

Decision No. 32576

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the amended	)	
Application of Hetty J. Elmore	)	
and John J. Elmore, co-partners,	)	
doing business as ELMORE COMPANY,	)	Application No. 21914
for authority to charge less than	)	
minimum rates.	)	

Appearances

- Arthur Glanz, for applicant.
- C. W. Durbrow, Frank Karr and E. L. H. Bissinger,  
by E. L. H. Bissinger, for Southern Pacific  
Company, interested party.
- C. G. Anthony, for Pacific Freight Lines,  
interested party.
- Gus A. Dreier, for Lumber Haulers Association of  
Southern California, interested party.

BY THE COMMISSION:

O P I N I O N

By this application Elmore Company, a co-partnership comprised of John J. Elmore and his wife, Hetty J. Elmore, seeks authority to charge less than the established minimum rates for the transportation of lumber as a highway contract carrier from Los Angeles, Long Beach and other points in the Los Angeles basin to various destinations in the Imperial Valley.

A public hearing was had before Examiner Bryant at Los Angeles, and the matter is now ready for decision.

It appears that, in addition to its transportation business, applicant is engaged in the business of growing agricultural products, principally hay, in the Imperial Valley, and in trans-

porting these products in its own vehicles to markets in the Los Angeles area. The same vehicles are utilized to transport property for compensation on the return trips to the Imperial Valley. By combining this "back haul" traffic with the movement of its own agricultural commodities in the opposite direction, it appears that applicant has been enabled approximately to balance its load and thus, by reason of the increased load factor, to lower its relative cost per ton of transporting both types of traffic.

The principal commodity transported in applicant's for-hire service is the one involved in this application, namely, <sup>1</sup>lumber. John J. Elmore and the traffic manager of Elmore Company testified that since minimum rates became effective for the transportation of lumber on January 27, 1938, applicant's tonnage of this commodity had decreased substantially. They stated that several lumber shippers had discontinued applicant's services entirely and were now performing the transportation in their own vehicles, and that a number of others had indicated an intention to resort to the use of proprietary trucks unless a reduction in rates were secured. Some of these latter shippers, it appears, had been dissuaded from discontinuing the services of Elmore Company only upon being assured that permission to charge less than established minimum rates would be sought from the Commission.

The rate here proposed to apply from all points of origin to destinations in the Imperial Valley proper is 17½ cents per 100 pounds, minimum weight 30,000 pounds. The established minimum rates, which vary according to the length of haul, range from 20

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Other commodities transported for compensation are cement, fertilizer, petroleum products and steel. In addition, there is a small movement of empty petroleum containers returning from the Imperial Valley to Los Angeles.

cents to 25½ cents per 100 pounds for the same transportation.<sup>2</sup>

Several shipper witnesses testified that they had regularly used the services of Elmore Company, that they were dissatisfied with rates assessed for transportation of lumber, and that they had concluded to purchase vehicles and haul the lumber themselves unless a rate reduction were authorized.

The carrier witnesses hereinbefore referred to expressed the belief that if the proposed rates were approved, applicant would be able to retain its present lumber traffic, regain some of the lost tonnage, and possibly obtain additional new tonnage. They thought, however, that if applicant were required to continue assessing the established minimum rates, it would lose the greater part of the lumber traffic still remaining to it. They asserted that loss of the lumber hauling would be a serious blow to Elmore Company, as each operation of the company was an integral part of the whole, and the for-hire transportation eastbound was essential to the profitable operation of applicant's vehicles in the westbound transportation of its own property.

Apparently for the purpose of showing that the proposed rates would be compensatory, applicant engaged a public accountant to prepare a cost study reflecting the operations of the company. This accountant testified that he had analyzed applicant's operations for a six-month period believed to be representative, using principally sources of information submitted to him by John J. Elmore and by employees of Elmore. His investigation did not extend to the books of original entry. The results of his study were reflected in cost statements attached as Exhibit "C" to the

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To destinations east of Holtville to and including Winterhaven, it is proposed to charge 22 cents per 100 pounds, minimum weight 30,000 pounds. The established minimum rates to these destinations on the same minimum weight are 25½ cents and 27½ cents per 100 pounds, according to the constructive distance involved.

amended application in this proceeding. It appears from the exhibit that the operations of Elmore Company for the period of the study would have been profitable had all of the lumber shipments moved at the proposed rate of 17½ cents per 100 pounds.

Southern Pacific Company, Pacific Freight Lines and Lumber Haulers Association of Southern California entered appearances in this proceeding as interested parties. The two carriers stated that they were not primarily concerned with the level of the rates sought, but were opposed to the granting of any authority which would have the effect of giving preferential rates to their competitors. None of these parties offered testimony of their own, nor did they specifically oppose the granting of this application.

Applicant's cost study develops the results of the transportation operation as a whole, embracing the for-hire transportation of a number of commodities not involved in this application, and also including the private transportation of hay, grain or other agricultural products owned by Elmore Company. The study contains no information from which it would be possible properly to estimate the cost to applicant of performing the particular transportation for which reduced rates are herein sought, and the cost witness frankly stated that he had not attempted to develop cost information for that purpose. There is nothing in applicant's cost study, or in other evidence of record, to show whether or not the proposed rates would be compensatory for the service performed.<sup>3</sup>

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<sup>3</sup> According to the cost study, Elmore Company earned a net profit from transportation operations during the six-month period from August 1, 1938, to January 31, 1939, of \$2,896.50, while its gross revenue from the transportation of lumber was \$2,577.05. Thus, from the showing here made it may be deduced that applicant's operations would have been profitable even though the lumber had been transported free of charge. Such a showing is obviously of little assistance to the Commission in determining whether the rates proposed to be charged for the transportation of lumber would be reasonable or compensatory.

In the absence of evidence to show whether or not the proposed rates would be compensatory, the Commission is obviously unable to make a finding that the rates would be reasonable. Without such a finding it may not authorize applicant to perform transportation at less than the established minimum rates. (Section 11, Highway Carriers' Act.)

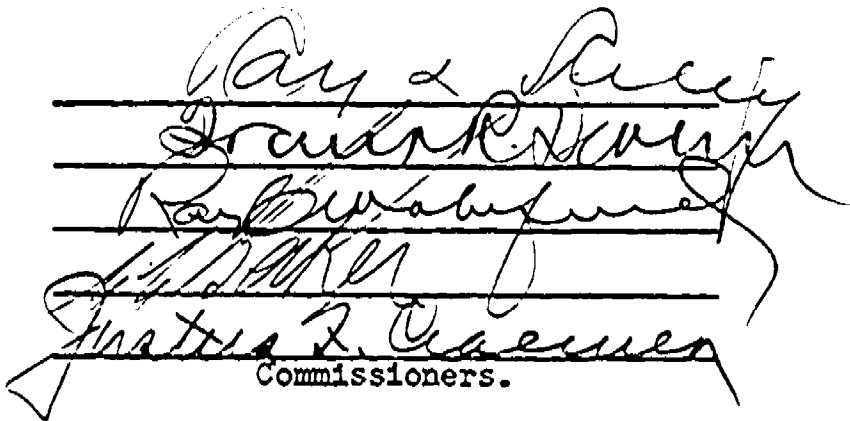
Upon consideration of all the facts and circumstances of record, the Commission is of the opinion that the proposed rates have not been shown to be "reasonable" rates within the meaning of Section 11 of the Highway Carriers' Act. The application will be denied, without prejudice.

O R D E R

This application 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 this application be and it is hereby denied, without prejudice.

Dated at San Francisco, California, this 2<sup>nd</sup> day of April, 1940.

  
Commissioners.