

ORIGINAL

Decision No. 82377

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, and 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  
Petition for Modification  
No. 744  
(Filed April 6, 1973)

Murchison & Davis, by Donald Murchison, Attorney at Law, and Fred H. MacKensen, for petitioners.  
Mark Kasner, for National Transportation Co.; and Stanley J. Draper, for Film Messenger Service; respondents.  
Kent N. Redwine, Attorney at Law, for Association of Motion Picture and Television Producers; and Milton W. Flack, Attorney at Law, for Spanish Picture Exhibitors Association; protestants.  
R. G. Moon, for Western Motor Tariff Bureau;  
R. W. Smith and A. D. Poe, Attorneys at Law, and H. W. Hughes, for California Trucking Association; and Homer I. Tegtmeier, for National Theatre Owners of California; interested parties.  
Leonard Diamond, Thomas Monji, and Frank Nyulassy, for the Commission staff.

O P I N I O N

Petitioners are Theatre Transit Company, Inc., Special Service Transportation Corp., Ltd., Santa Barbara Special Delivery Service, Inc., Film Transport Co. of California, Inc., Albert L. Webb, doing business as Webb Theatre Service, and William P. Brown, Jr., and Robert F. Brown, doing business as BeeKay Film Delivery. Petitioners are highway common carriers engaged in the transportation

of motion picture film and accessories between film distributors and motion picture theaters.

The petition herein seeks the establishment of minimum rates for the transportation of motion picture film and accessories on a statewide basis.

Public hearing was held before Examiner Mallory in Los Angeles on September 25 and 26, 1973. The matter was submitted upon the receipt of concurrent briefs filed on November 30, 1973. Briefs were filed by petitioners, by protestant Spanish Picture Exhibitors Association (SPEA), and by the Commission staff. SPEA and the staff urge that the petition be denied.

Background

Minimum Rate Tariff 2 (MRT 2) contains the minimum rates established by this Commission for all classes of highway carriers engaged in the transportation of general commodities. That tariff specifically exempts from the minimum rates established therein the following transportation (Item 40):

Film, motion picture.

Accessories, motion picture.

The above terms are not further defined in the tariff nor is reference made in MRT 2 to items in the National Motor Freight Classification which would embrace the specific description of the articles covered by the exemption.

Each of the petitioners files a tariff with the Commission naming its rates, charges, and rules for the transportation of motion picture film and motion picture accessories. The bases of rates and the level of rates are quite different in each tariff. Also, each tariff contains a different list of articles considered by the carrier to be motion picture accessories. Petitioners file annual reports with the Commission. Annual reports filed by petitioners for the years 1970, 1971 and 1972 were incorporated into the record herein by reference.

Statement of Issues

The Commission considers the following to be the material issues in this proceeding:

1. Whether there is a compelling economic or competitive need for the establishment of minimum rates.
2. Whether the public interest (aside from the interests of the carriers performing the service) will be served by the establishment of minimum rates.
3. In the event the answer to either of the foregoing is in the affirmative, whether the record contains sufficient data to serve as a basis for the establishment of just, reasonable, and nondiscriminatory minimum rates.

Evidence Adduced by Petitioners

The evidence presented on behalf of petitioners was adduced by representatives of two of the petitioners, by a theater owner who represented the National Association of Theatre Owners (NATO), by a highway permit carrier, and by an employee of a tariff publishing agent.

The following opening statement was made by petitioners' counsel:

"MR. MURCHISON: I might indicate that insofar as the objectives of this proceeding are concerned, we do not intend to prove that the proposed minimum rates are reasonably compensatory and produce a reasonable rate of return but rather that the presently published tariff rates of the common carriers by land are not unreasonably high; that they are a reasonable minimum level of rates by any yardstick but are not a reasonable maximum level of rates; and the establishment of minimum rates is necessary for the protection of an established public utility and for the preservation of an important public service, as in this case; and, finally, because of the exemption of motion picture films and supplies from the present minimum rate order, permitted carriers are providing unfair competition—which highway common carriers are

not under—to identify the rates charged vehicles and meet on other common grounds contrary to the intent of Section 3660 et seq. of the Public Utilities Code.

