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Decision No. _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Dutra Trucking for authority to deviate from minimum rates for the transportation of material in dump truck equipment for public works construction projects under Section 3666 of the Public Utilities Code.

Application No. 51143
(Filed June 6, 1969)

Francis A. Dutra, for applicant.
Richard W. Smith, H. F. Kollmyer, and A. D. Poe,
for California Trucking Association, interested party.
John W. Henderson, for the Commission staff.

O P I N I O N

This application is the second filed under guidelines approved by the Commission for the expeditious handling of applications to deviate from minimum rates for transportation of materials in dump truck equipment to or from construction projects.^{1/}

The guidelines require that the application for deviation from minimum rates supply the following information:

- a. Identification of contract or project;
- b. State the proposed rate in cents/ton;
- 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 en-route time, loading and unloading times.

^{1/} The first such proceeding was John W. Heck, Decision No. 75546, dated April 8, 1969, in Application No. 50911.

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The guidelines also require that the applicant agree to pay any subhaulers employed on the basis of 100 percent of the minimum rates, rather than on the basis of 95 percent as required by Item No. 94 of Minimum Rate Tariff No. 7 (MRT 7) which sets forth the applicable minimum rates for the transportation here in question.

Dutra Trucking, a corporation, seeks authority to apply the following rates in cents per ton for transportation performed for Redwood Empire Aggregate Company, from its plant one mile north of Arcata to the site of a freeway construction project involving the realignment of portions of U. S. Highway 101 near Trinidad:

Drain Rock and Subbase Aggregate	- 67¢
Plant Mixed Cement Treated Base	- 73¢
Asphaltic Concrete	- 88¢

Public hearing was held and the matter submitted before Examiner Mallory at San Francisco on June 24, 1969. Evidence was adduced by applicant's president. Other parties assisted in the development of the record through examination of this witness.

The testimony of applicant's president indicated the following: Applicant is an experienced hauler, having operated as a dump truck carrier for a period of seven years. The witness is thoroughly familiar with local conditions in the area. The transportation service to be performed is the movement of materials in dump trucks from the plant of Redwood Empire Aggregate Company (Redwood Empire) near Arcata to the freeway construction site. Transportation charges will be paid by Redwood Empire. Applicant will enter into a contract with Redwood Empire, if the authority herein is granted. Redwood Empire has contracted with Piombo Construction Company to furnish the road construction materials and to put them into place on the freeway site. As this is a freeway

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realignment, no dirt hauling will be involved in this project. Applicant will provide all of the dump truck services required.

The witness testified that the applicable minimum rate set forth in MRT 7 for the movement of subbase materials, which are power-loaded, is \$17.12 per hour; and that the minimum rate for cement treated base and asphaltic concrete, which are bunker-loaded, is \$15.90 per hour. The base materials will be transported in bottom-dump semi-trailer equipment, and cement treated base and asphaltic concrete will be handled in end-dump semi-trailer equipment. All equipment has a capacity of 23 tons.

The application contains a statement showing the development of round-trip running times for each type of material to be transported. The average round-trip mileage was estimated to be 30.6 miles, determined by using the mileage between the loading point and the center point of the 5.9-mile jobsite. The average running times were based on this mileage. The estimated round-trip cycle time is 54 minutes for subbase materials, 62 minutes for cement treated base, and 63 minutes for asphaltic concrete. The witness testified that said cycle times provide for normal delays at loading and unloading points, but contain no provision for unusual delays. Such delays may involve breakdowns of loading equipment at origin or unloading equipment at destination, or excessive delays from other causes, all of which reasonably can be expected to be encountered on jobs of this kind.

The witness stated that the rates in cents per ton set forth in the application for drain rock and subbase aggregate were a direct conversion of the hourly rate of \$17.12 per hour, based on multiplying the round-trip cycle time in minutes by 23.5 cents per

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minute. The witness stated that it is intended to operate equipment for at least 10 hours per day. MRT 7 requires that higher hourly rates be assessed for operations in excess of eight hours per day. Such higher rates reflect premium pay for drivers. The witness stated that no consideration was given to the higher minimum hourly rates applicable to service over eight hours in any one day, in the conversion of the hourly rates to the proposed tonnage rates.

The witness stated that about 30 units of equipment will be required to perform the transportation service involved herein. Applicant owns 19 power units and 55 trailers. Applicant proposes to use seven tractor and trailer units owned by it, and to employ subhaulers to furnish the balance of the equipment required. Four subhaulers will be employed who will furnish full units of equipment. About 19 or 20 subhaulers will be used who will own their tractors and will lease semi-trailers from applicant. Applicant agrees to pay the full-unit subhaulers 100 percent of the minimum rates. With respect to the balance of the subhaulers, applicant proposes to charge trailer-rental based on 25 percent of gross revenues. The witness testified that such 25 percent figure represents 5 percent for so-called "brokerage fees" and 20 percent for use of the trailers. Applicant is unwilling to waive the 5 percent brokerage fee, as applicant considers that it performs additional services for tractor-only subhaulers, which it does not perform for full-unit subhaulers.

The California Trucking Association (CTA), in its closing argument, pointed out that the procedure under which this application was filed is relatively new, and that further amplification of the guidelines may be required. CTA also pointed out that in other types

of proceedings under Public Utilities Code Section 3666, carriers seeking to deviate from established minimum rates have been required to show, by cost studies or other means, that the rates proposed to be assessed will exceed the carrier's expenses of providing the service.

