

Decision No. 36336

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 es- )	Application No. 23418
tablished by Decision No. 31606, )	
as amended and Decision No. 32504, )	
as amended. )	

**ORIGINAL**

BY THE COMMISSION:

Additional Appearances

Edward M. Berol for A. M. Gross and F. Gross, doing  
 business as Gross Systems.  
 Fred W. Kendall for M-M Foods, Inc.

OPINION ON REHEARING

Ralph W. Baetz, an individual holding 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 groceries and related commodities from the warehouse of Certified Grocers, Inc., situated in the City of Vernon, to certain retail stores located in southern California. On the original record the proposed rates were not shown to be necessary or reasonable, and by Decision No. 35518 of June 23, 1942, the application was denied. Thereafter, upon applicant's petition for opportunity to submit additional evidence, rehearing was granted.

Evidence on rehearing was received before Examiner Bryant at Los Angeles, and the matter is ready for decision.

The operations involved are described in the earlier decision. Very briefly, groceries are transported from the Vernon warehouse to ten retail stores located in Los Angeles, Alhambra, San Gabriel, Wilmar, Rosemeade, El Monte, Baldwin Park and South

Pasadena. The transportation is performed for, and charges are paid by, the consignees. Certified Grocers, Inc. offers its customers the option of receiving the goods on a delivered basis, or of accepting an allowance in lieu of delivery, based upon one per cent of the invoice value. This allowance has been accepted from the consignees by Baetz in lieu of minimum transportation rates heretofore established by this Commission.<sup>1</sup> Applicant does not seek authority to continue the percentage basis, but asks approval of rates which are stated in cents per 100 pounds and are related to the length of haul.<sup>2</sup>

Testimony introduced on rehearing was offered by applicant's consignees. These witnesses stated that they had used Baetz' services for a number of years, paying him on the percentage basis; and that his services had been satisfactory and would be patronized so long as they were available at charges not appreciably higher than the cost of other means of transportation. None of the witnesses had made a comparison to determine whether the rates now sought would result in charges higher or lower than the percentage basis allowed by Certified Grocers, Inc.

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Subsequent to the date of rehearing a judgment was entered in Superior Court directing Baetz to pay appropriate penalties for failure to observe established minimum rates and units of measurement.

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The proposed rates are 10 per cent higher than those sought on the original record, and are now identical to those which another carrier, Gross Systems, is authorized to assess for transportation performed on behalf of Certified Grocers, Inc. The Gross authority was granted by Decision No. 32960 of April 2, 1940, as amended, in Application No. 22240. On the original record in the instant proceeding applicant declared that the sought rates were necessary to enable him to compete with Gross Systems. On rehearing he recognized that the Gross authority was not the source of any competitive disadvantage, and that the competition with which he was confronted was rather the delivery allowance made by Certified Grocers, Inc. to its member-customers.

At the time of the rehearing applicant had no information whether the rates proposed were, or were not, comparable to the percentage basis. From comparisons prepared and submitted later, however, it appears that charges under the proposed rates would be lower by at least 13 per cent.

No other evidence was offered on rehearing. Applicant's counsel explained that the certified public accountant who introduced the original cost study had been consulted, and had advised that because of the manner in which Baetz' records were kept it would be virtually impossible to offer additional cost evidence.

Gross Systems assisted in developing the record through cross-examination of the witnesses. No one specifically opposed granting of the authority as sought on rehearing.

The proposed rates and the established minimum rates were not compared on the record, but it is evident from analysis of the two bases that the former would produce substantially lower charges. Since charges under the proposed rates would be considerably less than those under the percentage basis which is admittedly the measure of Baetz' competition, it is not clear why rates as low as those proposed are believed to be necessary. Moreover, before rates may be approved as reasonable, it is essential to inquire whether they will return the cost of performing the service.

The cost estimate of record was submitted in the original hearing in January, 1942; was developed during the year 1941; and was based on experience for the first six months of that year. In developing this cost study the accountant found it necessary to rely to a considerable extent upon estimates and approximations in lieu of actual cost data. According to the figures thus developed, rates approximately 10 per cent lower than those now proposed would have returned a narrow margin of profit. The cost of performing

the service is admittedly higher than in 1941, but by what amount was not shown. In the meantime the number of deliveries has been reduced from two to one each week, and the record gives no indication in what manner this may have affected either the cost or the revenues.

Thus, on this record, applicant has left to speculation the question whether the rates now proposed would be compensatory under present conditions. The rates have not been shown to be either necessary or "reasonable" within the meaning of Section 11 of the Highway Carriers' Act. The application must be again denied.

O R D E R

Rehearing having been had in the above entitled application, 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.

This order shall become effective twenty (20) days from the date hereof.

Dated at San Francisco, California, this 11<sup>th</sup> day of May, 1943.

Francis A. Havenner  
H. P. Baker  
Justus F. Curran  
Richard K. Kelsey  
Samuel W. Clavin  
Commissioners