

Decision No. 30738

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CHAS. H. WARD and J. L. STELLING for
an order authorizing the establishment
of reduced rates for the transporta-
tion of specified commodities between
the plant of the Lindsay Ripe Olive
Company and various other specified
points in California, under Section
11 of the Highway Carriers Act.

ORIGINAL

Application No. 22159

BY THE COMMISSION:

J. J. Deuel, for the applicants and for the California Farm
Bureau Federation.
Gerald E. Duffy and George T. Hurst, by C. R. Bishop, for
The Atchison, Topeka & Santa Fe Railway Co.
R. E. Wedekind, for Southern Pacific Company, interested party.
T. G. Differding, for Oakland Chamber of Commerce, interested
party.
W. G. Stone, for Sacramento Chamber of Commerce, interested
party.
Edward M. Berol, for Truck Owners Association of California,
as its interests may appear.

O P I N I O N

By this application C. H. Ward and J. L. Stelling, radial
highway common and highway contract carriers, each seek authority under
Section 11 of the Highway Carriers' Act to transport canned olives,
olive products, empty cans, empty glass jars, empty glass bottles and
fibre box shock, under contract with the Lindsay Ripe Olive Company
(an agricultural cooperative association), between Lindsay on the one
hand and San Francisco Bay points, San Jose, Stockton, Sacramento, Los
Angeles and Long Beach on the other hand, at rates less than the estab-
lished minimum rates.¹ The matter was publicly heard before former
Commissioner Whitsell.

¹ The minimum rates applicable for the transportation here involved,
at the time this application was filed and at the present time, are
those established by Decision No. 30738, as amended, in Case No. 4088,
Part "P", and Decision No. 30370, as amended, in Case No. 4088, Parts
"U" and "V". Effective August 7, 1939, however, those decisions will
be cancelled and superseded by Decision No. 31606, as amended, in Case
No. 4246, and, thereafter, the minimum rates will, in general, be sub-
stantially lower for this transportation.

According to the record, Stelling conducts four types of trucking operations, viz., contract, radial, interstate common and proprietary. The contract operation is the one involved in this application. It represents approximately 50 per cent of this applicant's total trucking business and consists of transporting canned olives and olive products from the plant of the Lindsay Ripe Olive Company at Lindsay to the points involved in this application, and of transporting empty cans, empty jars, empty bottles, box shook, salt, labels and acid on the return movements. The radial operation involves the transportation of oranges, fibre box shook, borax, spray, fertilizer, oil and similar farm products and supplies for Orange Belt Supply Company, Lindsay Citrus Growers and other shippers, between San Joaquin Valley points and between those points on the one hand and points in northern and southern California on the other hand. The interstate common carrier operation is conducted in conjunction with the aforementioned intrastate operations, a large part of the total tonnage handled for the Lindsay Ripe Olive Company into San Francisco Bay points, Stockton and Los Angeles Harbor being interstate in character. The proprietary operation consists mainly of local hauling in the San Joaquin Valley in connection with a farming business conducted by this applicant in the vicinity of Lindsay.

Ward, also, operates as a contract, radial, interstate common and proprietary carrier. His contract and interstate common carrier operations are substantially the same as those conducted by Stelling. His radial operation is somewhat more extensive than that of Stelling, embracing a greater volume of tonnage as well as additional shippers, commodities and points of movement. His proprietary operation, like Stelling's, is conducted in connection with a farming business, his farm being located in the vicinity of Strathmore.

The rates sought to be charged for the particular traffic here involved are stated in a form different from that in which the established minimum rates are stated, in that they are based upon

different minimum weights and commodity descriptions are less specific, hence they do not readily lend themselves to comparison. In general, the sought rates appear to be somewhat lower than the minimum rates established by Decision No. 31606, supra, for small shipments. On the other hand, they exceed the established minimum rates in many instances, particularly for transportation in quantities equal to or greater than the carload minimum weights, between railhead points or where either the origin or the destination point is served by a rail spur track.²

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The following is a general comparison of the minimum rates established by Decision No. 31606, supra, with those sought to be charged. (According to the record, the plant of the Lindsay Ripe Olive Company is located on a rail spur track.) Rates are stated in cents per 100 pounds.

