

ORIGINAL

Decision No. 51876

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of DIRECT DELIVERY SYSTEM, LTD.,) Application No. 25585
for authority to assess less than) (11th Supplemental)
minimum rates.)

In the Matter of the Application)
of DIRECT DELIVERY SYSTEM, LTD.,) Application No. 30240
for authority to assess less than) (9th and 10th Supplemental)
minimum rates.)

In the Matter of the Application)
of DIRECT DELIVERY SYSTEM, LTD.,) Application No. 30460
for authority to assess less than) (8th and 9th Supplemental)
minimum rates.)

In the Matter of the Application)
of DIRECT DELIVERY SYSTEM, LTD.,) Application No. 33160
for authority to assess less than) (5th Supplemental)
minimum rates.)

H. J. Bischoff, for applicant.
Fred Z. Wakefield and Lester E. Olson, for
The Great Lakes Carbon Corporation,
interested party.
R. A. Lubich, J. M. Jenkins, and Leonard
Diamond, for the Commission staff.

O P I N I O N

Prior orders in these proceedings have authorized applicant, a highway contract carrier, to assess rates which are lower than the established minimum rates in connection with transportation of diatomaceous earth and soda ash for The Great Lakes Carbon Corporation. The present authorities will expire with August 30, 1955. Applicant seeks their further extension at increased rates.

Public hearings on the matters were held on a consolidated record before Examiner C. S. Abernathy at Los Angeles on July 29 and August 1, 1955.

The specific transportation which is involved in these several applications is as follows:

Application No. 25585

Diatomaceous earth, in sacks, and empty sacks, transported between the plant of The Great Lakes Carbon Corporation, located adjacent to the City of Torrance, and points within that city.

Application No. 30240

Soda ash, in bulk, transported from Bartlett and Westend to Waltheria.

Application No. 30460

Diatomaceous earth, in bulk, transported from a quarry near Lompoc to Waltheria.

Application No. 33160

Crude diatomaceous earth and waste material from the processing of said earth transported between a quarry near the City of Lompoc to a plant of The Great Lakes Carbon Corporation at the eastern limits of said city.

The rates for this transportation which are currently authorized and those for which authority is sought for the future are set forth in Appendix "A" attached hereto. The sought rates, applicant states, reflect current operating conditions.

Figures purporting to represent the costs of the services were submitted by applicant's vice president who testified that they had been developed on the basis of the company's operating experience in performing the services during the past year and include such modifications as necessary to reflect recent increases in wage rates and other operating cost changes which have become effective since the currently authorized rates were approved. These costs were expanded to include provision for profit to arrive at the rates herein proposed.¹

¹ The amount which was included for profit was not specifically stated. However, the record shows that for the year 1954 applicant realized net operating revenues, before income taxes, equivalent to 6.2 per cent of its gross revenues. The larger part of the net revenues which applicant earned during 1954 apparently were derived from services performed for The Great Lakes Carbon Corporation.

The traffic manager of The Great Lakes Carbon Corporation submitted testimony relating to the expected volume of his company's operations for the future. He stated in effect that no change from present levels is anticipated at the present time.

No one appeared in opposition to granting of the applications.

With a minor exception applicant's data pertaining to the transportation of diatomaceous earth appear to portray reasonably the costs of the services performed. Detailed discussion thereof is not necessary. The exception relates to a charge for depreciation expense which was applied in connection with the costs developed for the transportation of diatomaceous earth and waste material in the vicinity of Lompoc. Applicant computed this charge partly upon experience of Southern California Freight Lines, an affiliated carrier. Thus, in effect, the resultant cost figure is partly contingent upon operations which are not involved herein. This method of cost development does not provide an acceptable basis upon which a finding may be made that the rates sought for this transportation are reasonable. Correction of the costs will be made to the extent that the record permits and adjustment will be made in the rates hereinafter authorized to compensate for the resultant increase in the cost figures.²

The data which applicant submitted to establish the reasonableness of the rates sought for the transportation of soda ash do not accomplish that purpose. The record shows that subhaulers perform approximately 75 per cent of the transportation involved.

² A further exception to applicant's cost showing applies to a cost exhibit which was introduced to rectify asserted errors in a cost statement attached to 11th Supplemental Application No. 25585. It appears that the cost exhibit contains substantial errors and that the cost statement is approximately correct. The data in the cost exhibit have been disregarded.

The cost data apparently were developed on the basis of transportation which applicant performs with its own trucks. It does not appear that the data are reasonably representative of the costs which are actually incurred in the performance of the service as a whole. Moreover, the data are unacceptable for the reason that they were developed in part on the basis of operations at vehicle speeds in excess of those lawfully attainable. Application No. 30240 for reduced rates for the transportation of soda ash will be denied.

In Decision No. 51619, dated June 28, 1955, in Application No. 35927 (official notice of which is hereby taken), the relationship of Direct Delivery System, Ltd., to Southern California Freight Lines and other affiliated transportation companies was considered in connection with sought departures from the minimum rates for the transportation of malt beverages. The applicant herein and the several related companies therein discussed were found to be alter egos of one another, comprising together an integrated transportation system.³ The decision points out that transportation involved in that proceeding would constitute transportation which, because of the relationship of Direct Delivery System, Ltd., to Southern California Freight Lines would be in violation of Sections Nos. 453, 494, 532 and 3542 of the Public Utilities Code. In consideration of these circumstances it was concluded that the authority which Direct Delivery System, Ltd., sought by its Application No. 35927 should not be granted.

It appears that the same principles which were enunciated in Decision No. 51619 apply with equal force to certain of the services involved in these proceedings. In transporting diatomaceous earth and empty sacks between the plant of The Great Lakes Carbon

³ The affiliated companies other than applicant which are named in the decision are Southern California Freight Lines, Southern California Freight Lines, Ltd., Southern California Freight Forwarders, Boyle & Son, International Express, Inc., and United Truck Service, Ltd.

