

ORIGINALDecision No. 71565

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 DALLAS H. BLACK under Section 3666
 of the Public Utilities Code of the
 State of California for Authority
 to Charge Rates Less than Those
 Prescribed in Minimum Rate Tariff
 No. 2 and Distance Table No. 5 for
 the Transportation of Cement Pipe
 and Related Articles from Fresno,
 California, to Various Points of
 Destination in California for the
 Account of FRESNO CONCRETE PIPE CO.

Application No. 48593
 (Filed July 1, 1966)

William H. Kessler, for applicant.
C. D. Gilbert, H. F. Kollmyer and A. D. Poe, for
 California Trucking Association, interested
 party.
R. W. Stich and Joseph C. Matson, for the
 Commission staff.

O P I N I O N

Dallas H. Black (Black), an individual operating as a high-
 way permit carrier, seeks authority to charge less than the estab-
 lished minimum rates for the transportation of cement pipe, cement
 pipe with metal valves attached, and metal gate valves, for Fresno
 Concrete Pipe Co., to points within 50 actual miles of Fresno. Black
 also requests that final determination of Case No. 8372 (an investi-
 gation involving rates assessed by Black to Fresno Concrete Pipe Co.)
 be withheld until the instant proceeding is decided; and that a
 finding be made herein that rates assessed by Black, as covered in
 the investigation in Case No. 8372, were reasonable.

Public hearing in Application No. 48593 was held before
 Examiner Mallory in Fresno on August 30, 1966. The matter was sub-
 mitted subject to the filing of three late-filed exhibits on or
 before September 15, 1966. Said exhibits have been received.

Specifically, applicant seeks to charge, for the future, rates on the levels assessed to Fresno Concrete Pipe Co. in 1964 and 1965, the period covered by the investigation in Case No. 8372. Said rates are the Class E rates in Minimum Rate Tariff No. 2 in effect during the period December 29, 1963 through January 17, 1964, based on actual, rather than constructive, mileages.

Evidence in support of the less-than-minimum rates sought for the future was presented by three witnesses appearing for applicant. ^{1/} Applicant testified concerning his carrier operations. Applicant stated that he has transported all or nearly all of the concrete pipe manufactured by Fresno Concrete Pipe Co. since 1960. The pipe hauls are seasonal in nature, occurring in the 8-month period from September through April. Applicant stated that he assigns three units of equipment to the pipe haul. Said equipment has special beds of steel to facilitate handling of the pipe. In the off-season from the pipe haul, such equipment is occasionally used to transport hay or poultry, but generally remains idle.

Applicant testified that the concrete pipe is used exclusively as irrigation pipe and deliveries are made to farms located within a 50-mile radius of Fresno. The pipe is loaded by the consignor with fork-lift and driver furnished without cost to applicant. The pipe is strung at destination along trenches prepared for the receipt of the pipe. Unloading is performed by rolling the pipe off the vehicle bed. No loss or damage occurs.

Applicant also testified that he conducts operations as a cement carrier, hauling cement in bulk to Fresno Concrete Pipe Co.,

^{1/} Applicant did not present evidence or argument relating to his request for retroactive rate relief, and such request is considered to be abandoned herein. Decision No. 71420, dated October 18, 1966, in Case No. 8372, found that Black had violated the provisions of Minimum Rate Tariff No. 2 with respect to shipments of concrete pipe in 1964 and 1965, and directed collection of the undercharges thereon.

and hauls live poultry during the summer months. He stated that the poultry hauls are normally conducted with separate equipment from his pipe hauls. Poultry hauls account for more than 50 percent of his revenues.

Applicant's bookkeeper and rate clerk presented evidence concerning the revenues and expenses attributable to pipe hauling for the calendar years 1964 and 1965 (Exhibit 2). Exhibit 2 indicates an operating ratio of 98.4 percent in 1964 and 83.9 percent in 1965.

