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**ORIGINAL**

Decision No. \_\_\_\_\_

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 NICK SMITS TRUCKING, INC., a )  
 California corporation, for authority )  
 to charge less than minimum rates )  
 pursuant to Section 3666 of the )  
 Public Utilities Code, for the )  
 transportation of grain products )  
 and related articles for UNITED )  
 DAIRYMEN'S ASSOCIATION. )

Application No. 45663  
 (Filed August 8, 1963)

Plotkin, Cossman & Delk, by Leonard A. Delk, for  
 applicant.

James X. Quintrall, Arlo D. Poe and J. C. Kasper,  
 for California Trucking Association, interested  
 party.

Leonard Diamond and Fred P. Hughes, for the  
 Commission staff.

O P I N I O N

Applicant highway permit carrier seeks authority under Section 3666 of the Public Utilities Code to charge less than the minimum rates for certain transportation of animal or poultry feed in bulk for the United Dairymen's Association. The commodities involved are named in Lists Nos. 3, 4 and 5 in Items Nos. 652-1/2 and 652-3/4 of Minimum Rate Tariff No. 2. Specifically applicant seeks to apply the prescribed minimum rates on the basis of actual rather than constructive highway distances. Rates less than the minimum rates result.

A hearing was held before Examiner Lane at Los Angeles on September 18, 1963. The matter was taken under submission on October 1, 1963, upon receipt of a late-filed exhibit. Testimony in support of the application was presented by applicant's president, by a certified public accountant, and by the Assistant Manager of United Dairymen's Association. A representative of California

Trucking Association and members of the Commission staff assisted in the development of the record. No one appeared in opposition to the sought authority.

The traffic involved in this application originates at the United Dairymen's Association (United Dairymen) plant in Santa Fe Springs in Los Angeles County. It is destined to dairymen located in Los Angeles, Orange, Riverside and San Bernardino Counties. The plant of United Dairymen is located in the southern part of Santa Fe Springs at 15216 Carmenita Avenue (Road), about one quarter of a mile east of the easterly boundary of Norwalk and one quarter of a mile north of the northerly boundary of Dairy Valley, both in Los Angeles County. This request to deviate from the minimum rates is a consequence of the physical location of the United Dairymen's plant in Santa Fe Springs.<sup>1/</sup>

According to the record, the point of origin is located approximately 6½ miles southeast of the mileage basing point of Santa Fe Springs - the point from which constructive mileage distances are computed on shipments from the involved plant. Most of the points of destination are southerly of and in close proximity to the shipping point. Assertedly, because of the relationship of the mileage basing point to the location of the plant, the use of constructive mileages results in the application of unfair rates to many of United Dairymen's shipments.

Applicant's president asserted that for distances over 20 miles the application of constructive mileages did not create

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<sup>1/</sup> For some time prior to May 21, 1963, applicant had assessed the basis of rates here sought. By Decision No. 65439, dated May 21, 1963, in Case No. 7431, applicant's basis of charges was found to result in rates less than the established minimum in some instances, and applicant was directed to collect the undercharges and to pay a fine.

any problems; however, the difference in charges under constructive mileage distances and actual distances for the shorter hauls, he said, created unreasonable inequities. As an example, a shipment actually moving one mile between the plant and a point in Dairy Valley would involve 6 constructive miles under the application of the minimum rates.

According to the witness, applicant uses equipment specially designed to handle bulk shipments of feed. The equipment is loaded by gravity. It is fitted with elevating equipment for unloading which requires special structures at destination to receive the shipments. Assertedly, all of the points of destination involved in this application are so equipped. Applicant handles approximately 200 tons of the involved traffic per day, six days a week, the year around.

Applicant's president said that United Dairymen was the only shipper of feed in the area using for-hire equipment. Other such shippers in the area, he said, use proprietary equipment. He further stated that the difference between rates based on constructive highway mileages and actual mileages was sufficient in view of the small margin of profit per ton of feed to force the shipper to acquire and use proprietary equipment.

The certified public accountant testified with respect to applicant's results of operations. He stated that about 95 percent of applicant's transportation service was performed for United Dairymen, that this service had been profitable under the basis of rates sought and should be profitable in the future.

