

Decision No. 35518

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application)	
of Ralph W. Baetz, for authority)	
to charge less than minimum rates)	
established by Decision No. 31606,)	Application No. 23418
as amended, and Decision No. 32504,)	
as amended.)	

BY THE COMMISSION:

ORIGINAL

A P P E A R A N C E S

ARTEUR GLANZ and T.A.L. LORETZ, for applicant.
 EDWARD M. BEROL and MARVIN HANDLER, for A. M. Gross
 and F. Gross, co-partners doing business
 as Gross Systems, protestant.
 R. E. CRANDALL, for Associated Jobbers and Manu-
 facturers, interested party.

O P I N I O N

By this application Ralph W. Baetz, an individual hold-
 ing permits from this Commission to operate as a radial highway
 common, highway contract and city carrier, seeks authority to charge
 less than established minimum rates for the transportation of gro-
 ceries and related commodities from the warehouse of Certified
 Grocers, Inc., situated in the city of Vernon, to ten retail stores
 located in southern California.

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

The minimum rates established by the Commission for this
 transportation are, for the most part, named in cents per 100 pounds,
 and vary according to the length of haul, classification of the

commodities and weight of the shipment. The rates proposed by applicant are likewise stated in cents per 100 pounds and related to the length of haul, but are not varied according to classification or weight. Differences in the bases upon which the established and proposed rates are stated make detailed comparison impracticable, but with few exceptions the proposed rates are lower than those now applicable as minimum.

Evidence in support of the application was presented by Baetz, by a rate and traffic consultant, and by a certified public accountant. Baetz testified that for the past six years he has been engaged in transporting groceries and grocers' supplies from the warehouse of Certified Grocers, Inc., to ten retail stores located in Los Angeles, Alhambra, San Gabriel, Wilmar, Rosemead, El Monte, Baldwin Park and South Pasadena.¹ This transportation is performed for and charges are paid by the consignees. Deliveries are made two days a week. In this service applicant normally operates two vehicle units, one of which is a tractor and semi-trailer and the other a truck-and-trailer combination, having capacities of ten tons and eleven tons, respectively. He stated that each unit is usually loaded to approximately its capacity, although on occasion the tendering of a greater load may necessitate the making of a second trip or the use of an additional vehicle unit. Each unit operates over a regular route, delivering to five of the stores. The loading is performed by a part-time employee engaged by applicant for this purpose, and the unloading is performed principally by employees of the retail stores. Applicant's only full-time employees are two

¹ Applicant explained that he also performs other intrastate transportation and transports some commodities between Alhambra and Los Angeles Harbor in interstate commerce as well. These operations are not involved in the application.

drivers, and he usually drives one of the vehicles himself. He uses a room in his home for an office, and rents a building nearby for use as a terminal and garage.

Baetz explained that since he has been engaged in this transportation he has based his charges upon one per cent of the purchase price of the commodities hauled, without regard to classification, weight or distance.² He stated that the consignees which he serves may, as members of Certified Grocers, Inc., buy their goods either f.o.b. the warehouse or f.o.b. their stores, at a difference in price approximately equal to the charges which he has assessed. The witness declared that the percentage basis of assessing charges had been satisfactory to himself and his consignees, but in view of the conclusions reached in the first Gross decision, he deemed it inadvisable to seek authority to continue that basis.³ The rates herein proposed, he said, are the same as those charged by Gross Systems.⁴

Applicant declared that he is in direct competition with Gross Systems, and said that he would be placed in an unfair competitive position if required to observe the established minimum

² The lawfulness of applicant's past practice in the assessment of charges is under investigation.

³ A. M. Gross and F. Gross, co-partners doing business as Gross Systems, are engaged in the transportation of groceries and related articles for Certified Grocers, Inc., from the Vernon warehouse to approximately 600 stores in southern California, when the charges are paid by the shipper. In Application No. 22240 Gross Systems sought authority to assess charges on a percentage of sales value. In denying this authority (Decision No. 32308 of September 12, 1939), the Commission said that the basing of rates upon a unit of measurement which would produce different charges from time to time, for a given kind and quantity of freight, would clearly be improper. On supplemental application, Gross Systems was authorized (Decision No. 32960 of April 2, 1940), to perform the transportation at rates similar to those herein proposed.

⁴ Since the submission of this application the rates charged by Gross Systems have been increased, so that they are now approximately 10 per cent higher than those herein sought, (Decision No. 35237 of April 7, 1942, in Application No. 22240).

rates. He objected to the established rates for the further reason that their use would involve the time and expense of classifying the articles and determining applicable rates and charges. He said that this work would probably necessitate the hiring of a qualified clerk, and he feared, moreover, that its performance would interfere with the service. The witness explained that the recording of weights for each classification would not present a problem, inasmuch as the weights were known to Certified Grocers, Inc. and indicated on the invoices, but asserted that on the whole the proposed basis would be more simple and less expensive to apply than would the established minimum rates.

A rate and traffic consultant testified that he had been engaged by Baetz to classify and rate certain shipments for purposes of this proceeding. The witness was of the belief that the shipments studied covered a representative day in July, 1940, but it developed during the hearing that they were transported on three different days in that month. According to this study the charges assessed under the percentage basis used by applicant were slightly higher in the aggregate than those which would result from application of the established minimum rates.⁵ No comparison was made with the proposed rates. The witness stated that he had kept an accurate record of the time consumed in analyzing, classifying and rating the shipments, and found that it totaled eighteen hours. He thought that the work could have been done in eight to ten hours had he been more familiar with the commodities and the operations involved.

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The validity of this comparison is questionable, since it appears from the record that the witness grouped a number of separate deliveries as a single "split-delivery shipment." Under the applicable minimum rate orders, split-delivery rates may be applied only when the charges are paid by the consignor where there is more than one consignee.

