Decision No. [illegible]

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LOMPOC TRUCK COMPANY, a corporation, for authority to charge less than minimum rates, under the provisions of the Highway Carriers' Act.	Application No. 21815

ORIGINAL

BY THE COMMISSION:

Appearances

Ware and Berol, by Edward M. Berol, for the applicant.
A. L. Whittle, for Southern Pacific Company and Pacific Motor Trucking Company, protestants.
W. C. Theis, for Johns-Manville Sales Corporation, interested party in support of the application.

FIRST SUPPLEMENTAL OPINION

By Decision No. 31141 of August 1, 1938, in the above entitled application, Lompoc Truck Company, a highway contract carrier, was denied authority sought by it under Section 11 of the Highway Carriers' Act to transport infusorial earth from White Hills to points throughout California, under contract with Johns-Manville Products Corporation, at rates less than the established minimum rates. Thereafter, by supplemental application, applicant requested a further hearing in this matter. The request was granted and the supplemental application was publicly heard in San Francisco before Examiner Mulgrew. The matter was submitted on briefs.

At the time the original application was filed the minimum rates in effect for the transportation here involved were those established by Decision No. 30370, as amended, in Case No. 4088, Parts "U" and "V". That decision established rates for transportation in shipments weighing

20,000 pounds or less and provided, in addition, that the charge for shipments weighing more than 20,000 pounds should not be less than the charge established as minimum for a shipment weighing just 20,000 pounds. Rates were set forth in the form of a mileage class rate scale subject to "less-carload" ratings (classes 1, 2, 3 and 4). Applicant sought authority to charge, in lieu thereof, specific rates from White Hills to forty-nine destinations throughout California.[1] From White Hills to unnamed points, applicant proposed to assess charges on the basis of 20 cents per actual truck mile. All of these rates were proposed to be made subject to a minimum weight of 20,000 pounds. Special rules were contained in the proposal relative to the performance of split deliveries.

The record made in the original hearing showed that applicant and its predecessors had been engaged since 1931 in transporting infusorial earth from White Hills to points in California and in transporting "plant supplies" on the return movement, under contract with Johns-Manville Products Corporation. Detailed statements were submitted showing all operating expenses incurred during the year 1937 and an estimate of such expenses during the year 1938 on the four units of equipment used in this service. These statements showed the average cost per mile for the 1937 operations to have been 16.71 cents and estimated the average cost per mile for the 1938 operations at 18.64

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1 The following table shows rates proposed to representative points:

Destinations	Proposed Rate (in Cents per 100 Pounds)
Betteravia	12½
Los Angeles	20
San Francisco	27
San Diego	35
Bakersfield	30
Modesto	35
Asti	50

cents. They also contained a comparison of the total revenue which accrued during the year 1937 ($44,256.49) with the operating expenses for that period ($41,782.91) and with the estimated revenue for the year 1938 ($46,613.56). The original record contained statements in behalf of the interested shipper, moreover, to the effect that proprietary operations would be commenced if the application were not granted.

The denial of the authority sought in the original application was based upon two principal grounds. The first was that the cost showing referred to applicant's aggregate operation whereas a large proportion of the total traffic consisted of interstate tonnage or "plant supplies," not involved in the application.[2] The second principal ground was that in computing charges applicable under the established minimum rates, full effect had not been given to "split delivery" provisions, as a consequence of which it was not clear that the observance of the established minimum rates would result in the assessment of charges substantially higher over an annual period than

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[2] In Decision No. 31141 the Commission said:

"Applicant has shown that rates somewhat lower than those here proposed produced a profit during 1937 and has asserted that the proposed rates are sufficiently higher than those assessed during 1937 to offset any increased operating expenses which might be experienced during 1938. The weakness of the cost showing comprising applicant's operation in the aggregate is apparent when it is considered that a large proportion of applicant's tonnage consists of "plant supplies" not involved in this application, that applicant transports considerable interstate tonnage not subject to the established minimum rates and that the volume of tonnage moving during 1938 may conceivably be substantially less than that which moved during 1937. The record shows that the inbound movement of plant supplies (intrastate and interstate) comprises approximately 40 per cent of the total movement and that outbound interstate tonnage comprises about 25 per cent. Thus, the traffic involved in this application constitutes roughly only 35 per cent of the business which produced the 1937 revenues and operating expenses relied upon. This being true, the profit and loss statement for the aggregate operation, converted to a truck-mile basis, is of little value as an indication that the proposed rates will be compensatory as to the particular traffic involved in the application."