The Assistant Manager of United Dairymen testified that, because of the location of the plant, the use of constructive mileages created inequities in rates on shipments to points southerly

and westerly of the plant. He further testified that the directors of United Dairymen have insisted that they would convert to the use of proprietary equipment if the sought authority is denied.

The record shows that applicant has computed constructive mileages incorrectly for many of the movements involved in this application. In many such cases no difference in rates results from the application of the actual mileages proposed by applicant and constructive mileages established by the Commission. In yet other cases, the basis proposed by applicant actually results in higher rates than applicable through use of constructive mileages. In connection with the foregoing cases, no useful purpose would be served by granting the relief sought.

Applicant submitted for the record the address by house number, street and city of all of the points of destination for which relief is sought. A number of such points of destination are in Santa Fe Springs, thus the movements are intracity. As no minimum rates have been established for the involved traffic within Santa Fe Springs, no relief from minimum rates is required. In a number of other instances the street addresses given are not in the cities indicated. In particular in this connection, many addresses shown as being in Artesia and Norwalk are actually in Dairy Valley. Where appropriate, these matters will be corrected in the order which follows.

It is clear from the evidence that the use of constructive mileage distances as opposed to actual distances results in significant differences in rates. These differences appear in connection with movements under 20 actual miles and particularly in connection with movements under 5 actual miles. The evidence shows, also, that applicant has been able to operate at a profit under the sought

basis of rates and may reasonably be expected to operate at a profit under such basis of rates in the future.

Upon consideration of the evidence, the Commission finds that assessment of minimum rates based on mileages and between the points set forth in Appendix A are reasonable. In other respects the assessment of rates based on the proposed mileages has not been shown to be reasonable.

The Commission concludes that the application should be granted to the extent set forth in the ensuing order. However, as the conditions under which the service is performed may change at any time,<sup>2/</sup> the grant of authority herein will be made to expire at the end of one year. The Commission concludes, further, that in other respects the application should be denied.

O R D E R

IT IS ORDERED that:

1. Nick Smits Trucking, Inc., is hereby authorized to depart from the provisions of Minimum Rate Tariff No. 2 for the transportation of grain and grain products for United Dairymen's Association to the extent specifically provided in Appendix A which is attached hereto and by this reference made a part hereof.

2. The authority granted herein shall expire on November 30, 1964.

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<sup>2/</sup> Distance Table No. 5, which has been adopted by the Commission but not yet made effective, will provide a revised and expanded zone system in the general area herein involved.

3. In all other respects, Application No. 45663 is hereby denied.

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

Dated at San Francisco, California, this 19<sup>th</sup> day of NOVEMBER, 1963.

William L. Bennett  
President  
John E. Hittell  
George B. Brown  
George B. Brown  
Frederick B. Hallock  
Commissioners

APPENDIX A  
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Nick Smits Trucking, Inc., is authorized to use for transportation of commodities specified in Section II hereof for United Dairymen's Association from its plant at 15216 Carmenita Avenue (Road), Santa Fe Springs, to the addresses shown in Section I hereof, the distances shown in Section I opposite such addresses, in lieu of highway constructive mileage distances. (The street addresses shown are within or in close proximity to the community named in connection with each such address.)

Section I

From: 15216 Carmenita Avenue (Road), Santa Fe Springs

<u>To:</u>	<u>Distance in Miles</u>
17108 Gridley Rd., Artesia	4½
18511 Gridley Rd., Artesia	4½
12243 South St., Artesia	4
6751 Valley View Ave. (Miller St.), Buena Park	4½
9542 Valley View Ave. (Miller St.), Cypress	6
5111 Crescent Ave., Dairyland	4½
5232 Crescent Ave., Dairyland	4½
5161 La Palma Ave., Dairyland	3½
5271 La Palma Ave., Dairyland	4
7551 Moody St., Dairyland	3
7622 Moody St., Dairyland	3
7761 Moody St., Dairyland	3
7811 Moody St., Dairyland	3
8050 Moody St., Dairyland	3½
5312 Orangethorpe Ave., Dairyland	3
5362 Orangethorpe Ave., Dairyland	3½
7052 Walker St., Dairyland	3½
11221 Artesia Blvd., Dairy Valley	4½
11242 Artesia Blvd., Dairy Valley	4½
12444 Artesia Blvd., Dairy Valley	3
12811 Artesia Blvd., Dairy Valley	2
13129 Artesia Blvd., Dairy Valley	2
13239 Artesia Blvd., Dairy Valley	2
13630 Artesia Blvd., Dairy Valley	2½
13656 Artesia Blvd., Dairy Valley	2½

