

ORIGINAL

Decision No. 76665

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BULK TRANSPORTATION, a corporation,
to perform transportation services
for PACIFIC WESTERN INDUSTRIES, INC.
in the movement of rock, sand, and
gravel from Upland, California to
State Highway construction job in
Orange County in and near Fullerton
and Brea.

Application No. 51380
(Filed September 19, 1969)

John T. Underwood, Transport Business Services,
for applicant.
E. O. Blackman, for California Dump Truck
Owners Association; and G. Ralph Grago, for
Associated Independent Owner-Operators, Inc.,
protestants.
Ernest E. Gallego, for Southern California
Rock Products Association; and Richard Smith,
E. F. Kollmyer and A. D. Poe, for California
Trucking Association, interested parties.
Ralph J. Staunton and William H. Well, for the
Commission staff.

O P I N I O N

Bulk Transportation, a corporation, is a highway contract carrier which engages in the transportation of bulk commodities in dump truck equipment. In this application it seeks authority (Section 3666 of the Public Utilities Code) to charge less than established minimum rates for the transportation of rock, sand and gravel (base materials) from the plant of Mountain Rock Company in Upland to a freeway construction project in Orange County lying between points located 0.1 miles north of Imperial Highway and 0.3 miles south of Los Angeles-Orange County line. Applicant proposes to charge a rate of \$1.11 per ton for transportation to the portion of the project lying north of the northern boundary of Delivery Zone 30003, as described in Directory 1, in lieu of the

applicable minimum mileage rate of \$1.28 per ton set forth in Minimum Rate Tariff No. 7 (MRT 7). The application states that Bulk Transportation intends to employ subhaulers to perform a portion of the transportation service, and requests that the rate of \$1.11 per ton be made applicable to said subhaulers.

Public hearing was held and the matter submitted before Examiner Mallory at Los Angeles on November 19, 1969. The application was protested by California Dump Truck Owners Association (CDTOA) and by Associated Independent Owner-Operators, Inc. (AI00). Southern California Rock Products Association (SCRPA) supports the relief sought. California Trucking Association and the Commission staff take no position in this matter.

Evidence was adduced by applicant's president. His testimony confirmed the data set forth in the application and developed certain additional facts concerning the route of movement. The record contains the following facts and allegations:

There are two minimum rate tariffs governing the transportation service to be performed by Bulk Transportation to the freeway construction project. The plant at point of origin is located in San Bernardino Production Area 36-L, and the southernmost portion of the freeway construction project is located in Delivery Zone 30003, both as described in Directory 1; therefore, such transportation is subject to Minimum Rate Tariff 17 (MRT 17). Said tariff provides a minimum rate of \$1.11 per ton from Production Area 36-L to Delivery Zone 30003. The northernmost portion of the construction site is not located in any described delivery zone. Applicant alleges that the general Southern Territory mileage rates set forth in MRT 7 are applicable to said transportation. The actual highway mileage over the route to be traversed from point of

origin to the northernmost point in the construction site is 23.2 miles, for which distance a minimum rate of \$1.28 per ton is set forth in MRT 7. The route of movement to the southern portion of the construction site, to which a minimum rate of \$1.11 per ton is applicable, is through the northern portion of the site, to which a minimum rate of \$1.28 per ton is applicable. Thus, under the currently effective minimum rate tariffs, applicant asserts that it is necessary for it to charge a greater rate for a shorter haul than for a longer haul over the same route, the shorter haul being included within the longer haul.

Cross-examination of applicant's witness developed that there are no public roads or haul roads which give access to the construction area to which relief from the minimum rates is sought. Applicant's witness explained that the general contractor for the construction project has informed him that haul roads will be built prior to the time the base materials it will haul are required. At the present time applicant is hauling to the portion of the project encompassed within an existing tariff zone and to which zone rates are applicable. Entrance to this area is by a route from origin point southerly along Brea Canyon Boulevard, thence easterly either along Central Avenue and Lambert Street or along Lambert Street to jobsite. If the haul roads are not constructed, access to the area north of the portion of project now under construction would be over the present route of movement, thence northerly over the constructed portion of the freeway project. The latter route would be circuitous and, therefore, would not present a rate situation where a lower minimum rate would be applicable for a longer haul encompassing a shorter haul.

