

DEC 20 1977

ORIGINAL

Decision No. 88298

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of SUNRISE TRANSPORTA-)
TION, INC. for suspension of)
Item 12970-A of Supplement 12 to)
Tariff 273-G Pacific Southcoast)
Freight Bureau, Agent naming a)
reduced rate for the transporta-)
tion of lime from Sonora,)
California to San Francisco,)
California (inclusive of South)
San Francisco). Effective Date:)
January 1, 1978. Participating)
carriers are Sierra Railroad)
Company and Southern Pacific)
Transportation Company.)

(I&S) Case No. 10473

ORDER OF INVESTIGATION AND SUSPENSION

By petition filed December 14, 1977, Sunrise Transportation, Inc., a corporation, seeks investigation and suspension of a reduced rate for the transportation of common lime, including magnesium lime, hydrated or hydraulic, quick or slaked from Sonora to San Francisco. This rail rate is scheduled to become effective January 1, 1978, with routing restricted to apply via Sierra Railroad Company and Southern Pacific Transportation Company.¹

It is petitioner's position that the proposed rate is unreasonable, unjust and noncompensatory and is in violation of Section 452 of the Public Utilities Code.

Petitioner is engaged as a highway contract and radial highway common carrier under permits issued by the Commission for the transportation of general commodities and bulk commodities within California.

¹The reduced rate is published in Item 12970-A of Supplement 12 to Pacific Southcoast Freight Bureau, Agent, Freight Tariff 273-G. Exhibit A of the petition contains a copy of this tariff supplement.

Petitioner states that it regularly transports lime at less than the minimum rates from the facilities of Merck & Co., Inc. at Sonora to its plant at South San Francisco pursuant to authority issued by the Commission initially granted approximately five years ago. The last renewal thereof was by Order SDD-521 dated December 14, 1976, extending the authority indefinitely. Pursuant to said authorization Petitioner transports said shipments at a rate of 37 cents per 100 pounds, minimum weight 52,000 pounds. The current rail rate as shown in Item 12970 of Tariff 273-G from Sonora to San Francisco is 56 cents per 100 pounds, minimum weight 60,000 pounds.

By publication issued November 28, 1977, it is proposed that the rail rate on lime from Sonora to San Francisco (South San Francisco is included in the San Francisco switching limits) will be reduced to 28 cents per 100 pounds on shipments of not less than 120,000 pounds. The participating railroads for the reduction to 28 cents are the Sierra Railroad Company and Southern Pacific Transportation Company.

Petitioner alleges that the effectiveness of the proposed reduction is protested by reason of the fact that the rate is unreasonable, unjust and noncompensatory. It is specifically in violation of Section 452 of the Public Utilities Code which provides that no common carrier subject to the jurisdiction of this 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 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 addition, said proposed rate is violative generally of Division 1 of Chapter 3, Articles 1 and 2 and Sections 728 and 732 of the California Public Utilities Code.

Petitioner further states, that the proposed rate is unreasonably low is clearly demonstrated by the drastic reduction from 56 cents per 100 pounds to 28 cents. The increase in the minimum weight as proposed is insignificant since the normal covered hopper car in which the commodities would move has the capacity of not less than 120,000 pounds and normally shippers would include a quantity sufficient to fill the car. It appears clear that the reduction is aimed at diverting the traffic of Merck from petitioner to the rail lines. While petitioner's authority to charge less than the minimum rate is based upon a minimum of 52,000 pounds, in fact shipments are made daily of one or more truckloads so that Merck can readily increase each shipment to a minimum of 120,000 pounds. It will be noted that no similar reductions in Item 12970 are included in the proposal. While at first blush the 30-cent rate from Permanente to San Francisco appears to be comparable to the proposed 28-cent rate, the rail distance from Permanente to San Francisco is only 65.1 miles compared to 169 rail miles from Sonora to San Francisco. Comparison of the rate with other rates on lime contained in PSFB Tariff 273-G demonstrates the drastic nature of the proposal. Attached hereto marked Exhibit "C" and by this reference incorporated herein is a comparison of such rates. Petitioner's rate of 37 cents per 100 pounds was authorized by the Commission for permanent application in December 1976 and at that time, while compensatory, provided for an adequate profit. Since December of 1976, petitioner's costs have increased as have those of all transportation agencies. In order to maintain the compensatory nature of the service, petitioner is required to increase its rates (effective January 1, 1978) for the transportation of lime from Sonora to Merck at South San Francisco to 38 cents per 100 pounds on a minimum of 50,000 pounds which will offset the increased costs. The 28-cent proposed rail rate is below petitioner's direct costs and may well divert this important business, representing approximately ten percent of petitioner's volume, resulting in substantial impairment thereof. Therefore, petitioner respectfully asserts that the proposed rate is an obvious violation of Section 452 of the California Public Utilities Code.

(I&S) C. 10473 - cab/hk *

The Commission is of the opinion and finds that the effective date of the rate herein in issue should be postponed pending further consideration and review.

Good cause appearing,

IT IS ORDERED that:

1. The operation of Item 12970-A of Supplement 12 to Pacific Southcoast Freight Bureau, Agent, Freight Tariff 273-G filed to become effective January 1, 1978, is hereby suspended and the use thereof deferred until April 30, 1978, unless otherwise ordered by the Commission and that no change shall be made in said rate during the period of suspension or any extension thereof unless authorized by special permission of the Commission.

2. Copies of this order shall be forthwith served upon Pacific Southcoast Freight Bureau, Agent, J. L. Nelson, Tariff Publishing Officer; Southern Pacific Transportation Company; Sierra Railroad Company; and petitioner herein.

(I&S) C. 10473 - cab

The effective date of this order is the date hereof.

Dated at San Francisco, California, this twentieth day of
December, 1977.

Robert Batimnich

President

William Syron Jr.

Vernon L. Sturgeon

Richard D. Givale

Commissioners

Commissioner Claire T. Dedrick, being
necessarily absent, did not participate
in the disposition of this proceeding.