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<u>To:</u> (Continued)	<u>Distance in Miles</u>
13727 Artesia Blvd., Dairy Valley	2½
13841 Artesia Blvd., Dairy Valley	2
14106 Artesia Blvd., Dairy Valley	3
16203 Bloomfield Ave., Dairy Valley	2
16230 Bloomfield Ave., Dairy Valley	2
16624 Bloomfield Ave., Dairy Valley	2½
16723 Bloomfield Ave., Dairy Valley	3
16828 Bloomfield Ave., Dairy Valley	2½
17001 Bloomfield Ave., Dairy Valley	2½
17725 Bloomfield Ave., Dairy Valley	2½
17804 Bloomfield Ave., Dairy Valley	2½
17900 Bloomfield Ave., Dairy Valley	2½
16205 Carmenita Ave., Dairy Valley	1
16330 Carmenita Ave., Dairy Valley	1
16728 Carmenita Ave., Dairy Valley	1
17026 Carmenita Ave., Dairy Valley	1
17302 Carmenita Ave., Dairy Valley	2½
12214 Del Amo Blvd., Dairy Valley	4½
12408 Del Amo Blvd., Dairy Valley	4
12555 Del Amo Blvd., Dairy Valley	3½
16325 Greening Lane, Dairy Valley	2
17619 Marquardt Ave., Dairy Valley	2
17009 Norwalk Blvd., Dairy Valley	3
20122 Norwalk Blvd., Dairy Valley	5
16107 Shoemaker Ave., Dairy Valley	2
16218 Shoemaker Ave., Dairy Valley	2
16331 Shoemaker Ave., Dairy Valley	2
16410 Shoemaker Ave., Dairy Valley	2
16901 Shoemaker Ave., Dairy Valley	2½
12441 South Street, Dairy Valley	4
12860 South Street, Dairy Valley	4
12900 South Street., Dairy Valley	3½
13034 South Street, Dairy Valley	3½
13200 South Street, Dairy Valley	3
13252 South Street, Dairy Valley	3
2000 So. Bloomfield Ave., Dairy Valley	4
16103 Studebaker Rd., Dairy Valley	4
16200 Studebaker Rd., Dairy Valley	4
16332 Studebaker Rd., Dairy Valley	4
16404 Studebaker Rd., Dairy Valley	4
16415 Studebaker Rd., Dairy Valley	4
18001 Valley View Ave., Dairy Valley	4½
13128 - 166th Street, Dairy Valley	2
13500 - 166th Street, Dairy Valley	1½
13660 - 166th Street, Dairy Valley	1½

(Continued)



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<u>To:</u> (Continued)	<u>Distance in Miles</u>
12324 - 183rd Street, Dairy Valley	3½
12327 - 183rd Street, Dairy Valley	3½
12352 - 183rd Street, Dairy Valley	3½
12405 - 183rd Street, Dairy Valley	3½
12856 - 183rd Street, Dairy Valley	2½
13128 - 183rd Street, Dairy Valley	2½
12045 - 195th Street, Dairy Valley	4½
12160 - 195th Street, Dairy Valley	4½
7917 Speer Ave., Huntington Beach	15
5810 Palo Verde Ave., Lakewood	6
6036 Palo Verde Ave., Lakewood	6
6208 Palo Verde Ave., Lakewood	6
3210 South Street, Lakewood	9
5430 South Street, Lakewood	6½
14016 Imperial Hwy., Los Angeles County (near Santa Fe Springs)	3
19906 Pioneer Blvd., Los Angeles County (near Dairy Valley)	4½
8222 Moody St., Orange County (near Dairyland)	3½

Section II

Grain, Rice, Grain Products and Related Articles as described in:

List No. 3, Item No. 652-1/2, Fourth Revised Page 49-A, Minimum Rate Tariff No. 2;

List No. 4, Item No. 652-1/2, Fourth Revised Page 49-A, Minimum Rate Tariff No. 2; and

List No. 5, Item No. 652-3/4, Fifth Revised Page 49-B, Minimum Rate Tariff No. 2.

End of Appendix A