

Decision No. 63030**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CHARLES R. COYNER, doing business)
 as COYNER TRUCKING CO., for authority)
 to depart from the rates, rules and)
 regulations of Minimum Rate Tariff)
 No. 2, under the provisions of the)
 Highway Carriers Act on transportation)
 for BERT MC DOWELL CO.)

Application No. 43031

Francis X. Vieira, for applicant.J. C. Kaspar, A. D. Poe and J. X. Quintrall, for
California Trucking Associations, Inc.,
interested party.Grant L. Malquist and John R. Laurie, for the
Commission staff.O P I N I O N

This application was heard before Examiner Jack E. Thompson on September 13, 1961 at Sacramento and on November 10, 1961 at San Francisco, on which latter date it was submitted. Copies of the application and the notice of hearing were served in accordance with the Commission's procedural rules.

Charles R. Coyner, doing business as Coyner Trucking Co., is a highway contract carrier. For over sixteen years applicant has performed transportation for Bert McDowell Company, chiefly within an area in and about Stockton. The latter, a subsidiary of United Grocers, Ltd., is a wholesale grocer and, until February 1960, applicant received tender of shipments from Bert McDowell Company at a warehouse in Stockton. Subsequent to said date, McDowell closed its Stockton warehouse and centralized its distribution from a new warehouse in Sacramento. The warehouse facility is open from 6:30 a.m. to 11:30 p.m. and warehouse operations and shipping take place during those hours. McDowell operates a large fleet of trucks in the distribution of groceries and employs a number of teamsters to load

its trucks at the warehouse. Those employees also load applicant's trucks. On October 14, 1960, applicant and McDowell entered into a written agreement, a copy of which is Exhibit No. 9, setting forth that applicant will pay McDowell for the loading of the trucks the applicable straight time wage rate per hour plus payroll charges of employees. For the purpose of computing the number of hours, the loading of a 35-foot semitrailer would require three teamsters for 1-1/2 hours each, or a total of 4-1/2 hours per unit; a set of doubles (two semitrailers) would require three teamsters for 2 hours each, or a total of 6 hours per set; and to load a 14-foot truck, three teamsters for 1/2 hour each, or a total of 1-1/2 hours per unit. For the month of March 1961, applicant paid McDowell \$1,678.52 for loading based upon the following computation:

510 man hours @ \$2.92½ per hour	\$1,491.75
Payroll Taxes @ 4.8%	71.60
Workmen's Compensation @ \$1.84 per \$100	27.45
Medical, Hospital & Pension @ \$0.172 per hour	<u>87.72</u>
Total	\$1,678.52

The rate of \$2.92½ per hour is the rate of pay McDowell is required to pay its loaders under a union agreement. The other items also reflect the cost per hour to McDowell for engaging loaders.

Applicant's employees place empty trailers in the yard at McDowells. Employees of the latter spot the trailers at the loading door and load the trailers. When laden, McDowell employees close the trailer and spot it in the yard. Applicant's driver connects the trailer to a tractor, obtains manifests and delivery instructions and proceeds to point or points of destination. Applicant takes possession of the shipments already laden and ready to go.

Applicant became apprehensive that its arrangement with McDowell might be in conflict with the regulations of the Commission.^{1/}

^{1/} On May 16, 1961, the Commission ordered hearings in Case No. 5432 and related cases to determine the practices of carriers regarding payments to shippers for services performed. The Commission's staff had made investigations and studies prior thereto.

He filed this application seeking the "approval", as he calls it, of this practice by the Commission or, in the alternative, an order authorizing applicant to charge less than the minimum rates for transportation of shipments for McDowell. The proposed rates are the equivalent of 80 percent of the established minimum rates.

The matter of allowances and payments by carriers to shippers for services performed is presently before the Commission in Case No. 5432, and related cases, by Order Setting Hearing Dated May 16, 1961. We are of the opinion that any consideration of the "approval" of the present practice of applicant should be made only after a decision is made in the aforementioned case. It is unnecessary, however, to postpone a decision in this application on the request for authority to charge rates less than the established minimum.

Because of the nature of some of the commodities stored in its warehouse and placed on its shipping dock, McDowell does not allow persons, other than its employees, in the warehouse or on the dock handling its merchandise. The manager of McDowell testified that he doubts whether the company would allow applicant's employees to remain on the premises for the loading of trucks, and if it did, applicant would be required to have the loaders under constant supervision in order to provide assurance that they handle only goods tendered to applicant and stay clear of the dock and warehouse except while in the process of loading. He said that it would be more likely, because McDowell presently operates 52 trucks in the distribution of merchandise, if the authority sought herein is not granted McDowell will obtain additional vehicles and conduct the operation itself.