Discussion Re Guidelines

The guidelines for proceedings of this type were developed following a series of informal meetings with various parties generally concerned with such problems. As a result of these meetings 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. As heretofore noted, this is the second proceeding to be heard under the procedures set forth in the guidelines.

This proceeding indicates that the guidelines should be amended to clearly indicate to prospective applicants that they will be required to make a showing that the proposed rates will be reasonable, as required by Section 3666 of the Public Utilities Code.^{2/} This Commission has consistently held that, in order to find that proposed less-than-minimum rates are reasonable, there must be a showing that the proposed rates will be compensatory.^{3/} Generally,

^{2/} 3666. If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate. (Former Sec. 11. Amended 1959, Ch. 1566.)

^{3/} The Paper Transport Co., 63 Cal. P.U.C. 690, 694;
Peters Truck Line, 65 Cal. P.U.C. 292, 294;
Ventura Transfer Co., 65 Cal. P.U.C. 613, 615.

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such showing consists of a cost study of the operations to be performed; however, any other reasonable method may be used which will indicate the compensatory nature of the proposed rates.^{4/} The guidelines should be amended to indicate that prospective applicants will be required to show that proposed rates are compensatory.

This proceeding and the initial proceeding under the guidelines indicated that many of the subhaulers employed on construction projects lease trailers from the applicant overlying carrier. The guidelines require that applicant agree to pay subhaulers 100 percent of the applicable minimum rates. The guidelines do not spell out how this requirement is to be applied when trailer rental is involved.^{5/} Moreover, Minimum Rate Tariff No. 7 does not specify the amount that may be assessed for trailer rental.

Two interpretations are possible concerning the requirement that applicant must agree to pay subhaulers 100 percent of the minimum rate. One interpretation is that no trailer rental may be assessed by the applicant overlying carrier. The second interpretation is that the customary percentage deduction for trailer rental should be

4/ Peters Truck Line, supra;
Fresno Cooperative Trucking, Inc., Decision No. 75592, dated
April 22, 1969, in Application No. 75592.

5/ Decision No. 75546, supra, states as follows:
"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."

reduced by 5 percent (the amount of the "brokerage fee" specified in Item 94 of MRT 7).^{6/} The Commission staff and interested parties are planning further consideration of the guidelines to clarify their application in light of experience in this type of proceedings. Said consideration should include the trailer rental question.

Discussion Re Evidence Herein

Applicant has indicated that the rates set forth in the application contain no provision for the higher charges under MRT 7 applicable for service in excess of eight hours in any one day, even though it is applicant's intention to operate more than eight hours each work day. Applicant has not shown that the proposed rates will be compensatory in this respect. Applicant also has conceded that extraordinary delays often occur at loading points and at destinations on construction jobs. No provision for such delays has been made in the development of the proposed rates for these contingencies. Applicant also testified that the proposed rates were computed on the basis of maximum capacity of the equipment. Charges under the proposed rates would be computed on the basis of actual weight of each shipment which is usually less than the capacity of the equipment. This method of computation would result in applicant receiving less compensation as an overlying carrier than it would be required to pay its underlying carriers at 100% of the minimum rate.

6/ This is the conclusion reached in Decision No. 75546; Finding 4 thereof reads as follows:

"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."

Applicant has indicated that it will employ a certain number of subhaulers who will lease trailers from applicant, as well as other subhaulers who will furnish full equipment units. Applicant proposes to assess, to the former group, trailer rental charges amounting to 20 percent of gross revenues, and "brokerage fees" amounting to 5 percent of gross revenues. Applicant proposes to pay the latter group of subhaulers 100 percent of the minimum rates. While, as indicated above, the guidelines are silent with respect to payments to tractor-only subhaulers, Decision No. 75546, supra, indicated that "brokerage fees" should not be deducted from payments to tractor-only subhaulers. The failure of applicant to agree to eliminate charges for "brokerage fees" appears to depart from the spirit, if not the letter, of the guidelines established for this type of proceeding.

Findings and Conclusions

The Commission finds:

1. Applicant, Dutra Trucking, a corporation, proposes to assess rates in cents per ton for the movement of various materials to a freeway realignment construction project of Piombo Construction Company.
2. The rates proposed in the application have been developed by converting the basic hourly rate for the types of equipment to be employed into tonnage rates, based on round-trip cycle times set forth in the application.
3. The converted rates make no provision for, and will not provide revenues sufficient to recover, the higher minimum hourly rates applicable when service is performed in excess of eight hours in any one day.

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4. Applicant intends to operate trucking equipment at least 10 hours per day for the hauls involved herein.

5. Applicant has not shown that the proposed rates will be compensatory.

The Commission concludes:

1. A finding that the proposed rates will be compensatory is essential to the statutory finding (Section 3666) that the proposed rates will be reasonable.

2. Applicant has failed to meet the burden of proving that the proposed rates will be reasonable.

3. The application should be denied.

4. The guidelines heretofore approved by the Commission for the processing of applications to deviate from minimum rates for transportation of materials in dump trucks to or from public works construction projects should be revised, as indicated in the preceding opinion, and copies of such revisions should be furnished to all parties served with copies of the original guidelines.

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O R D E R

IT IS ORDERED that Application No. 51143, filed by Dutra Trucking, a corporation, is hereby denied.

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

Dated at San Francisco, California, this 19th day of AUGUST, 1969.

William J. ...
President

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Commissioners