

Decision No. 31041

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
H. S. BRIETIGAM, doing business as
LEMOORE TRUCKING CO., for an order
authorizing the establishment of
rates for the transportation of spe-
cified commodities between specified
points under Section 11 of the
Highway Carriers' Act.

Application No. 21888

ORIGINAL

Carl R. Schulz, for the Applicant.
R. E. Wedekind, for Southern Pacific Company,
Protestant.
G. E. Duffy and George F. Hurst, for The Atchison,
Topeka and Santa Fe Railway Company.
J. E. Sommers, for the Stockton Chamber of Commerce.
C. O. Burgin, for the Port of Stockton.
J. Richard Townsend, for the Stockton Traffic Bureau,
City of Stockton, Stockton Chamber of Commerce,
Stockton Port District and San Joaquin County
Farm Bureau Federation.
Roy B. Thompson and Edward M. Berol, for The Truck
Owners Association of California.
J. J. Deuel, for the California Farm Bureau Federation.
W. G. Stone, for the Sacramento Chamber of Commerce.
Harold Frasher and J. J. Broz, for Valley Motor Lines,
Inc., Valley Express Company and George Harm
Truck Lines.

BY THE COMMISSION:

O P I N I O N

By this application H. S. Brietigam, an individual doing business as Lemoore Trucking Co., seeks authority under Section 11 of the Highway Carriers' Act, to transport canned goods in shipments of all sizes, between the Armona plant of the Kings County Packing Company, Ltd., the Visalia plant of the Visalia Canning Company, and the Dinuba plant of the Exeter Kadota Fig Association, on the one hand, and a wide range of points and territories throughout California,

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on the other hand, at rates lower than the established minimum rates.

Public hearings were held before Examiner P. W. Davis at San Francisco on May 9, 13, 27 and 31, 1938, and the matter was submitted on briefs.

The rates which applicant proposes to charge in lieu of the established minimum rates are set forth in Appendix "A" of the application. In general, rates are provided for five weight brackets ("any quantity," 4,000 pounds, 10,000 pounds, 20,000 pounds and 30,000 pounds). Specific rates are named between Visalia, Armona and Dinuba on the one hand and various points and groups throughout California, including San Francisco Bay points, Marin County points, Sacramento Valley points, San Joaquin Valley points, Coast points and Southern California points, on the other hand. In addition a rule is proposed allowing intermediate application of these rates between unnamed points located within any of the various groups shown.

According to the record applicant conducts three distinct classes of trucking operations. The first embraces transportation of property of various kinds under contract with approximately eleven shippers, principally between points in the San Joaquin Valley on the one hand and the San Francisco Bay and Los Angeles areas on the other hand, and includes the transportation involved in this application. The second is a radial operation centering at Lemoore and

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The original application covered dried fruits as well as canned goods and included Hanford and Reedley as shipping points. However, its scope was restricted by oral amendment at the hearing to the transportation above described.

The particular minimum rate orders from which applicant seeks authority to deviate are Decision No. 28761, as amended, in Part "A" of Case No. 4088, establishing minimum rates on property in quantities of less than 4,000 pounds and fixing the charge for 3,999 pounds as minimum for shipments of greater quantities; Decision No. 30370, as amended, in Parts "U" and "V" of Case No. 4088, establishing minimum rates on property in quantities of 20,000 pounds or less within specified territories and fixing the charge for 20,000 pounds as minimum for shipments of greater quantities; and Decision No. 29252, as amended, in Part "P" of Case No. 4088, establishing minimum rates on canned goods and dried fruits in shipments of all weights, between San Joaquin Valley points on the one hand and San Francisco Bay points, San José, Stockton and Sacramento on the other hand.

appears to be confined principally to grain hauling. The third is a proprietary trucking operation in connection with a grain and feed business conducted by applicant at Lemoore.

The evidence adduced at the hearings is directed to the following major propositions: (a) that Lemoore Trucking Co. is able to operate more economically than can the average carrier due to the fact that the constancy of movement and heavy volume of tonnage furnished by its customers produce higher load and use factors than those estimated in the cost studies upon which the established minimum rates were predicated, (b) that by reason of such high load and use factors the rates here proposed would be compensatory to said applicant, and (c) that should the authority here sought be denied the shippers for whose benefit the proposed rates were intended would terminate their contracts and purchase their own equipment, or that due to competitive influences such shippers would be required to curtail their production substantially and thus reduce the volume of available tonnage.

