

IS

Decision No. 83305

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

BBD TRANSPORTATION COMPANY, INC., )  
GRILEY FREIGHT LINES, CHESLEY TRANS- )  
PORTATION CO., INC., W. S. EMERIAN )  
TRUCKING COMPANY, B & G TRUCKING, INC., )  
TRANS-CAL FREIGHT WAYS, ART BAKER )  
TRANSPORTATION COMPANY, JEROME H. )  
MC LEOD TRUCKING, W. E. WHITE, CARL R. )  
BUTLER, WILLIE SHEPARD, EDGAR STANFUL )  
TRUCKING, TRUCKING UNLIMITED, C & E )  
TRUCKING COMPANY, INC., OLIVER F. MILLER )  
TRUCKING, LOU ROBERTSON TRUCKING, )  
JOE LANE, J & L TRUCKING, SELMER )  
BORNHOLDT, DONALD M. BUNIK, JAMES HALL, )  
RICHARD C. HAMILTON, FRANK HERNANDEZ, )  
JOHN ROCHER, WILLIAM RYLAARSDAM, W. E. )  
SMITH, GEORGE M. WINSTON TRUCKING )  
COMPANY, ACME GENERAL CORPORATION, )  
AMERON PIPE PRODUCTS, CAL-STRIP STEEL )  
CORPORATION, WESTERN ALLIED CORPORATION )  
WESTERN AIR & REFRIGERATION, INC., )  
VALLEY CITIES SUPPLY COMPANY, MARCH )  
PIPE COMPANY, J. C. FABRICATORS, INC., )  
ANGELES METAL SYSTEMS, MAGNA METALS, )  
INC., ROYAL MARINE, ROYAL TRUCK BODIES, )  
BELL PIPE AND SUPPLY COMPANY, ENSCO )  
MANUFACTURING COMPANY, INC., STORAGE )  
RACK SYSTEMS, INC., AND AIR CONDITIONING )  
COMPANY, INC., )

Complainants, )

vs. )

PACIFIC SOUTHCOAST FREIGHT BUREAU, )  
KAISER STEEL CORPORATION, UNITED STATES )  
STEEL CORPORATION, THE ATCHISON, TOPEKA, )  
AND SANTA FE RAILWAY COMPANY, CENTRAL )  
CALIFORNIA TRACTION COMPANY, HOLTON )  
INTER-URBAN RAILWAY COMPANY, MC CLOUD )  
RIVER RAILROAD COMPANY, NORTHWESTERN )  
PACIFIC RAILROAD COMPANY, PETALUMA AND )  
SANTA ROSA RAILROAD COMPANY, SACRAMENTO )  
NORTHERN RAILWAY, SAN DIEGO AND ARIZONA )  
EASTERN RAILWAY COMPANY, SOUTHERN )  
PACIFIC TRANSPORTATION COMPANY, STOCKTON )  
TERMINAL AND EASTERN RAILROAD, TIDE- )  
WATER SOUTHERN RAILWAY COMPANY, THE )  
WESTERN PACIFIC RAILROAD COMPANY, and )  
UNION PACIFIC RAILROAD COMPANY, )

Defendants. )

Case No. 9424  
(Filed August 15, 1972;  
amended September 22, 1972)

OPINION AND ORDER  
DENYING REHEARING

This proceeding arose upon the complaint of BBD Transportation Company, Inc. (BBD) and other highway carriers of certain steel and iron commodities, filed August 15, 1972. Complainants alleged that rates filed by Pacific Southcoast Freight Bureau (PSFB) in Supplement 36 to PSFB Tariff 272-B were unlawful as violations of Section 452 of the Public Utilities Code.<sup>1/</sup> Hearings were held at which time evidence was presented as to the effect of the new rates on competition and the justification for said rates. In Decision No. 82645 we held that the rates were lawful and that they were in conformance with the provisions of Section 452.