Commodity	FROM Lindsay except as noted by (1)	A	B	C	D	E	F
Canned Olives Olive Oil	San Francisco	30	27	33	18	22	25
	Oakland	30	27	33	18	22	25
	San Jose	28	25	32	18	22	25
	Stockton	24	20	27	15	19	22
	Sacramento	28	25	32	18	22	23
	Los Angeles	27	25½	30	20	24	25
	Long Beach	28	27	32	20	24	25
Empty Cans Empty Jars & Bottles Fibre Box Shook	San Francisco(1)	24	19	(2)29	19	19	25
	San Francisco(1)	38	28½	42½	21	25	25
	Stockton(1)	31	(3)23	34	14	18	15

(1) Applies to Lindsay from points named.

(2) Minimum weight 14,000 pounds.

(3) Minimum weight 36,000 pounds.

Column A - Minimum rate for minimum weight of 20,000 pounds.

Column B - Minimum rate for minimum weight of 30,000 pounds, except as noted.

Column C - Minimum rate for minimum weight of 10,000 pounds, except as noted.

Column D - Minimum rate for transportation between railheads (subject to rail carload minimum weight in some instances and classification minimum weight in others.)

Column E - Minimum rate for movement where point of origin or point of destination (but not both) are located off-rail. Subject to rail carload minimum weight on rail and classification minimum beyond.

Column F - Rates sought to be charged (subject to minimum weight 18,000 pounds on olives and olive oil; capacity of equipment on empty cans, jars, bottles; and 10,000 pounds on fibre box shook).

Applicants propose to assess the established minimum rates for intrastate transportation of commodities which are not involved in this application or which are transported for shippers other than the Lindsay Ripe Olive Company, and to assess rates filed with the Interstate Commerce Commission on the interstate traffic. They intend to readjust their interstate rates on the commodities here involved to the basis here sought for intrastate traffic, should this application be granted.

In support of the application, Stelling asserted that his for-hire trucking operations (contract, radial and interstate common) had been profitable in the aggregate since operations were commenced eight years ago. In this connection, he stated that the proceeds of his trucking business had provided support for his family of four, offset substantial losses experienced in his farming operations and enabled him to accumulate his present trucking equipment.³ He presented an itemized statement prepared from his Federal Income Tax returns for the years 1936 and 1937, purporting to show that his trucking operations during that period were profitable.⁴ He stated, moreover, that the rates here sought to be charged were approximately 25 per cent higher than rates charged on the same traffic prior to the establishment of minimum rates and that he had every reason to believe

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Stelling estimated that this present equipment, if purchased new, would cost about \$12,000. He conceded on cross-examination that approximately \$3,100 was owing on this equipment and stated that its present sale value was between \$7,000 and \$8,000.

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The following is an abstract of the final revenue and expense figures based on the above source:

<u>Period</u>	<u>Total Revenue</u>	<u>Total Expense</u>	<u>Profit</u>
Jan. 1, to Dec. 31, 1936	\$ 9,462.39	\$ 8,199.01	\$1,263.38
Jan. 1, to Dec. 31, 1937	10,404.58	9,205.29	1,199.29

the same volume of traffic would be enjoyed in the future as had been transported in the past, if the application were granted. Stelling also furnished a statement of the rates charged various commodities other than those involved in this application, apparently for the purpose of indicating that they were not excessive and that a part at least of the asserted profits could be attributed to earnings from the transportation here involved.

Applicant Ward asserted that his trucking operations, also, had proved profitable in the aggregate over a period of six years. He stated that during that period he had paid off prior indebtednesses, offset losses from his farming operations and had paid for his present hauling equipment.⁵ He furnished a revenue and expense statement drawn from his book records for the period July 1, 1936 to July 1, 1938, purporting to show that a profit had been earned.⁶ Applicant stated that rates approximately 25 per cent less in volume than those here proposed had been charged in the past and claimed that the volume of traffic in the future would not be reduced. In fact, he asserted, it would probably be greater inasmuch as applicants Stelling and Ward had been promised the exclusive contract hauling of the Lindsay Ripe Olive Company if the sought rates were granted, whereas they were previously only handling three-fourths of that traffic. Ward also furnished a schedule of rates assessed in connection with his operations not involved in this application.

