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ORIGINAL

Decision No. 77767

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of MAJOR TRUCK LINES, INC., a corporation, for authority, under Section 3666 of the Public Utilities Code, to charge less than the minimum rates established by the Commission for the transportation of salt, in packages, in truckload lots, for the MORTON SALT COMPANY.	Application No. 51685 (Filed February 3, 1970)

Donald Murchison, for applicant.
Thomas E. Carlton, for Morton Salt Company; James L. Roney, for Dart Transportation Service; and J. C. Kaspar, A. D. Poe, and H. F. Kollmyer, for California Trucking Association; interested parties.
Joseph C. Matson and Jerome Parke, for the Commission staff.

O P I N I O N

This matter was heard April 7, 1970 before Examiner Thompson at San Francisco and was submitted on briefs filed April 24, 1970.

Major Truck Lines is a radial highway common carrier engaged in transporting commodities in truckloads between points in California. It here seeks authority under Section 3666 of the Public Utilities Code to transport salt, in packages, for Morton Salt Company from Newark to points in the Los Angeles area at a rate of 58 cents per cwt., minimum weight 45,000 pounds. Said rate is less than the applicable minimum rate for such transportation.

Applicant has been transporting salt for Morton Salt Company for a number of years. Until January 1970 it had assessed the rates on salt published in Pacific Southcoast Freight Bureau

Tariff 294 series applicable to trailer on flatcar movements (piggyback) by railroad which is authorized under Item 200 series of Minimum Rate Tariff No. 2. On January 1, 1970 the then applicable rate on salt of 54 cents cwt. in PSFB Tariff No. 294-E was canceled. Thereafter the applicable minimum rate provided in Minimum Rate Tariff No. 2 for the transportation of common salt in packages from Newark to Los Angeles Territory was 63 cents per cwt., minimum weight 40,000 pounds, plus a surcharge of $2.85 per shipment.[1/]

Applicant's principal operation is between the San Francisco Bay area and Los Angeles Basin. It asserts that the transportation of salt from Newark to Los Angeles Basin assists in balancing its operations and thereby provides it with a load factor which makes its operations profitable. During the twelve months ended June 30, 1969, applicant's transportation revenues were derived from the following classes of traffic:

Commodity	Direction	Revenue	% of Total
Salt (in packages)	Southbound	$125,748	18.5
Case Goods	Southbound	105,998	15.6
Beer	Northbound	274,390	40.4
Paper Bags	Northbound	173,503	25.5
Sub-Total, S.F. - L.A.		$679,639	100.0
Beverages - L.A. - local area		115,557	
Total Revenue		$795,196	

During that same period applicant had operating expenses of $764,115 which provided it with net operating revenue of $31,081 and an operating ratio of 96.1 percent.

1/ By Interim Surcharge Supplement and Order in Decision No. 77064 the charges on any and all shipments computed on a minimum weight of 20,000 pounds and over were increased by six percent effective April 24, 1970.

While the actual dispatching of vehicles varies somewhat, the following type of operation, starting with the movement of commodities northbound, was considered typical for cost development purposes. During the day local drivers will pick up a truckload shipment of beer or bags in the Los Angeles area and place the loaded equipment at applicant's terminal at La Mirada. In the evening of that same day a line driver will take the loaded equipment enroute to the San Francisco Bay area where he will arrive about 10 hours later on the following morning. The beer or bags will be unloaded and the driver will communicate with applicant's office at San Jose for dispatching purposes. If he is dispatched to Morton Salt for a load he then proceeds to Newark. For cost development purposes it estimates that the distance from the point of unloading the beer or bags to Morton's plant at Newark is 32 miles and that it would take the driver one hour to traverse that distance. At Morton's plant the driver supervises the loading of the truck. The packages of salt are on disposable pallets which are placed on the carrier's equipment by fork lift trucks. It was estimated that it takes 2.09 hours to load the average shipment. After the shipment is loaded the driver proceeds to some point to park the equipment and takes his required 8 hour rest period at the end of which, usually late in the evening, he then proceeds enroute (410 miles in 10 hours) to applicant's terminal at La Mirada where he arrives the next morning. A local driver then takes over the equipment and delivers the salt at destination. It is estimated that a typical destination is 15 miles from the terminal and that 45 minutes is required to traverse the distance. At destination the shipment is unloaded by hand requiring 3.13 hours. The local driver is then dispatched to some point in the Los Angeles area for a load of beer or of bags going to the San Francisco Bay area.

