

Decision No. 33184

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of SAM AND PASQUALE, doing business )  
as MAGGIO BROS., to charge less ) Application No. 23126  
than established minimum rates. )

BY THE COMMISSION:

ORIGINAL

Appearances

Charles W. Rollinson, for applicant.  
J. E. Lyons, for Southern Pacific Company and  
Pacific Motor Trucking Company, protestants.  
Harold W. Dill, for Truck & Warehouse Association  
of San Diego and Imperial Counties, protestant.  
C. A. Hodgeman, for Port of San Diego, Harbor  
Administration of the City of San Diego, and  
San Diego Chamber of Commerce, as their interests  
may appear.  
Edwin Stern, for Railway Express Agency, Inc.,  
interested party.

O P I N I O N

By this application Sam Maggio and Pasquale Maggio, copartners doing business as Maggio Bros., a radial highway common carrier and highway contract carrier, seek authority to charge less than established minimum rates for the transportation of dry ice (carbon dioxide, solidified) from a point near Niland to Los Angeles for the National Dry Ice Company.

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

The testimony shows that applicant operates vehicles which are enclosed and insulated, and are therefore suitable for the transportation of dry ice. It shows also that the Los Angeles storage and office facilities of National Dry Ice Company are located in a building adjacent to the Los Angeles headquarters of Maggio Bros. It appears that the present application had its inception when a representative of the ice company, allegedly contemplating the purchase of proprietary trucks

to perform the transportation here involved, approached the Los Angeles representative of Maggio Bros. for information concerning the insulated vehicles. The latter, learning of the dry ice movement from Imperial Valley, solicited the traffic for applicant's account at the reduced rate upon which the approval of the Commission is herein sought. The proposed rate is 20 cents per 100 pounds, subject to a minimum weight of 14,000 pounds. The minimum rates heretofore established by the Commission for this transportation vary from 20 cents to 68 cents per 100 pounds, according to the weight of the shipment.<sup>1</sup>

It appears from the record that the applicant copartnership was formed in June, 1939, for the purpose of transporting fresh fruits and vegetables for Maggio Bros., a corporation of the same name engaged in the wholesale produce business. One of the partners is president of the corporation, and the other partner is a director. All records of the two companies are kept by employees of the corporation, and the copartnership keeps no separate books of account. The corporation absorbs all profits and losses of the copartnership, so that the partners receive no profits and sustain no losses from their enterprise except as stockholders in the corporation.

Maggio Bros., the copartnership, transports property from Los Angeles to the Imperial Valley for the corporation, but apparently not for others. It also carries some produce of the Valley in the return movement to the Los Angeles market, principally for the

<sup>1</sup> The established minimum rates for the transportation of this commodity from Niland to Los Angeles are class rates provided in Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended, in Case No. 4246). They are as follows:

<u>Minimum Weight in Pounds</u>	<u>Rates in Cents per 100 Pounds</u>
Any Quantity . . . . .	68
4,000 . . . . .	46½
10,000 . . . . .	35
20,000 . . . . .	32
30,000(a) . . . . .	20
36,000(b) . . . . .	20

(a) Applicable from October 1 to March 31, inclusive.  
 (b) Applicable from April 1 to September 30, inclusive.

corporation. Applicant has not heretofore transported dry ice, but anticipates that it will be favored with the shipments of National Dry Ice Company from Niland to Los Angeles in the event it is authorized to apply the reduced rate sought by this application.

In justification of the proposed rate, witnesses testified that applicant's vehicles have returned from the Imperial Valley to Los Angeles unladen upon about 90 per cent of the trips, and that the total "back-haul" has been only 8 or 10 per cent of the vehicle capacity. The bookkeeper of the company estimated that the "added" cost of picking up and transporting the dry ice would not exceed \$8.00 per trip, and pointed out that the gross revenue on this commodity would amount to \$28.00 or more per trip at the proposed rate and minimum weight. The estimated cost of making a complete round trip from the Imperial Valley to Los Angeles and return, according to a brief statement attached to the application is \$31.25.<sup>2</sup>

A witness for Southern Pacific Company testified that his company had published carload rail rates designed to accommodate the movement of dry ice from Niland to Los Angeles. He introduced a statement showing the various rail rates in effect for this movement from July 1936 up to the date of the hearing, and explained that all of these rates had been published and maintained for the benefit of two companies producing dry ice in the vicinity of Niland. He was unable to state whether or not the shippers had availed themselves of these rates.<sup>3</sup>

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<sup>2</sup> This amount makes no provision for any of the overhead items, and apparently none for the additional cost which would be incurred in travelling to and from Niland. (Niland is situated some 14 miles distant from applicant's normal route.)

<sup>3</sup> From his statement it appears that the carload rail rates at the date of the hearing were 19 cents, 20 cents and 22 cents per 100 pounds, subject to minimum weights of 40,000, 36,000 and 30,000 pounds, respectively.

No representative of the shipper appeared in support of the application or otherwise participated in the disposition of this proceeding. Southern Pacific Company, Pacific Motor Trucking Company and The Truck and Warehouse Association of San Diego and Imperial Counties protested the granting of the application, but did not specifically state the basis of their objections.

Applicant apparently made no attempt to determine the full cost of performing the particular transportation service here involved, but proceeded instead upon the proposition that the proposed rate must be reasonable if it would return any revenue over and above the bare additional out-of-pocket expense which might be incurred in transporting the dry ice. This theory makes no provision for any of the overhead expenses, or even for a proportionate share of the variable expenses, and if applied to all of the traffic would obviously return insufficient revenue to permit the operator to continue in business. The cost showing is meagre and far from convincing, and this reason, if for no other, the application must be denied.

However, two other reasons appear as obstacles to the granting of this application. In the first place, the record is not persuasive that the proposed deviation from the established basis of minimum rates is necessary or desirable. The sought rate of 20 cents per 100 pounds is the same, it will be observed, as the minimum rate heretofore established by the Commission for larger shipments. The sought rate would be subject to a minimum weight of 14,000 pounds; the established rate of the same volume is subject to a minimum of 30,000 pounds during the period from October 1 to March 31, and to a minimum of 36,000 pounds during the balance of the year. No reason appears of record why the shipping and transportation practices in connection with the traffic here involved could not be adjusted so as to accommodate themselves to the minimum weights prescribed in connection with the present 20 cent rate. A carrier witness testified that he did not know whether or not the dry ice could be offered in shipments

of 30,000 and 36,000 pounds, but stated that if that tonnage were offered his company could handle it.

In the second place, even though granting of the application were otherwise justified, it must be seriously questioned whether it would be in the public interest that the Commission permit this applicant, which according to this record is primarily and essentially a private carrier, to seek to reduce the cost of transporting its own tonnage by soliciting and transporting the property of others at lower rates than those which are available to for-hire carriers generally. Should the Commission sanction and adopt such a policy, the established for-hire carriers would find themselves faced with a serious and formidable type of competition which it would be difficult and perhaps impossible for them to meet, and which might well eventually force them to retire from the field and leave the public without adequate and dependable transportation service.

Upon careful consideration of all the facts of record we are of the opinion and find that the proposed rate has not been shown to be necessary, or "reasonable" within the meaning of Section 11 of the Highway Carriers' Act. Under the circumstances here presented the application must be denied.

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.

Dated at San Francisco, California, this 11<sup>th</sup> day of June, 1940.

James J. Quinn  
James J. Quinn  
James J. Quinn  
James J. Quinn  
James J. Quinn  
Commissioners.