

ORIGINAL

Decision No. 33554

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of W. A. BAXTER for relief under )  
Section 11 of the Highway Carriers' )  
Act, Chapter 223, Statutes of 1935 )  
of the State of California, as )  
amended, and under Section 10 of )  
the City Carriers' Act, Chapter 312, )  
Statutes of 1935, of the State of )  
California, as amended. )

Application No. 24903

BY THE COMMISSION:

Appearances

E. L. H. Bissinger, for applicant,  
W. A. Baxter; in propria persona,  
George McClure, for Pacific Electric  
Railway Company.

O P I N I O N

By this application W. A. Baxter, an individual holding permits from this Commission to operate as a highway contract carrier and city carrier, seeks authority to perform certain transportation services for Pacific Electric Railway Company at rates and charges which are lower than those heretofore established by the Commission as minimum, and which are stated in units of measurement different from those in which the minimum rates are stated. The services consist exclusively of the movement of property belonging to Pacific Electric and used by it in connection with the construction, reconstruction, maintenance, repair or removal of its railway facilities, including rails, ties, poles and other material related to its railway operations in the Counties of Los Angeles, Orange, Riverside and San Bernardino.

Public hearing was had before Examiner Bryant at Los Angeles on June 16, 1942, at which time the application was submitted for decision.

According to Baxter, who testified in his own behalf, he

has been engaged in performing the service here involved for about twenty years, and has never during that period transported property for other than Pacific Electric. He said that the relationships between himself and the company are so close as to be comparable to those which would exist if he were an employee rather than an independent contractor. His vehicles are garaged at an assigned location on Pacific Electric property, and are dispatched from that point upon call. He explained that the operations are in the nature of a regular "standby" service, inasmuch as Pacific Electric calls upon him whenever its own equipment is not suitable or not readily available.

Applicant testified that in his opinion it would be impracticable, if not wholly impossible, to base his charges upon the weight and classification of the property transported as would be required under strict application of the established minimum rates. The rates which he has used in the past, and on which he here seeks approval, are stated in dollars and cents per hour for each vehicle. He explained that because of the nature of the services required, vehicles sometimes stood on the job for considerable periods of time without turning a wheel, at other times moved only between points on railroad property, and at various times moved mixed property in great variety. He believed that it would not be feasible to segregate the movements for which minimum rates have been established from those which are not subject to such rates, and expressed the conviction that if his total charges were increased by any substantial amount the railroad would dispense with his services and use its own vehicles exclusively.

Baxter declared that the rates herein proposed have proved to be fully compensatory in the past, and based upon his long experience he was satisfied that they would be compensatory in the

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future. In support of this conclusion he introduced a statement of his revenues and expenses for the year 1941, according to which he received gross revenues of \$27,902.98 and incurred expenses of \$17,179.95, leaving a net profit from the operation of \$10,723.03, from which may be deducted his own compensation for services rendered.

An assistant engineer in charge of track maintenance for Pacific Electric, testifying in support of the application, stated that his company for a number of years had carefully compared Baxter's charges with the estimated cost of performing the same services with its own vehicles, and had found for each year that Baxter's charges were the lower, although the margin between the two was small. The witness declared that if Baxter's rates were increased to the point that the railroad could own and operate the necessary vehicles at no greater cost, then Baxter's services would be discontinued.

No one objected to the granting of this application.

The record is convincing that the weighing and classifying of the property transported, and segregation of the operations according to whether or not they are subject to minimum rates, would in this instance be a burdensome and undesirable requirement. The operation clearly appears to be one for which the established minimum rates are not adapted. Applicant, based upon long experience, is satisfied that the charges which he is now applying will be fully compensatory; and the statement of 1941 revenues and expenses which he introduced in evidence supports his conclusion.

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Baxter testified that he had not applied the established rates because he had assumed that they were not applicable to his type of transportation.

Upon consideration of all the facts and circumstances of record, we are of the opinion and find that the rates and charges proposed in this application are reasonable within the meaning of Section 10 of the City Carriers' Act and Section 11 of the Highway Carriers' Act. This finding is necessarily predicated upon existing conditions, and the authority hereinafter granted will therefore be limited to a period of one year. If, prior to the date of expiration, applicant is of the opinion that an extension is justified, an appropriate supplemental application should be filed.

O R D E R

This matter having been duly heard and submitted,

IT IS HEREBY ORDERED that applicant, W. A. Baxter, be and he is hereby authorized to assess and collect for the transportation for which rates are provided in Appendix "A" attached hereto and by this reference made a part hereof, rates and charges less than the minimum rates and charges established by the Commission, but in no event less than those provided in said Appendix "A".

IT IS HEREBY FURTHER ORDERED that applicant be and he is hereby relieved of the necessity of issuing and preserving a freight bill for each shipment received for transportation; but applicant shall prepare and preserve for a period of not less than three years from the date of issuance such records as may be necessary to show whether his rates and charges are being assessed and collected in accordance with the requirements of this order.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall expire one (1) year from the effective date hereof

unless sooner changed, cancelled or extended by appropriate order of the Commission.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day of July, 1942.

Ray L. Riley

Francis D. Havens

Richard L. Madge

Commissioners

APPENDIX "A"

Rates apply only to transportation and accessorial and incidental services performed by W. A. Baxter for Pacific Electric Railway Company, and are limited to property belonging to said Pacific Electric Railway Company and used by it in connection with the construction, reconstruction, maintenance, repair and removal of its railway facilities, including rails, ties, poles and other material related to its railway operations, in the Counties of Los Angeles, Orange, Riverside and San Bernardino.

Time for the purpose of computing charges shall be computed from the departure of vehicle from the Washington Street Yards (Los Angeles) of said Railway Company until returned to said yards and released by said Railway Company, except that in cases where equipment is located on job until the termination of its actual operations on such job time shall be determined for the number of hours that said equipment is actually operated on the job, including time of originally going to job and returning to Washington Street Yards upon completion.

RATES

Trucks in excess of one-ton capacity, with driver . . . . .	\$1.75 per hour
Trucks of one-ton capacity or less, with driver . . . . .	1.50 per hour
without driver . . . . .	1.12 " "
Crane, with driver . . . . .	2.50 per hour
Pole dolly . . . . .	.75 per hour
Power winch and stiff leg boom . . . . .	.75 per hour

(End of Appendix "A")