

Decision No. 76835

ORIGINAL

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  
Order Setting Hearing in  
Decision No. 76030, dated  
August 12, 1969

And Related Matters.

Cases Nos.  
5330, 5433, 5435, 5436, 5437,  
5438, 5439, 5440, 5441, 5603,  
5604, 6008, 7857, 7858, 7783  
and 8808

Pacific Southcoast Freight Bureau }  
to quote reduced rates under }  
Section 530 of the Public Utilities }  
Code.

Application No. 51312  
(Filed July 29, 1969)

John MacDonald Smith, for Pacific Southcoast Freight  
Bureau and Southern Pacific Company, applicant  
and real party in interest, respectively, in  
Application No. 51312.

Arlo D. Poe, J. C. Kaspar and H. F. Kollmyer, for  
California Trucking Association; Philip Davies  
and Lloyd K. Hoffman, for the State of California,  
Department of General Services; John T. Reed, for  
California Manufacturers Association; and M. A.  
Passman, for the University of California;  
interested parties.

M. L. Frost, for System 99; and Leland E. Butler, for  
The Atchison, Topeka and Santa Fe Railway Company;  
respondents in Case No. 5432 et al., and inter-  
ested parties in Application No. 51312.

Sergius Boikan, Counsel, for the Commission staff.

O P I N I O N

On July 29, 1969, Pacific Southcoast Freight Bureau submitted, on behalf of Southern Pacific Company, a rate quotation under Section 530 of the Public Utilities Code covering the transportation of textbooks from Sacramento to Los Angeles for the State of California.<sup>1/</sup>

California Trucking Association (CTA) by letter dated July 30, 1969, requested that any submission of rates reduced below competitive publications be rejected.<sup>2/</sup> The rate quotation was not rejected, but Order Setting Hearing in Decision No. 76030 was issued on August 12, 1969. Said Order reads, in part, as follows:

"Its [CTA's] position is that, under Section 530 of the Code, carriers may make simple filings of reduced rate tenders only when they are for the purpose of meeting rates which may be lawfully assessed by other carriers. In support of its position it relies on Decision No. 51831 dated August 16, 1955 in Case No. 5432 (54 Cal.P.U.C. 332).

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<sup>1/</sup> Among other things, Section 530 of the Public Utilities Code of the State of California provides:

"The commission may permit common carriers to transport property at reduced rates for the United States, state, county, or municipal governments, to such extent and subject to such conditions as it may consider just and reasonable. Nothing herein shall prevent any common carrier subject to the provisions of this part from transporting property for the United States, state, county, or municipal governments, at reduced rates no lower than rates which lawfully may be assessed and charged by any other such common carrier or by highway permit carriers as defined in the Highway Carriers' Act."

<sup>2/</sup> Decision No. 51831 dated August 16, 1955 (54 Cal.P.U.C. 332) provides:

"As a matter of administrative control, the common carriers will be required hereinafter to file with the Commission statements of reduced rates quoted to governmental agencies for the transportation of property under the foregoing exception of Section 530 of the Public Utilities Code. Reduced rates beyond the scope of the exception may be permitted only upon application to the Commission and a finding by the Commission that they will be just and reasonable."

"The Southern Pacific Company quoted rate is a rail trailer-on-flat-car rate and is not subject to the minimum rate order. This raises the question as to whether the subject rate constitutes a reduced rate beyond the scope of the Section 530 exceptions quoted above or whether it falls within the conclusion reached in Decision No. 51831, supra, that, under the second sentence of the quoted section, when no minimum rates have been established by the Commission for the transportation of property for governmental agencies by highway permit carriers, common carriers subject to Part I of the Code may assess rates with the same freedom as permitted carriers.

"In the circumstances, the quotation statement here in issue...will be docketed as a formal application and will be consolidated for hearing with this Order Setting Hearing."

