

ORIGINALDecision No. 51873

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of FARNSWORTH AND RUGGLES, a)
corporation, for authority to depart)
from the rates, rules and regulations)
of Highway Carriers' Tariff No. 2) Application No. 36743
under the provisions of the Highway)
Carriers' Act.)

Edward M. Berol and Edward J. Hubber, for
applicant.

Frank Hubert, Jr., for Bethlehem Pacific
Coast Steel Corporation; and C. R.
Nickerson, for Pacific Coast Tariff
Bureau and members of Cal. P.U.C. No. 18
of C. R. Nickerson, Agent; interested
parties.

Harold J. McCarthy and Arthur M. Mooney, for
the Commission's staff.

O P I N I O N

Farnsworth and Ruggles, a corporation, operates as a city,
radial highway common, and highway contract carrier in the transporta-
tion of property between points in this State. By this application
it seeks authority under Section 3666 of the Public Utilities Code to
transport iron or steel, structural iron or steel, and iron or steel
articles from South San Francisco to San Francisco for Bethlehem
Pacific Coast Steel Corporation at rates less than those established
as minimum.

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By Decision No. 51044, dated January 25, 1955, in Application No.
35051, applicant was authorized to operate as a highway common carrier,
as defined in Section 213 of the Public Utilities Code, for the trans-
portation of general commodities between all points in the San
Francisco-East Bay Cartage Zone, as defined in Appendix A of said
decision. Applicant, however, has not yet accepted the certificate
thus granted. The time within which it may do so has been extended
to September 30, 1955.

A public hearing of the application was held before Examiner Carter R. Bishop at San Francisco on May 6 and 20, 1955. Evidence in support of the proposal was offered by a certified public accountant, by applicant's traffic manager and by the traffic manager of Bethlehem Pacific Coast Steel Corporation.

The record discloses that prior to September 13, 1954, no minimum rates had been established for the transportation of the commodities in question between San Francisco and South San Francisco, and that effective that date the rates, rules and regulations set forth in Minimum Rate Tariff No. 2 were made applicable thereto.² The applicable minimum rates (including a temporary surcharge of 11 per cent) and the corresponding rates for which authority is sought herein are set forth in the table below.

Table

<u>Minimum Weight</u> (Pounds)	<u>Rates</u> (In Cents Per 100 Pounds)	
	<u>Minimum</u>	<u>Proposed</u>
Any Quantity	102.12	97
2,000	64.38	61
4,000	47.73	45
10,000	30.53	28½
20,000	17.76	16½
36,000	12.77	11½

The accountant introduced a series of exhibits purporting to show the revenues derived and the expenses incurred by applicant in performing the transportation services involved herein. According

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Minimum Rate Tariff No. 2 was formerly designated as Highway Carriers' Tariff No. 2. Its provisions were made applicable to shipments moving between San Francisco and South San Francisco by Decision No. 50432, dated August 17, 1954.

to the exhibits, during the three-month period from October to December 1954, inclusive, revenues derived from the traffic in question, transported at the established minimum rates, amounted to \$5,549, while the same shipments, had they moved at the rates sought herein, would have returned revenues of \$5,332.³ The total operating costs during the same period, as disclosed by the exhibits, amounted to \$4,282. The operating expenses to be incurred in handling the same traffic at the sought rates, were calculated at \$4,267. As developed by the accountant, the net operating revenues accruing from the traffic here in issue, for the aforementioned three-month period, and before provision for income taxes, amounted to \$1,267. Under the sought rates the net revenue was estimated at \$1,065.⁴ The corresponding operating ratios were 77.17 and 80.03 per cent.

In developing the total costs of operation between San Francisco and South San Francisco for the ninety-day period the accountant in most instances utilized actual company records. With respect to some items of expense he found it necessary to employ estimates. These represented the best estimate of the carrier, based on its experience, or of the accountant, predicated upon analyses which he had made of operating expenses of other comparable carrier services.⁵ In calculating wage expense the witness included an allowance for nonproductive time. Indirect expense was estimated at 23.4 per

³ The revenue figures mentioned include \$296 received in the transportation for Bethlehem of shipments from San Francisco to South San Francisco. This traffic, which is small, moves at the established minimum rates. No relief is sought herein in connection therewith.

⁴ As a comparison with the above-stated operating results an exhibit of record discloses that the results of applicant's over-all operations for the calendar year 1954 were as follows: gross operating revenues: \$846,614; operating expenses: \$812,211; net operating revenue, before taxes: \$34,403; operating ratio, before taxes: 95.94 per cent.