A study of the cost of performing the transportation was prepared and introduced in evidence by a certified public accountant engaged by applicant for this purpose. According to this study the total cost of the operation averages \$256.07 per month, while the estimated average monthly revenue under the proposed rates would be \$264.66. The resulting net profit of \$8.59 per month would be in addition to an allowance of \$200 per month to applicant for his services as manager of the business. This witness explained that applicant had not maintained formal accounts or records, and it had therefore been necessary in the development of the cost study to rely, to a considerable extent, upon estimates and approximations in lieu of actual cost data. He stated that because of the absence of operating statistics he had made no attempt to determine load factors or use factors, or to develop cost estimates on a per-ton mile basis.

Granting of this application was opposed by Gross System, supra. A. M. Gross declared that although rates comparable to those here proposed had heretofore been found by the Commission to be reasonable for his company, this fact should not be controlling in determining whether or not the same rates would be necessary, reasonable

⁶ The first six months of 1941 were considered in the study, that period being the most recent one for which records were available. Drivers' wages were determined by multiplying the estimated number of hours worked by the actual rate of pay. Fuel and lubrication expenses were calculated by using the estimated number of vehicle miles chargeable to the grocery operation, the consumption experience per mile as indicated by applicant's available records, and the actual prices paid per gallon for gasoline and oil. The items of repairs, servicing of the vehicles, and tire and tube expenses were estimates based upon experience of the cost witness, since applicant had no satisfactory records. Depreciation, interest, taxes, licenses, insurance and general overhead expenses were allocated between the grocery operation and applicant's other transportation services according to the ratio between the revenues. Actual cost experience was used for several direct charges. Several minor items of expense were overlooked, but the cost witness expressed the opinion that a "miscellaneous" figure which he allowed in his estimates would be sufficient to absorb these items.

or compensatory for the operation conducted by Baetz. He asserted that the two operations were dissimilar with respect to economies, tonnage, equipment and other factors. This witness expressed the opinion, based upon his own transportation experience, that some of the estimates used in applicant's cost study were too low. He stated also that his company was not in competition with Baetz, as it performed transportation only for Certified Grocers, Inc., and not for the consignees. He feared, however, that granting of this application would encourage requests for similar authority by other carriers, with ultimate loss of business by his company.

No representative of the consignees participated in the disposition of this proceeding.

The principal contentions advanced in justification of the authority herein sought are that the proposed rates are necessary to enable Baetz to compete with Gross Systems, and that the established basis of minimum rates is undesirable because of the time and expense which would be involved in classifying and rating the property.

Applicant made no attempt to explain in what manner the special rate authority held by Gross Systems may place him at a competitive disadvantage. The Gross rates are now some 10 per cent higher than those herein proposed, but even though they were identical it does not appear from this record wherein either Baetz or his consignees are affected by the rates assessed by Gross Systems. The Gross authority is limited to transportation performed for and on behalf of Certified Grocers, Inc., and does not permit the carrier to transport property for applicant's consignees or for others at rates less than those established as minimum. Moreover, the

proposed rates are stated in cents per 100 pounds and vary with the length of haul, while the difference in sales price represents merely a fixed percentage of the purchase price.

The record is persuasive that the work of classifying and rating the shipments under established minimum rates would impose some inconvenience and expense upon applicant, but it is questionable whether in actual experience it would prove to be as burdensome as anticipated by the witnesses. Determination of weights would admittedly present no problem in this case. The inconveniences of classifying and rating individual commodities are ordinarily far outweighed by the public benefits accruing from a stabilized basis of known transportation charges, and the Commissioner is reluctant to authorize deviations from minimum rates when the application is predicated primarily upon a desire to avoid these problems.⁷

It may be noted that there is no representation from Bactz' consignees that they favor the granting of this application, or that they will resort to other means of transportation if it is denied.

The cost study of record indicates that the proposed rates would return slightly more than the cost of performing the service, but in view of the narrowness of the anticipated profit margin and the extent to which estimates were relied upon, it cannot be determined with the desired degree of certainty whether or not the rates would in fact be compensatory.

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Decision No. 32320 of September 19, 1939, in Application No. 22408 of Ben Gruell; and Decision No. 33164 of June 4, 1940, in Application No. 23148 of Alfred Zuelow.

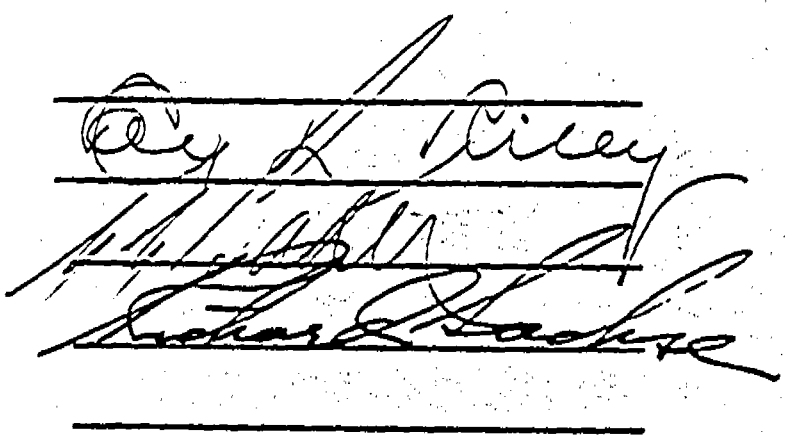
Upon consideration of all the facts and circumstances of record, we are of the opinion and find that the proposed rates have not been shown to be necessary or "reasonable" within the meaning of Section 11 of the Highway Carriers' Act. The application will be denied.

ORDER

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 23^d day of June, 1942.



Commissioners