

ORIGINAL

Decision No. 89474 OCT 3 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purpose of considering and)
determining minimum rates for)
transportation of any and all)
commodities statewide, including,)
but not limited to, those rates)
which are provided in Minimum)
Rate Tariff 2 and the revisions)
or reissues thereof.)

Case No. 5432
Petition for Modification
No. 940
(Filed January 6, 1977;
amended March 31, 1978)

Donald Murchison, Attorney at Law,
and Fred Mackenson, for Warren
Trucking Co., Inc., petitioner
in C.5432, Pet. 940, and petitioner
for modification of D.87434.

William R. Haerle, Attorney at Law,
and H. W. Hughes, for California
Trucking Association, petitioner
for rehearing of D.87434.

James R. Foote, for Associated
Independent Owner-Operators, Inc.,
interested party.

George L. Hunt and Jack Johnson, for
the Commission staff.

O P I N I O N

Warren Trucking Co., Inc. (Warren) is a highway common carrier transporting shipments of newsprint paper and printing paper in flat stock and rolls (paper), exclusively, for various shippers. By D.87434 (1977) in C.5432, Pet. 940, Warren was authorized to publish in its common carrier tariff certain rates which were less than minimum rates established by the Commission in Minimum Rate Tariff 2 (MRT 2), as described below. On June 23, 1977 Warren filed petition for modification

of D.87434, seeking to extend the geographic scope of the reduced rates to all points in its certificated area, and to remove certain restrictions. By D.88843 Warren was permitted to increase the rates authorized by D.87434 by 10 percent, subject to an expiration date of December 1, 1978.

On June 28, 1977 California Trucking Association filed a petition for reconsideration or rehearing of D.87434. Rehearing was granted by D.87771 (1977).

Public hearing was held before Administrative Law Judge Norman Haley at Los Angeles on May 24, 1978, and the matter was submitted.

Presentation of Warren

Warren transports paper between certain points in California aggregating (1) about 66 percent in interstate or foreign commerce; (2) about 34 percent in intrastate commerce after a prior movement in interstate or foreign commerce; and (3) less than one-half of 1 percent in intrastate commerce not having a prior movement in interstate or foreign commerce.^{1/}

The principal traffic in question is category 2 which moves into Warren's warehouse for temporary storage without knowledge who the final consignee is at the time.

^{1/} Warren possesses all of the necessary authority. By D.86377 (1976), as amended by D.86860 (1977), Warren was granted a certificate to operate as a highway common carrier for the transportation of newsprint paper and printing paper in California intrastate commerce from Los Angeles, Long Beach, San Diego, and points and places within five statute miles thereof to points in Santa Barbara, Ventura, Los Angeles, Orange, San Bernardino, Riverside, Imperial, San Diego, Tulare, Kern, Kings, and San Luis Obispo Counties. A certificate was issued to Warren by the Interstate Commerce Commission by order dated November 24, 1976 pursuant to application for certificate of registration of the rights acquired by D.86377. Warren also holds certificate of public convenience and necessity No. MC-119389 (Sub. No. 2) issued by the Interstate Commerce Commission.

The less than minimum rates for paper authorized by D.87434 were from points in the Los Angeles Harbor Commercial Zone (Los Angeles Harbor, Long Beach Harbor, and adjacent areas) to various points in southern California. Those rates were limited to shipments having had a prior movement in interstate or foreign commerce and being reshipped to final destination after temporary storage from a warehouse location in Los Angeles County. The commodity rates for paper specified in D.87434 are set in Warren's Local and Proportional Freight Tariff No. 2-A, MF-I.C.C. No. 15, Cal. P.U.C. No. 1. Rates for paper between other points in its certificated area are higher class rates.

In its petition for modification of D.87434 Warren explains that since Appendix A to D.87434 is limited to shipments having had a prior movement in interstate or foreign commerce, and being reshipped to final destination after temporary storage from a warehouse location in Los Angeles County, it is required to publish a different level of rates from and to all other points encompassed in Appendix A to its certificate decision (D.86377), or not meeting the conditions set forth in Appendix A to D.87434. It is Warren's position that since a substantial portion of its traffic is temporarily stored in its warehouse, and since some happens to be earmarked for final destination at the time of arrival in the warehouse and some is not, the same rates should be charged whether the traffic moves out as interstate or intrastate shipments. Warren does not want to discriminate against any shipper in intrastate commerce shipping the same commodity and requiring the same equipment, regardless of the point of origin within its certificated territory, and whether or not the commodity had a prior movement in interstate or foreign commerce. Warren seeks to have D.87434 modified to permit the requested rates to cover all intrastate authority granted by D.86377 without

restriction as to prior movement in interstate or foreign commerce or temporary storage.