"We do not intend to put any cost study as such on by virtue of the manner and proposal—as the case will develop—is a consequence of their movement."

The witnesses appearing for Film Transport Co. of California and Theatre Transit, Inc. described the operations performed by those petitioners, by other petitioners, and by competing highway permit carriers. This testimony shows that each petitioner is certificated to serve a particular area or portion of the State. The certificates, with two exceptions, are limited to motion picture film and accessories, and require that the consignor or consignee is a theater. The territories described in petitioners' certificates overlap only to a limited extent. The rates maintained by petitioners are not uniform, inasmuch as the rates were developed over long periods of time to meet the needs of the individual carriers and shippers.

The witness for Film Transport Company of California, Inc. stated that four other petitioners also operate in southern California and that he was testifying on their behalf as well as for his company. The witness stated that his company performs service as a common carrier of general commodities as well as motion picture film and accessories. The film operations are kept separate from the other services because the film is transported under different conditions. According to the witness, motion picture film transportation service is a highly specialized business and is performed in the evening hours, as opposed to general freight operations performed during daylight hours. Each driver has a set of keys to the theaters served. Deliveries and pickups are made after the theaters are closed. Generally no theater personnel are present.

The aforementioned witness testified that the five petitioners operating in southern California face competition from only one highway permit carrier by the name of Brakewater.<sup>1/</sup> That carrier assertedly charges less than the rates published by petitioners. Assertedly, petitioners lost the business of 18 theaters to this carrier. The record does not contain any additional information concerning the volume of film transportation service performed by this carrier, nor the precise level of rates assessed. ✓

Theatre Transit, Inc. is based in San Francisco and serves an area generally north of Bakersfield and south of Auburn and Sacramento. A total of 425 theaters are served. The witness named only one permit carrier (Tamber Film Service) which provided competing service to theaters within the territory served by this carrier.<sup>2/</sup> According to the witness the highway permit carrier charges lower rates. No statement of the rates charged or the number of theaters served by the competing highway permit carrier was introduced into evidence. The witness indicated that the business lost to the highway permit carriers occurred over a period of several years.

A tariff compiler employed by Western Motor Tariff Bureau presented in evidence a proposed tariff (Exhibit 744-1). The proposed tariff is a composite of the existing common carrier tariffs of petitioners. As indicated in the testimony of the petitioners' operating witnesses, the rates and rules in the several tariffs are not uniform, and each tariff reflects the independent needs of the carriers and the shippers in the areas they serve. The proposed

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- <sup>1/</sup> Brakewater Transport, a proprietorship, holds radial and highway contract carrier permits and is authorized to transport general commodities and motion picture film within a 300-mile radius of Los Angeles.
- <sup>2/</sup> The Commission's records show Tamber is a copartnership holding radial and highway contract carrier permits and is authorized to transport motion picture film and theatrical supplies within a radius of 300 miles of Earlimart. ✓

tariff in Exhibit 744-1 contains different rates for the same lengths of haul; different descriptions of film accessories, resulting in uncertainties as to the commodities covered by the tariff; ambiguities as to the application of conflicting rate and tariff provisions; and, although subject to Distance Table 7, fails to give recognition to the metropolitan zone system contained in that tariff.

The owner of Film Messenger Service, a highway permit carrier operating locally in the San Francisco Bay Area, was called as a witness for petitioners. This witness stated that he currently charges the same rates as Theatre Transit, Inc. However, the witness opposed the petition because the rate proposals of petitioners would assertedly cause confusion and would be difficult to apply.

The owner of a chain of theaters testified in support of the petition. This witness stated that he was satisfied with the services and rates maintained by petitioners and did not want the rates changed.

#### Evidence of Protestants

A representative of the Spanish Picture Exhibitors Association testified in opposition to the petition. The witness stated that the association has approximately 70 members who are theater owners. Each such member operates one or two theaters which exhibit Spanish language films exclusively or in combination with English language films. These theaters have different service requirements from theaters which exhibit English language films exclusively, because the principal depository of Spanish language films is in Los Angeles; whereas there are film depositories in both Los Angeles and San Francisco for English language films. Some of SPEA's members use highway permit carriers to provide their film delivery requirements. The rates of these highway permit carriers assertedly are designed for the particular service accorded to protestants.