Public hearing on the Order Setting Hearing and Application No. 51312 was held before Examiner Mallory at San Francisco on November 13, 1969. The facts concerning the movement of the textbooks were presented in evidence by a traffic officer of Southern Pacific Company (Southern Pacific) and by the Traffic Manager of the California Department of General Services (General Services). These facts are not in dispute. The matter was submitted subject to the filing of concurrent opening and closing briefs, which have been received, on the question of the manner in which the Commission should interpret and apply the provisions of Section 530 of the Public Utilities Code with respect to rate quotations of common carriers to the State of California and to county and municipal governments. Opening briefs were filed by Southern Pacific and CTA. Reply briefs were filed by Southern Pacific, CTA, General Services, and California Manufacturers Association (CMA). No briefs were filed by the Commission staff.

#### Facts Surrounding the Transportation

The facts surrounding the transportation services here in question are as follows: On July 1, 1969, Southern Pacific was

requested to quote a reduced rate to the State for the movement of school textbooks from the State's warehouse at Sacramento to the warehouse of the Los Angeles Unified School District in Los Angeles. The textbooks were elementary school textbooks used in the public schools, which the State furnished free to the school district under various provisions of State law. The applicable Plan II trailer-on-flatcar rate of Southern Pacific from Sacramento to Los Angeles was 96 cents per 100 pounds.<sup>3/</sup> The lowest rate for highway permit carriers (or highway common carriers) was 79 cents per 100 pounds.<sup>4/</sup> Southern Pacific advised General Services that it would quote and apply a rate of 70 cents per 100 pounds, minimum weight 40,000 pounds per trailer used. The quotation made orally on July 7, 1969, was confirmed by the filing of the quotation letter referred to above.<sup>5/</sup> Textbooks were moved under this quotation beginning July 10, 1969. Approximately 2.8 million pounds of textbooks were transported. The bulk of the movement took place during July and August; but movements continued into September and finally ended in October 1969. Plan II trailer-on-flatcar service is door-to-door service in equipment furnished by the rail carrier.

General Services showed that the savings under the rate quotation amounted to approximately \$2,060 on the outbound transportation service and \$500 for the free return of the pallets on which the textbooks were loaded.

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<sup>3/</sup> The fourth class rate set forth in Item 1590, Supplement 9 to PSFB Tariff 294-E. The fourth class rating is found in Item 79520 of Western Classification No. 78.

<sup>4/</sup> Minimum Rate Tariff No. 2, Item No. 510, based on the Exception Rating on School Textbooks of Class 35.1, Minimum Weight 45,000 pounds, in Item No. 317.

<sup>5/</sup> The quotation bears an Issue Date of July 14, 1969, and an Effective Date of July 7, 1969. As indicated heretofore the quotation was received by the Commission on July 29, 1969.

Southern Pacific indicated that the quotation was made following a cost analysis which showed that the 70-cent rate more than covers its out-of-pocket costs and some contribution to overhead expenses. Said cost analysis was not introduced in the proceeding herein.

Position of the Parties

It is the position of Southern Pacific that it was not necessary to secure any approval from this Commission to make its rate quotation effective, based on its interpretation of Section 530 and Decision No. 51831, supra.

General Services concurs in and supports the position of Southern Pacific as expressed in its opening brief and opposes the position of CTA, as CTA's position would significantly restrict the ability of the State to negotiate for transportation for the State at reduced rates under Section 530.

CTA contends that railroads do not have an unrestricted right to transport property for governmental agencies at free or reduced rates. Specifically, CTA contends that the 1955 amendment to Section 530 (supra) prohibits, without express authority from the Commission, a common carrier from quoting or assessing rates below its own published rate, the published rate of another common carrier or the applicable minimum rate, whichever is lower, unless the Commission has not established minimum rates for the specific movement. CTA urges that inasmuch as there were established rates for highway permit carriers and highway common carriers, the transportation of textbooks does not fall within the exception in the last sentence of Section 530.

