

Decision No. 50394**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JOSEPH GEOFFROY, MARGARET GEOFFROY,)
 WILLIAM GEOFFROY, AUGUST GEOFFROY)
 and GEORGE GEOFFROY, partners doing)
 business as R. H. GEOFFROY COMPANY,)
 for authority to charge less than)
 the minimum rate for the transpor-)
 tation of malt liquors in cans or)
 bottles in cases from Falstaff)
 Brewing Corporation plant, San Jose)
 to Falstaff Brewing Corporation)
 warehouse, San Francisco and to)
 East Bay Beverage Co., Emeryville,)
 California.)

Application No. 35046

Frank Loughran, for applicants.
Edward M. Berol, Bertram S. Silver
 and Robert D. Boynton, for Truck
 Owners Association of California,
 protestant.
William Larrimore, for California
 Brewers Institute, interested party.
J. L. Pearson and J. W. Mallory, for
 Commission's staff.

O P I N I O N

Applicants, who are partners doing business as R.H. Geoffroy Company, operate as a highway contract carrier in the transportation of property between points in this State. In this application, as amended, they seek authority to transport malt liquors for Falstaff Brewing Corporation at a rate less than that established as minimum.

A public hearing of the application was held at San Jose on February 23 and March 15, 1954, before Examiner Carter R. Bishop. Briefs have been filed and the matter is now ready for decision.

The transportation in question is of malt liquors in cans or bottles in cases from the Falstaff Brewing Corporation's plant in San Jose to its warehouse in San Francisco and to the warehouse of

the East Bay Beverage Co. in Emeryville. The established minimum rate for both of these movements is 17 cents per 100 pounds, subject to a surcharge of six per cent and subject to a minimum weight of 30,000 pounds. Applicants seek authority herein to apply a rate of 13 cents per 100 pounds without surcharge, subject to a minimum weight of 32,000 pounds.¹

The record shows that applicants' operations are devoted exclusively to the transportation for Falstaff of malt liquors from its brewery in San Jose to various points in California and of empty containers returning to the brewery and that applicants have been so employed since February, 1953, when Falstaff assumed operation of the San Jose plant. The record also discloses that applicants have been handling about one third of the total movement of malt liquors originating at Falstaff's San Jose brewery and destined to San Francisco and Emeryville, and of empties returning. The balance of this traffic is divided among three other permitted carriers and the East Bay Beverage Co. Assertedly, Falstaff is willing to give all of the San Francisco and Emeryville traffic to applicants if a satisfactory rate can be established for such transportation:

A cost engineer employed by applicants testified that the latter utilize six gasoline-powered tractors and semi-trailers and two diesel units in its operations. None of these is permanently assigned to the San Francisco-Emeryville runs. The engineer testified, however, that most of the hauls between these points and San Jose are made with the gasoline-powered equipment, the diesels being

¹ In the original application authority was sought to apply a rate of 12½ cents per 100 pounds. In view of the effect of certain adjustments in applicants' cost calculations the application was amended at the adjourned hearing to seek a rate of 13 cents.

employed very infrequently in this service. According to the engineer, the transportation here in issue is performed on pallets and all loading and unloading is accomplished with lift trucks.²

The cost engineer had made a study of applicants' operations for a representative period, from which he developed the weighted average cost, per round trip, of performing the transportation here in issue to San Francisco and Emeryville and return.³ To a large extent the cost data, according to the witness, were obtained from the records of the carrier. In other instances it was necessary to rely upon his professional opinion and experience. At the initial hearing certain infirmities in the study were brought to light through cross-examination. At the adjourned hearing applicants offered an exhibit containing such corrections of the original study as the cost engineer deemed proper. The witness pointed out that in his study only cost data for the gasoline-powered equipment had been utilized.

The engineer developed a weighted average cost per round trip between San Jose and San Francisco-Emeryville of \$56.96, including expansion for gross revenue expense. He then calculated the weighted average revenue per trip loaded with malt liquors to be \$46.14 and of empties returning to be \$15.12.⁴ The total calculated revenue per

² The lift trucks, according to the engineer, are furnished by and at the expense of the shipper and consignee, respectively, and are operated by their employees.

³ Both in testimony and exhibits reference was frequently made to "Oakland". The witness stated that such reference should, in each instance, be construed as meaning "Emeryville".

