commission.

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

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1967.

E. N. Mitchell
President

William L. Bennett

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William L. Bennett

Paul P. Mansueti
Commissioners