

ORIGINAL

Decision No. 67431

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432  
Petition for Modification  
No. 334  
(Filed March 30, 1964)

Berol, Loughran & Geernaert, by Frank Loughran,  
for petitioners.  
C. D. Gilbert, H. F. Kollmyer and A. D. Poe, for  
California Trucking Association, protestant.  
Arthur F. Burns, for the Commission staff.

O P I N I O N

This petition was heard and submitted May 11, 1964 before Examiner Thompson at Napa. Copies of the petition and the notice of hearing were served in accordance with the Commission's procedural rules. California Trucking Association appeared as protestant.

Petitioners (there are twenty of them) are highway permit carriers engaged in transporting building blocks for Basalt Rock Company, Inc. (hereinafter called Basalt) from its plants in Napa and French Camp to points and places in Northern California. They request the Commission to establish in Minimum Rate Tariff No. 2 an exception rating on building blocks to provide a minimum weight of 40,000 pounds at the applicable truckload rating. The present minimum weight applicable thereto is 45,000 pounds.

During the hearing, petitioners requested that an alternate proposal be considered by the Commission. It was stated that

petitioners preferred that they individually be authorized, pursuant to Section 3666 of the Public Utilities Code, to charge for the transportation of building blocks for Basalt the rates that were prescribed in Minimum Rate Tariff No. 2 on January 17, 1964.<sup>1/</sup> California Trucking Association did not protest the alternate proposal. It urged the Commission to give consideration to it rather than to the request for the establishment of the exception rating. Because of the unusual circumstances in this matter, which will be related later herein, the examiner ruled that evidence relative to both the relief sought in the petition and that in the alternate proposal would be received and the matters referred to the Commission.

The twenty petitioners are, and for considerable time have been, engaged by Basalt to transport building blocks. Except for one petitioner, who testified that he had transported a few shipments for a person at Lake Tahoe, the only transportation performed by the petitioners is for Basalt. Twelve of them operate out of Basalt's plant at Napa and eight operate out of the plant at French Camp. The average length of service for Basalt of the carriers operating out of Napa is eleven years and for those operating out of French Camp is eight years. One of the petitioners has performed transportation for Basalt for 23 years. Except for the circumstances that the petitioners own their equipment and perform services as independent contractors, to outward appearances their relationships with Basalt are similar to employer-employee relationships. Basalt employees dispatch the carriers on a

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<sup>1/</sup> On January 18, 1964, the changes in minimum rates established by Decision No. 66453 in Case No. 5432 became effective. As it pertains to the rates on building blocks, that decision increased the truckload minimum weight from 40,000 pounds to 45,000 pounds and, in general, reduced the rates in cents per one hundred pounds for truckload shipments.

seniority basis and the management endeavors to apportion the shipments among the carriers in a manner that each will have his share of the high revenue producing hauls.

The circumstances that caused petitioners to initiate this proceeding are: (1) By Decision No. 66453 the Commission changed the minimum truckload weight on building blocks from 40,000 pounds to 45,000 pounds effective January 18, 1964; (2) except for two of the petitioners, none of them has equipment that can legally carry 45,000 pounds of building blocks; (3) the cost of modifying their equipment or of purchasing new vehicles capable of carrying 45,000 pounds of building blocks is so great that the investment would not be a prudent one; and (4) Basalt has informed them that it will continue to engage them and will pay charges based upon 45,000 pounds pending a determination of this proceeding but, because it must meet competition from others in the building material market, if the issue is decided by the Commission unfavorably to petitioners, Basalt will have to tender shipments of 45,000 pounds or more. In that event petitioners would either have to modify their equipment or no longer perform the transportation.

It should be pointed out here that all of petitioners' vehicles can lawfully carry cargo weighing in excess of 45,000 pounds. In fact, when transporting a 40,000 pound shipment of building blocks, the shipment together with the implements for handling the shipment weighs about 47,000 pounds. The implements include a forklift truck, the pallets on which the blocks are loaded and transported and the running board and other gear required to load and unload the forklift truck from the trailer. In order to transport a 45,000 pound shipment of building blocks the carriers' equipment must be capable of transporting well over 52,000 pounds.

The sales manager of Basalt testified that there are nine major manufacturers of building blocks in Northern California with whom Basalt competes. All of those competitors transport their shipments in proprietary vehicles. Almost all of the petitioners have been performing service for Basalt for long periods of time. The sales manager testified that the quantities of building blocks involved in sales to contractors and to retail sales outlets are such that Basalt can make its shipments in quantities of 45,000 pounds or even more. It has been Basalt's practice to make its shipments in quantities that will provide the carriers with full truckloads. It treats each truckload as a separate shipment because it tenders truckloads to the petitioners under a rotation system. In March, Basalt became aware that the minimum rates had been changed on January 18, 1964 to provide a minimum weight of 45,000 pounds on building blocks. At that time it had been paying the carriers at the truckload rate without protecting the 45,000 pound minimum weight. It has revised the billings and has paid the undercharges. Basalt wishes to assist the petitioners, is continuing the use of their services during the pendency of their petition and is paying them the charges prescribed for 45,000 pounds even though the shipments weigh less than that amount. The sales manager said that, even though a close relationship exists between Basalt and the petitioners, economic circumstances will prevent Basalt from continuing this practice if the relief sought by petitioners is denied.