⁵ An example of applicant's estimate, utilized by the accountant, is the item of equipment maintenance costs. An example of the accountant's estimate relates to the service life assigned to semitrailers employed in the transportation involved herein. The carrier in its book records estimates the service life of 8 years for this type of equipment. The basis used by the accountant was 10 years.

cent of direct expense, which, he stated, was the actual ratio in the carrier's over-all operations for the calendar year 1954. In the opinion of the witness this ratio is greater than that actually experienced in the operation here in issue, since very little supervision and dispatching are required in the handling of Bethlehem's shipments.

The selection of the last quarter of 1954 for the purposes of developing the costs in question, the accountant testified, was a representative one. He stated that, during that quarter applicant transported a total of 3,049,146 pounds of iron and steel from South San Francisco to San Francisco for Bethlehem, and that the corresponding figure for each of the other quarters of the same year was also a little over 3,000,000 pounds. Thus, he said, the movement in question is fairly constant throughout the year.

Applicant's traffic manager testified that the contractual relationship between his company and Bethlehem is a long-standing one, dating back at least to 1932. Assertedly, during that period Bethlehem has continuously utilized the services of applicant, among others, in the transportation of iron and steel articles between the points in question. Also, this witness stated, the operation in question is a highly efficient one. In support of this contention he pointed out that the loading and unloading of trucks is performed by mechanical means, that the drivers assigned to the Bethlehem traffic are experienced and require a minimum of instruction in making their pickups in the Bethlehem plant, and that delays are rarely encountered.

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According to this witness, the rates sought herein reflect differentials of approximately one-half cent per 100 pounds under the minimum rates in effect when the application was filed. At that time, such rates included a temporary surcharge of five per cent. As hereinbefore indicated, the surcharge is now 11 per cent. The witness pointed out that a half cent differential was accorded another highway contract carrier for several years in connection with the transportation of iron and steel for Bethlehem between points in Southern California. The authority in question was issued to A. D. Paxton and J. C. Peters, doing business as DeLair Truck Co. The last extension of that authorization was covered by Decision No. 51200 in Application No. 29891 (6th Supplemental). It expired June 13, 1955. By Decision No. 51523, a further extension of the authorization was found not justified.

The testimony of applicant's traffic manager was supported by that of the traffic manager of Bethlehem. The latter asserted that his company was eminently satisfied with the quality of service which applicant had provided through the years and was continuing to offer. Because of that carrier's long experience and high degree of efficiency in handling his company's shipments, he stated, Bethlehem was desirous that applicant handle as much of the traffic in question as possible.⁷

No one opposed the granting of the application..

Applicant is affiliated with United Transfer Co.-Carley & Hamilton, Inc.,⁸ in that the president of applicant herein is also the president of United. The latter company is a highway common carrier of general commodities, including iron and steel, operating between San Francisco and South San Francisco. In view of the provisions of Section 35+2 of the Public Utilities Code to the effect that no person or corporation shall engage in the transportation of property both as a common carrier and as a highway contract carrier of the same commodities between the same points, it was essential for the purposes of this proceeding to ascertain whether or not United is the alter ego of applicant herein. Accordingly, testimony relative to the intercorporate relationships of these two companies was adduced at the adjourned hearing by the aforementioned accountant and by applicant's president. The substance of this testimony is as follows:

⁷ This witness admitted that, in the event of denial of the application herein, Bethlehem would continue to utilize the services of applicant, as it has in the past.

⁸ Hereinafter sometimes identified as "United".

George D. Hart, who is president and treasurer of applicant and of United, owns 100 per cent of the stock of the former and 51.7 per cent of the stock of the latter company. Dudley F. Miller is vice president and secretary of applicant, and is secretary of United, but owns no stock in either company. The stock of United not held by George D. Hart is owned by N. H. Hart (36.2 per cent), E. L. Carley (6.05 per cent) and Edna Kalthoff (6.05 per cent). N. H. Hart and E. L. Carley are vice presidents of United.

The management of the two companies is kept entirely separate. George D. Hart is in full charge of applicant's policies and operations, while E. L. Carley is in direct charge of the activities of United.⁹ Hart does not participate in the management of the latter carrier, his activities in connection therewith being almost entirely confined to watching United's accounts and financial statements.

