

Decision No. 51327**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 THOMAS B. WATT, JR., and WALTER J.)
 NELSON, doing business as JOHNSON'S) Application No. 36562
 TRUCKING SERVICE to deviate from)
 established rates.)

Barr & Hammond, by J. E. Barr, for applicants.
James H. Lance, for B & L Lumber Transportation;
Fred Tufts, for Klamath River Freight Line;
 and Joe Thomason, in propria persona; protestants.
Robert D. Boynton, for California Trucking
 Associations, Inc.; and E. B. McLeod, for Yreka
 Western Railroad Company; interested parties.
A. R. Day, for the Commission's staff.

O P I N I O N

Thomas B. Watt, Jr., and Walter J. Nelson, copartners doing business as Johnson's Trucking Service, operate as a contract carrier of property between points in this State. By this application, as amended, they seek authority to transport forest products for Willamette Builders Supply Company, at a rate less than that established as minimum.

A public hearing of the application was held at Yreka on March 1, 1955, before Examiner Carter R. Bishop.

The movement in question is from Willamette's mill at Happy Camp to its concentration yard at Hornbrook.¹ The established truckload minimum rate for this transportation is 22 cents per 100 pounds, minimum weight 30,000 pounds.² Applicants seek authority herein to apply in lieu thereof a rate of 16½ cents.³

¹ Happy Camp and Hornbrook are located in Siskiyou County.

² This rate is the mileage rate for a constructive highway distance of 101 miles.

³ In the application as filed, authority was also sought to observe a rate of \$5.75 per ton for the transportation of forest products from Happy Camp to Anderson. However, at the hearing the application was amended by deleting therefrom this part of the request.

One of the partner applicants testified concerning the character of the transportation here in issue. He explained that applicants commenced operations in California in August 1954 and that since that time they have been engaged solely in the transportation of forest products for Willamette from Happy Camp to Hornbrook.⁴ In the performance of this service, the witness stated, applicants utilize three truck and trailer combinations, each of which makes an average of two round trips per day.⁵ Assertedly, the weight of the lumber, per truck and trailer, ranges from 48,000 to 50,000 pounds, the vehicles returning empty from Hornbrook to Happy Camp.

According to the partner, the movement of lumber involved herein is a highly efficient one. Loading and unloading are performed with lift trucks. The time involved in each of these operations is about one-half hour, and the average total time per round trip, including loading and unloading, averages approximately seven hours. The use factor, the partner said, is high, since the mill at Happy Camp is operated throughout the year.⁶

A public accountant employed by applicants testified regarding a study he had made purporting to show the cost of performing the service here in issue.⁷ According to the study, the full cost, per round trip, is \$72.25. Based on an assumed weight of

⁴ The witness stated that for many years past he had been engaged in the for-hire transportation of forest products, principally between points in Oregon.

⁵ The actual highway distance from Happy Camp to Hornbrook and return, the record discloses, is 150 miles. The route involved herein is via State Highway No. 96, commonly known as the Klamath road, to its junction with U. S. Highway No. 99 six miles south of Hornbrook, thence via the latter highway to Hornbrook.

⁶ The partner testified that most lumber mills in Northern California find it necessary to cease operations during the winter.

⁷ The study was incorporated in an appendix to the application.

twenty-five tons per load of lumber, the accountant calculated the gross revenue as \$82.50, and the net revenue as \$10.25, per trip.

The record discloses that the direct costs, as developed in the accountant's study, were predicated to a large extent upon estimates, rather than upon book records of applicants' operations.⁸ Moreover, no provision was made therein for compensation to applicants for their driving time.⁹ In calculating indirect expense the accountant employed a rule-of-thumb factor of 10 per cent of gross revenue, rather than utilizing the ratio of indirect to direct expenses which could be readily developed from applicants' records.¹⁰

The accountant also introduced an exhibit setting forth applicants' operating revenues and expenses for the period August 10 to December 31, 1954, inclusive. According to this exhibit, taken from the carrier's books, operating revenues for that period totaled \$26,370, while operating expenses amounted to \$19,809, reflecting net operating revenue, before provisions for income taxes, of \$6,561 for the period in question.¹¹ It is important to note, however, that no allowance was made in the operating expenses for compensation to applicants, either as drivers or as managers of the business.

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The elements of direct expense which were estimated included fuel, tires, and repairs and maintenance. In some cases the witness was uncertain about the bases which he had employed in making the estimates. Vehicle depreciation expense was calculated on an estimated service life of 10 years for both trucks and trailers.

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According to the record, applicants employ five drivers, but also do some of the driving themselves.

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The witness stated that in businesses of the type involved herein it is customary to allow 10 per cent of gross revenue for indirect expense. Assertedly, to guard against understatement of the indirect expense he allowed 12 per cent; however, the amount assigned does not bear out this assertion.