Applicant's witness further testified that the transportation will be performed in bottom-dump trailers, that applicant has placed six units of its equipment on the project, and that the balance of the equipment required will be met by employment of subhaulers. Said subhaulers will supply full units, that is, trailers will not be leased from the overlying carrier. Up to 50 subhaulers will be employed, depending upon the amount of materials to be moved during a particular time period. At this time applicant does not know the subhaulers it will employ.

The witness stated that work has already begun on the project; that material being furnished by Pacific Western Industries, Inc., for whom applicant proposes to perform the transportation services, began to move about October 1, 1969 to the portion of the project where no rate relief is sought; that movement into the area where rate relief is sought will begin shortly; and that the entire project is scheduled to be completed within approximately one year. Inasmuch as adverse weather or other conditions may affect the completion date, applicant requests that the authority, if granted, be made to expire upon completion of the project.

CDTOA made a motion to dismiss the application on two grounds. The first is that applicant has not complied with Section 3666 of the Public Utilities Code, in that it has failed to present cost evidence to show that the proposed rate will be reasonable. The second reason is that Section 3666 provides that relief from the minimum rates may be granted only to the carrier applying for such relief; whereas applicant seeks relief on behalf of the subhaulers it will employ as well as for itself.^{1/}

^{1/} PUC Section 3666: If any highway carrier other than a highway common carrier desires to perform any transportation of 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.

CDTOA argued as follows:

Applicant has not proved that there will be haul roads available when it begins service to the area to which rate relief is sought; the only evidence is that the contractor has indicated that such roads will be constructed. If the haul roads are not constructed, the entire premise of the application is wrong, because the vehicles will need to go through an existing zone to get to the area to which rate relief is sought. Moreover, if the sought rate is to be made applicable to carriers other than applicant, the minimum rate tariff should be revised as there is no provision in Section 3666 or other sections of the Code under which relief can be granted to unnamed subhaulers. The proper vehicle for the rate adjustment sought would be a petition in Case No. 5437 seeking the establishment of a new delivery zone and rates thereto. The Commission staff would then determine ingress and egress times and mileages from existing routes over established roads, in the same manner as the existing zone rates are constructed. As there are no existing roads, the rates probably would be constructed over routes through Zone 30003.

AI00 argued that the application should be denied to the extent that it seeks lower rates for subhaulers under Section 3666. AI00 does not oppose the relief as it would apply to applicant but believes it may be improper to the extent it is intended to affect third parties.

Applicant points out that so called long- and short-haul violations are a form of discrimination covered under Part 1 of the Public Utilities Code, and common carriers are prohibited from maintaining higher rates for shorter hauls embraced within longer

hauls without express authority of this Commission. Also, it points out that the difference in rates between the zoned and unzoned portions of the same project is not justified by the differences in transportation conditions, as the conditions encountered in a single freeway construction project, except for distance traversed, are the same. Applicant also argued that it would be impossible to have subhaulers join in the application as they were unknown when the application was filed. Applicant further argued that there will be no backhaul involved, as urged by CDTOA, as the contract for the project calls for construction of the necessary haul roads prior to the time the transportation for which rate relief is sought commences. Applicant urges that granting of the application will provide an equitable relationship of rates on the same job.

None of the parties supplied references to prior opinions of this Commission in support of the position urged by it.

