

ORIGINAL

Decision No. 77513

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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; Ronald C. Broberg, for California Trucking Association; 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 interested 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 Transportation Company (Southern Pacific), 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.

California Trucking Association (CTA) by letter dated July 30, 1969, requested that any submission of rates reduced below competitive publications be rejected. The rate quotation was not rejected, but Order Setting Hearing in Decision No. 76030 was issued on August 12, 1969.

Public hearing was held on the issues raised in the Order Setting Hearing, and Decision No. 76835 was issued on February 20, 1970. Said decision contains a statement of the facts surrounding the transportation of textbooks under the quotation statement, and conclusions of law with respect to the meaning and intent of Section 530 of the Public Utilities Code. That decision reads, in part, as follows:

"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."

Decision No. 76835 ordered that Application No. 51312 be set for further hearing for receipt of evidence with respect to the reasonableness of the rate herein in issue.

Such hearing was held before Examiner Mallory at San Francisco on June 4, 1970 and Application No. 51312 was submitted.

Evidence was presented on behalf of Southern Pacific and for the Department of General Services of the State of California. No one opposed the approval of the quotation statement. CTA's representative urged that an expiration date be attached to the rate quotation, inasmuch as circumstances surrounding the transportation may change at any time.

A special analyst from Southern Pacific's Bureau of Transportation Research presented in evidence a summary of the cost of transporting textbooks in Plan II trailer-on-flat-car (TOFC) service, and a comparison of said costs with the revenues earned from the movement of textbooks under the rate quotation. Said exhibits showed that the out-of-pocket cost per trailer for door-to-door service amounted to \$196.43. The witness testified that 67 trailers were hauled in the period July through October 1969. The total revenue was \$19,317.31 and the total estimated out-of-pocket cost was \$13,160.81, resulting in a contribution to overhead and profit of \$6,156.50. Stated differently, the estimated out-of-pocket cost per 100 pounds was 48 cents, and the assessed rate was 70 cents per 100 pounds, leaving a margin of 22 cents per 100 pounds for overhead and profit. The witness testified that the foregoing indicates the contribution to overhead and profit was about 47 percent above estimated out-of-pocket costs.

Southern Pacific's general freight agent testified the existing published Plan II TOFC rate of 96 cents was too high to attract the textbook traffic to that carrier as it exceeded the existing truck rate. The witness testified that faster and more personal service offered by trucklines requires that the railroad offer rates something less than the truck rates in order to compete. The witness stated that it is Southern Pacific's position that the

70-cent rate is within the zone of reasonableness. The witness asserted that the lower limit of that zone generally is fixed at the point at which the rate would fail to contribute revenue above the out-of-pocket cost of performing the service; the upper limit of the zone would be the level at which the rate would be above the value of the service. A determining factor of value of service, according to the witness, is a regular and substantial movement under a particular rate. The witness testified that the record shows that there was a regular and substantial movement under the rate of 70 cents. The witness urged that the 70-cent rate is in excess of the lower limit of the zone of reasonableness, inasmuch as it substantially exceeds out-of-pocket costs. The witness stated that said rate does not exceed a maximum reasonable rate in light of demand factors enumerated above.

The traffic manager of the California Department of General Services testified in support of the sought rate. He stated that the rate in question is in excess of published Plan II TOFC rates on other commodities having similar transportation characteristics; that said rate quotation resulted in a substantial saving to the State, aiding it in its program of free textbook distribution to local school districts; and that the State again desires to use the rate for textbook distribution next year.^{1/} He urged that the 70-cent rate be found reasonable, and that it be authorized for the forthcoming year.

The Commission finds:

1. The Plan II TOFC rate of 70 cents per 100 pounds on school textbooks from Sacramento to Los Angeles, in issue herein, as

^{1/} The witness stated that the 70-cent Plan II TOFC rate was not used during 1970, as it was under a cloud because of the proceeding herein. He stated that substantially all of this year's textbook distribution had been accomplished by the date of the hearing.

more specifically set out in Government Quotation 88 of Pacific Southcoast Freight Bureau, was issued July 14, 1969, was made effective July 7, 1969, and bears no expiration or termination date.

2. The State of California, Department of General Services moved 67 trailer-loads of textbooks during 1969 under the quotation described in finding 1. The total freight charges were \$19,317.31.

3. The total estimated out-of-pocket costs for the movement described in finding 2 was \$13,160.81. The assessed charges provided a contribution to fixed costs and profit in excess of such out-of-pocket costs of \$6,156.50, or 47 percent.

4. The 70-cent rate exceeds other published Plan II TOFC rates in effect at the time of movement. Said rate resulted in the movement of a substantial amount of traffic.

5. The 70-cent rate falls within the parameters of the generally accepted range of the zone of reasonableness for rail carload rates. Said rate was, in 1969, and for the future will be, a just, reasonable and nondiscriminatory rate for the transportation to which it applies.

6. In approving said rate for future application a time limit (expiration date) should be established because cost and other circumstances surrounding the transportation may change. Under the circumstances involved herein, an expiration date of November 15, 1971 will be reasonable.

The Commission concludes that the following order should be issued.

ORDER

IT IS ORDERED that Government Rate Quotation 88 of Pacific Southcoast Freight Bureau issued July 14, 1969, containing a quotation to the State of California on school textbooks, shall expire on November 15, 1971, unless sooner canceled or extended.

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

Dated at San Francisco, California, this 21st day of JULY, 1970.

Chairman

Commissioners

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

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.