Applicant presented an estimate of the cost he would have incurred if he had engaged a foreman and three teamsters to load vehicles during March 1961. In straight time wages alone, under the

present wage contract, it would have cost him \$2,112.^{2/} Including payroll taxes, fringe benefits, overtime pay and compensation insurance, however, it was estimated that the cost would have been \$3,230.35. Applicant paid McDowell \$1,678.52 for loading services performed in March 1961. From the freight bills of applicant for three months in 1961 covering transportation of shipments loaded by McDowell and the invoices of McDowell to applicant for such services it appears that the present charge for the loading services amounts to approximately 19.04 percent of the revenue received for transporting the shipments. The request that the rates be established at 80 percent of the minimum rates is predicated upon that relationship.

Approximately 50 percent of the total revenues earned by applicant is from transportation of shipments loaded by McDowell. The applicant testified that about another 25 percent of the total revenues is derived from other transportation performed for McDowell. He stated that the loss of the traffic he presently enjoys from McDowell would substantially impair his ability to remain in business.

Applicant did not present data regarding the cost of performing the transportation involved; however, it was shown that for the year 1960 and for the first five months of 1961 he enjoyed a profit from all operations. He has demonstrated that the transportation at issue herein is what might be called his basic haul and that other transportation services performed are somewhat contingent upon the availability of equipment beyond that required for the distribution of merchandise for McDowell.

Upon consideration of all of the facts and circumstances, we find that applicant has shown that transportation of shipments from McDowell in Sacramento to points within 130 miles of Sacramento

2/ 8 hours per day for four men @ \$3.00 per hour for 22 working days.

at rates equal to 81 percent of the established minimum rates would be compensatory. We further find that a departure from the minimum rates on this transportation is necessary in order to retain the traffic to for-hire carriage. The rates which will be authorized in the order which follows are based upon 81 percent of the established minimum rates; we find said rates, subject to the limitations and conditions set forth in said order, to be reasonable for the transportation of articles, regularly sold by McDowell at retail or wholesale, from Sacramento to points within 130 constructive miles of Sacramento. In all other respects the proposals of applicant have not been shown to be reasonable.

Applicant stated that he will incur additional costs on or about July 1, 1962 because of wage increases provided for in the wage agreement with his drivers. He suggested that the proposed rates be scheduled to expire July 1, 1962.

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:

1. Charles R. Coyner is authorized to transport property for Bert McDowell Co. from Sacramento at rates and charges no lower in volume or effect than the rates and charges set forth in Appendix A attached hereto and by this reference made a part hereof.

2. The authority granted herein shall expire July 1, 1962, unless sooner modified, extended or canceled by order of the Commission.

3. In all other respects Application No. 43031 is denied.

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

Dated at San Francisco, California, this 9th day of JANUARY, 1962.

Cornell W. Page
President
W. J. Hutchins
E. Lynn Fox
George G. Grover
Frederick B. Halboff
Commissioners

CHAS. R. COYNER

Schedule of Minimum Rates for Transportation of
Property for Bert McDowell Company.Section 1Item 10 - Application of Rates - General.

To the extent that Minimum Rate Tariff No. 2 prescribes minimum rates for the transportation of property, said minimum rates, rules and regulations are applicable to all shipments except as specifically provided in Section 2.

Section 2Item 20 - Application of Rates - Territorial

Rates in this section apply to the transportation of property from the premises of Bert McDowell Co., Sacramento, to points in Northern California located within 130 constructive miles of the intersection of Twelfth Street and L. Street, Sacramento, California.

Item 30 - Application of Rates - Commodities

Rates in this section apply only to such articles regularly sold or offered for sale by Bert McDowell Co. in its retail or wholesale grocery establishments.

Item 40 - Application of Rates - Limitations and Conditions.

Rates in this section are subject to the following conditions:

- (a) All property must be loaded into carrier's equipment by Bert McDowell Co. and tendered to the carrier with the vehicle sealed.

- (b) Shipping documents must bear the notation "Shipper Load and Count"
- (c) Carrier shall be absolved from liability and shall not accept liability for loss, damage, non-receipt or misdescription of goods, other than that where the collision or overturning of the vehicle or where negligence on the part of the carrier or his employees is the proximate cause thereof.

Item 50 - Shipping Documents

Carrier may accept from the shipper component parts of a shipment, including a split-delivery shipment, being progressively received, handled and loaded into carrier's equipment during one calendar day, prior to being furnished with manifest or written delivery instructions covering the entire shipment.