Evidence on behalf of Warren was presented by E. W. Warren, the carrier's general manager, Terry Hollern, executive vice president of Powell River Alberni Sales Corporation (PRAS), an affiliate of McMillan-Bloedel Paper Company, and Mr. Newman, manager of transportation pricing of Crown Zellerbach.

According to Warren's general manager, only one commodity (paper) is transported. Large rolls of paper are handled utilizing trailing forklifts with clamps (paper roll lifts). Assertedly, this is a service which general commodity highway common carriers are unable to provide except at added cost in temporarily renting such equipment. Major competitors are C. W. Bundren, Inc.,^{2/} Hobbs Trucking Co., Less Brockman, and Fortier Transportation Company, Ltd. Some of these carriers also use paper clamps. It was the opinion of the witness that most, if not all, of the paper shipments those carriers handle are subject to the jurisdiction of the Interstate Commerce Commission. He said Warren is about the only southern California paper carrier that operates in the manner it does with some of the interstate and foreign commerce coming into its warehouse^{3/} unmarked and thereafter being rated out to consignees as intrastate shipments.

^{2/} C. W. Bundren, Inc., a permitted carrier, has authority to deviate from minimum rates for transportation of newsprint paper in rolls for the Times-Mirror Publishing Company, pursuant to SDD 529.

^{3/} Warren assesses separate charges for handling all paper that goes in and out of its warehouse. There are about 30 different sizes of paper that go into stock.

Warren serves approximately 200 destinations. Freight charges are collected from the suppliers (paper mills). Warren's largest supplier with 52 percent of total business is PRAS. Other large suppliers are Crown Zellerbach, Croften Paper Company, and Boise Cascade. These all represent interstate or foreign sources. Simpson-Lee at Anderson, California, ships only occasionally and generates less than one-half of 1 percent of Warren's total business. Since paper from Simpson-Lee does not have a prior move in interstate or foreign commerce, shipments from that company out of Warren's warehouse do not qualify under the rates authorized by D.87434, as amended.

Paper arrives in southern California by ship, rail car, and truck. Most of it arrives by ship at Los Angeles and Long Beach harbors. Regardless of the mode of linehaul transport, local deliveries are handled by Warren in the same manner. When a shipment arrives, a notice of stock-on-board is received, and Warren contacts the customers to determine whether the paper should be delivered or placed in a warehouse. If the consignees have room at their plants or in their own adjacent storage facilities, those are filled first. Overflow is placed in Warren's warehouse for future delivery. Paper consigned for a specific account is usually stencilled with the name of the consignee. However, whether it is marked or not, it is all handled the same way, and the interstate and intrastate rates are the same as the result of the rate deviation.

Warren's general manager estimated that if the authorized rates expired, increases ranging from 35 to 40 percent would result from applying the otherwise applicable class rates to intrastate shipments emanating from the warehouse. The witness stated that he has had difficulty in determining whether traffic going through the warehouse actually was intrastate or interstate in nature.

Furthermore, a single consignee may order paper, some of which is earmarked to it and some of which is unmarked. Having the same rates on both interstate and intrastate commerce generally obviates these problems, thereby simplifying rating and billing procedures.

Warren's general manager explained that the transportation of paper is relatively constant with few peaks and valleys, except when there is a strike at the harbor. The use of Warren's warehouse tends to level off the hauling to consignees.

The witness stated that because paper is susceptible to damage and requires special equipment and trained people to handle it, subhaulers are not used. The carrier does not plan to use subhaulers in the future.

Warren has 48 employees who can function either as drivers, loaders, or warehousemen, as required. All receive the same rate of pay, which is the teamsters' union scale. A haul from the harbor to a centrally located consignee at Costa Mesa, for example, takes about two hours round trip. Four such round trips can be made in a day. The carrier operates 31 three-axle diesel tractors and 35 trailers (40- to 45-foot flats), plus auxiliary equipment. The equipment is driven about 100,000 miles a month. The age of the equipment is from three weeks to about eight years. The total cost to run the equipment without driver assertedly runs from 46 to 50 cents per mile. The average weight per load is about 48,000 pounds. Approximately 500,000 tons were transported last year. Hauls range in length from one-half mile to 350 miles.