⁵ Ward placed a present value of \$12,000 on his trucking equipment. Cross-examination developed an existing indebtedness on it of \$2,500.

⁶ The following is an abstract of the final revenue and expense figures shown:

<u>Period</u>	<u>Total Revenue</u>	<u>Total Expense</u>	<u>Profit</u>
July 1, 1936 to July 1, 1937	\$21,651.76	\$19,035.17	\$2,616.59
July 1, 1937 to July 1, 1938	23,682.82	20,559.78	3,123.04

Both applicants asserted that the Lindsay Ripe Olive Company had informed them that it could not afford to pay the established minimum rates and that it would purchase and operate its own trucks unless the rates here sought were authorized and charged.

A witness representing both applicants introduced an exhibit showing revenue received for 18 separate commodities, transported by applicants during the last two years, together with the aggregate weight transported and the total miles hauled. This exhibit shows that revenues per mile ranging from \$.1034 for hay and straw to \$.2351 for nails, pipe and machinery, were received.

The manager of the Lindsay Ripe Olive Company stated that consideration had been given by his company to the purchase and operation of its own equipment and that he had been given authority to arrange for the commencement of a proprietary operation should this application be denied. He claimed that a proprietary operation was practicable and could be conducted as economically as were the for-hire operations of Ward and Stelling. He conceded on cross-examination, however, that the movement of canned olives and olive products was seasonal to some extent, that the outbound tonnage was considerably in excess of the return tonnage and that, hence, the load factor which could be obtained in a proprietary operation would be somewhat less than that obtainable in a for-hire operation. The secretary-treasurer of the shipper confirmed the foregoing testimony to the effect that his company was contemplating the commencement of a proprietary operation. He also testified that the volume of the outgoing tonnage for this year would exceed last year's tonnage. The traffic manager of the shipper stated that Valley Express Co., Pacific Motor Transport Company and other common carriers were being given a portion of his company's tonnage but that the bulk of it was

being handled by contract carriers.⁷ An exhibit, prepared by this witness, shows that for the period July 1, 1937 to June 30, 1938, the tonnage hauled by Stelling for the Lindsay Ripe Olive Company was 62 per cent intrastate and that hauled by Ward was 65 per cent intrastate.

Competing rail lines and The Truck Owners Association of California protested the granting of this application. A rail witness stated that it would be necessary for the rail lines to meet whatever rates applicants herein were authorized to charge and, moreover, that they must extend the same or related rates to other shippers in the territory. The witness asserted that the result would be a breaking down of the entire rate structure on canned goods from the San Joaquin Valley. He contended that if the established minimum rates were excessive or otherwise improper, relief should be accorded through a general adjustment rather than through the granting of special authority to one or two carriers. A witness for The Truck Owners Association introduced two exhibits comparing the established minimum rates and the current rail rates with those here proposed and pointed out that the rates here sought were higher than such rail rates in many instances. This witness testified further that from 40 to 50 truck operators were hauling canned goods within the territory involved in this application and were

⁷ The following is a tabulation drawn from the testimony of this witness, showing the volume and distribution of the Lindsay Ripe Olive Company's tonnage (intrastate and interstate) handled by contract carriers during the period from July 1, 1937 to June 30, 1938:

Carrier	Outbound		Inbound	
	Tons	Per Cent	Tons	Per Cent
Ward	1546	41.5	599	45.0
Stelling	1181	32.0	449	34.0
Armstrong	630	17.0	87	7.0
Weymouth	158	4.0	124	9.0
Gates	186	5.0	43	3.0
Others	23	.5	25	2.0
Total	3724	100.0	1328	100.0

charging the established minimum rates for that transportation.

The Truck Owners Association also filed a statement criticizing the cost data submitted by Stelling and Ward. It pointed out that the cost figures furnished lacked allowances for return on investment, overhead, garage rent, and investment in and replacement of machinery and tools. It pointed out also that only a portion of applicants' operations was involved here, although the cost data covered their entire operations.