Item 100 - Rates

CLASS RATES(1)

MILES Not Over	Minimum weight as provided in Western Classification, Exception Sheet or Minimum Rate Tariff No. 2 (Subject to Item No. 290 of MRT 2) but not less than 20,000 pounds			Minimum weight as provided in Western Classification, Exception Sheet or Minimum Rate Tariff No. 2 (Subject to Item No. 290 of MRT 2)			
	2	4	90% of 4	5	B	C	D
3	17	14	12½	11	10	9	8
5	19½	15½	14	11½	11	9-¾	9
10	20	16	14½	12½	11½	10½	9-¾
15	21	17	15½	13½	12½	11½	10½
20	23	18	16	14	13½	12	11½
25	24	18½	17	15	14	13	12
30	25	19½	18	16	15	14	13
35	28	21	18½	16½	16	14½	14
40	29	22	19½	17½	16½	15½	14½
45	31	23	21	18½	17½	16½	16
50	32	25	23	20	18½	18	17
60	34	27	24	22	20	18½	18
70	36	28	26	23	21	20	18½
80	39	30	27	25	22	21	20
90	41	32	29	27	23	22	21
100	45	35	32	28	23	23	22
110	46	37	33	30	25	23	23
120	48	38	34	32	27	24	23
130	50	40	36	33	28	25	24

COMMODITY RATES(1)

MILES	Canned Goods and related products as described in Items Nos. 320, 338 and 345 of MRT 2					Grain, Rice, Grain Products and related products as described in Items Nos. 652 and 653 of MRT 2				
	Not Over	Minimum Weight				20,000	Minimum Weight		(a)	(b)
		30,000	36,000	42,000	45,000		30,000	40,000		
3	-	-	-	-	7 $\frac{3}{4}$	7	6 $\frac{1}{4}$	6 $\frac{1}{2}$	4 $\frac{3}{4}$	
5	11	9 $\frac{3}{4}$	9	7 $\frac{1}{2}$	9	7 $\frac{1}{2}$	6 $\frac{3}{4}$	7	5 $\frac{1}{2}$	
10	11 $\frac{1}{2}$	10 $\frac{1}{2}$	9 $\frac{3}{4}$	8	9 $\frac{3}{4}$	8	7	7 $\frac{3}{4}$	5 $\frac{3}{4}$	
15	12 $\frac{1}{2}$	11 $\frac{1}{2}$	10 $\frac{1}{2}$	9	10 $\frac{1}{2}$	9 $\frac{3}{4}$	7 $\frac{1}{2}$	9	6 $\frac{1}{4}$	
20	13 $\frac{1}{2}$	12	11 $\frac{1}{2}$	9 $\frac{3}{4}$	11 $\frac{1}{2}$	10 $\frac{1}{2}$	8 $\frac{1}{2}$	9 $\frac{3}{4}$	6 $\frac{3}{4}$	
25	14	13	12	10 $\frac{1}{2}$	12	11 $\frac{1}{2}$	9 $\frac{1}{2}$	10 $\frac{1}{2}$	7 $\frac{1}{2}$	
30	15	14	13	11 $\frac{1}{2}$	13	12	10	11 $\frac{1}{2}$	8 $\frac{3}{4}$	
35	16	14 $\frac{1}{2}$	14	12	14	13	11	12	9 $\frac{1}{4}$	
40	16 $\frac{1}{2}$	15 $\frac{1}{2}$	14 $\frac{1}{2}$	13	15	14	11 $\frac{1}{2}$	13	10	
45	17 $\frac{1}{2}$	16 $\frac{1}{2}$	16	14	16	15	12 $\frac{1}{2}$	14	11	
50	18 $\frac{1}{2}$	18	17	14 $\frac{1}{2}$	17	16	13 $\frac{1}{2}$	15	11 $\frac{1}{2}$	
60	20	18 $\frac{1}{2}$	18	15 $\frac{1}{2}$	18	17	15	16	13 $\frac{1}{2}$	
70	21	20	18 $\frac{1}{2}$	16	18 $\frac{1}{2}$	18	16	17	14	
80	22	21	20	17	19 $\frac{1}{2}$	18 $\frac{1}{2}$	16 $\frac{1}{2}$	18	15	
90	23	22	21	18 $\frac{1}{2}$	21	19 $\frac{1}{2}$	17 $\frac{1}{2}$	18 $\frac{1}{2}$	16	
100	23	23	22	20	22	20	19 $\frac{1}{2}$	19 $\frac{1}{2}$	16 $\frac{1}{2}$	
110	25	23	23	21	23	22	21	20	18 $\frac{1}{2}$	
120	27	24	23	22	24	23	22	21	19 $\frac{1}{2}$	
130	29	26	24	23	25	23	23	22	20	

(1) Subject to all increases and surcharges prescribed in supplements to Minimum Rate Tariff No. 2.

END OF APPENDIX A