A series of eleven exhibits were introduced in support of the first two propositions. These were later amended and supplemented by ten additional exhibits and by oral testimony. No good purpose would be served by detailing the material in these exhibits; however a description of the plan followed in their compilation will be given. Briefly, the total tonnage handled by applicant during 1937 in his proprietary, radial and contract operations was segregated according to districts and to direction of

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 movement. The average constructive mileage between the San Joaquin Valley shipping points and several principal points in each of the destination territories was then computed, and weighted according to the tonnage moving. Thus, a weighted average mileage into each territory was developed. Additional mileage was added for hauls where the return load was obtained at some point other than the inbound destination. Next, the capacity of applicant's equipment, ranging in carrying capacity from 9 tons to 21 tons, was considered and the average load into the various territories was estimated. The total tonnage handled in 1937 was then divided by the weight of the average load, the resulting figure was multiplied by the average mileages into the respective territories and an estimate of the total mileage operated during the year was thus obtained. 3
 Having thus arrived at an estimate of the miles operated during 1937, the costs allocated to applicant's radial, contract and proprietary trucking operations for the year were drawn from his books and an estimated cost per truck mile was computed. Using this figure, and estimating

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 The following tabulation shows tonnages transported into and out of the principal territories during 1937:

Territory	Inbound	Outbound
	From San Joaquin Valley (tons)	To San Joaquin Valley (tons)
San Francisco Bay region	9,527	6,163
Monterey Bay region	--	743
Stockton	2,044	127
Sacramento	93	398
Tracy	--	263
Los Angeles	3,742	--
Los Angeles-Los Angeles Harbor region		1,200
Lancaster-Monolith		303

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 A substantial portion of the traffic included in this mileage figure during 1937, was handled by what were termed "outside" trucks, applicant retaining a carrier relationship between himself and the shipper, but employing other contract carriers to perform the transportation. The miles operated by such outside trucks was deducted from the total mileage figure on a revenue pro-rate basis.

a round-trip load factor for representative movements, a round-trip cost was developed. This cost was halved to indicate the cost in one direction. While applicant made no specific comparison of the developed costs it was evident that he considered them consistent with the average revenue which would be produced by the proposed rates.⁴

W. B. Mel, President and Manager of Visalia Canning Company, J. V. Gregg, Traffic Manager of Kings County Packing Company and E. J. Firebaugh, Secretary and Manager of Exeter Kadota Fig Company, urged that this application be granted. According to the testimony of witnesses Mel and Gregg, their companies, as well as other small canners in the territory, market their products principally in the San Francisco Bay and Los Angeles areas, in competition with several large volume canners. They contended that whereas the latter generally distribute through warehouses maintained near the consuming centers, shipping by rail and receiving the benefit of the carload rate into such warehouses, the smaller canners must distribute directly from the valley canneries and pay the higher rates applicable to the smaller

⁴ The following table shows a comparison of the developed costs and proposed rates for representative movements:

From: San Joaquin Valley Shipping Points			
To:	Average Costs (in Dollars per Ton)	Proposed Rates (in Dollars per Ton)	Estimated Average Revenue under Proposed Rates (in Dollars per Ton)
San Francisco Bay points (returning via Monterey region)	3.66	3.50 (min. 30,000 lbs.)	4.00-4.25
		4.10 (min. 20,000 lbs.)	
		4.70 (min. 10,000 lbs.)	
		5.80 (min. 4,000 lbs.)	
		7.00 (any quantity)	
Stockton (picking up return loads at Sacramento and Tracy)	4.19	2.60 (min. 30,000 lbs.)	2.80-2.90
		3.20 (min. 20,000 lbs.)	
		3.70 (min. 10,000 lbs.)	
		5.80 (min. 4,000 lbs.)	
		7.00 (any quantity)	
Los Angeles District (picking up return loads at Los Angeles, Monolith or Lancaster)	4.46	4.00 (min. 30,000 lbs.)	4.32-5.00
		4.80 (min. 20,000 lbs.)	
		5.40 (min. 10,000 lbs.)	
		7.00 (min. 4,000 lbs.)	
		9.40 (any quantity)	

quantity shipments. For this reason, the witnesses were eager that the spread between the rates for carload or truckload quantities and the rates for the lower weight minima be reduced. Gregg pointed out that the carload rail rate from Armona to San Francisco exceeded the rates from other competing points by several cents, even though the rail distances were comparable, and that to that extent the use by highway carriers of the "alternative application" rule resulted in discrimination against his company. Neither Mel nor Gregg were particularly interested in the proposal here in so far as the "any quantity" or minimum 4,000 pound rates were concerned, inasmuch as they seldom have shipments of that size.

The situation of the Exeter Kadota Fig Company, as described by witness Firebaugh, appears to be somewhat different. This company packs a product as to which competition from valley canners is less severe. However, its annual pack is considerably smaller than that of other valley canners, averaging only about 15,000 tons and this is distributed almost entirely in less-truckload quantities. This witness was not particularly interested in the spread between truckload and less-truckload rates, but wanted lower rates for the lower weight minima.

All of the shipper witnesses conceded on cross-examination that their principal interest in supporting this application was to obtain lower rates and that they had no objection to similar relief being accorded to competing canners through the medium of a general readjustment of the established minimum rates.

