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ORIGINAL

Decision No. 72211

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ADOLPH Q. TOLEDO and CHARLES B.)
TOLEDO, doing business as TOLEDO)
TRUCKING, under Section 3566 of the)
Public Utilities Code of the State)
of California, for authority to)
charge rates less than those pre-)
scribed in Minimum Rate Tariff)
No. 2 for the transportation of)
hides from Stockton, California, to)
Modesto, California, and empty con-)
tainers returning, for the account)
of UNION HIDE - VALLEY CO., and to)
establish and charge for the)
transportation of heretofore unrated)
poultry processing plant offal rates)
prescribed in Minimum Rate)
Tariff No. 2 for the transportation)
of Tankage, N.O.I., for the account)
of MODESTO TALLOW CO.)

Application No. 47998
(Filed October 25, 1965)

William H. Kessler, for applicant.
A. D. Poe and R. W. Smith, for California Trucking
Association, interested party.
R. J. Carberry, J. C. Matson and George M. Morrison,
for the Commission staff.

OPINION ON REHEARING

The application herein was filed on October 25, 1965.
Applicant sought minimum rate and documentary deviations on the
transportation of hides from Stockton to Modesto and on waste from
poultry processing plants within the City of Modesto and between
Turlock and Oakdale and Modesto.

By Decision No. 70647, dated May 3, 1966, the sought authority was denied. Toledo petitioned for rehearing. Rehearing was granted on July 12. On October 10, 1966, rehearing was held before Examiner Power in San Francisco and submitted.

The last two sentences of Decision No. 70647 read as follows:

"In the circumstances, the Commission finds that the relief sought in the application has not been justified. The Commission concludes that the application should be denied."

Applicants' burden on rehearing was to present evidence which, with the evidence already in the record, would overcome the above finding and conclusion.

The evidence at the rehearing consisted of testimony by Adolph Toledo, a profit and loss statement (Exhibit No. 6), a personal income tax statement (Exhibit No. 5), and a tariff page.

Toledo testified that nine-tenths of his business was included in three operations. The first, for Modesto Tallow Co., is the transportation of waste from poultry plants in Turlock, Modesto and Oakdale to a plant in Modesto where the waste is processed into a feed. The second is the transport of green hides from a slaughterhouse in Stockton to the Union Hide - Valley Co. in Modesto. The third is transport of processed hides from the Modesto plant to the Port of Stockton. This last is a movement in interstate or foreign commerce.

The financial information presented indicates an over-all profit in operations. It is not, however, assigned to particular operations and therefore is of little probative value. This deficiency of the documentary evidence was not cured by the oral testimony.

The Commission requires a showing that rates are compensatory (Paper Transport, 63 Cal.P.U.C. 690, 694). The old evidence, weighed with the new, fails to satisfy this requirement. The minimum rate deviations requested in the original and amended applications must be denied.

Applicants' request in connection with the hide traffic from Stockton to Modesto is for an exemption from the Commission's multiple lot rule, Item No. 85 of Minimum Rate Tariff No. 2. This is a protective rule to obstruct a potential means of evading the minimum rates. In connection with the transport of hides some of the reasons for this rule do not exist. It is therefore advisable to consider the conditions under which green hides are transported.

In the first place, hide transport is a programmed and coordinated operation. A gang of men to handle the hides must be available. As a result, the trucks must be present at certain times. The hides must be in the processing plant within eight hours of the time at which they are stripped from the animal, otherwise spoilage can occur. It is obvious that, while the exact number of hides cannot be tendered to carrier before shipment, the number of animals programmed to be killed is known and the carrier must be notified of this amount so that sufficient equipment can be provided. If this is not done, the whole operation may be rendered unprofitable.

Without belaboring the point, it is readily apparent that the traffic in green hides has many unique features which distinguish it from ordinary traffic. It is at this ordinary traffic that Item No. 85 is aimed. It appears that the deviation requested should be allowed.

Applicants also had another request in connection with the hide transportation. It seems that there is a regulation issued by the California Highway Patrol requiring that green hides be transported in waterproof bins. The hides would drip blood on the highway unless so packed. They also serve to provide a degree of protection to the carrier's own equipment.

The Commission's Minimum Rate Tariffs provide rates for such things as pallets and empty containers returning. Bins are similar to these, especially to containers, in some of their characteristics. The bins are removable and they do contain the cargo. There are also certain differences which have been noted.

If the bins are treated as containers, applicants' request would involve a showing that the traffic is compensatory. As was pointed out in connection with the movement of chicken waste this has not been done. However, in view of the differences pointed out above, the possible benefits to the carrier resulting from use of the bins and other potential economies, the Commission will authorize the deviation for a period of six months to give applicants an opportunity to make a further showing.

The Commission finds that:

1. Applicants have failed to show that the rates proposed for the transportation of waste material from the processing of poultry are compensatory.
2. In the transportation of green hides from Stockton to Modesto the protection afforded to the rates in Minimum Rate Tariff No. 2 by Item No. 85 of that tariff is not necessary.

The Commission concludes that the application should be granted in part as provided by the following order.

O R D E R

IT IS ORDERED that:

1. Adolph Q. Toledo and Charles B. Toledo are authorized to deviate from the rules and regulations set forth in Minimum Rate Tariff No. 2, to the extent set forth in Appendix A, hereto attached, in the transportation of green hides from Stockton to Modesto.

2. The authority granted herein will expire one year after the effective date of this order, unless sooner canceled, changed or extended.

3. Adolph Q. Toledo and Charles B. Toledo are authorized to furnish carrier owned bins for the transportation referred to in paragraph 1 of this order for a period of six months after the effective date hereof.

4. A further public hearing will be scheduled in this proceeding at such time as applicants are prepared to proceed for the receipt of additional evidence relating to the furnishing of carrier owned bins.

5. Except insofar as relief is granted by paragraphs 1 and 3 and Appendix A hereof, Application No. 47998 is denied.

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

Dated at San Francisco, California, this 28th day of MARCH, 1967.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

APPENDIX A

Carrier: Adolph Q. Toledo and Charles B. Toledo,
dba Toledo Trucking.

Shipper: Union Hide - Valley Co.

Commodity: Hides, Green - Minimum weight 36,000 pounds. From
Stockton to Modesto.

Conditions:

1. Rate is not subject to Paragraph (a) 1. of
Item 85 of Minimum Rate Tariff No. 2.
2. Written shipping instructions shall be
furnished by Union Hide - Valley Co. to
the carrier within a period of two (2)
calendar days (excluding Saturdays,
Sundays, and legal holidays) of the date
on which the first lot is picked up. The
written instructions shall confirm oral
shipping instructions and shall describe
the kind and quantity of property in the
multiple lot shipment.
3. Within a period of two (2) calendar days
(excluding Saturdays, Sundays, and legal
holidays) of the date on which it receives
the written shipping instructions, the
carrier shall issue to Union Hide -
Valley Co. the single multiple lot
document required by Paragraph (a) 3. of
Item 85, Minimum Rate Tariff No. 2.