The operations of applicant and United are kept entirely separate. Applicant maintains its general office and yard in San Francisco while United has its general office and yard in Oakland.¹⁰ Each carrier has its own separate fleet of vehicles, separate corps

⁹ According to the record, George D. Hart many years ago purchased a 50 per cent interest in the then separate firm of Carley & Hamilton, Inc., E. L. Carley owning the balance of the stock and being in full charge of that company's operations. Carley continued to manage the combined operations of United Transfer Company and Carley & Hamilton after the merger of those two companies. Carley's current contract with United as manager of that company's operations is due to expire in September 1955; however, Hart asserted that, as president and majority stockholder he is prepared to renew the contract and has no other plans with respect thereto.

¹⁰ According to the record, United also maintains an office in San Francisco, and applicant bases part of its fleet in the East Bay area.

of office, operating and maintenance personnel, separate dispatching
arrangements and separate equipment maintenance facilities. ¹¹ None of
the office or operating employees of the one company has anything to
do with the operations of the other carrier.

While applicant and United utilize the services of the same
accounting firm, the respective accounts of the two carriers are kept
entirely separate. Separate payrolls are also maintained. Moreover,
while a single insurance policy, placed with one insurance company,
covers both applicant and United, each of the carriers is billed for,
and pays, a separate premium for its share of the coverage under such
policy. The record shows that, by combining their gross volume of
business under one policy, the two carriers are able to get lower
insurance rates.

Conclusions

It is clear from the evidence of record, and we hereby
find, that Farnsworth and Ruggles, applicant herein, and United
Transfer- Carley & Hamilton, Inc., are not the alter ego of each
other, but are separate and distinct carriers. Accordingly, the
corporate relationships of the two companies are not such as to pre-
vent, under the provisions of Section 3542, supra, of the Code, the
operation of applicant as a highway contract carrier in the trans-
portation of iron and steel between South San Francisco and San
Francisco.

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Assertedly, during peak periods or when emergencies arise applicant
sometimes rents vehicles from United and United sometimes rents
equipment from applicant. In all such cases the renting carrier is
paid a charge for the use of such equipment.

Moreover, the evidence is convincing that applicant will be able to perform the transportation involved herein under the sought rates on a compensatory basis.

The Commission is of the opinion and hereby finds that the proposed reduced rates are reasonable.¹² The application will be granted. 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 set forth in the preceding opinion,

IT IS HEREBY ORDERED that Farnsworth and Ruggles, a corporation operating as a highway contract carrier, be and it is authorized to transport iron or steel, iron or steel articles, and structural iron or steel for Bethlehem Pacific Coast Steel Corporation from South San Francisco to San Francisco at rates less than the minimum rates but not less than the following:

<u>Minimum Weight</u>	<u>Rate</u> (In Cents per 100 Pounds)
Any Quantity	97
2,000 Pounds	61
4,000 Pounds	45
10,000 Pounds	28½
20,000 Pounds	16½
36,000 Pounds	11½

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In order to avoid possible violation of the provisions of Section 3542, supra, of the Public Utilities Code a limitation will be placed upon applicant's service as a radial highway common carrier during the existence of the authority herein granted. Also, the granting of the relief herein sought will be made subject to the condition that, in the event that applicant shall accept the highway common carrier certificate granted to it by Decision No. 51044, supra, the authority herein granted shall expire effective with the effective date of tariffs filed pursuant to the acceptance of said certificate.

IT IS HEREBY FURTHER ORDERED that during the period that the authority herein granted is in effect the aforesaid applicant shall not engage in the transportation of the same commodities between the points involved in this authority as a radial highway common carrier, and that any such transportation which applicant may perform in violation of these provisions shall be cause for revocation of the authority herein granted.

IT IS HEREBY FURTHER ORDERED that, if, during the period that the authority herein granted is in effect, the aforesaid applicant should accept the certificate of public convenience and necessity granted to it by Decision No. 51044, dated January 25, 1955, in Application No. 35051, the authority herein granted shall be canceled, said cancellation to be effective as of the effective date of the rates on the commodities, and applicable between the points, involved herein, filed pursuant to the acceptance of said certificate.

IT IS HEREBY FURTHER ORDERED that, subject to the provisions of the immediately preceding ordering paragraph herein, 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.

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

Dated at San Francisco, California, this 23rd day of August, 1955.

John E. Mitchell
President
James J. Cagney
Matthew D. Deady
R. Hardy

Commissioners

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