⁴ The average revenue per load of malt liquors was predicated upon the weighted average weight per load of the traffic of all the carriers which participated in the movement here in issue during the 12-month period ending February 28, 1954. The average revenue per load of empties returning was derived from the total number of loads of empties handled by applicants during the same 12-month period, the revenue derived therefrom, and the ratio of loads of empties returning to loads of malt liquors.

round trip of \$61.26 reflected an operating ratio of 93 per cent and profit of \$4.30, both before income taxes.⁵

The procedure employed by the engineer in calculating the cost per round trip entailed the development of fixed expense for a typical tractor and semi-trailer train per year and per hour, of running expense per constructive mile for such a unit, of drivers' wages per round trip, including vacation pay and payroll expense,⁶ and of indirect expenses. The running expenses included costs for fuel, lubricating oil, tires, and repairs and servicing. These, according to the witness, reflected applicants' book figures, except in the following respects: service lives of tires, in the absence of adequate carrier records, were developed from the witness' knowledge of other comparable operations; adjustment was made in the labor cost for repairs and servicing of equipment to reflect increases in mechanics' wages.⁷

In developing the ratio of indirect to direct expenses the engineer utilized the expenses accruing in connection with the carriers' entire operation during the 12-month period ending September 30, 1953. Actual book figures were employed, except that wages and fuel taxes were adjusted to reflect increases which took effect during the test period, equipment depreciation expense was predicated on judgment

⁵ On cross-examination the witness admitted that gross revenue expense should have been calculated on the basis of the average revenue per trip instead of expense per trip. The corrections thus indicated change the above figures to \$57.12 for total expense per trip, operating ratio of 93.26 per cent and profit of \$4.14 before income taxes.

⁶ The record shows that only one round trip between San Jose and San Francisco or Oakland can be made by each driver during a single eight-hour day. The engineer found no evidence in applicants' records of wages for overtime.

⁷ These increases became effective July 1, 1953.

figures of 7 and 10 years for service lives of tractors and semi-trailers, respectively,⁸ and allowances were included for rental of office and parking lot space.⁹

The witness stated that during the peak season, which comes in the summer months, it would probably be necessary to utilize the diesel units in the service here under consideration, or to lease additional equipment or to subhaul some of the traffic. His study did not take into account the costs which might be incurred if the excess traffic beyond the capacity of the gasoline-powered equipment were to be moved through any of the above-mentioned instrumentalities.

The engineer had also prepared a study purporting to show the cost per trip which would be incurred by Falstaff if it were to lease trucks for the performance of the service here in issue in the event that the application should be denied. This study was predicated on a written quotation of lease terms which the engineer had secured from a concern which engages in large scale truck rental operations.¹⁰ According to the study the cost per round trip of operating equipment under lease between San Jose and San Francisco-Emerlyville would amount to \$59.66. This amount includes the charges for lease of equipment, and allowances for drivers' wages and supervision. The total cost, per trip, for proprietary lease operations, as estimated by the witness, would be slightly less than the estimated

8

Applicants' books reflect estimated service lives of 5 and 7 years for tractors and semi-trailers, respectively.

9

The office and parking lot are located on Falstaff's premises. Applicants are not charged for the use of these facilities.

10

Applicants produced as a witness the employee, a transportation engineer, of the truck-rental company, who wrote the letter in question. He testified concerning the correctness of the figures, and regarding the manner in which the various terms of his employer's standard lease contract are carried out.

charge of \$61.26 Falstaff would pay applicants for the same transportation under the sought rate.

Falstaff's traffic manager offered testimony on behalf of applicants. He said that the application herein had been filed at the request of the brewery and that if the sought relief were granted Falstaff would enter into a contract with applicants under which the latter would handle all of the brewery's traffic between the involved points. Initially, the traffic manager testified that if the sought reduction were not authorized his company would go ahead with a lease arrangement or proprietary hauling. Subsequently, on cross-examination he indicated that if a rate as high as 15 cents per 100 pounds were approved by the Commission his company would "take another look" before launching into proprietary operations. At the adjourned hearing the traffic manager also qualified his original testimony by stating that if the application were denied his company would give consideration to the utilization of some means other than for-hire transportation, probably proprietary hauling.