The mere statements by applicants that their trucking operations have provided support for their families and have offset losses on their farms do not, of course, indicate that the particular traffic involved in this application has been responsible for or has contributed to the asserted profits. The corroborating cost figures are more detailed; however, they too are of little assistance in determining whether or not the rates here proposed will be compensatory as to the particular traffic on which they are intended to be applied since (1) they lack several essential items of expense which are usually substantial in operations of this nature, and (2) they cover the operations in the aggregate (contract, radial and interstate), whereas not more than 31 per cent of Stelling's total tonnage and not more than 33 per cent of Ward's are involved in this application.

An analysis of Stelling's cost statement shows that no allowance has been made for return on investment, a recognized item of expense. Using his investment figure of \$12,000 and considering, for present purposes, 8 per cent of one-half the original investment to be a reasonable rate of return, this item alone would add \$480 to the annual expenses shown. Another item omitted is overhead expense,

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These percentages are based on estimates of Stelling and Ward that 50 per cent of their tonnage came from the Lindsay Ripe Olive Company and on the showing of the distribution of this tonnage as between intrastate and interstate movements.

including the cost of supervision and management, bookkeeping, office and clerical work. For an operation such as this, grossing nearly \$10,000 annually, the overhead may be expected to be an appreciable amount. In addition, the equipment is depreciated over approximately a ten-year period, whereas the normal life of trucking equipment, due to use and obsolescence, is seldom in excess of five or six years. It is apparent that if a reasonable return on the investment and the minimum cost of overhead were added to the statement and the equipment properly depreciated, the net earnings reflected would be substantially reduced, if not eliminated entirely. The statement submitted by Ward also lacks an allowance for return on investment, although it contains certain overhead items omitted by Stelling.

While the omission of the foregoing expense items seriously limits the weight which can be accorded the cost showings, the defect which appears to be most serious is that costs are not developed for the particular transportation involved in this application. It seems evident that a revenue and expense statement covering an operation as a whole is of little value in determining whether or not rates to be charged in the future on a particular portion of the traffic will be compensatory. Even if it could be concluded from this record that the rates sought to be charged would produce revenue, in the aggregate, in excess of the cost of performing the service, the individual rates could not be found to be "reasonable."⁹ They give little, if any, recognition to the difference in transportation characteristics of the different commodities to be transported and but slight consideration to differences in the lengths of hauls involved. The same rate is proposed on a shipment of canned goods moving from Lindsay to Los Angeles,

⁹ Section 11 of the Highway Carriers' Act authorizes the Commission to permit departure from the established minimum rates only upon finding that the rates sought to be charged are reasonable.

a constructive highway distance of 210 miles, for example, as is proposed for a movement from Lindsay to San Francisco, a distance of 272 miles. The same rate is proposed for a shipment of empty cans as for one of canned goods, despite the apparent difference in densities of the respective commodities.

While the statements of the shipper's representatives to the effect that proprietary operations are contemplated should not be discounted it should be observed that their conclusion that such an operation would be economical was founded upon the belief that applicants could earn a profit on the Lindsay Ripe Olive Company's tonnage under the sought basis. The record here does not support that conclusion and in view of the admitted fact that a proprietary operation would not produce as favorable a load factor as is obtained by Ward and Stelling, it seems probable that the shipper will reconsider its plan pending a more careful analysis of costs.

As pointed out previously in this opinion, the minimum rates in effect at the time this application was filed will be superseded on August 7, 1939, by those established by Decision No. 31606, as amended, in Case No. 4246. Thereafter, rates substantially lower than those from which authority to deviate is here sought will be in effect. It appears probable that, upon reviewing the new rates, applicants and the interested shipper will find that much of the cause for their objections to the present basis has been removed.

Upon careful consideration of all the evidence of record, therefore, we are of the opinion and find that the rates here sought have not been shown to be reasonable and that the application should be denied.

O R D E R

Public hearings having been held in the above entitled application, the matter having been duly submitted and the Commission being fully advised,

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

Dated at San Francisco, California, this 18th day of July, 1939.

Francis A. Hunt

Raymond S. Kelley

J. H. Baker

Justus D. Coe
Commissioners