Southern Pacific Company and its affiliates; The Atchison, Topeka and Santa Fe Railway Company; and the Truck Owners Association

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By the terms of the several decisions from which authority to deviate is sought, highway contract carriers are permitted to alternate the established minimum rates with rates concurrently maintained by railroads and other common carriers for the same transportation.

of California opposed the granting of this application. These protestants offered no evidence in their own behalf but engaged in extensive cross-examination of applicants' witnesses. Upon brief, the rail lines argued that the proposed rates contemplated a disruption of the rate structure and that the basis sought was evidently intended to equalize geographical and production disadvantages of particular industries in order to better their relative competitive position with like industries more favorably situated with respect to common markets. The rails further argued that as the complaint of shipper witnesses was centered upon the level of rates established in the proceedings from which relief is herein sought a Section 11 application was not appropriate. Conversely, they contended that if a determination of these issues was deemed necessary it should properly be accomplished through a reopening of the pertinent proceedings and reconsideration of the rate levels therein established.

The Truck Owners Association of California argued on brief that Section 11 of the Highway Carriers' Act contemplates relief thereunder only when it is shown that there are extenuating circumstances peculiar to the carrier and shipments involved, distinguishing the transportation from that for which the minimum rates were designed. It asserted, moreover, that the load and use factors developed by applicant presuppose that applicant at no time sent a truck north with a partial load nor did he send an empty truck north to pick up an urgent south-bound load. The Association contended that an operating condition of this nature is phenomenal, and that applicant's failure to give consideration to empty truck miles and testimony indicating that applicant transported urgent less-truckload shipments as required rendered the load factor inaccurate and unduly high. Truck Owners Association further pointed out on brief that applicant's 1937 operations in the aggregate were conducted at a loss, and that the record

does not indicate that tonnage equivalent to that transported during 1937 would be available for 1938. Lastly, it asserted that if the relief sought were granted it would force both rails and trucks serving other packing plants in the territory to secure competitive relief.

Undoubtedly applicant has made a sincere attempt to estimate the cost of performing the transportation here involved. However, it must be observed that the accuracy of his final figures depends entirely upon the propriety of several doubtful allocations and unsupported assumptions. Among these are (a) the allocation of management and supervision expenses between the grain and feed business and the trucking operations, (b) the allocation of miles operated as between "for-hire" and "outside" trucks on a revenue basis, (c) the allocation of overhead costs to particular hauls on a mileage basis, (d) the allocation of overhead and running expenses as between the proprietary, radial and contract operations on a mileage basis, (e) the assumption that load factor should be computed without reference to non-revenue mileage, and (f) the assumption that the tonnage moving annually in the future will be substantially equivalent in volume and character to that moving during 1937.

The record does not indicate the method used in allocating costs between the grain and feed business and the trucking operations, nor is there sufficient information from which a proper basis for allocation might be ascertained. The use of a revenue basis in estimating the relative mileage over which "for-hire" and "outside" trucks were operated is clearly arbitrary in the extreme, particularly where it appears that the use of "outside" trucks is confined to particular types of hauling and that charges were not assessed on a mileage basis. The allocation of overhead costs to particular hauls on a mileage basis is generally recognized as erroneous, it being evident that depreciation, insurance, rent and similar expenses have little relation to the mileage operated. The distribution of costs on a mileage basis between the

proprietary, radial and contract operations fails to give recognition to the inherent differences in these three operations, such as differences in average lengths of haul, in types of equipment required, and in commodities handled. The computation of load factor according to the aggregate tonnage moving to and from particular territories over a period of time and without regard to non-revenue mileage traversed in obtaining return loads is entirely different from the manner in which load factor was estimated in the cost studies upon which the minimum rates were based, and hence does not afford a proper basis for comparison. The assumption that the same volume and character of tonnage enjoyed by applicant during the year 1937 would be tendered to him over like periods in the future finds little support in the record. Representatives of two shippers testified that they expected their 1938 tonnage to be substantially the same as that shipped during 1937. On the other hand, applicant contracted during 1937, with at least eleven shippers. The record shows that his contracts with certain of those shippers have been canceled. To that extent his 1938 tonnage may be reduced. The fact that with the establishment of minimum rates the opportunity of obtaining back-haul tonnage by the quotation of "out-of-pocket" rates would be lessened, may also tend to affect applicant's load factor in the future. Considering all these uncertain factors, the record is not convincing that applicant can operate more economically than can competing carriers or that the rates proposed would return the cost of performing the service.

Upon consideration of all the facts and circumstances of record the Commission is of the opinion and finds that the proposed rates have not been shown to be reasonable or compensatory. The application will be denied.

ORDER

Upon consideration of all the facts and circumstances of record,

IT IS HEREBY ORDERED that this application be and it is hereby denied.

Dated at San Francisco, California, this 27th day of

June, 1938.

William W. Mason
Leon C. Caldwell
Frank W. Nelson
Kathleen W. W. W. W.
Neil L. Kelley
COMMISSIONERS