

ORIGINAL

Decision No: 51523

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 A. D. PAXTON and J. C. PETERS, a co-)
 partnership doing business as DeLAIR)
 TRUCK CO., for authority to charge)
 less than minimum rates under Sections)
 10 and 11 of the City Carriers' Act)
 and the Highway Carriers' Act, re-)
 spectively, (now Sections 4015 and)
 3666 respectively of the Public)
 Utilities Code), for the transporta-)
 tion of iron and steel articles and)
 other commodities for Bethlehem)
 Pacific Coast Steel Corporation and)
 Bethlehem Supply Company.)

Application No. 29891
 (6th Supplemental)

Glanz & Russell by T. W. Russell, for
 applicant.
 Arlo D. Poe, for California Trucking
 Associations, Inc., interested party.
 C. E. Wadsworth, for Bethlehem Pacific
 Coast Steel Corporation, interested
 party:

SEVENTH SUPPLEMENTAL OPINION

Applicants are engaged in the business of transporting iron and steel articles and oilfield supplies under permits authorizing operations as a highway contract carrier, as a radial highway common carrier and as a city carrier. By their sixth supplemental application, filed February 16, 1955, applicants request an extension of the authority granted by the Commission in its Decision No. 42551 for an additional period of one year from March 15, 1955 to and including March 15, 1956. Said decision as amended by Decision No. 49779 in this proceeding authorized applicants to charge, until March 15, 1955, rates one-half cent per 100 pounds less than the minimum rates otherwise applicable on shipments of iron and steel articles for Bethlehem Pacific Coast Steel Corporation and the Bethlehem Supply Company within a 25-mile radius of the intersection

of 1st and Main Streets, Los Angeles. On March 15, 1955 the Commission in Decision No. 51200 in this proceeding found that the applicants' allegations in the sixth supplemental application were not fully persuasive that the sought extension of authority should be granted for the entire period without further investigation. Pending investigation, the authority was extended by that decision to June 13, 1955.

Public hearing of the application was had before Examiner J. E. Thompson at Los Angeles on April 26, 1955. Evidence was adduced through the testimony of one of the applicants and the district traffic manager of the Bethlehem companies.

The record shows that applicants had an operating loss of \$5,952 for the calendar year 1954. The transportation performed for the Bethlehem companies constituted 65 per cent of their traffic. Applicants state that the loss shown on the financial statement is attributable to two factors: (1) Bethlehem's volume of production decreased from 256,692 tons in 1953 to 192,088 tons in 1954 and that applicants were geared to handle the 1953 tonnage; (2) an error in bookkeeping extending over a period of several years was detected and the entire amount, \$8,900, was written off the books in 1954.

Financial statements of the first three months of 1955 were introduced in evidence. They show applicants had a \$2,923 operating profit for the period. The Bethlehem traffic amounted to 80 per cent of applicants' transportation during this period.

The remaining 20 per cent comprised transportation of iron or steel articles for others and includes subhauling for another carrier.

Applicants' justification for the authority sought is predicated upon the allegations that they can transport the property here involved at the rates sought profitably; and that the reason that a profit can be made is because of operating economies and

efficiencies due to the proximity of applicants' truck terminal to the Bethlehem plant. Applicants have their terminal on property they own which is immediately adjacent to the Bethlehem plant. The shipping departments of Bethlehem have direct telephone communication with applicants' dispatchers. Orders for transportation service are given the dispatchers usually the day before transportation is to be performed. On numerous occasions trucks are loaded at the Bethlehem plant at night so that the loaded vehicles can be dispatched at the start of the working day. Because of the proximity, trucks can be dispatched from the terminal and arrive at Bethlehem for loading within a few minutes. The circumstances described above are not unusual and are frequently encountered by other highway contract carriers and also by highway common carriers which are regularly engaged in transporting iron and steel articles and oilfield supplies.

Applicants entered into a contract with Bethlehem Pacific Coast Steel Corporation and with Bethlehem Supply Company. Both contracts are in the same form and have the same terms except that in the one with the steel company, the contract calls for transportation of iron and steel articles as that term is defined in the Western Classification subject to a guarantee of the steel company to tender a minimum of 12,000 tons per year; whereas, the contract with the supply company calls for the transportation of oilfield supplies with a guaranteed minimum annual tonnage of 1,000 tons. The provisions of the contracts may be briefly summarized as follows: in consideration for the guarantee of the minimum annual tonnage and the promise by Bethlehem to pay charges at the rates authorized by the Commission, applicants promise to have sufficient trucks available for the transportation of Bethlehem's shipments, to transport the shipments safely to destination at the rates authorized by the Commission and to hold Bethlehem free from any liability which may arise from operation of the trucks.

In 1953 applicants transported in the aggregate for the Bethlehem companies 119,407 tons, in 1954 90,070 tons. Both of the figures are approximately 47 per cent of Bethlehem's production for those years. Approximately 60 per cent of the tonnage hauled by applicants for the Bethlehem companies moved under the rates herein sought. The remaining 40 per cent moves at an agreed rate which is below the rates sought, but which is greatly in excess of the applicable rail carload rates.¹

Applicants testified that in order to make a profit at the rate sought they had to transport an annual tonnage in excess of the 90,070 tons they received from Bethlehem in 1954. Bethlehem estimates that it will tender to applicants 113,258 tons in 1955. There is no guarantee that this amount will be tendered as the contracts guarantee an aggregate of 13,000 tons per year. The district traffic manager characterized the applicants only as Bethlehem's preferred carrier. Under such circumstances, the applicants' argument, for the sought authority, that they can perform the service at a profit at the presently authorized rates loses much of its weight.

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On shipments within the same zone within the Los Angeles Switching Limits the rail carload rate is 59¢ per ton plus 15 per cent surcharge subject to a minimum charge per car of \$12.93 plus 15 per cent surcharge. This rate becomes the minimum rate for highway carriers on shipments from Bethlehem to consignees located on P. E. Ry. or U.P.R.R. railhead. DeLair's agreed rate is \$1.20 per ton on such shipments. Comparable shipments to consignees not at railhead in the Los Angeles Drayage Area within the same zone move by DeLair at the sought rate of \$1.60 per ton. The minimum otherwise applicable is \$1.70 per ton. Comparable shipments to consignees not at railhead outside the Los Angeles Drayage Area move by DeLair at the presently authorized rate of \$1.80 per ton, the minimum otherwise applicable being \$1.90 per ton.

In a proceeding brought under Section 3666 of the Public Utilities Code the applicants have the burden of showing that the sought rate is reasonable. There has been no showing made here respecting the transportation conditions surrounding particular hauls nor has there been produced evidence respecting the cost of performing individual services on representative hauls. The evidence of record will support only the conclusion that, if given sufficient tonnage, applicants can make a profit on the over-all operation of transporting shipments for Bethlehem, at the sought rate, within a 25-mile radius of the plant. This is not an adequate showing for a finding that for each shipment transported within the area involved a rate $\frac{1}{2}$ cent less than the prevailing minimum rate is reasonable.

Upon consideration of all of the facts of record, the Commission is of the opinion and hereby finds that the authorization herein sought has not been shown to be reasonable. The supplemental application will be denied.

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 the authority sought in the above-entitled supplemental application of A. D. Paxton and J. C. Peters, a copartnership, doing business as DeLair Truck Co., be and it is hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 31st day of May, 1955.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner Justus E. Craenor, being necessarily absent, did not participate in the disposition of this proceeding.