

ORIGINALDecision No. 59611

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
 3666 and 4015 of the Public Utilities
 Code, for the transportation of iron
 and steel articles for the Bethlehem
 Steel Company.

Application No. 41515

Glanz & Russell, by Theodore W. Russell, for
 applicants.

Lewis B. Kean, for C.K.M. Transportation, Inc.,
 and Geo. Lyles, dba Lyles Trucking Co.,
 protestants.

James Quintrall, A. D. Poe and J. C. Kaspar,
 for California Trucking Associations, Inc.,
 interested party.

R. A. Lubich, for the Commission staff.

O P I N I O N

A. D. Paxton and J. C. Peters are copartners doing business under the fictitious name of DeLair Truck Co. By this application filed September 24, 1959, they seek authority to transport iron and steel articles from the plant of Bethlehem Steel Corporation at 3391 East Randolph Street, Vernon, to points and places within a radius of 25 constructive miles from the intersection of First and Main Streets, Los Angeles, at rates lower than the applicable minimum rates, but not lower than one cent per 100 pounds less than the rates in cents per 100 pounds provided in Minimum Rate Tariff No. 2 and Minimum Rate Tariff No. 5.

Public hearing was held December 10, 1959 before Examiner Jack E. Thompson at Los Angeles.

The transportation of iron and steel articles from the Bethlehem plant constitutes about 98 percent of the for-hire carriage performed by applicants. Applicants and their immediate predecessors operating as DeLair Truck Co. have performed services for Bethlehem for over 33 years. For a number of years prior to 1955 applicants had authority from the Commission to assess rates one half cent less than the applicable minimum rates for transportation of steel from Bethlehem's plant to points in the territory involved herein. An extension of that authority was denied by Decision No. 51523 dated May 31, 1955 in Application No. 29891. In 1954 applicants transported 47 percent of the total tonnage shipped from the Bethlehem plant. In 1956 the applicants' share of the traffic was reduced to 40.8 percent; in June 1959 it was further reduced to 30.7 percent. The managing partner of applicants testified the reason for the filing of this application is an attempt, through the assessment of lower rates, to recapture a greater percentage of the traffic. The distribution of traffic from the Bethlehem plant is of record. Estimates of the amount of traffic moving by for-hire truck under rates based upon rates maintained by the railroads are also of record. The following shows the amount of traffic which is involved herein:

36.9%	moves by railroad
12.2%	moves by proprietary vehicles
15.7%	moves by DeLair at MRT 2 and MRT 5 rates
15.0%	moves by DeLair at rail competitive rates
10.0%	moves by other truckers at MRT 2 and MRT 5 rates
<u>10.2%</u>	<u>moves by other truckers at rail competitive rates</u>
100.0%	Total tonnage

Only the traffic moving under rates prescribed in Minimum Rate Tariffs Nos. 2 and 5 would be affected by the proposed reduced rates, and a portion of that would not be affected because

applicants propose that the reduced rates not apply on split pickup or split delivery shipments. The amount of additional tonnage applicants could attract is in the neighborhood of 20,000 tons per year which is approximately the amount moving by other for-hire trucks under rates set forth in Minimum Rate Tariffs Nos. 2 and 5.

Applicants made an operating profit of \$26,020 on a total gross operating revenue of \$211,794 during the first six months of 1959. Had the reduced rates been in effect during that period, the operating revenue would have been reduced by \$4,678. More than half of applicants' business is conducted under rates lower than those sought herein. An estimate was presented indicating that on the traffic subject to the proposed rates transported during that period, applicants would have had an operating ratio of 75.6 percent at the proposed rates.

Applicants also presented a study of 42 shipments transported in May 1959 which would have been subject to the proposed rates, showing the charges actually assessed, the charges computed under the proposed rates and the charges computed under the hourly rates set forth in Minimum Rate Tariff No. 5. Briefly summarized, the exhibit shows \$2,192.22 was actually assessed, \$2,029.73 would have been the charges at the proposed rates and \$1,479.16 would be the charges under hourly rates computed in accordance with Minimum Rate Tariff No. 5.

