

**ORIGINAL**

Decision No. 73676

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
ROCKO TRANSPORTATION, INC., a corpora-  
tion, for authority to depart from the  
rates, rules and regulations of  
Minimum Rate Tariff No. 2, under the  
provisions of the Highway Carriers' Act

Application No. 49555

(Filed July 21, 1967)

Raymond F. Feist, for Rocko  
Transportation, Inc., applicant.  
W. A. Dillon, J. C. Kaspar and  
A. D. Poe, for the California  
Trucking Association, interested  
party.  
Frank Haymond and Ralph Staunton,  
of the Commission's staff.

O P I N I O N

Applicant is engaged in the business of transporting property as a for-hire carrier pursuant to permits from this Commission authorizing operations as a radial highway common carrier, a highway contract carrier and a city carrier. By this application it seeks authority to transport quarried rock at a lesser rate than that which applies as minimum for the transportation involved. Said transportation consists of the movement of quarried rock (and stone) for Silberberger Constructors, Inc., from a quarry (Twin Oaks Quarry) in the San Marcos Mountains, northerly and easterly from Vista, San Diego County, to Dana Point Harbor, Orange County -- a distance of about 51 miles -- where the rock is being used for the construction of a jetty.

Applicant states that it had entered into an agreement with the shipper, Silberberger Constructors, Inc., to perform the transportation by dump truck equipment at a rate of \$2.28 per ton, assertedly the applicable minimum distance rate under the provisions of Minimum Rate Tariff No. 7. Applicant further states, however, that the pieces of rock which are being transported range in size from 50 to 24,000 pounds per piece and that experience has shown that it is impractical and unsafe to haul the larger pieces of rock in dump truck equipment. Hence, in order to prevent unnecessary damage to the vehicles and to observe safety standards for hauling over the public highways, applicant has been using flatbed vehicles for the hauling of the larger pieces of rock.

The transportation of rock by flatbed equipment is subject to the minimum rates and regulations in the Commission's Minimum Rate Tariff No. 2. Said rates are higher for the transportation involved herein -- being in excess of \$4.00 a ton. The authority which applicant is seeking in this matter is authority to transport rock by flatbed equipment at the same rate as that which is assessed for the transportation in dump truck equipment, namely, \$2.28 a ton.

By Decision No. 72930 dated August 15, 1967, applicant was authorized by an interim opinion and order to assess the sought rate of \$2.28 per ton for a period of six months pending further investigation and hearing on the request. The authority was granted upon the basis of data indicating that the transportation could be performed at a cost of \$1.79 per ton and that

the transportation could reasonably be expected to be profitable pending the outcome of hearings on the matter. The decision also questioned whether applicant possesses the type of operating authority required for the transportation, and stated that this aspect of the matter should be considered at the hearing.

Public hearings on the application were held before Examiner Abernathy at Los Angeles on November 16 and December 12, 1967. Evidence was presented by applicant through its president and through a consulting engineer. A representative of the California Trucking Association and members of the Commission staff participated in the development of the record.

Applicant's president testified that applicant has been transporting rock for construction work at Dana Point Harbor since August 1, 1966; that since that date to November 1967, the amount of rock which it has so transported is about 350,000 tons; that about 200,000 tons remain to be hauled; that the stated completion date of the contract is October 1, 1968, but that it is expected that the actual completion date will be sooner; that applicant utilizes approximately 33 units of vehicular equipment in performing the transportation; that the motive power (tractors) for 27 of these units is supplied by subhaulers, and are operated by them in conjunction with trailers which the subhaulers rent from applicant; that in other respects the equipment which is used belongs to applicant; that the rental which applicant charges its subhaulers for its trailers is 20 percent of the freight charges for the transportation performed thereby, and that said

A. 49555 - SW/GF \*

rental is in addition to a commission of five percent which applicant collects from the subhaulers for the transportation which it turns over to them to perform.