Exhibit 1 is Warren's balance sheet as of March 31, 1978. Total assets were \$944,086. Stockholder's equity, including retained earnings and net income for the period ended March 31, 1978, was \$871,618.

Exhibit 2 is Warren's pro forma statement of income for the year ended December 31, 1978 showing 1977 actual and 1978 estimated results. This statement is discussed in D.88843, being the same as Exhibit B to the March 31, 1978 amendment to Pet. 940. An operating ratio of 5.1 (94.9) is shown for 1977 and also is projected for 1978 following the 10 percent rate increase authorized by D.88843.

The executive vice president of PRAS testified that his company sells and distributes paper from two mills in British Columbia. Transportation cost is a very important consideration in delivering products and getting orders from consignees. All freight is prepaid and the company is responsible for delivering products to the consignees' pressrooms or warehouses. However, all shipments are not destined to specific consignees when they arrive in Los Angeles. There are about 30 different sizes of paper that go into stock. Some shipments go to Warren's warehouse for the convenience of consignees so that general and special stock will be immediately available, rather than having to ship it all the way from Canada. If transportation rates on unmarked cargo from Warren's warehouse were higher than on marked cargo, PRAS would have to absorb the difference because it sells on a freight prepaid or delivered basis. PRAS does experience peaks and valleys. If Warren's rates on unmarked cargo were higher, PRAS would try to hold all of the products in Canada until it had all necessary orders. This would cause deliveries to take longer. PRAS does not want to get into technical or legal determinations of whether traffic is in intrastate or foreign commerce when it leaves Warren's warehouse. PRAS supports continuation of Warren's presently authorized rates to avoid the problems described above, and also to permit the plant to run at full production by building inventory in Warren's warehouse. PRAS also ships paper occasionally by C. W. Bundren, Inc. and Hobbs Trucking Co. when paper is so routed by specific consignees.

The witness from Crown Zellerbach stated that his company ships some paper from the harbors direct to consignees and some paper through Warren's warehouse. Warren is the primary carrier in southern California utilized for both transportation arrangements. It is the policy of Crown Zellerbach to consider virtually all of the motor carrier traffic, whether it moves through Warren's warehouse or not, to be foreign commerce. This shipper supports the petition to keep the rates at the same level on all of Warren's traffic. Crown Zellerbach feels that what it is paying and what Warren is receiving is reasonable. The company could use some of its proprietary fleet if it is required to pay more than it deems to be reasonable for part of its southern California deliveries.

Position of CTA

CTA's position is set forth in its petition for reconsideration or rehearing filed June 28, 1977. The CTA position can be summarized as follows: (1) any highway common carrier that publishes rates less than minimum rates becomes the minimum ratemaking agency for the particular transportation involved because all other carriers may use or publish the same rates pursuant to Code Section 3663 (and conforming rules in MRT 2); (2) the Commission cannot determine a level of rates to apply to all carriers premised upon the desire of one carrier to assess lower rates because of the requirements of Public Utilities Code Section 726 and the holding in California Manufacturers Association v Public Utilities Commission (1954) 42 Cal 2d 530 (CMA v PUC); (3) the rates authorized by D.87434 were carried forward ex parte from D.80759 (1972) which authorized those rates to Warren as a highway contract carrier without evidence to base findings required for a highway common carrier by Code Sections 452 and 1705; and (4) the contention that lower interstate rates would discriminate against intrastate rates, if higher, can have validity only in the context of prior specific findings that the interstate rates are reasonable. CTA presented no evidence.

Position of Associated
Independent Owner-Operators

It is the position of Associated Independent Owner-Operators, Inc. that the sought authority should be conditioned upon any subhaulers being paid 100 percent of the authorized rates, even though Warren does not plan to use subhaulers. That organization presented no evidence.

Position of Staff

The Commission staff points out that when less than minimum rates are granted under Code Section 452 they are available to other carriers, and the evidence presented should be sufficient to justify such rates under that section. The staff presented no evidence.

Discussion

We will turn first to the Code Section 452 issues. That section reads as follows:

"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 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." (Former Sec. 13 $\frac{1}{2}$.)

We have consistently held that common carrier rates on individual commodities are above a minimum reasonable level, if they make a reasonable contribution to fixed (overhead) costs above the variable (out-of-pocket) costs of providing the service. (See BBD Transportation Co., Inc. et al. v Pacific Southcoast Freight Bureau, et al. (1974) 76 CPUC 485; and D.83305 (1974).)

In D.83305, we stated as follows:

"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.)"