Discussion

The Commission will rely upon the testimony of applicant's president, undisputed on the record, that haul roads will be constructed permitting access to the freeway route from Brea Canyon Road south to the point where major construction will take place; thus, no circuitry will occur and the shortest route to the zoned portion of the project will be via the freeway route under construction through the unzoned portion of the project. Therefore, the situation will exist where the minimum tonnage rate to the unzoned portion will be greater than the minimum zone rate to the zoned portion of the project.

The foregoing rate situation results in a form of discrimination expressly prohibited by Section 460 of the Public Utilities Code with respect to rates maintained by common carriers

subject to Part 1 thereof. Applicant and other highway permit carriers are not subject to Part 1 of the Code and, therefore, are not subject to the statutory prohibition contained in Section 460. However, the Commission has considered unreasonable differences in rates which are not justified by transportation conditions to be unlawful (City of Long Beach et al vs. Western Air Lines, Inc. 62 Cal. P.U.C. 553, 570). Conversely, the Commission has refused to authorize a common carrier to publish a reduced rate, otherwise justified by costs, because said rate would result in a long- and short-haul violation (Harrison-Nichols Co., 65 Cal. P.U.C. 184, 188).

The Commission has in several prior proceedings stated that a finding that a proposed less-than-minimum rate will exceed the costs of providing the service is essential to the finding required by Section 3666, that the proposed rate will be reasonable (H.P. Produce Company, 67 Cal. P.U.C. 45, 46; C. W. Bundren, 66 Cal. P.U.C. 150, 153; Sierra Distributing, Ltd. and John T. Lane, 66 Cal. P.U.C. 177, 178 and cases cited therein). However, several methods of showing the compensatory nature of the proposed rates have been accepted (Sierra Distributing Co. and John T. Lane, supra; Fresno Cooperative Trucking, Inc., Decision No. 75592, dated April 22, 1969, in Application No. 50955; Thompson Bros. Freight Forwarding Co., Inc. and Thompson Bros., Inc., Decision No. 75921, dated July 15, 1969, in Application No. 51154; Miller Moving & Storage Co., Decision No. 74913, dated November 6, 1968, in Application No. 50416). We are of the opinion that a showing by an applicant (1) that a lower minimum rate is applicable to a more distant point over the same line or route than the rate to the intermediate point on the line or route where rate relief is sought and (2) that (except for the added distance) there is no material difference in transportation conditions between the two points, is sufficient to establish that

the minimum rate to the more distant point will be reasonable for the movement to the less distant point. The showing made by petitioner herein, having met this test, is sufficient to serve as a basis for the statutory finding that the proposed rate will be reasonable.

Protestants CDTOA and AI00 urge that relief under Section 3666 can be authorized only to the carrier who applies for such relief, and that said section does not permit the Commission to authorize rate deviations to unknown highway permit carriers operating as subhaulers. Two prior proceedings have authorized highway permit carriers to deviate from the rates in MRT 7 and also to depart from the provisions of Item No. 94 of said tariff to the extent that they may engage subhaulers. (William Doran, 65 Cal. P.U.C. 628, 634 and Pacific Motor Trucking Company, Decision No. 66201, dated October 23, 1963, in Application No. 45642.) Thus, prior Commission decisions indicate that dump truck carriers may employ subhaulers under rate deviations without said subhaulers being joined in the applications seeking such relief.

The relief sought in this application is to apply to one portion of a construction project the lower minimum rate previously found reasonable by the Commission to a more distant portion of the same construction project. Authorization herein for applicant to employ subhaulers at the zone rate, subject to the provisions of Item No. 94 of MRT 7, will not result in an unreasonable rate for subhaulers, as such is the rate for transportation by subhaulers to the more distant portion of the construction project.

The Commission finds:

1. Applicant is engaged in providing transportation of base aggregate materials in dump truck equipment from the plant of Mountain Rock Company in Upland to a State Division of Highways

freeway construction project (contract number: 07-032204; project route designation: 07-Ora-57-19.5/R22.6) in and near Fullerton and Brea, Orange County between points lying 0.1 miles north of Imperial Highway and 0.3 miles south of the Los Angeles-Orange County line.