The consulting engineer submitted and explained data summarizing a study which he made of applicant's operations to develop the costs of performing the transportation involved herein. In his development of costs the engineer calculated the costs on two bases: (a) the costs of the services as performed by applicant itself and (b) the costs of the services as performed by the subhaulers. According to the engineer's cost development, applicant's costs per ton of rock transported in loads averaging 22.88 tons per load are approximately \$1.81 a ton. This cost, as related to the sought rate of \$2.28 a ton, would result in an operating ratio of 79.4 percent before provision for income taxes. With respect to the subhauler's costs, the engineer's computations emphasized the subhauler's earnings per trip. His figures show earnings per trip of about \$20.50 after provision for all of the subhauler's expenses with the exception of those for labor. In comparison, the engineer's figures for applicant's own operations show labor costs per trip as amounting to \$19. The engineer asserted that this comparison, together with the level of earnings which applicant is realizing from the rock hauling which applicant performs itself, amply demonstrates that the subhaulers' earnings under the rate of \$2.28 per ton are not below a reasonable level.

The question which was raised by Decision No. 72930 concerning applicant's operating authority stems from the fact that the special rate authority which applicant seeks was based originally on applicant's operations as a radial highway common carrier. In an earlier proceeding in which special rate authority was requested on the basis of radial highway common carrier operations, the Commission found that the carrier should have a highway contract carrier permit. The rate authority was granted, but the exercise thereof was conditioned upon the carrier's first obtaining a permit to operate as a highway contract carrier (Decision No. 69965, dated November 16, 1965, Application No. 47560, In re Cabs Unlimited, Inc., doing business as Falcon Parcel Service).<sup>1/</sup> Applicant's request herein, based on its operations as a radial highway common carrier, suggests that the procedure which was followed in the Cabs proceeding should be followed in this matter also. At the hearing on December 12, 1967, however, applicant submitted evidence showing that as of November 28, 1967, it had been granted a highway contract carrier's permit, and it asked that its request for special rate authority be considered as being submitted on its operations as a contract carrier.

---

<sup>1/</sup>It appears that both as to services and rates the operations of Cabs Unlimited which were the subject of Application No. 47560 were other than those which Cabs could lawfully perform and assess as a radial highway common carrier. Decision No. 69965 states that said services consisted of the transportation of exposed and processed film and prints and certain other articles for Eastman Kodak Company in daily service over eight separate routes. By definition, the operating authority of a radial highway common carrier does not include operations over a regular route or routes. Moreover, the assessing of special charges for a designated shipper by a common carrier is a form of discrimination which is prohibited by Article XII, Section 21, of the State Constitution.

No one opposed the granting of the application. A representative of the California Trucking Association urged that the sought authority, if granted, be limited in duration to one year, subject to cancellation, modification or extension upon further order of the Commission. The Association's representative pointed out that such a limitation is commonly imposed by the Commission in proceedings of this kind.

Upon consideration of the record in this matter, we find that:

- a. The sought rate of \$2.28 per ton will return the costs of the services provided thereunder plus an adequate profit.
- b. The sought rate, subject to a minimum weight of 22 tons per load, is reasonable.
- c. The transportation services to which the sought rate would apply are those of a highway contract carrier.

We conclude that the sought rate should be authorized. Inasmuch as the completion date for the construction work involved is October 1, 1968, the duration of the authority hereinafter granted will be limited accordingly unless otherwise canceled, modified or extended by further order of the Commission.

O R D E R

IT IS ORDERED that:

1. Rocko Transportation, Inc., is hereby authorized to assess a rate of \$2.28 per ton, subject to minimum weight of 22 tons per load, for the transportation of quarried rock and

stone, by means of tractors and flatbed trailers, pursuant to permit of a highway contract carrier, for Silberberger Constructors, Inc., from Twin Oaks Quarry, located in the San Marcos Mountains northeasterly from Vista, San Diego County, to a job site at Dana Point Harbor, Orange County.

2. The authority herein granted shall expire October 1, 1968, unless otherwise canceled, modified or extended by further order of the Commission.

The effective date of this order shall be February 15, 1968.

Dated at San Francisco, California,  
this 30<sup>th</sup> day of JANUARY, 1968.

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