

Decision No. 32507

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Higgins Trucks, Inc., for permission) Application No. 22395
to charge less than minimum rates on)
freight, regardless of classification.)

Appearances

F.W. Turcotte, for applicant
E.L.H. Bissinger, for Pacific Electric Railway
Company, as its interests may appear.

BY THE COMMISSION:

THIRD SUPPLEMENTAL OPINION

By Decision No. 31487 of November 28, 1938, the Commission authorized Higgins Trucks, Inc., a corporation operating as a city carrier and a highway contract carrier, to charge less than established minimum rates for the transportation of property for B.F. Goodrich Co. within the Los Angeles drayage area.¹ The reduced rates were approved for a one year's period upon allegations that applicant was engaged in the performance of a scheduled and routed transportation service for which the established minimum rates were not entirely appropriate; that various operating economies were possible in a service of this nature which would permit profitable operations at rates lower than those required for ordinary drayage; and that the shipper had definitely decided to purchase truck equipment and commence proprietary operations if it were required to pay the established minimum rates.

By the terms of said Decision No. 31487 the present authority will expire with February 29, 1940, unless sooner cancelled, changed

¹ The "Los Angeles drayage area" referred to herein is the area within which minimum rates were established by Decision No. 31473 of November 25, 1938, as amended, in Case No. 4121. Rates established by this decision were cancelled and superseded effective January 1, 1940, by those established in and by Decision No. 32504 of October 24, 1939, as amended, in the same proceeding.

or extended by the Commission.² Applicant now seeks by supplemental application to have the authority extended to November 28, 1940. It alleges that conditions have not materially changed since granting of the original authority and that the shipper has definitely stated to applicant that upon the expiration of the present relief rates it will entirely discontinue using applicant's service and will acquire and operate its own fleet of trucks and perform its own delivery service within the Los Angeles drayage area.

Public hearing on the supplemental application was had before Examiner Bryant at Los Angeles, and the matter is now ready for decision.

The general manager of B.F. Goodrich Co. and the president of Higgins Trucks, Inc. testified in support of the application. From their testimony it appears that the Goodrich company is engaged in the manufacture and sale of tires, tubes and other rubber goods, and that the Higgins company has made all of its city deliveries for the past five years. Transportation charges under the relief rates which have been in effect since December 1, 1938, have averaged somewhat in excess of \$400.00 per month, and according to the testimony, would be increased about 20 or 25 per cent if established minimum rates were assessed. The Goodrich company is desirous of continuing applicant's service, but will undertake to perform the transportation itself if required to pay established rates. The shipper estimates that it could operate one truck at a total cost of less than \$225.00 per month, and that if neces-

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The authority was originally scheduled to expire with November 28, 1939, but by Decision No. 32587 of that date it was extended to December 31, 1939; and thereafter, by Decision No. 32665 of December 19, 1939, it was extended to February 29, 1940, in order that carrier and shipper might suffer no hardship pending a full consideration of the present record by the Commission.

sary it could operate two vehicles without increasing its present transportation expense. While the service would admittedly be inferior to that now rendered by Higgins, it would nevertheless be reasonably satisfactory.

The record shows further that applicant operates a routed and scheduled delivery service, serving a considerable number of shippers. It utilizes a total of seven vehicles, of which two are used exclusively in pickup service, four in delivery service, and one partly in each. All shipments are picked up and brought to applicant's terminal, where they are sorted for distribution over various delivery routes. Three pickups are made each day at the Goodrich plant. The Goodrich shipments average 25 per day, with an average weight of about 250 pounds each.

Applicant's president stated that from his experience in operating trucks he was of the belief that the revenue received from B.F. Goodrich Co. under present rates would at least equal the operating cost of performing the service. He conceded that he had not made a study of the expenses involved, and did not actually know what it was costing his company to handle the traffic, but said that he kept books and accurate records of certain phases of the operation, and thought it might be possible from such data to prepare a satisfactory estimate of the actual cost of handling the Goodrich shipments. He added that the trucks which carried these shipments also carried other traffic, and that, regardless of the cost of handling the Goodrich shipments, if the Goodrich account were lost there would be little or no decrease in expenses to offset the loss of revenue.

No one protested the granting of this application.

The record is convincing that if applicant is required to assess the established basis of minimum rates for the transportation here involved, the B.F. Goodrich Co. will divert at least a portion of its traffic to proprietary equipment. It fails to show, however, that

the rates which applicant seeks to continue in effect have been, or will be, compensatory. Although they are substantially less than those paid by applicant's other shippers, and although they have been in effect under temporary authority for more than a year, applicant has apparently made no real effort to determine whether or not they have, in fact, returned the cost of performing the service.

In view of the total absence of information as to the cost of transporting the traffic, and the lack of substantial evidence to show whether the rates have been, and may hereafter be, compensatory, the Commission is obviously unable to make a finding that the rates are reasonable. Without such a finding, it may not authorize applicant to perform transportation at less than the established minimum rates. (Section 10, City Carriers' Act; Section 11, Highway Carriers' Act.) Controlling weight cannot with propriety be given to the theory expressed by applicant's counsel that as loss of the traffic would result in little or no decrease in expenses, the rates should be approved. Upon the same theory, applicant might well ask the Commission to approve rates far lower than even those here proposed. Obviously, such rates would not be "reasonable" within the meaning of Section 10 of the City Carrier's Act and Section 11 of the Highway Carriers' Act.

It may be that rates lower than those established as minimum for carriers and shippers generally would be reasonable and compensatory rates for the transportation service here involved. If this is the case, the facts should be presented to the Commission. As the record now stands, the supplemental application must be denied.

O R D E R

This proceeding having been duly heard and submitted, full

consideration of the matters and things involved having been had,
and the Commission now being fully advised,

IT IS HEREBY ORDERED that the supplemental application
filed in this proceeding on November 28, 1939, except to the extent
that it has heretofore been granted, be and it is hereby denied.

Dated at San Francisco, California, this 12th
day of February, 1940.

Ray & Peery
Green & White
Randolph & White
W. H. White
Justin J. Cooney
Commissioners.