

**ORIGINAL**

Decision No. 71987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
LEE KUYKENDALL, EUGENE HARNSBERGER, )  
SALVATORE DANNA and ROBERT M. )  
WILLIAMS for authority to depart )  
from the minimum rates, rules and )  
regulations of Minimum Rate Tariff )  
No. 7, pursuant to the provisions )  
of Section 3666 of the Public )  
Utilities Code for transportation )  
performed for MISSION VALLEY ROCK )  
CO. )

Application No. 48851  
(Filed October 10, 1966;  
Amended December 6, 1966)

Handler, Baker & Greene, by Daniel W. Baker,  
for applicants.  
E. O. Blackman, for California Dump Truck  
Owners Association, protestant.  
Richard W. Smith, H. F. Kollmyer and A. D.  
Poe, for California Trucking Association,  
interested party.  
Joseph C. Matson and Robert W. Stitch, for  
the Commission staff.

O P I N I O N

Applicants seek authority to depart from the provisions of Minimum Rate Tariff No. 7 for transportation performed for Mission Valley Rock Co. An Amendment to Application was filed December 6, 1966, deleting applicant Eugene Harnsberger and inserting applicant James E. Swift.

A public hearing was held before Examiner O'Leary at San Francisco on December 16, 1966, and the matter was submitted.

Applicants are highway permit carriers engaged in the transportation of sand and gravel for Mission Valley Rock Co. from its quarry near Sunol to the plant of Berkeley Ready Mix Co. at Berkeley. Applicants request authority to assess a rate of 90 cents per ton for said transportation.

Evidence in support of the sought authority was presented by three witnesses testifying for applicants. The general manager of Mission Valley Rock Co. testified that the cost of transportation is a major factor in the marketing of his company's product. He further testified that competitors of Mission Valley Rock Co. can obtain transportation at lower costs since the quarries of the competing companies are all served by rail facilities and under the alternative application provision contained in Minimum Rate Tariff No. 7 can take advantage of rail rates which are lower than the rates contained in Minimum Rate Tariff No. 7. Mission Valley Rock Co. cannot utilize rail rates since the quarry near Sunol is not served by rail facilities. Under the proposed operation Mission Valley Rock Co. will supply trailers which are to be pulled by applicants' tractors. The trailers will be supplied at no cost to applicants. The witness testified further that if the sought authority is not granted his company would consider obtaining its own equipment to perform the transportation.

An accountant presented evidence concerning the anticipated revenues and expenses of applicants under the proposed operation (Exhibit 2). This witness testified that the exhibit was based upon an examination of applicants' records and income tax returns. The expenses shown are based upon the operation of tractors only, since all expenses attributable to the trailers will be borne by the shipper. The study does not contain any provision for salaries for applicants while engaged in driving and performing maintenance on their equipment. It was stipulated that the applicants spend from 90 to 100 hours a year maintaining their equipment.

Applicant Kuykendall testified that he drives his own equipment and does not employ drivers or subhaulers. Normally, four loads a day are transported; however, on occasion five loads are transported. It normally takes two hours to complete a round trip. This witness further testified that under the proposed operation he will not incur any billing expense, since Mission Valley Rock Co. will send him a check weekly with an itemized statement of the transportation performed. He also testified that he will not be responsible for the maintenance of trailers in the proposed operation.

The three other applicants did not testify. It was stipulated that their testimony would be similar to that given by applicant Kuykendall.

Discussion, Finding and Conclusion

This Commission has consistently held in applications seeking deviations from minimum rates that a showing that the proposed rates will exceed the costs of providing the service is indispensable to the requisite finding that the proposed rates are reasonable.<sup>1/</sup>

Applicants contend that the cost study (Exhibit 2) is based upon actual costs of providing the service. Applicants also contend that because they drive their own equipment and drivers are not employed, drivers' wages are not a cost factor to be

---

1/ Paper Transport, 63 Cal.P.U.C. 690.

A. 48851 sk \*

considered in this proceeding. The fact that drivers are not employed does not eliminate the expense of services of a driver. Driving and maintenance of equipment are elements of cost and provision must be made for them in determining the total expenses attributable to the operation.

The Commission finds that applicants have not shown that the proposed rates will exceed the cost of providing the service and therefore have not sustained the burden of proof that the proposed rate is reasonable and concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 48851 is denied.

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

Dated at San Francisco, California, this 7th day of FEBRUARY, 1967.

*Edmund J. Mitchell*  
President  
*William G. Beard*  
*Augustus*  
*William Squares, Jr.*  
*Paul P. Morrison*  
Commissioners