Several petitioners testified regarding their plight.<sup>2/</sup>

In addition to the facts and circumstances related above, they

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<sup>2/</sup> It was stipulated among the parties that the other petitioners if called as witnesses would testify substantially the same as the petitioners who were called.

said that they were familiar with the manner in which common brick is transported and that ordinarily shipments of brick and shipments of building blocks destined to construction sites and to retail sales yards are handled virtually in the same manner; that is, both are handled on pallets, the shipper loads the trucks with the palletized shipments with a forklift and the carrier has a forklift which he carries on his equipment and with which he unloads the shipments at destination.

A traffic consultant regularly retained by Basalt testified that he had rated the freight bills on all shipments transported by petitioners during the month of October 1963 to determine the revenue effect of the proposal in the petition and of the alternate proposal. Using the charges under the alternate proposal (truckload rates, subject to minimum weight of 40,000 pounds in effect on January 17, 1964) as a base, he found that the charges at the present rates, subject to minimum weight of 45,000 pounds, would increase the total revenues of the twenty carriers as a whole by \$442.95 per month. Assuming that this additional revenue were to be shared equally among the petitioners, the present rates would increase each carrier's earnings by \$265.78 per year. The proposal in the petition (present 45,000 pound truckload rates, subject to a minimum weight of 40,000 pounds) would have the effect of providing \$5,315.45 less per month to the petitioners as a group than the revenue computed under the alternate proposal.

The traffic consultant also compared the transportation characteristics of Basalt's building blocks with common brick and compared the minimum rates prescribed by the Commission for the transportation of those commodities. He showed that Basalt's

building blocks have about the same weight density as common brick and have a value per pound somewhat less than brick. Common brick is subject to a truckload rating of Class E, minimum weight 40,000 pounds, which is the same rating sought by the petition.

A certified public accountant testified that he had examined the books and income tax returns of petitioners. Exhibit 2 sets forth the results of operations for 1963 of four of petitioners operating out of Napa and of three that operate out of French Camp. The accountant stated that he had selected these seven petitioners from the twenty in order to show the results of some carriers having higher than usual depreciation expenses, some carriers having higher than usual maintenance expenses, one carrier that employs a driver, the carrier that performed transportation in addition to that performed for Basalt and one carrier that started hauling for Basalt in May 1963. He said that the results of operations of the other petitioners would be no worse than those reflected in Exhibit 2. The exhibit shows that all of the seven carriers operated at a profit. The average income earned was about \$10,000.

This matter involves very unusual circumstances. It is readily apparent that petitioners do not wish to be forced into the position of making capital investments of at least \$4,000 or else lose their "jobs". This is understandable in view of the showing that the additional annual gross revenue that would be earned from such investment would only be about \$300. On the other hand, the shipper in order to continue to use the services of petitioners is willing to pay a higher transportation cost per 100 pounds than it could obtain by engaging other carriers at the present minimum

rates.<sup>3/</sup> Basalt is the only manufacturer of building blocks in Northern California regularly engaging the services of for-hire carriers. That does not mean necessarily that the shipments from Basalt are the only truckload shipments of building blocks moving in this State, or for that matter, within Northern California.

While there is evidence that the truckload minimum weight for building blocks should not be greater than that of common brick it is not necessarily determinative. The comparisons herein relate only to products manufactured by Basalt. It is within the knowledge of the Commission that building blocks are manufactured, distributed and marketed in Southern California and that they are made from many kinds of aggregate. The proposal set forth in the petition would lower the minimum weights on all truckload movements of building blocks in California.

From the evidence we find:

1. Favorable transportation conditions, including the loading of palletized cargo by the shipper and the waiving of any claim for loss or damage as the result of normal handling by the carriers, result in favorable operating conditions.
2. The rates in the alternate proposal are compensatory.
3. Unless the authorities sought are granted petitioners will be required either to make imprudent capital investments or to lose the traffic that they have enjoyed for many years.

3/ The following is a comparison of the present rates with those in effect on January 17, 1964:

<u>Distance in Miles</u>		<u>Present</u>	<u>Jan. 17, 1964</u>
<u>Over</u>	<u>Not Over</u>	<u>(min. wt. 45,000)</u>	<u>(min. wt. 40,000)</u>
20	25	14 <sup>50</sup>	13 <sup>00</sup>
45	50	17	13
90	100	22	25
140	150	27	30
170	200	32	35

4. The rates in the alternate proposal are reasonable for transportation of building blocks by petitioners for Basalt.

5. All persons served with a copy of the petition and who were served with the Commission's notice of hearing attended and participated at the hearing.

