

**ORIGINAL**

Decision No. 29974

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
TRIANGLE TRANSFER AND STORAGE COMPANY }  
for authority to charge less than } Application No. 21275  
minimum rates. }

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ELLIS BROWN, for Applicant.

C. P. VON HERZEN, for Bekins Van & Storage  
Company, Protestant.

D. G. SHEARER, for Council of Trucking  
Associations, Protestant.

HAROLD W. DILL, for Truck & Warehouse Asso-  
ciation for San Diego and Imperial  
Counties, Interested Party.

BY THE COMMISSION:

O P I N I O N

These are three applications by the Triangle Trans-  
fer and Storage Company for authority to transport used  
household furniture and personal effects for the U. S. Navy  
at less than minimum rates established by the Railroad Com-  
mission. The applications are filed pursuant to Section 10

of the City Carriers' Act and Section 11 of the Highway Carriers' Act, sanctioning less than minimum rates if first found reasonable and authorized by the Railroad Commission. It is the privilege of carriers to perform services for governmental agencies at preferential rates, less than the minimum, if they are not unjustly or unduly discriminatory against other shippers or traffic or against public interest. If the applicant can show that the service involved can be performed at the rates proposed without resulting in a loss which would have to be regained from other traffic, the application should be authorized.

Public hearings were held before Examiner Elder at San Diego on July 9 and the matters then submitted on a consolidated record.

In Application No. 21273 the applicant proposes a rate of \$1.80 per hundred for the transportation of uncrated household goods, under a contract with the U. S. Navy running from July 1, 1937, to September 30, 1937, between San Diego, Ocean Beach, Pacific Beach, La Jolla, Point Loma, La Mesa, National City, El Cajon, Chula Vista and other places in the county of San Diego at a distance from the Navy Supply Depot shorter than the most distant point named above, on the one hand, and points in Los Angeles County not embraced within applicant's highway common carrier operative right, on the other hand. That right embraces Los Angeles and San Diego and all intermediate points and points within thirty miles of the highway between Los Angeles and San Diego. No prior authority for preferential rates to the government is required of highway common carriers in view of section 17 (a) 4 of the Public Utilities Act.

Although the proposed rate of \$1.80 per 100 pounds is higher than the prescribed minimum rate for movements from and

to Los Angeles County points, namely points located within the City of Los Angeles and adjacent territory and points in the more southerly portions of the county, it is lower than the established minimum rates to other points, particularly those located in the more northerly part of Los Angeles County. It will be observed that the extent of the territory subject to the higher minimum rates is considerably broader on any quantity shipments than on shipments weighing 2,000 pounds or more due to the lower rates prescribed at minima of 2,000 and 4,000 pounds. It seems doubtful that there will be any appreciable movement between points subject to the higher rates and that the lower the minimum rates applied to such movements will not cast an undue burden on other traffic nor result in unjust discrimination in view of the transportation from and to Los Angeles and adjacent territory at rates substantially higher than minimum rates under the terms of the contract. The rate should be authorized.

In Application No. 21274, applicant seeks authority for a rate of 14 cents per hundred with a minimum charge of 50 cents, less 2 per cent for cash payment within twenty days, for the transportation of crated household effects and furniture between docks, depots and warehouses located in San Diego and other points in San Diego County, under contract with the Navy Department from July 1, 1937, to September 30, 1937. The minimum rate for such transportation varies according to the weight of the shipment and the distance moved. For distances under three miles the minimum rate varies from 30 cents per hundred for shipments over 7,000 pounds to \$1.00 per hundred for shipments under 200 pounds. For distances of fifteen miles the rate varies from 50 cents per hundred for shipments over 7,000 pounds to \$3.00 per hundred for shipments under 200 pounds.

In support of the 14 cent rate, the applicant's witness testified that he had endeavored to compute the cost of service and believed it would not result in a loss and might even yield a profit. He submitted no figures to support such a conclusion, however, and made no attempt to reproduce the computation which led to his belief. From the experience of approximately six days of operation, he figured the cost would be \$2.50 per hour but supplied no information to enable this figure to be converted to a cost per hundred pounds.