The assistant district traffic manager for Bethlehem testified in support of the application. He said that it is the company's practice, except in a very few instances, to sell their products F.O.B. plant. Routing of the shipments is determined by the consignees. Bethlehem is willing to enter into a contract with DeLair under which it will pay the freight charges on shipments

where routing via the applicants is specified by the consignee. Bethlehem will add the amount of the charges assessed to the customer's invoice. He said that Bethlehem is willing to enter into such a contract and to assume the burden of the additional bookkeeping because it may contribute to alleviating an unsatisfactory condition involving loading of trucks at the plant. Other than that circumstance, he stated, Bethlehem has no interest in the application. He stated that he doubted whether the reduction in rates would have any effect upon Bethlehem's sales and, inasmuch as the transportation cost is borne by the consignees, the company's only gain from approval of the authority sought is the probability that more consignees would use applicants' services and thereby reduce the number of carriers picking up shipments at the plant.

Applicants' terminal is immediately adjacent to the plant of Bethlehem. There is a direct telephone line between the plant's shipping office and applicants' terminal. The facilities of Bethlehem are open for the loading of equipment during most of the hours of a 24-hour day. These circumstances, together with the studies offered by applicants showing that the proposed rates are higher than the rates authorized in Item 140 of Minimum Rate Tariff No. 5 and Item 200 of Minimum Rate Tariff No. 2 for transportation between railheads, and that the aggregate of the charges under the proposed rates exceeds the aggregate of the charges computed under hourly rates provided in Minimum Rate Tariff No. 5, are relied upon by applicants as justification for the proposed rates.

C.K.M. Transportation, Inc., offered evidence that it presently transports a substantial amount of tonnage from Bethlehem to a number of firms. Such transportation amounts to approximately ten percent of its total business. About forty percent of this amount would be affected by applicants' proposal. Its president

testified that the transportation of steel has been profitable, including that portion which moves to railhead points under rates lower than those proposed by applicants. He contends that it would be discriminatory to permit applicants to the exclusion of others, including C.K.M., to maintain lower rates to off-rail points.

George Lyles, a carrier doing business as Lyles Trucking Co., testified that 90 percent of his business is the transportation of steel. At present, the transportation he performs is to points at railhead and therefore is not affected by applicants' proposed rates. He stated, however, that the granting of this application would prejudice his opportunity to freely compete for any new business arising from the transportation of steel from Bethlehem to potential customers who are not at railhead.

While a showing that the proposed rates will exceed the full cost of providing the service is indispensable to a finding of reasonableness under Section 3666, such a showing is not conclusive in and of itself of reasonableness. Minimum rates are established at a level necessary to preserve and maintain for the public adequate and dependable transportation service. The determination of such rates is not a purely scientific process. The established minimum rates are not designed necessarily to reflect the cost of an individual carrier transporting a particular commodity for a particular shipper between a given pair of termini. The circumstance that a rate one cent lower than the minimum rate may return something more than full cost to the carrier, standing alone, does not justify relief under Section 3666. Authority to charge less than the minimum rates is granted only to provide a remedy for an unusual situation. But, certainly Section 3666 should not be a

vehicle by which a carrier can effectively throttle its competition. Applicants were very frank in stating that the reason for this filing is to capture traffic moving by other for-hire carriers. It is not a case of meeting competition but of obtaining an advantage over their competition through lower rates.

Upon consideration of all of the facts and circumstances of record, we are of the opinion and find that the rates sought herein have not been shown to be reasonable and that the application should be denied.

O R D E R

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

IT IS ORDERED that the application of A. D. Paxton and J. C. Peters, doing business as DeLair Truck Co., is denied.

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

Dated at San Francisco, California, this 1st day of FEBRUARY, 1960.

Everett B. Deane
President
John E. Smith
William F. Smith
C. J. Fox
Theodore H. Hume
Commissioners