6. There are no persons known by the Commission to have an interest in the issues presented in the alternate proposal that would not be interested in the issues set forth in the petition.

7. The parties to this proceeding did not object to the consideration of the alternate proposal by the Commission on the basis of the record made at the hearing and those parties waived any right to advance notice of the alternate proposal.

Based on the foregoing findings of fact we conclude that petitioners should be authorized to charge the rates specified in the alternate proposal and that further proceedings for the purpose of hearing evidence on an amended petition that would incorporate the alternate proposal are unnecessary.

O R D E R

IT IS ORDERED that:

1. Sam Clerici, Tom C. Cramer, Frolly F. Crumpton, Helen B. Ellington, Joe Flax, Robert Guck, M. E. Kenyon, Rudolph Maynard, Frank Noceti, Arthur Savano, Ferd Silva, Lloyd Tyler, and each of them, are authorized to transport building blocks in truckload shipments for Basalt Rock Company, Inc., from the latter's plant at Napa to points and places in California at rates lower than the minimum rates but no lower than the rates set forth in Appendix A attached hereto and by this reference made a part hereof.

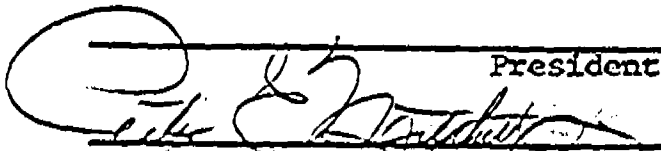
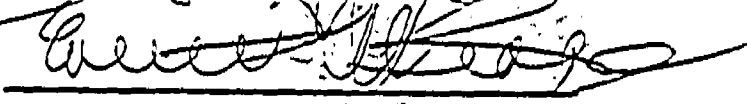

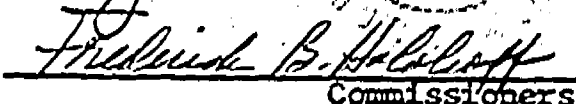


2. Gilbert Behlen, Gertrude Ferrara, administratrix for the estate of A. B. Ferrara, Andrew J. Kookan, Robert Morgan, James McCafferty, Melvin McCafferty, Edgar Stanful, Ynes C. Zavala, and each of them, are authorized to transport building blocks in truckload shipments for Basalt Rock Company, Inc., from the latter's plant at French Camp to points and places in California at rates lower than the minimum rates but no lower than the rates set forth in Appendix A.

3. The authorities granted herein shall expire on July 31, 1965 unless sooner modified, canceled or extended by the Commission.

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

Dated at San Francisco, California, this 23rd day of June, 1964.

  
 \_\_\_\_\_ President  
  
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 \_\_\_\_\_ Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A  
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Schedule of Minimum Rates for  
the Transportation of Building Blocks  
for Basalt Rock Company, Inc.

Section 1

Item 10 Application of Rates - General

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

Section 2

Item 20 Application of Rates - Commodity

Rates in this section apply to the transportation of building blocks as described in Item No. 32040 of National Motor Freight Classification A-7.

Item 30 Application of Rates - Territory

Rates in this section apply only between the plants of Basalt Rock Company at Napa and at French Camp, on the one hand, and points and places in California, on the other hand.

Item 40 Surcharges

Rates in this section are subject to the provisions set forth in Supplement No. 63 to Minimum Rate Tariff No. 2.

Item 50 Rates in Cents Per 100 Pounds  
Minimum Weight 40,000 Pounds

<u>Miles</u>		<u>Rate</u>	<u>Miles</u>		<u>Rate</u>
<u>Over</u>	<u>Not Over</u>		<u>Over</u>	<u>Not Over</u>	
0	3	8-3/4	90	100	25
3	5	9-1/4	100	110	26
5	10	10	110	120	27
10	15	11	120	130	28
15	20	12	130	140	29
20	25	13	140	150	30
25	30	14	150	160	31
30	35	15	160	170	32
35	40	16	170	180	33
40	45	17	180	190	34
45	50	18	190	200	35
50	60	19	200	220	36
60	70	20	220	240	37
70	80	21	240	260	38
80	90	23	260	280	40

(Continued)

APPENDIX A  
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Item 50 Rates in Cents Per 100 Pounds  
Minimum Weight 40,000 Pounds (Continued)

<u>Miles</u>		<u>Rate</u>	<u>Miles</u>		<u>Rates</u>
<u>Over</u>	<u>Not Over</u>		<u>Over</u>	<u>Not Over</u>	
280	300	44	1000	1050	99
300	325	46	1050	1100	102
325	350	48	1100	1150	105
350	375	50	1150	1200	108
375	400	52			
400	425	53			
425	450	55			
450	475	57			
475	500	59			
500	525	61			
525	550	63			
550	575	65			
575	600	67			
600	625	69			
625	650	71			
650	675	74			
675	700	76			
700	725	78			
725	750	80			
750	775	82			
775	800	85			
800	850	88			
850	900	90			
900	950	93			
950	1000	96			