In Reduced Rates on Cement (1939) 42 CRC 110, we stated:

"It is a well-established principle that in the absence of statutory restrictions to the contrary, common carriers have the right to establish rates which are less than maximum reasonable rates provided such rates are not so low as to cast a burden on other traffic, and provided, of course, that no discrimination results."

Since Warren hauls only paper, and since it proposes essentially single scales of less than truckload and truckload rates for all of its services, those rates must cover not only the variable costs, but all of the fixed costs as well. The financial data presented in Exhibits 1 and 2 demonstrate that in the aggregate Warren's rates for paper transportation (intra-state as well as interstate and foreign commerce) return all of its costs plus a profit. The record shows that Warren reduced its intrastate charges to equalize them with its charges on interstate or foreign commerce. The record does not show that Warren reduced its intrastate charges for the purpose of meeting the competitive charges of other intrastate carriers. However, even if it did, the rates Warren maintains and proposes do not transgress the provisions of Section 452.

We now turn to the Section 726 matter. The second paragraph of that section is at issue. It reads as follows:

"In any rate proceeding where more than one type or class of carrier, as defined in this part or in the Highway Carriers' Act, is involved, the commission shall consider all such types or classes of carriers, and, pursuant to the provisions of this part or the Highway Carriers' Act, fix as minimum rates applicable to all such types or classes of carriers the lowest of the lawful rates so determined for any such type or class of carrier. This provision does not prevent the commission from granting to carriers by water such differentials in rates as are permitted under other provisions of law." (Former Sec. 32(d).)

Section 726 must be considered in connection with other provisions of the Public Utilities Code, including Sections 452 and 3663.

Section 3663 reads as follows:

"In the event the commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

Whether lower minimum rates are fixed directly by the Commission or are fixed by the process of authorizing a highway common carrier to publish and file lower rates, the end result is the same, i.e., new minimum rates have been established because of Section 3663 and conforming rules in minimum rate tariffs (rules governing alternative application of common carrier rates).

When Warren published the intrastate common carrier rates authorized by D.87434, which were less than minimum class rates otherwise established by the Commission, Warren's rates became the minimum rates for highway carriers for the particular transportation involved under Section 3663 and the rules in minimum rate tariffs. Since highway common carriers are subject to minimum rates, the question is whether the rates maintained and sought by Warren are lawful under Section 726.

Warren is making a profit at rates about 35 to 40 percent below the minimum rates established by the Commission. The minimum rates are class rates in MRT 2 applying to all general freight assigned the same class ratings in the National Motor Freight Classification (Class 55 less truckload and Class 35 truckload). The same minimum truckload class rates that apply to paper therefore also apply to hundreds of other disrelated commodities that have basically one thing in common, similar classification characteristics. There are no commodity rates or exception ratings provided in minimum rate tariffs for the types of paper transported by Warren.

A number of different types or classes of carriers may be involved in a Commission rate proceeding involving Section 726.^{4/} That section is complied with if the Commission determines from all of the evidence before it that for a given service the particular rate is necessarily the lowest it can lawfully determine for any of the types or classes of carriers involved (CMA v PUC, cited above). All of the minimum rates in MRT 2 were developed in conformity with applicable provisions of the Public Utilities Code, including Section 726. All types or classes of carriers involved were considered. The minimum class rates were developed as the lowest of the lawful rates for transportation of general freight, which includes paper among thousands of other commodities. No minimum commodity rates or exception ratings have been established for transportation of paper. Although data from some specific commodity transportation were considered in the development of the minimum truckload class rates, those rates do not reflect the efficiencies inherent in the specialized transportation of paper, as disclosed by this record. Now that we have before us the record in this proceeding, we can find that the lowest of the lawful rates for transportation of paper in the area involved are the commodity rates maintained and sought by Warren, a highway common carrier hauling for a number of shippers and making deliveries at about 200 places over a wide area.

^{4/} See, for example, Petition of the River Lines, Inc. (1966) 65 CPUC 345; River Lines, Inc. v Public Utilities Commission (1965) 62 Cal 2d 244; Truck Owner's Association of Calif. (1955) 54 CPUC 5; and CMA v PUC, cited above.