CMA urges that the rates quoted by Southern Pacific were subject to the permissive requirements of Section 530(a), but not

within the Exception contained in the last sentence of that paragraph; therefore, the quotation was in violation of Section 530.

Issues

At the hearing it was agreed that the time and the efforts of the parties would be conserved if the Commission first determined whether the railroad rate quotation was one which required prior approval by the Commission; that determination may preclude the necessity of presenting additional evidence to show that the rate quoted was reasonable. Therefore, the issue to be determined initially is whether under the provisions of Section 530 of the Code and the language of Decision No. 51831 (supra), the rate quotation docketed as Application No. 51312 is a "reduced rate no lower than the rate which lawfully may be assessed by any other such common carrier or by highway permit carriers as defined in the Highway Carriers' Act."

On this point Decision No. 51831 (54 Cal.P.U.C. 332, at pages 333 and 334) provides:

"The second sentence of the quoted paragraph [Footnote 1 herein] provides in effect (as an exception to the new requirement that common carriers assess their tariff rates on property transported for governmental agencies unless the Commission permits otherwise) that common carriers may meet any rates which lawfully may be assessed by any other such common carrier or by highway permit carriers. On most traffic, minimum rates for highway permit carriers have been established by the Commission. On some traffic, however, no rates have been established as applied to highway permit carriers. As to the latter traffic, therefore, under the amended statute, common carriers subject to Part I of the Code may assess rates with the same freedom as permit carriers...Reduced rates beyond the scope of the exception may be permitted only upon application to the Commission and a finding by the Commission that they will be just and reasonable." (Underscoring supplied.)

Discussion, Findings and Conclusions

Pursuant to Decision No. 31606 (41 Cal.P.U.C. 671, 724) and later decisions involving the establishment of minimum rates for highway permit carriers and common carriers, rail carriers operating in California are not subject to, nor required to observe, established minimum rates on their carload traffic (except with respect to carload rates on bulk petroleum products). The railroads are free to establish reduced rates on the preponderance of their commercial carload traffic without prior approval of this Commission, subject only to the suspension procedures set forth in the Code and to statutory notice requirements. When reduced rail rates are suspended, the burden of proof as to their reasonableness rests with the proponent railroad.

The question presented, therefore, is whether railroads have the same freedom to initiate reduced carload rates on government traffic as on commercial traffic. Southern Pacific argues that the railroads have this right; CTA and CMA urge that railroads do not.

Preliminarily, we will dispose of the argument of Southern Pacific that even if the 1955 amendment is applicable to its quotation to General Services, the transportation of school textbooks is for "charitable purposes", and therefore may be accorded reduced rates without restriction by the Commission under paragraph (a) of Section 530. We must reject this argument. The State, in supplying textbooks without charge to school districts, does so primarily for purposes other than for "charitable purposes". The establishment and maintenance of a public school system supported by taxes is a governmental rather than a charitable function. We find that the transportation of school textbooks by Southern Pacific for the State of California was not for "charitable purposes" as that term is used in Section 530(a) of the Code.

We turn now to the principal question presented herein. We conclude as a matter of law that railroads are not free to initiate free or reduced rates to the State, or to county and municipal governments, to the same extent that they are permitted to initiate reduced rates on commercial traffic because of the provisions of the 1955 amendment to Section 530 of the Code.

After review of the briefs filed herein, the language of Decision No. 51831, and the provisions of Section 530, as amended, it is our conclusion that the intent of the 1955 amendment of Section 530 was to place a restraint on the ability of common carriers to grant reduced rates on government traffic below the levels of rates published in their own tariffs or the tariffs of other common carriers and which are also below the level of the established minimum rates for highway permit carriers. In order to remove the one major "loophole" remaining to the foregoing interpretation the Commission, in Decision No. 51831, canceled the exemption on armed forces traffic in Minimum Rate Tariffs Nos. 2 and 10.<sup>6/</sup>