Discussion

As previously indicated, petitioners must make a showing that the establishment of minimum rates is necessary to meet the needs of the public and the needs of the carriers performing the service. The record contains no specific information which supports the need for the establishment of minimum rates. The competition faced by petitioners is minimal and is not destructive to petitioners' operations. The motion picture exhibitors in California appear to be adequately served under present arrangements; there was no showing of a discrimination in rates nor lack of adequate service to shippers. Therefore, petitioners have failed to show any compelling need for the establishment of minimum rates or that the establishment of minimum rates is required to preserve adequate and efficient service at reasonable rates.

The proposed minimum rates are not supported by sufficient evidence to establish that they would be reasonable. Petitioners have relied upon the annual reports of petitioners to show the existing common carrier rates are not excessive. The annual reports are inadequate for such purpose, inasmuch as the operating ratios shown therein for the year 1973 range from 64.2 to 100.2 percent; the revenues reflected therein are received from sources other than transportation of motion picture film and accessories, and the expenses also reflect operations other than those under consideration herein.

The rates proposed by petitioner are not uniform in application, the commodities covered by the proposed tariff are uncertain, the rates are different for the same lengths of haul, numerous long- and short-haul violations are present, and the tariff fails to recognize the metropolitan zone system used in the governing distance table. These inadequacies would make it inappropriate to adopt the proposed tariff, even if the rate levels had been supported by adequate cost data. (Section 3662, Public Utilities Code.)

Findings

1. Petitioners are common carriers of motion picture film and accessories. One petitioner operates in northern California, the others operate in southern California.

2. The transportation of motion picture film and motion picture film accessories was exempted from the rates in Minimum Rate Tariff 2 by Decision No. 31606 (1939), 41 CPUC 671, and that exemption has been continuously in effect since statewide minimum rates on general commodities were established in 1939.

3. Petitioners publish tariff rates for the transportation of motion picture film and accessories from, to, or between theaters in the territories served by them. The rates, charges, rules, and regulations for this transportation are not uniform and the rate levels are substantially different for similar lengths of haul.

4. Petitioners are faced with competition from two highway permit carriers, one operating in northern California, and one operating in southern California. The record fails to show fully the nature and extent of the operations of the competing highway permit carriers and the levels of rates assessed by them. (Section 726 of the Public Utilities Code.)

5. Petitioners have not lost any substantial amount of business to competing permit carriers and have not been required to reduce or otherwise adjust their rates to meet the competition of highway permit carriers.

6. Film exhibitors appear to be adequately served under existing competitive conditions, and no showing has been made that any rate discrimination exists between shippers.

7. Petitioners have failed to show that there is any compelling present need for the establishment of minimum rates for the transportation of motion picture film and accessories. (Sections 726 and 3662 of the Public Utilities Code.)



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Conclusion


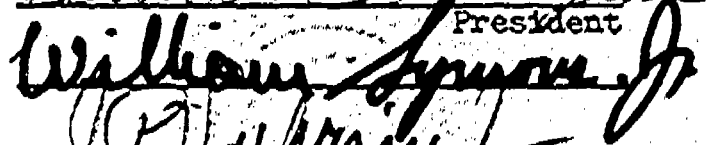
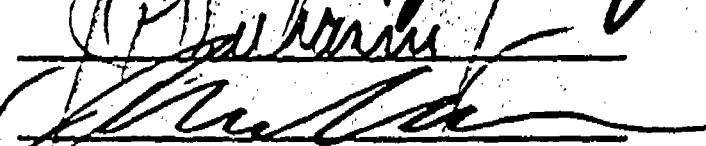
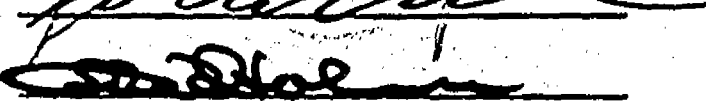
The Commission concludes that the petition should be denied.

O R D E R

IT IS ORDERED that Petition No. 744 in Case No. 5432 is denied.

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

Dated at San Francisco, California, this 22<sup>nd</sup> day of JANUARY, 1974.

  
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President  
  
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Commissioners