

ORIGINALDecision No. 65687

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of HOWARD J. MAINWARING, HOWARD C.)
MAINWARING and FRANKLIN ROBERTSON,)
a copartnership, doing business as)
SPECIAL DELIVERY SERVICE, for)
authority to charge less than the)
established minimum rate for the)
transportation of automobile parts)
and supplies.)

Application No. 44675

Marquam C. George, for applicants.
Sam L. Dileo, for L. & S. Drayage; Roger L. Ramsey, for United Parcel Service;
Louis C. Schmitt, for Keller's Freight Line, Inc.; Irving Silverman, for Peninsula Delivery Service and Drayage;
R. A. Swenson, for J. & J. Truck Line;
J. C. Kaspar, A. D. Poe and J. X. Quintrall, for California Trucking Association, protestants.
Philip A. Winter, for Delivery Service Company, interested party.
Henry E. Frank, R. A. Lubich and George H. Morrison, for the Commission staff.

O P I N I O N

Howard J. Mainwaring, Howard C. Mainwaring and Franklin Robertson, a copartnership, doing business as Special Delivery Service, operate as a city carrier and as a highway contract carrier between points in this state. By this application, as amended, they seek authority, under Sections 3666 and 4015 of the Public Utilities Code, to deviate from the established minimum rates, rules and regulations for the transportation of all commodities distributed by automotive parts and supply houses between said automotive parts and supply houses located in 43 specified communities and at points intermediate thereto. Said communities and unnamed points are located within a radius of approximately 30 miles of Oakland, where the carrier's terminal is located.

The original application was filed on August 1, 1962 and an amendment thereto on January 28, 1963. Public hearing was held before Examiner Bishop, at San Francisco, on September 27 and November 5, 1962 and January 28, 1963. Evidence on behalf of applicants was adduced through the principal partner and through the company's accountant.

Applicants confine their operations exclusively to the transportation involved in this application. Specifically the movements are from the warehouses of manufacturers of auto parts and supplies, or from the warehouses of the agents of said manufacturers, to the premises of jobbers. The business of the latter, the record indicates, is 90 percent wholesale. Applicants make no deliveries to such businesses as automobile retail agencies, gas stations or small garages. Applicants' drivers follow regular routes, calling daily at 26 consignor warehouses, all of which are located in San Francisco, South San Francisco, Burlingame, Oakland and Emeryville. Deliveries are made to the above-mentioned consignees, numbering approximately 280, located in the various communities embraced by the application herein. At the present time deliveries are made to not more than 225 of said consignees on any one business day. Depending on whether transportation charges are handled on a prepaid or collect basis, the carrier's contract is in some instances with the consignor, and in others with the consignee. All contracts covering present operations are oral.

Shipments range in size from one pound to as much as 7,000 pounds. The record indicates, however, that 85 percent of the shipments weigh less than 100 pounds. Assertedly applicants are assessing the established minimum rates and charges. Under the proposal herein shippers would be assessed a flat charge per week,

the amount of which would depend upon the maximum weight per month and the maximum number of deliveries per month for which the shipper would contract. In the event that the weight tendered or the deliveries made during a particular month should exceed said maxima the carrier would bill the shipper an additional charge per 100 pounds for the excess weight or per delivery for the excess deliveries. The proposed maximum tonnages range from 10,000 to 120,000 pounds per month; the maximum deliveries are from 150 to 1,850 per month; the corresponding weekly charges run from \$57.50 to \$420.00 and the excess charges per 100 pounds or per delivery range from \$1.90 in connection with the smallest weight bracket to \$1.40 for the largest bracket.

At the final hearing applicants introduced signed contracts with nine consignors in which the latter had agreed to various of the bases of charges herein proposed, said bases to become effective on the first day of the month following authorization by the Commission. Each contract also provides that it may be canceled by either party on 30 days' notice. Each contract is for a specific weight bracket. These brackets range all the way from the smallest to the greatest set forth in the application, depending upon the amount of tonnage the individual shipper is prepared to offer.

According to the testimony of the principal partner, the established minimum rates, rules and regulations are not suitable for the type of transportation in which applicants are engaged. Their service is largely in the nature of a parcel delivery service of automobile parts and supplies, and is one in which expedited handling and dispatch are usually essential.

Based on test periods in June, July and November of 1962, a monthly average total of approximately 317,000 pounds of freight was being delivered by applicants to all consignees. Under the

above-described nine contracts the maximum tonnage from just the nine shippers involved therein would be 540,000 pounds per month. Estimates made by the above-mentioned applicant partner of the tonnage currently handled from eight of these shippers total 213,000 pounds per month. While applicants have written contracts for only nine of the 26 warehouses at which they pick up auto parts, the partner indicated that if the application herein is approved they will proceed to obtain as many other contracts as they can.¹ According to the witness, the additional traffic which applicants would secure under the proposed rates is now being handled either by other for-hire carriers or by the shippers in their own vehicles.