This witness explained that operating expenses for the pipe haul were based on the percentage that revenues for pipe hauling bear to the total revenues for all operations. These percentages were approximately 18 percent for 1964 and 21 percent for 1965. The witness stated that drivers were paid on the basis of \$2.00 per hour in 1964 and 1965, and are being paid in 1966 on the basis of \$2.25 per hour. No provision was made in Exhibit 2 to reflect such increased wages.

The expenses attributable to pipe hauling do not include any provision for salary for Black, who devotes substantially all of his time to the carrier operations. The witness estimated that a reasonable amount for this purpose would be \$7,500 per year, of which expense approximately 20 percent should be allocated to pipe hauling.

This witness and Black also testified that Black drives one of the vehicles used in pipe hauling on the average of one day per week. No provision was made in Exhibit 2 for driver's wages when Black operates the equipment.

Late-filed Exhibit 4 shows that the proposed rates would result in a 21.57 percent reduction in revenues from charges applicable under the minimum rates. Late-filed Exhibit 6 shows that for the period January 1, through June 30, 1966, there would be an excess

of revenues over expenses of \$1,014.73, under the rates proposed herein.

The president and principal stockholder of Fresno Concrete Pipe Co. testified that his company competes in its marketing area with several other manufacturers of concrete irrigation pipe; that all of said competitors operate their own equipment; that in discussions with representatives of said companies, the representatives indicated that they believe that lower transportation costs are incurred through ownership of trucking equipment; and that Fresno Concrete Pipe Co. would give consideration to purchasing and operating its own trucking equipment if the relief sought herein is not granted.

Discussion, Finding and Conclusion

The Commission has consistently held that essential to a finding that a proposed less-than-minimum rate will be reasonable is a finding that services under the sought rate will be compensatory.^{2/}

Concerning the compensatory nature of the sought rates, applicant relies herein upon a showing of revenues and expenses attributable to his concrete pipe hauling for the years 1964 and 1965 (Exhibit 2) and for the first six months of 1966 (Exhibit 6). There are numerous deficiencies in this showing. No provision was made in Exhibit 2 for known increases in costs, such as increases in drivers' wages, and no amount was shown in Exhibits 2 and 6 to compensate for the services of managing and driving performed by Black. Depreciation expenses for equipment are understated.^{3/} Moreover, the method used to allocate overall expenses (percentage of revenue) does not produce the actual expenses incurred for any particular services performed by applicant.^{4/} In addition, revenues for the year 1965 shown in

2/ Paper Transport, 63 Cal. PUC 690; Karl A. Weber, 60 Cal. PUC 59, 60.

3/ The record shows that equipment depreciation expenses cover only the three units used in pipe hauling; and that only 18 percent in 1964 and 20 percent in 1965 of the full depreciation expenses for said units are included in Exhibit 2, even though said units are used almost exclusively for pipe hauling.

4/ The proportion of expenses allocated to pipe hauling in 1964 was 18 percent and in 1965 was 21 percent (Exhibit 2). This proportion was 49.6 percent for the first six months of 1966 (Exhibit 6).

Exhibit 2 were overstated, because for a portion of that year rates higher than the proposed rates were assessed for pipe hauling.

Applicant has not sustained the burden of proof that the less-than-minimum rates proposed in the application herein would be compensatory for a future period. In the circumstances, the Commission finds that applicant has not made a showing that the rates proposed in Application No. 48593 are just and reasonable and concludes that the application should be denied.

ORDER

IT IS ORDERED that Application No. 48593, filed by Dallas H. Black, is hereby denied.

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

Dated at San Francisco, California, this 22nd day of NOVEMBER, 1966.

[Signature]

President

[Signature]

[Seal]

[Signature]

Commissioners

Commissioner George G. Grover did not participate in the disposition of this proceeding.

Commissioner Frederick B. Roleboff, being necessarily absent, did not participate in the disposition of this proceeding.