those which would accrue under the sought rates.[3]

In an effort to satisfy the deficiencies in the record pointed out by the Commission in Decision No. 31141, applicant suggested the addition of a restriction to the effect that the carrier must be tendered at least 7,000 tons of property per year, of which not less than 4,500 tons shall be intrastate in character. Also, several additional exhibits were introduced in applicant's behalf. Two of them (Exhibits Nos. 9 and 10) show all shipments transported by applicant for Johns-Manville Products Corporation during the months of April and December, 1938, the revenue which accrued under the minimum rates then in effect, that which would have accrued under the Decision No. 31606 basis, and that produced by the proposed rates. Another (Exhibit No. 11) compares revenue under the several bases for the entire year of 1938. Total figures shown in these exhibits are as follows:

Period	30370 Rates	31606 Rates	Proposed Rates
April, 1938	$2,702.00	$2,698.92	$2,484.18
December, 1938	2,670.19	2,680.85	2,664.19
Year of 1938	33,588.71	33,723.64	32,215.62

In addition, a statement was introduced showing the relationship during each month of the years 1937 and 1938 between the intrastate and interstate tonnage handled. In general, these figures show that the 1938 tonnage was considerably less than the

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3 Subsequent to the rendition of the original decision in this matter, Decision No. 31606 was issued in Case No. 4246, in re Rates of All Common and Highway Carriers. That decision superseded Decision No. 30370 and provided a statewide basis of minimum rates for shipments of all weights. In so far as shipments weighing less than 20,000 pounds were concerned, the new rates were generally substantially lower than those previously in effect. For larger shipments, however, some increases resulted, since, as hereinbefore stated, the only minimum rate applicable under Decision No. 30370 was the charge for a shipment weighing 20,000 pounds. The rates established by Decision No. 31606, as amended, became effective August 7, 1939.

1937 tonnage, but that the proportion of tonnage of each type remained approximately the same.

With respect to costs, a statement was introduced showing the load factor enjoyed by applicant during each month of the year 1938, the average load factor shown being 76.4 per cent. A statement comparing revenues and expenses for the year 1938 was also submitted, the total revenues shown being $37,755.56 and the expenses $36,220.59.[4]

Further testimony relative to the probability of the shipper inaugurating its own trucking services was also introduced. Witnesses testified that a comprehensive study of the cost of proprietary operation had been made and that, based on that study, a recommendation that such operations be installed in the event this application were denied had been submitted to the company's board of directors. These witnesses stated that under the present rates it had been necessary to make certain changes in distribution methods to prevent undue increases in transportation charges. Among these changes were the maintaining of increased warehouse stock at San Francisco, the delaying of customers' orders to accumulate large aggregate shipments and the selling of large orders beyond customers' normal credit limits.

Southern Pacific Company and Pacific Motor Trucking Company protested the granting of the supplemental application. They argued that the same weaknesses pointed out by the Commission in denying the original application were present in applicant's showing on further hearing. They pointed out that during the year

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4 These figures include transportation performed by shippers other than Johns-Manville. The revenue shown is the amount actually received by applicant, rather than the amount which would have been received had the Decision No. 30370 rates been in effect for the entire period.

1938 less than 31 per cent of the tonnage producing applicant's revenues and responsible for its expenses consisted of intrastate shipments of infusorial earth and that no segregation of either revenues or expenses had been made.

Protestants submitted studies of earnings under applicant's proposed rates, the present rates, rail carload rates and the cost estimates of the Commission's engineer in Case No. 4246, supra, used as rates, purporting to show that the proposed rates were not properly related to the distance involved or to the cost of transportation. According to these studies earnings per constructive mile, based upon round-trip miles at the proposed rates, range from 8 cents on shipments to San Francisco, a distance of 644 round-trip miles, to 30 cents on shipments to Betteravia, a distance of 82 round-trip miles. At the minimum rates, the range from and to the same points is from 11 to 24 cents at the 20,000-pound minimum weight and from 15 to 31 cents at the 36,000-pound minimum weight. Estimates of costs, based upon constructive miles, are indicated as being 12 cents to San Francisco, 23 cents to Betteravia, at the 20,000-pound minimum weight, and 22 and 37 cents, respectively, at the 36,000-pound minimum weight.