Findings

1. Warren is a highway common carrier engaged exclusively in the transportation of paper between points authorized in D.86377.
2. Paper transported by Warren aggregates (1) about 66 percent interstate or foreign commerce; (2) about 34 percent intrastate commerce after a prior movement in interstate or foreign commerce; and (3) less than one-half of 1 percent intrastate commerce not having a prior movement in interstate or foreign commerce.
3. Category 2 of Finding 2 covers paper that has been moved into Warren's warehouse unmarked as to consignee and which has been sent there for storage and inventory. Shipments of such paper outbound from Warren's warehouse are subject to the jurisdiction of this Commission.
4. Warren's competitors are motor carriers engaged mostly in the transportation of paper in interstate or foreign commerce.
5. Warren publishes less than minimum intrastate rates for transportation of paper from points in the Los Angeles and Long Beach harbor areas to various points in southern California limited to shipments having had a prior movement in interstate or foreign commerce and being reshipped to final destination after temporary storage from a warehouse location in Los Angeles County, pursuant to D.87434, as amended by D.88843.
6. Rates published by Warren pursuant to D.87434 and D.88843 are at the same level as rates published for transportation of paper in interstate or foreign commerce.
7. The rate authority in D.87434 and D.88843 is less extensive geographically than the certificate authority in D.86377.
8. Exhibits 1 and 2 demonstrate that rates maintained by Warren for transportation of paper in intrastate commerce and in interstate or foreign commerce, within the territory authorized in D.86377, return all of Warren's costs plus a profit.

9. Warren seeks to extend the rate authority in D.87434 and D.88843 to include all points authorized in D.86377 at the level of rates for interstate or foreign commerce, and to include intrastate commerce not having had a prior move in interstate or foreign commerce for the purpose of eliminating discrimination.

10. Minimum class rates are 35 to 40 percent higher than rates for paper maintained and proposed by Warren.

11. The specialized methods of handling and transporting paper as performed by Warren justify rates lower than current minimum class rates applicable to transportation of commodities generally.

12. The minimum class rates, as they apply to paper in the area involved, are excessive and above the value of the service performed by Warren. If class rates were assessed, shippers have the capability of using their own trucks, or routing and marking paper so that more of the traffic would be subject to the jurisdiction of the Interstate Commerce Commission.

13. The reduced rates for paper maintained and proposed by Warren are not unreasonably low or otherwise contrary to the provisions of Section 452 of the Public Utilities Code. The needs of commerce and the public interest require that those rates be established. They are justified by transportation conditions.

14. When an intrastate rate is published in a common carrier tariff which is less than the minimum rate published by the Commission for the same transportation, the lower common carrier rate becomes the minimum rate under Section 3663 of the Public Utilities Code and conforming rules in minimum rate tariffs.

15. With respect to Section 726 of the Public Utilities Code, class rates in MRT 2 are not the lowest of the lawful rates for transportation of paper between points served by Warren pursuant to D.86377.

16. Commodity rates maintained and proposed by Warren are the lowest of the lawful rates for transportation of paper between points authorized in D.86377.

17. The rates for transportation of paper in interstate or foreign commerce maintained by Warren on June 1, 1978 between all points authorized in D.86377 should be authorized for intrastate transportation between those points without the restrictions imposed by D. 87434 and D.88843.

18. In the event Warren employs independent contractor-subhaulers, it should pay them not less than 100 percent of its published rates. This condition should appear in the rate item(s) published by Warren.

The Commission has carefully reviewed the entire record in this matter and concludes that Warren should be authorized to publish and file intrastate rates for transportation of paper to the extent indicated in the order which follows.

O R D E R

IT IS ORDERED that:

1. Warren Trucking Co., Inc., is authorized to publish and file rates for transportation of newsprint paper and printing paper used in the publication of newspapers and other printed matter, in flat stock and in rolls, from, to, and between all points authorized in D.86377, at levels of rates it maintained for transportation of the same commodities between the same points in interstate or foreign commerce on June 1, 1978.

2. The authority granted in paragraph 1 shall continue in effect until further order of the Commission.

3. Tariff publications authorized to be made as a result of the order herein may be made effective on ten days' notice to the Commission and to the public.

4. Warren Trucking Co., Inc., is authorized to depart from the provisions of Sections 460 and 461.5 of the Public Utilities Code in establishing and maintaining the rates authorized herein. Schedules containing the rates published under this authority shall make reference to this order.

5. In the event transportation is performed by independent contractor-subhaulers, such independent contractor-subhaulers shall not receive less than 100 percent of the rates named in this item. This condition shall appear in the rate item(s) published by Warren Trucking Co., Inc.

6. The authorities in D.87434 and D.88843 are rescinded. The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 3rd day of OCTOBER, 1978.

Robert Buttrick
President
William J. Quinn
Virginia A. Stutzman
Richard D. Smith
Clair L. Deibel
Commissioners