BBD has requested rehearing of Decision No. 82645. In support of its petition for rehearing BBD alleges, inter alia, that the Commission wrongfully placed the burden of proof on it rather than on the proponent of the new rates, PSFB. BBD acknowledges that this proceeding was initiated by its complaint and that the normal rule places the burden of proof in such cases on the complainant. It argues, however, that here the rates never became lawful rates because Section 452 was not complied with, and, therefore, the burden of proof should have been placed on PSFB.

Section 452 states:

"Nothing in this part shall be construed to prohibit any common carrier from establishing and charging a lower than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction of the commission may establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which is less than the charges of

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<sup>1/</sup> All further statutory references herein are to the Public Utilities Code.

competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as is required by the commission and a finding by it that the rate is justified by transportation conditions. In determining the extent of such competition the commission shall make due and reasonable allowance for added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation."

The section allows certain reductions in rates to be made by common carriers without Commission approval, subject only to the giving of statutory notice as provided in Section 455. However, where a carrier proposes reduced rates for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which is less than the charges of competing carriers, the carrier must show and the Commission must find that the rates are "justified by transportation conditions."

The rate changes here in question were filed June 26, 1972, to become effective July 26, 1972. On July 14, 1972, within the time permitted under Section 455 and General Order No. 113-A, BBD filed a petition for suspension and investigation of rates. This petition was not granted and the filed rates were allowed to become effective at the end of the statutory notice period. Had the Commission suspended the filed rates and ordered an investigation, the burden of proof as to whether the filed rates were "justified by transportation

conditions" would have been placed on PSFB. (see Atchison, Topeka & Santa Fe Railroad Company - Transportation of Cement,

62 Cal.P.U.C. 49, 51 (1963); San Joaquin Pipe and Power Corporation, 38 Cal.P.U.C. 831, 834 (1933); and Smith Transportation Company, 54 Cal.P.U.C. 561 (1955).)

However, the Commission in its discretion did not suspend the filed rates. BBD thereafter filed its complaint. Were the Commission to accept BBD's contentions, it would have to allow challenges to all presently effective rates, which by the mere assertion that Section 452 is somehow involved, would place the burden of

proving the rates are justified on the proponents of the rates. More is required. By its complaint BBD attempted to show that the rates involved reductions below the charges of competing carriers within the meaning of Section 452. As to that issue it had the burden of proof.

After it was established that Section 452 was involved the burden of going forward with evidence shifted to PSFB. PSFB had the burden of showing that the rates were justified by transportation conditions. PSFB produced several witnesses and exhibits and the Commission found in Decision No. 82645 that it successfully met that burden. As to the other allegations of BBD regarding discrimination and safety, the burden of proof remained with it, and we have held that it did not meet its burden of proof. BBD's due process rights have not been injured in this proceeding.

The law is clear that whether the rates are "justified by transportation conditions" is to be determined by the Commission based on its review of the evidence and weighing of a number of factors. The major factor is whether the reduced rate will "return to the carrier its cost of transportation." (Southern Pacific Company v. Railroad Com., 13 Cal.2d 89, 106 (1939).) We have found that the rail rates here involved provide sufficient revenue to meet variable costs as well as contributing to general overhead costs. We are also aware that highway carriers of these iron and steel articles are not required in any way to charge these rail rates.

The California Supreme Court in the Southern Pacific case, supra, stated that:

"..., in its zeal to perform its conceived duty in the premises, the concern of the commission should not extend to the limit of 'holding an umbrella' over either present or possibly future competitors, ...." (13 Cal.2d at 103-104.)

We see no reason why the Commission should "hold an umbrella" over highway carriers of these articles.

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IT IS ORDERED that the petition for rehearing of Decision No. 82645 is hereby denied.

IT IS FURTHER ORDERED that the effective date of Decision No. 82645 is the date hereof.

Dated at San Francisco, California, this 20th day of AUGUST, 1974.

Samuel L. Stanger  
President  
William J. Quinn  
W. H. Keim  
W. H. Keim  
W. H. Keim  
Commissioners