Corporation which is located adjacent to the City of Torrance and points within that city, applicant is operating within the service area of Southern California Freight Lines. The record is convincing that the sought rates themselves are reasonable. However, if the present application were granted, Direct Delivery Service, Ltd., would be authorized to charge lesser rates than those which are maintained for the corresponding common carrier service of Southern California Freight Lines. To this extent the proposed rates would be unduly preferential and discriminatory.⁴ Application No. 25585 will therefore be denied.

One further matter which requires mention is service which various of applicant's affiliates perform under authority of radial highway common carrier permits. Since applicant herein is undertaking to serve The Great Lakes Carbon Corporation as a contract carrier, the transportation of the same commodities between the same points by the affiliates would be violations of the provisions of Section 3542 of the Public Utilities Code. The exercise of the authority hereinafter granted to Direct Delivery System, Ltd., will be conditioned upon the observance by the affiliates of the prohibitions of Section 3542 of the Public Utilities Code as said prohibitions apply to transportation which as to commodities and points is the same as that for which the rate authority is granted.

Upon careful consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds as a

⁴ By Applications Nos. 37127 and 37128, Southern California Freight Lines and an affiliate, Southern California Freight Forwarders, seek to withdraw from the field of common carriage with respect to the commodities which applicant transports for The Great Lake Carbon Corporation and with respect to the transportation of malt beverages. These matters are pending.

fact that the rates which Direct Delivery System, Ltd., is herein-after authorized to assess are reasonable. To this extent Applications Nos. 30460 and 33160 will be granted.

The authorizations will be limited in duration to one year inasmuch as the conditions which justify the granting of the authorizations may change at any time.

O R D E R

Public hearings of the above-entitled supplemental applications having been held, and based upon the evidence received, and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that:

1. Under Application No. 30460, Direct Delivery System, Ltd., be and it hereby is authorized to perform transportation as described in Item No. III of the attached Appendix "A" for The Great Lakes Carbon Corporation at lesser rates than the applicable minimum rates but not less than the rates shown as "Proposed Rates" in said Item No. III.
2. Under Application No. 33160, Direct Delivery System, Ltd., be and it hereby is authorized to perform transportation as described in Item No. IV of the attached Appendix "A" for The Great Lakes Carbon Corporation at lesser rates than the applicable minimum rates but not less than 49.3 cents per 100 pounds, subject to minimum weights as specified in said Item No. IV.
3. The authority herein granted shall expire one year after the effective date of this order unless sooner changed or extended by order of the Commission.
4. Applications Nos. 25585 and 30240 be and they hereby are denied.

IT IS HEREBY FURTHER ORDERED that should any of the alter ego affiliates of Direct Delivery System, Ltd., which are so designated in Decision No. 51619, supra, engage in transportation as a common carrier, which transportation as to commodities and points served is the same as that for which rate authority is herein granted to Direct Delivery System, Ltd., the performance of said transportation shall be cause for revocation of the authority herein granted.

IT IS HEREBY FURTHER ORDERED that the Commission's Secretary be and he hereby is directed to cause a copy of the decision in these matters served upon each of the aforesaid alter ego affiliates of Direct Delivery System, Ltd.

The effective date of this order shall be August 31, 1955.

Dated at San Francisco, California, this 23rd day of

August, 1955.

Chas. E. Fitchell
President

Justice D. C. ...

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Commissioners

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

APPENDIX "A"
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Currently authorized rates, and proposed rates, for transportation services herein specified which are performed by Direct Delivery System, Ltd., for The Great Lakes Carbon Corporation.

		<u>Rates in Cents per Ton</u> <u>Unless Otherwise Indicated</u>	
		<u>Present</u>	<u>Proposed</u>
Item No. I	Diatomaceous earth, in sacks, and empty sacks, transported between the plant of The Great Lakes Carbon Corporation, located adjacent to the southerly city limits of Torrance, and points within that city:		
	Diatomaceous earth in sacks, minimum weight 50,000 pounds per day that carrier's equipment is operated.	59	65
	Empty sacks	59	65

NOTE: Rates do not include loading or unloading of carrier's equipment. Transportation charges and minimum weight shall be computed upon basis of actual weight of diatomaceous earth and sacks. No additional charge shall be made for transportation of pallets.

Item No. II	Soda ash, in bulk, transported from Bartlett and Westend to WALTERIA, minimum weight 48,000 pounds:		
	From Westend	31.3*	32.77*
	From Bartlett	35.5*	37.1*
	* Cents per 100 pounds.		

Item No. III	Diatomaceous earth, in bulk, transported from a quarry proximately nine miles south-east of the City of Lompoc to WALTERIA		
	<u>Minimum Weight</u>		
	43,000 pounds	496	520
	44,000 "	484	509
	45,000 "	474	497
	46,000 "	463	487
	47,000 "	453	476
	48,000 "	444	466
	48,500 "	439	461
	49,000 "	435	457
	49,500 "	431	452

APPENDIX "A"
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Rates in Cents per Ton
Unless-Otherwise Indicated
Present Proposed

Item No. IV Crude diatomaceous earth
and waste material from
the processing of crude
diatomaceous earth, in
bulk, transported between
a plant of The Great Lakes
Carbon Corporation at the
east city limits of Lompoc
and quarries located ap-
proximately nine miles
southeast and five and
one half miles southwest
of the City of Lompoc:

Crude diatomaceous earth, minimum weight 40,000 pounds	47	48.3
Waste material, mini- mum weight 4,000 pounds ..	47	48.3