2. Said origin point lies within San Bernardino County Production Area 36-L, and the lower (southerly) portion of said freeway project lies within Delivery Zone 30003, both as described in the Commission's Directory 1, which governs Minimum Rate Tariff 17. The minimum rate set forth in Minimum Rate Tariff 17 from Production Area 36-L to Delivery Zone 30003 for the transportation of base aggregate materials (rock, sand and gravel) in dump truck equipment is \$1.11 per ton.

3. The upper (northerly) portion of the freeway construction project is not within any delivery zone described in Directory 1. Haul roads will be constructed which will permit access to such portion of the job site from the north. There is no minimum rate for transportation via such route set forth in Minimum Rate Tariff 17. The applicable minimum rates are those set forth in Minimum Rate Tariff No. 7. The minimum mileage rate (for 23.2 miles) to the center of the northern portion of jobsite is \$1.28 per ton.

4. When haul roads are constructed permitting access to the freeway jobsite from the north, the route of movement for the transportation of base materials to the southerly portion of freeway jobsite will be over the northerly section of the freeway under construction.

5. There are no material differences in transportation conditions between the portions of the jobsite subject to zone rates and the portion of the jobsite subject to mileage rates, except that the portion subject to zone rates is a greater distance from origin.

6. Maintenance of a lower rate to the southerly portion than to the northerly portion of the jobsite will result in an unreasonable difference in rates.

7. Applicant proposes to maintain the same rate to all portions of the jobsite. Said proposal will result in reasonable rates to both the northerly and southerly portions of the jobsite and is justified by transportation conditions.

8. Payments to subhaulers employed by applicant based upon the rate authorized herein subject to the general requirements of Item No. 94 of Minimum Rate Tariff No. 7 will result in reasonable rates for said carriers.

The Commission concludes that maintenance of a rate from the plant of Mountain Rock Company in Upland to destinations in the northernmost portion of the freeway construction project involved herein on the level of the prescribed minimum rate in MRT 17 from San Bernardino Production Area 36-L to Delivery Zone 30003 should be authorized. Inasmuch as the rates in MRT 17 may change in the period during which the services are to be performed, applicant and its subhaulers will be authorized to maintain a rate on the level of the minimum rate in effect at time of movement, rather than the specific rate proposed in the application. With the foregoing modification, the application should be granted.

O R D E R

IT IS ORDERED that:

1. Bulk Transportation, a corporation, is authorized to charge and assess to Pacific Western Industries, Inc., for transportation performed by it and by subhaulers employed by it, a rate no lower than the prescribed minimum rate in Minimum Rate

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Tariff 17 from San Bernardino Production Area 36-L to Delivery Zone 30003, in effect at time of movement, for the following transportation:

The transportation of rock, sand and gravel in bulk in dump truck equipment, from the plant of Mountain Rock Company in Upland (San Bernardino Production Area 36-L) to the northern portion of the highway construction project in Orange County (State Division of Highways Project Route Designation 07-Ora-57-19.5/R22.6) extending from the northern boundary of Delivery Zone 30003 to a point 0.3 miles south of the Orange-Los Angeles County line.

2. Bulk Transportation, a corporation, shall pay subhaulers employed by it not less than 95 percent of the rate authorized in paragraph 1 hereof for the transportation involved herein, less the gross revenue taxes applicable and required to be paid by it, and liquidated amounts, as provided in Notes 1 and 2 of Item No. 94 of Minimum Rate Tariff No. 7.

3. The authority granted herein shall expire with the completion of the construction project described in ordering paragraph 1 hereof.

4. The motion of California Dump Truck Owners Association to dismiss this proceeding is denied.

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

Dated at San Francisco, California, this 13th day of JANUARY, 19 70.

William J. Brown
President

August
W. Brown

Vernon L. Stinson
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.