

Decision No. 51585**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of T. ELMER HIGHT for authority)
to perform transportation service)
at a lesser rate than the minimum)
established rate.)

Application No: 35661

Marvin J. Colangelo, for applicant;
William Meinhold and John MacDonald
Smith, for Southern Pacific Company
and Northwestern Pacific Railroad
Co.; protestants.
J. C. Kaspar, for California Trucking
Associations, Inc; K. M. Robinson
and S. A. Moore, for Permanente
Cement Co.; Gene Feise, for Calveras
Cement Co.; interested parties:
A. R. Day and R. O. Biedenbach, for the
Commission's staff.

O P I N I O N

By this application, T. Elmer Hight seeks authority from the Commission under Section 3666 of the Public Utilities Code to transport cement in bulk from Permanente Cement Co., Permanente, and Ideal Cement Co., Redwood City to A and E Ready-Mix, Arcata, and McWhorter and Dougherty, Fortuna at a rate of 32 cents per 100 pounds.¹ The minimum rates applicable are set forth in Minimum Rate Tariff No. 10.²

¹ The application filed July 30, 1954 sought authority respecting transportation from Ideal Cement Co., Redwood City to A and E Ready-Mix, Arcata. The application was amended at the hearing.

² The minimum rates prescribed in Minimum Rate Tariff No. 10 for the transportation of bulk cement, minimum weight 40,000 pounds in cents per 100 pounds:

Redwood City to	Fortuna	39
" "	Arcata	44
Permanente	Fortuna	42 1/2
" "	Arcata	44

Public hearing was held before Examiner J. E. Thompson at San Francisco on March 14, 1955 and May 11, 1955.

Applicant is engaged in the business of transporting cement and lumber under permits authorizing operations as a radial highway common carrier and as a highway contract carrier. In general his operations consist of transporting lumber from Humboldt and Mendocino Counties to the San Francisco Bay area and the San Joaquin Valley and the transportation of cement from Permanente, Redwood City and Kentucky House to Humboldt County. Applicant characterizes the transportation of cement as his "backhaul."

Evidence in support of the application was introduced through testimony of applicant and an exhibit offered by him of the operating results as shown in his books for the year ended December 31, 1953. He testified from notes respecting the operating results for the five-month period ended December 31, 1954. Applicant was not familiar with the items of revenue and expense comprising the 1953 and the 1954 statements as the calculations were made by his auditor who was not present at the hearings. Upon cross-examination, numerous errors and deficiencies were brought to light.

As justification for the authority herein sought, applicant asserts that acquisition of special flat-bed hopper combination trailers has improved his load factor because it enables use of the same vehicles in the transportation of lumber southbound and of bulk cement northbound. He points out that usually the hauling of cement in bulk requires special equipment and the transportation of lumber a different type of special equipment; each type not being conducive to the transportation of the commodity hauled in the other. Applicant states that ordinarily the transportation of lumber or cement in bulk is a one-way haul because backhauls are difficult to

obtain with equipment that is limited as to use. The vehicles that he has acquired are readily and quickly capable of being converted by the driver from a flat-bed to a hopper-bottom dump and vice versa; therefore, applicant states, he is able to double the load factor generally attributed to the hauling of cement or lumber. Applicant offered in evidence photographs of the special flat-bed hopper combination vehicles.

Applicant contends that there is presently a widespread misunderstanding regarding the rates applicable on bulk cement between the points involved. The Southern Pacific Co. and the Northwestern Pacific Railroad Co. have published a rate of 32.2 cents on shipments of sacked cement subject to a minimum weight of 60,000 pounds from Permanente and Redwood City for truck delivery within their pickup and delivery limits at Arcata and Fortuna.³ The aforementioned rail lines also publish a 32.2-cent rate, minimum weight 60,000 pounds on bulk cement between these points; however, the delivery service is not included in the latter rate. Minimum Rate Tariff No. 10 provides that when lower aggregate charges result, for the same transportation, the rail rates may be applied in lieu of, or in combination with the rates contained in the minimum rate tariff. A condition to the use by highway carriers of rail rates in the transportation of bulk cement is that there be available at the points to which and from which the rail rates apply facilities for loading or unloading motor vehicles with cement in bulk. The rail line does not have a structure or facility for loading bulk

³ 28 cents plus 15% surcharge (Pacific Southcoast Freight Bureau Tariff No. 88T, Agent J. P. Haynes, Cal. P.U.C. No. 161, Items 810 and 825, and Tariff of Increased Rates and Charges X175B, Agent J. P. Haynes, Cal. P.U.C. No. 176).

cement on motor vehicles at Arcata, Eureka or Fortuna or any point in that area. The only permanent facility on railhead in the area for loading bulk cement into motor vehicles is owned by a private industry that is in competition with the applicant's customers.

The testimony of applicant indicated that his customers sought rate parity with their competitor who is at railhead and that there is an apparent belief on the part of such customers as well as highway carriers competing with applicant that the rail rate on sacked cement is applicable to shipments of cement in bulk. Furthermore, it appears from applicant's testimony that the customers and the carriers do not give due regard to the published pickup and delivery limits of the rail carrier but consider that the rate for delivery service is applicable to the points and their immediate environs. Applicant stated that he was of such opinion until informed otherwise by the Commission's staff. He stated that he is requesting the authority so as to meet competition in the light of the misunderstanding held by the shippers and carriers in that area. As justification he states that he can operate, and has operated, profitably at the rate sought because of the special type equipment he has acquired. He testified that he could provide the service at a profit to all consumers in the Eureka area but that he is requesting authority under Section 3666 to transport bulk cement at a 32-cent rate only for his two principal accounts because he does not desire to undertake the burden and the expense of making a showing to justify a change in the minimum rate structure.

Protestant rail carriers offered evidence respecting the service and the rates of their lines on transportation of sacked cement and cement in bulk between the points involved. It is their contention that a truck carrier should not be authorized to assess

a rail rate for a service which is not offered or cannot be given by the rail carrier. They assert that what the applicant is attempting to do is to provide an "off-rail" service at an "on-rail" rate.

A spokesman for the California Trucking Associations, Inc. stated that it had no objection to the granting of authority to depart from the minimum rates provided such authorization is founded upon a showing based upon adequate evidence of costs, and not upon comparison with the rates of rail carriers.

Conclusions

Applicant has chosen to request, under Section 3666, authority to assess charges for the transportation of cement at a rate less than the established minimum rate. It is incumbent upon applicant, in a proceeding of this type, to show that the sought rate is reasonable considering all of the circumstances and conditions attendant to the transportation involved. This the applicant has failed to do. It has not been shown that the rate adjustment sought will be reasonably compensatory for the services involved. There was evidence presented showing that the special equipment can improve applicant's load factor, but the load factor under present operations was not disclosed nor was it related to the costs for any of the four movements involved. The evidence offered regarding operating results has been shown to be unreliable.

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 application will be denied.

ORDER

Based on the evidence of record and on the conclusions and finding set forth in the preceding opinion,

IT IS HEREBY ORDERED that the application of T. Elmer Kight 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 9th day of June, 1955.

Arthur E. Mitchell
President

Paul C. Lutz
Commissioner

Matthew A. ...
Commissioner

Commissioners

Justus F. Croemer
Commissioner... Rex Hardy
... being necessarily absent, did not participate in the disposition of this proceeding.