The foregoing is consistent with the conclusion that, by its amendment of Section 530, the Legislature was not committing an idle act. The 1955 amendment struck from subdivision (a) all reference to transportation of "property" by common carriers for governments at free or reduced rates (leaving therein only the transportation of passengers), and added the paragraph quoted

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<sup>6/</sup> Decision No. 51831 (54 Cal.P.U.C. 337 at page 334) reads as follows:

"If this provision [the exemption of armed forces traffic] were retained in the minimum rate tariffs, not only the permitted carriers but also the common carriers would be without the rate regulation which clearly was contemplated under the recent legislative enactment."

Subsequently, the federal courts determined that Section 530 was invalid insofar as it purports to authorize this Commission to impose conditions upon the granting of reduced rates by common carriers to the United States, as contravening the provisions of the United States Constitution relating to national defense. (U.S. v. Pub. Util. Com. of Calif., 141 F. Supp. 168, Affirmed 355 U.S. 534, 2 L.Ed.2d 470.)



in footnote 1. The logical conclusion to be reached is that the Legislature intended to place a restraint on the ability of common carriers to grant free or reduced rates on government traffic. By the inclusion in the 1955 amendment of the phrase "at reduced rates no lower than rates which lawfully may be assessed and charged by any other common carrier or by highway permit carriers as defined in the Highway Carriers' Act", the Legislature intended to place a definite floor under rates which could be quoted by common carriers without express approval by this Commission.

We further conclude that, as a matter of law, the "rates which lawfully may be assessed and charged" by common carriers and highway permit carriers within the meaning of that phrase in the 1955 amendment of Section 530 are the following:

1. Where minimum rates have been established:
  - (a) rates no lower than the minimum rates established by this Commission for highway permit carriers; or
  - (b) rates specifically authorized to be established by highway permit carriers or common carriers which are lower than the established minimum rates; or
  - (c) the published carload rates of rail carriers and the published rates of vessel carriers.
2. Where minimum rates have not been established, any level of rates desired.

Thus, we conclude that no rail carrier (or other common carrier) may quote or assess rates for the transportation of property for the State or for county or municipal governments lower than the lowest of the lawful rates described in the preceding paragraph without express authority of this Commission.

We further conclude that the rate quotation in issue was one which required prior approval of the Commission.

For administrative control, rules will be required to implement the handling and filing of rate quotations under Section 530 of the Public Utilities Code. For example, it is clear that the Commission cannot effectively regulate under this Code Section if common carrier rate quotations to governmental agencies are permitted to be filed retroactively; also, guidelines are required as to the manner in which common carriers may seek advance approval, when necessary, of their government rate quotations.

In view of the foregoing findings and conclusions and pursuant to the understanding reached at the hearing herein, Application No. 51312 and the proceeding in Case No. 5432 et al. will be set for further hearing for receipt of evidence with respect to the reasonableness of the rate invoked. Moreover, the proceeding in Case No. 5432 et al. will be kept open for the receipt of further evidence with respect to the rules required to implement the conclusions reached herein. The Commission staff will be directed to prepare recommended rules for the consideration of the parties. Further hearing will be held with respect to this phase of the matter when the Commission is advised that the parties are ready to proceed.

O R D E R

IT IS ORDERED that:

1. Application No. 51312, filed July 29, 1969 by Pacific Southcoast Freight Bureau and Order Setting Hearing in Decision No. 76030 in Case No. 5432 et al. will be set for further hearing at a time and place to be determined for receipt of evidence with respect to the reasonableness of the rate herein in issue.

C. 5432 (OSH D.76030) ds

2. The Order Setting Hearing in Decision No. 76030 in Case No. 5432 et al. will remain open for the receipt of further evidence with respect to the rules required to implement the handling and filing of rate quotations under Section 530 of the Public Utilities Code.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of FEBRUARY, 1970.

William J. Simon  
President

Thomas L. Sturgeon  
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.