The record in this proceeding, as augmented at the further hearing, is now convincing that applicant would enjoy a compensatory operation in the aggregate under the rates here proposed, assuming that (1) the volume of infusorial earth tonnage, both intrastate and interstate, did not diminish substantially, (2) the rates charged on the interstate tonnage were not substantially lower than those previously charged, (3) the rates charged on the "plant supplies" were not reduced materially and (4) no other charge of an adverse character was experienced. The minimum annual tonnage requirement suggested by applicant appears to satisfy the first assumption. While it cannot

be predicted with certainty how applicant's rates for the future on interstate shipments of infusorial earth and on shipments of plant supplies will compare with those charged in the past there appears to be little likelihood of an adverse change within the next year. The record indicates, moreover, that the remuneration received by applicant for transportation of property not involved in this application is, at least, not excessive. The "plant supply" rates are those established by this Commission in Decision No. 31606; the interstate rates for infusorial earth and "plant supplies" are lower than those established by this Commission for like transportation in intrastate commerce. If, then, the applicant would enjoy a compensatory over-all operation under the sought rates, and if contraband traffic is not paying excessive rates, it is a reasonable conclusion that, in the aggregate, the sought rates will be compensatory for the particular transportation to which they are intended to apply.

Although it now appears that the sought rates would be compensatory in the aggregate, applicant has made no effort whatever to explain the basis upon which the sought rates were predicated or to justify them individually. As pointed out by protestants, these rates bear little relationship to the length of the hauls or to the cost of performing the particular transportation to which they respectively apply. For example, the rate proposed to be assessed from White Hills to Bakersfield, a constructive highway distance of 190 miles is 30 cents per 100 pounds, as compared with the rate of 20 cents per 100 pounds proposed for transportation from White Hills to Long Beach, also a distance of 190 miles. In several instances the sought rates are in fact higher than the established minimum rates. Examples of this are the rate of 12½ cents proposed to Betteravia

as compared with the minimum rate of 10 cents per 100 pounds, and the proposed rate of 30 cents to Bakersfield as compared to the minimum rate of 27 cents per 100 pounds. The point-to-point rates are proposed to be applied intermediately along "direct" routes, but no designation of the routes to be used is given. For movements for which specific point-to-point rates are not proposed the sought rate is 20 cents per actual truck mile traveled, a basis which manifestly has no relationship to the quantity of freight transported and which is not in such form that it could be published by competing carriers. In addition, applicant's proposal contemplates the performance of split delivery service without additional charge and under conditions substantially different from those contained in present minimum rate orders. It will be seen, therefore, that the rates of which approval is here sought are widely different in form from the form of the established minimum rates, but that no need or reason for the differences has been made to appear.

In instances where Section 11 relief is sought in connection with competitive traffic, competing common carriers would clearly be placed at a serious disadvantage if rates were authorized in such form that they could not be incorporated in the carriers' tariffs on file with the Commission. Moreover, carriers of all types seeking to compete for only a portion of the traffic would be virtually foreclosed if rates were authorized on the basis of aggregate operations rather than upon the reasonableness of rates for individual movements. In Decision No. 32174 of July 18, 1939, in Application No. 22159 of C. H. Ward and J. L. Stelling, and in Decision No. 32320 of September 19, 1939, in Application No. 22408 of Industrial Transfer Corporation, the Commission held that showings relating solely to the compensatory nature of the operations in the aggregate would not suffice. Under these circumstances, the application will be denied without prejudice.

O R D E R

A public hearing having been held in the above entitled supplemental application, full consideration of the matters and things therein involved having been had and the Commission being fully advised,

IT IS HEREBY ORDERED that the above entitled supplemental application be and it is hereby denied without prejudice.

Dated at Los Angeles, California, this 26th day of March, 1940.

Commissioners