

ORIGINALDecision No. 75546

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of }
 JOHN W. HECK, an individual, for }
 authorization to deviate from the }
 minimum rates for transportation }
 by dump truck equipment, Visalia. }

Application No. 50911
 (Filed February 26, 1969)

John W. Heck, for applicant.
Richard W. Smith, H. F. Kollmyer, A. D. Poe, for
 California Trucking Association; E. O. Blackman,
 for California Dump Truck Owners Association;
Jacob Franzen, Richard B. Clyde, for Gordon H.
 Ball, Inc.; N. W. Hoffman, for Construction
 Materials Trucking, Inc., interested parties.
B. I. Shoda, for the Commission staff.

O P I N I O N

This application is the first in an expected series of proceedings specially designed to deal with the problems caused by the application of dump truck rates to public works construction projects.

The Commission staff held a series of informal meetings with various parties generally concerned with such problems; as a result of the last meeting it was determined that an experimental program, involving expedited and simplified deviation applications, would be attempted. With Commission approval, a set of guidelines for such specialized proceedings was generally distributed.

In general terms, the guidelines required that an application for deviation from minimum rates cover the following information:

- a. Identification of contract or project;
- b. State the proposed rate in cents/ton;

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- c. Starting and ending dates of the transportation;
- d. A description of the transportation including total tonnage, route and origin and destination;
- e. The average on-route time, loading and unloading times.

The guidelines also require that an applicant undertake to pay sub-haulers 100% of the minimum rates, rather than the 95% required by Item 94 of Minimum Rate Tariff No. 7.

Applicant seeks, by means of this specialized procedure, authorization to charge .82¢ per ton per load of 25 tons for the transportation of aggregates. The transportation is expected to occur between May 1 and May 5, 1969, and will involve an estimated total of 45,000 tons. According to the application the cycle time is 71 minutes, including 7 minutes of loading and 7 minutes of unloading.

Public hearing was held on March 17, 1969, before Examiner Gilman in San Francisco, and the matter submitted.

Applicant Heck who has broad experience in the field of dump truck transportation testified in support of the proposed rate relief. The evidence indicated that the cycle times had been developed by actual test runs using a 220 hp truck and a set of bottom-dump trailers loaded to legal capacity. The test runs included tests of loading and unloading time. He also indicated that representatives of the Standard Material Plant (the point of origin) had represented that loading time could be kept below a 3-minute average. He testified that a front-end loader would be used at origin; at the destination, a cement plant, the aggregates would be dumped over a grate.

According to the witness the transportation would be performed primarily by means of subhaulers. He plans to operate

only one complete set of his own equipment; for the remainder of the transportation, he will use 10 subhaulers pulling trailers leased from him and 21 or 22 subhaulers pulling their own trailers.

Applicant's testimony repeats the applicant's undertaking to pay 100% of the hourly minimum rate to subhaulers pulling their own trailers. For those subhaulers renting trailers from applicant, he will reduce his standard trailer rental charge from 27-1/2% to 22-1/2% of the hourly minimum rate, thus in effect eliminating the 5% "brokerage" charge normally allowed in dump truck subhauling by Item 94 of MRT 7.

A general increase in hourly rates is under consideration and, if granted, might be effective during part or all of this operation. In such case, applicant proposes to absorb the increased payments to subhaulers, without obtaining extra revenue under the contract.

Discussion

Since there is a substantial (nearly 10%) cushion over the irreducible payments to subhaulers, since there was no protest from staff or the served parties, and since applicant is well qualified to estimate costs of performing dump truck transportation, the applicant's showing is satisfactory for this special type of relief. Since the guarantee of 100% of the applicable minimum rates accomplishes a primary objective of our policy - protection of subhaulers - we find the proposed rates reasonable.

Subsidiary Issues

1. The Commission has in the past required that radial highway common carriers obtain contract carrier permits as a condition to obtaining authority to deviate from minimum rates. (Cf., e.g.,

Evans Tank Lines, Inc., Decision No. 73834, in Application No. 49931.) However, the Legislature amended §3666 of the Public Utilities Code in 1959 to permit the Commission to authorize deviations by all carriers other than highway common carriers, thus eliminating this problem. Further, a district court has recently held that a radial highway common carrier may lawfully enter into a special contract with a shipper and provide regular service for that shipper between fixed termini (AT&SF R.R. Co. v. Flintkote, 256 Cal.App.2d 764 (1967)).