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The record discloses that applicants have, since the beginning of service in August 1954, assessed charges on all shipments on the basis of the sought rate of 16½ cents. Consequently, the accountant's exhibit reflects operating results under that rate, rather than under the applicable minimum rate of 22 cents.

Evidence relating to highway conditions encountered between the points involved herein was adduced by applicants through the testimony of a superintendent employed by the State Division of Highways. He stated that the portion of the Klamath road which connects Happy Camp with U. S. Highway No. 99 had been under his supervision for the preceding eight years. During that period, the witness said, substantial improvements in the Klamath road had been made. Whereas, formerly this road was extremely narrow, with many curves and steep grades, it is now, the witness testified, considerably wider and the number of curves and steep grades has been greatly reduced. Assertedly, the speeds at which trucks may safely operate over the Klamath road are, by reason of these improvements, considerably higher than they were eight years ago.

Testimony on behalf of applicants was also given by two of Willamette's employees, who are in charge of timber management and plant operations, respectively. The timber manager corroborated the testimony of the highway superintendent regarding improved road conditions. According to the plant manager, Willamette has concluded that, in the event of denial of the application herein, it will terminate its contract with applicants and will itself perform the transportation services in question. The differential between the minimum and sought rates, he said, is sufficient to justify such action.¹²

The granting of the application was opposed by three for-hire highway carriers operating in Siskiyou County. However, none of them offered testimony in support of their protests. Their participation in the proceeding was confined to cross-examination of applicants' witnesses.

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This witness indicated that Willamette does not now engage in proprietary operations but that it has made some investigation to ascertain the costs which would be involved.

The deficiencies in applicants' cost study have been hereinbefore indicated. The cumulative effect of the deficiencies is, in our opinion, such that no reliance can be placed on the study for the purposes of this proceeding. Such does not appear to be the case, however, with respect to the revenue and expense statement introduced by applicants' accountant. As indicated above, that statement shows that, during the period from August 10, 1954 to December 31, 1954, inclusive, applicants' net operating revenues, before income taxes, amounted to \$6,561.¹³ On an annual basis this would amount to approximately \$17,000. Since applicants' operations have, from the beginning, been devoted exclusively to the transportation of forest products from Happy Camp to Hornbrook and since charges on all of the traffic transported during the period of the statement were based on the rate sought herein it appears that the above-stated figures are indicative of the results to be experienced under the sought rate.

The partner applicant stated that, in assessing the sought rate of 16½ cents, in lieu of the applicable minimum rate of 22 cents, there was no intent to violate the Commission's minimum rate order, and that Willamette would be billed for the difference between the two rates on all traffic moving prior to the effective date of such authorization as may issue from this proceeding.¹⁴ Also, Willamette's plant manager testified that his company fully intended to make additional payment of charges to the basis of the applicable minimum rate on all shipments not covered by minimum rate relief. Applicants will be expected to collect these undercharges from Willamette. In the order which follows, applicants will be directed to inform the Commission when said undercharges have been collected, identifying the shipments involved and the amounts collected.

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As hereinbefore stated, no compensation for services of applicants was included in the operating expenses.

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It appears that both carrier and shipper expected that the minimum rate relief sought herein, if granted, would be made retroactive to the date when shipments under their mutual contract began to move.

The evidence is convincing that applicants will be able to perform the transportation involved herein under the sought rate on a compensatory basis and that the rate is necessary to retain the traffic for for-hire carriage. The Commission hereby finds that the proposed reduced rate is reasonable. The application will be granted.¹⁵ Because the conditions under which service is performed may change at any time 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 Thomas B. Watt, Jr., and Walter J. Nelson, doing business as Johnson's Trucking Service, operating as a highway contract carrier, be and they are hereby authorized to transport forest products for Willamette Builders Supply Company from Happy Camp to Hornbrook, at a rate less than the established minimum rate, but not less than 16½ cents per 100 pounds, minimum weight 40,000 pounds.

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

IT IS HEREBY FURTHER ORDERED that Thomas B. Watt, Jr., and Walter J. Nelson shall, when the undercharges mentioned in the preceding opinion have been collected from Willamette Builders Supply

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No minimum weight was specified in the application. In the order which follows the rate authorized therein will be made subject to a minimum weight of 40,000 pounds.

Company, promptly inform the Commission of that fact, identifying each shipment involved by date of movement, weight and total charges collected thereon, and setting forth the date or dates on which said undercharges shall have been collected.

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

Dated at San Francisco, California, this 19th
day of APRIL, 1955.

John E. Mitchell
President
Justus D. Craven
Ralph H. Freeman
Marion J. ...

Commissioners