Applicants' accountant testified regarding cost analyses which he had made of the transportation services here in issue. According to revised exhibits, introduced at the second hearing, operations under the proposed contracts would produce estimated revenue of 58.96 cents per mile, with full costs of 48.72 cents per mile, reflecting net revenue before income taxes of 10.24 cents per mile. Estimated operating results for a nine months' period would reflect operating revenue of \$87,067, operating expenses, including income taxes computed on a corporate basis, of \$76,478 and net revenue, after taxes, of \$10,589. These results reflect an estimated operating ratio, after taxes, of 87.8 percent. These latter figures are to be compared with actual results for the first nine months of 1962, as follows: operating revenues, \$59,131; operating expenses, \$53,261; net revenue of \$5,870 after income taxes computed on a corporate basis, and a corresponding operating ratio of 90.1 per cent.

¹ We here point out that relief from the minimum rate orders under Section 3666 of the Public Utilities Code is accorded highway contract carriers in connection with transportation services performed for specified shippers. Relief in connection with services for additional shippers would necessitate additional authority.

In developing his estimates of operating results under the proposed rates the accountant utilized the actual operating expenses for the first nine months of 1962, adjusted to reflect certain known increases in expense which had been experienced or would be incurred under the proposed operation. However, in most items the accountant contemplated no change. This is of particular note in connection with running expenses. He assumed, and the managing partner so testified, that there would be no increase in vehicle mileage under the proposed operation, although in certain of his exhibits the accountant further assumed that the number of deliveries per day would increase from the present average of 225 to approximately 280.

No evidence was adduced by parties other than applicants. Several highway carriers and California Trucking Association² opposed the granting of the application. Various parties, including members of the Commission's Transportation Division staff, assisted in the development of the record through examination of applicants' witnesses.

Several weaknesses in applicants' cost studies were disclosed. The most notable of these concerned the mileage to be operated under the proposed arrangement. Applicants expect to get from the nine warehouses with whom written contracts have been arranged substantially more tonnage than they currently secure altogether from the 26 consignors on whom they regularly call. Additionally, applicants anticipate that substantially more delivery stops will be made under the proposed rates than at present and plan

² California Trucking Association and United Parcel Service changed their appearances during the course of the hearings from interested party to protestant.

to employ two additional drivers. Moreover, the partner witness stated that if the application is granted there will necessarily be some rerouting of the carrier's trucks. These facts all point to a reasonable conclusion that if the authority is granted there will be substantial changes in daily mileage operated and that such mileage will be increased. This development in turn will result in increased running costs, with an adverse effect on the above-mentioned estimated operating results. It is reasonable to conclude, moreover, that an increase in the number of stops to be made would also result in augmentation of costs.

As hereinbefore mentioned, the contracts which applicants have secured for traffic under the proposed rates may be canceled on thirty days' notice. In the event a shipper, after some experience with the arrangement, were to find that he was tendering tonnage well below the maximum for which he contracted, he would undoubtedly cancel the contract after due notice and perhaps express willingness to enter into a new contract subject to a lower weekly charge and a correspondingly lower maximum monthly weight. Thus, there is actually no assurance that the monthly revenue represented by the contracts which applicants now have in hand would, in event of approval of the sought rates, be received by the carrier for a reasonable period, such as a year.

In sum the showing made by applicants with respect to revenues and costs under the proposed charges and the proposed plan of operation is too weak to support a finding that said proposed charges are reasonable. Additionally, no convincing evidence has been offered in support of the proposal to deviate from the requirement of Minimum Rate Tariff No. 2 that rates shall not be quoted or assessed based upon a unit of measurement different from that in which the applicable minimum rates are stated.

The record does not disclose that the circumstances surrounding applicants' operations are unusual, for which the established minimum rates are not suitable, or that said operations are unusually efficient. It appears that the proposed charges are merely a means by which applicants hope to substantially increase the volume of auto parts traffic which they are handling. This additional traffic would be obtained largely at the expense of other for-hire carriers whose loss would be occasioned, not because of better service by applicants, but due simply to lower charges.

Upon consideration, we find that:

1. The sought charges have not been shown to be compensatory.
2. The record is lacking in probative evidence for the proposed deviation from the requirement of Minimum Rate Tariff No. 2 that rates shall not be quoted or assessed based upon a unit of measurement different from that in which the minimum rates are stated.
3. The proposed charges have not been shown to be reasonable with respect to applicants' highway contract carrier operations, and have not been shown to be reasonable and in the public interest with respect to applicants' city carrier operations.

The application, as amended, will be denied.

ORDER

IT IS ORDERED that Application No. 44675, as amended, is denied.

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

Dated at San Francisco, California, this 4th day of JULY, 1963.

William D. Duggan
President
Robert E. Hutchings
Robert W. Bagg
George H. Grover
Fredrick B. Holmoff
Commissioners