2. California Trucking Association suggested that special documentation rules might appropriately be imposed on any carrier obtaining authorization for two reasons: (a) to prevent conversion which would prevent the subhaulers from receiving 100% of the established rates; and (b) to provide a data base for refining both substance and procedure for future proceedings of this nature. In view of the short duration of this project and the narrow cost margins herein, we will not impose any documentation requirements on applicant, substantially more burdensome than the documentation required by the tariff.

3. The reasonableness of trailer rentals between dump truck prime carriers and subhaulers has been a much-vexed question. A proceeding dealing with this question (Petition No. 112 in Case No. 5437) has been in hearing before the Commission for some time and it is unlikely that any final decision will be rendered before completion of this project. Accordingly, applicant will be required to charge no more than 22-1/2% of the hourly rates for rental, in order to protect the requirement of 100% payment to subhaulers. However, no finding is made as to the reasonableness of such rental.

Findings

1. We find that the proposed rate will be reasonable.
2. We find that requiring applicant to develop and retain the information required by ordering paragraph 3 hereof will not be unduly burdensome, and will be useful to the staff in making studies to further refine and improve both procedural and substantive aspects of future proceedings in this series.
3. We find that no useful regulatory purpose would be served by requiring applicant to obtain a contract carrier permit, and that the required fee would be an unnecessary expense for the proposed operation.
4. We expressly refrain from finding that 22-1/2% trailer rental is reasonable. We find that applicant usually charges tractor-only subhaulers 27-1/2% for a combination of trailer rental and the prime carrier allowance contained in Item 94 of the tariff; we further find, for the purposes of this proceeding only, that a 22-1/2% trailer rental charge will adequately protect the requirement of 100% payment to subhaulers.

Conclusions

1. We conclude that the authority sought should be granted.
2. We further conclude that the limited information required by the guidelines is insufficient and that the following information should henceforth be included in applications under this specialized proceeding:

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1. The name of the person responsible for ultimate payment of the shipping charges.
2. Copies of the contract.
3. A detailed statement of the type or types and capacity of equipment to be used.
4. The number of subhaulers and tractor-only subhaulers expected to be used; the amount of trailer rental to be charged tractor-only subhaulers, and an estimate of the number of hauls to be performed by each class of subhaulers.

We further conclude that if any application of this class is set for hearing, applicant should offer as a witness the person who is fully conversant with the cost information used in developing the contract bid.

O R D E R

IT IS ORDERED that:

1. John W. Heck is hereby authorized to deviate from the minimum rates, charges and rules established in Minimum Rate Tariff No. 7 and to charge not less than \$0.82 per ton, with a 25-ton minimum for each shipment, for transportation of aggregates in bottom-dump equipment between the Standard Material Plant near Los Banos to the Santa Rita cement plant of Gordon H. Ball, Inc. Such authority shall commence on April 15, 1969 and terminate on May 31, 1969.

2. John W. Heck shall pay each subhauler engaged to perform such transportation not less than 100% of the applicable hourly minimum rate and charge, provided by Minimum Rate Tariff No. 7 for such transportation. If John W. Heck provides trailers to such subhaulers for use in performing such transportation, he shall charge no more than 22-1/2% of the applicable minimum hourly rates for such use. John W. Heck may also deduct from subhauler payments the gross

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revenue taxes applicable to such transportation as defined in Note 1 of Item 94 of Minimum Rate Tariff No. 7.

3. John W. Heck is hereby ordered to prepare for each day's transportation by each subhauler a document containing the information listed in Item 93.1, paragraph (d), subparagraphs (1), (3), (4), (5), (6), (7), (8), (9), (10) and (11) of Minimum Rate Tariff No. 7. Said documents shall also identify the subhauler, and if John W. Heck furnishes trailers for use by such subhauler, shall identify the items of equipment furnished and the amount of rental charged for that day's use. Such documents shall be retained as provided in Item 93.2, subparagraph (g).

The effective date of this order shall be April 14, 1969.

Dated at San Francisco, California, this 8th day of APRIL, 1969.

William Agnew Jr.
President
August
Shelton Morrison
William J. E.
Commissioners