It is plainly impossible upon such evidence to make a finding that the proposed rate of 14 cents per hundred pounds is reasonable. The evidence shows that applicant has operated at a loss each year since 1928, and under such circumstances, particularly, a rate as extraordinarily low as that proposed cannot be approved without clear and convincing proof of its reasonableness.

In Application No. 21275, authority is sought to transport 5,000 pounds of uncrated household goods for the Navy from San Diego to San Francisco at a rate of \$2.95 per hundred. The application, which is dated June 15, 1937, and was filed June 17, 1937, does not show when the service was to be performed and no request was made for expedited attention. The evidence shows, however, that the service was performed at the \$2.95 rate on June 22. Section 11 of the Highway Carriers' Act and Section 10 of the City Carriers' Act seem clearly to contemplate that the preferential rate should be approved and the authority granted before the service at the reduced rate is performed, though the filing of the application promptly upon the submission of the bid tends to manifest the applicant's sincerity and good faith.

But even if we were able or disposed to overlook this phase of the matter, the record on this application also is with-

out any evidence from which the cost of the service can be ascertained and the reasonableness of the rate determined. Applicant's witness testified no cost records are kept by his company and no estimates or computations whatever were offered. Attempt was made to rely on a comparison with rates for service from San Diego to Seattle, but such a comparison is valueless, particularly as the Seattle rate itself was questionable. Reliance was also placed on certain information as to the cost of service between San Diego and Los Angeles in 1931, but such figures are of no help in arriving at current costs to San Francisco. In the absence of any evidence to support the \$2.59 rate, the application must be denied.

The testimony indicates that applicant filed the applications under the misapprehension that they would be granted as a matter of course. Applicant claims to have been misled to this opinion partly by a document purporting to be an opinion of the Acting U. S. Controller General to the Secretary of the Interior, which applicant construed to hold that government hauling was exempt from state regulation; and partly by a sentence in a form letter drafted by the Commission to assist carriers in preparing applications for authority to charge less than minimum rates. But the essence of the Controller's opinion was merely that advertisements for bids for drayage services should not be framed so as to insure compliance by carriers with state prescribed rates. The opinion plainly stated as a reason, "It is not the duty or responsibility of contracting officers of the Federal Government, by means of restrictive specifications, to enforce carriers to comply with the requirements of motor transportation acts of a state." The opinion contains no support for the interpretation placed on it by applicant. The statement in

the letter of the Commission was as follows:

"If a preferential rate or charge is offered in competitive bidding, the application should be prepared and ready for filing immediately upon the opening of the bids. If the application is in proper form and states the necessary facts, the Commission will act on the application as expeditiously as possible."

The letter also quoted sections 10 and 11 in full. We see nothing in the letter to justify applicant's assumption that his applications would be approved as a matter of course.

#### O R D E R

The above mentioned applications having been duly heard and submitted for decision, and the Commission now being fully advised in the premises; on the basis of the conclusions and findings in the preceding Opinion,

IT IS HEREBY ORDERED that applicant, Triangle Transfer and Storage Company, be and it is hereby authorized to transport for the U. S. Navy Department crated and uncrated household goods, furniture and personal effects between San Diego, Ocean Beach Pacific Beach, La Jolla, Point Loma, La Mesa, National City, El Cajon, Chula Vista and other places in the county of San Diego at a distance from the Navy Supply Depot shorter than the most distant point named above, on the one hand, and points in Los Angeles County, other than the City of Los Angeles and points within thirty miles of the highway between San Diego and Los Angeles, on the other, at a rate of not less than \$1.80 per hundred pounds, from July 1, 1937, to September 30, 1937.

IT IS HEREBY FURTHER ORDERED that Application No. 21274 be and it is hereby denied.

IT IS HEREBY FURTHER ORDERED that Application No. 21275 be and it is hereby denied.

Dated at San Francisco, California, this 27<sup>th</sup> day  
of July, 1937.

Walter H. ...  
James R. ...  
Raymond ...

COMMISSIONERS.