The application was vigorously opposed by the Truck Owners Association of California. Counsel for that organization cross-examined applicants' witnesses at length and, at the adjourned hearing, offered rebuttal evidence through a transportation engineer employed by the Association. This witness introduced an exhibit in which he had recalculated those portions of applicants' study which he believed to contain errors.¹¹ Additionally, protestant's witness had

¹¹

The two studies differed principally in respect to fixed expense per trip, expense per mile for tires, repairs and servicing, ratio of indirect to direct expenses, hours per round trip, ratios of empties to fulls, average weight of fulls, and average revenue of empties returning. It does not appear necessary to set forth in detail the differences in the various estimates and the methods by which they were calculated.

computed rates separately for movement to San Francisco and Emeryville respectively, in place of a single weighted average rate, as developed by applicants' engineer. With respect to most of the elements as to which there were differences in the two studies such differences were small. However, the cumulative effect was such that, on the basis of an operating ratio of 90 per cent before provision for income taxes, protestant's witness developed rates of 14.26 cents and 15.38 cents to San Francisco and Emeryville respectively. From these he developed a weighted average rate of 14.52 cents.¹² On the basis of the costs as developed by this witness the rates necessary to reflect an operating ratio of 93 per cent are 13.65 cents to San Francisco, 14.76 cents to Emeryville, and a weighted average rate of 14.20 cents. These rates range from 65 hundredths of a cent to 1.76 cents per 100 pounds higher than that sought herein.

On brief, protestant argued that the threat of proprietary competition was not clearly established, that applicants' study purporting to show the costs which would be incurred if Falstaff were to perform the transportation here in issue in leased trucks is defective, since it fails to include all the costs and incorrectly develops those elements that are included, and that applicants have not sustained their burden of showing that the sought rate is compensatory.¹³ Protestant concludes that the lowest reasonable rates for the transportation in question would be 15.38 cents to Emeryville and 14.26 cents to San Francisco.

¹²

Protestant's engineer employed an operating ratio of 90 per cent because applicants' study presented at the initial hearing was predicated on that ratio. Applicants' revised study in which a rate of 13 cents was developed in lieu of the 12½-cent rate originally proposed reflected an operating ratio of 93 per cent.

¹³

With respect to the last-mentioned argument, protestant contends that, in some instances, applicants used weighted averages which do not best reflect the facts, that it has consistently understated its costs and that its cost figures are, in many instances, inaccurately used.

Applicants argued on brief that there is a present and real threat of proprietary diversion, that the loss of traffic would adversely affect applicants and would threaten their continued operation, and that the proposed minimum rate is a just and reasonable rate.

It appears from a review of the studies introduced by the witnesses for applicants and protestant respectively, together with the arguments on brief, that, with respect to most of the cost elements in which there were differences, the methods employed and the results obtained in applicants' study were reasonable. With respect to a few of the factors involved the methods used and the resulting figures developed in protestant's study appear to give more appropriate effect thereto. Revision of applicants' study in these respects would result in a weighted average cost approximating 14 cents per 100 pounds.

After careful consideration of all the evidence, we are of the opinion and hereby find that a rate of 14 cents per 100 pounds, minimum weight 32,000 pounds, is reasonable for the transportation involved herein. On this record no lower rate has been justified. Applicants, accordingly, will be authorized to assess a rate of not less than 14 cents per 100 pounds, minimum weight 32,000 pounds. Because circumstances under which the transportation is to be performed may change, the authority will be made to expire at the end of one year, unless sooner canceled, changed or extended by order of the Commission.



O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that Joseph Geoffroy, Margaret Geoffroy, William Geoffroy, August Geoffroy and George Geoffroy, partners doing business as R. H. Geoffroy Company, be and they are hereby authorized to transport malt liquors in cans or bottles in cases for Falstaff Brewing Corporation from San Jose to that company's warehouse in San Francisco and to the East Bay Beverage Co. in Emeryville at rates less than the established minimum rates but not less than 14 cents for 100 pounds, minimum weight 32,000 pounds.

IT IS HEREBY FURTHER ORDERED that in all other respects the transportation herein involved shall be subject to the provisions of the applicable minimum rate tariffs.

IT IS HEREBY FURTHER ORDERED that the authority herein granted shall expire one year after the effective date of this order unless sooner canceled, changed or extended by order of the Commission.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 10th day of August, 1954.

[Signature]
President

[Signature]

[Signature]

[Signature]

Commissioners