Utilizing the foregoing as a "typical" operation, applicant estimated its cost of operating from the point of destination of the northbound beer or bag shipment in the San Francisco Bay area to the completion of unloading the salt shipment in the Los Angeles area - at $219.83 or 49 cents per cwt. on a shipment of 45,000 pounds. Utilizing applicant's cost development, the direct cost[2/] to it of operating from its terminal at La Mirada to Newark and transporting 45,000 pounds of salt to Los Angeles and unloading it at destination is $303.47. The revenue from the transportation of 45,000 pounds of salt from Newark to Los Angeles at the proposed rate would be $263.85. Issues were raised regarding the reasonableness of some of the cost factors utilized in applicant's estimates. We set those aside for the moment and consider the principal issue involved herein which is: assuming that applicant's cost estimates are valid, is the proposed rate reasonable as that term is used in Section 3666 of the Public Utilities Code, which reads:

> "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 a finding that the proposed rate is reasonable, authorize the lesser rate."

Preliminarily it should be noted that the "highway common carrier" does not come under this section. That type carrier is a public utility subject to the provisions of the Public Utilities Act (Part 1 of Division 1 of the Public Utilities Code) and the reduction of rates by such carrier is governed by Section 452 of the Public Utilities Code.

2/ Direct cost is not the same as "out-of-pocket cost". Direct cost includes: expenses relating to the ownership of the vehicles such as depreciation expense, license fees and use taxes; expenses relating to the operation of the vehicles such as fuel, tires and maintenance; and expenses related to labor required to operate the vehicles and load and unload the shipment. Examples of "out-of-pocket costs" not included in "direct cost" include those based upon gross revenue, such as B.E. tax, P.U.C. fee and expense for liability and cargo insurance, and expenses related to billing and collecting charges for the shipment transported.

The term "reasonable" used in the context of Section 3666 has not been defined succinctly and it is doubtful that such can be done. The meaning of the term lies in the whole concept or policy of transportation regulation adopted by the people of this State and implemented by enactments of the legislature which have been codified in the Public Utilities Code. It is the law of this state that the rates of common carriers subject to the Public Utilities Act (hereinafter referred to as public utility carriers) shall be reasonable and nondiscriminatory. The term "zone of reasonableness" imports a rate which is confined in its maximum to a figure not so excessive as to be greater than the particular traffic will bear, and in its minimum not so low that it will be destructive of the business of the common carrier, or that it will not return to the carrier the actual cost of transportation, Southern Pacific Company v. Railroad Commission, (1939) 13 C.2d 89. Public utility carriers may lawfully maintain rates which are within said zone of reasonableness; however, such carrier may not establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which is less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as is required by the commission and a finding by it that the rate is justified by transportation conditions (Pub.Util.Code § 452). It is and has been the policy of this State that public utility carriers by land should have equal opportunity to compete, provided however, that competition through rate cutting should be prevented so as to avoid the discontinuance of service by such public utility carriers which

necessarily would be a detriment to the needs of commerce and to the public interest. (See Southern Pacific Co. v. R.R. Comm., supra.)

In 1935, the Legislature through the enactment of the Highway Carriers' Act and amendments to the Public Utilities Act further implemented said policy by providing for the regulation of the rates of carriers other than public utilities. The scheme of such regulation is the establishment by the Commission of just, reasonable and nondiscriminatory minimum rates to be observed by all agencies of transportation by land.[3/] The Commission, pursuant to the legislative mandate, has established minimum rates "to secure to the people just and reasonable rates for transportation by carriers operating on such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public." (Pub.Util.Code § 3502). In the establishment of minimum rates it has been the policy or procedure of the Commission to determine the cost of performing transportation in a reasonably efficient manner by the type of carrier best suited to provide the service and to determine those rates which will return the cost plus a reasonable profit. With that rate scale as a basis the Commission then looks to determine areas in which the rates would exceed the value of the service to the shipper. In such areas the rates are adjusted to that level which will permit the free and

3/ Note that the statutory phrase is "just, reasonable and nondiscriminatory minimum rates" and is not "minimum, just, reasonable and nondiscriminatory rates". The two phrases have different meanings: the first means a level of rates within the zone of reasonableness below which no carrier should be permitted to charge; whereas the second phrase means the lowest level of rates within the zone of reasonableness.

unrestricted flow of traffic by for-hire carriers. The revised rate structure is then reviewed to determine if the rates will provide sufficient revenues to preserve to the public an adequate and dependable transportation system. Where the need for greater revenues is found, it is the policy to raise the general level of the rate structure. (Inv. Highway Carriers, 55 Cal. P.U.C. 778,788.) The Commission has not in every instance prescribed as a minimum rate the lowest rate within the zone of reasonableness that might be found for any particular transportation service. It is readily apparent that the establishment of minimum rates at a level where every rate would merely provide something more than out-of-pocket costs would be incompatible under present-day circumstances with the maintenance of an adequate and dependable transportation system. (Inv. Highway Carriers, supra.)

The less-than-minimum rates authorized under Section 3666 are not available to any carrier other than the one to which the authority has been granted. Other carriers may not compete for such traffic at the authorized rate. If the Commission were to grant such authority merely on the basis that the proposed rate is within the zone of reasonableness from the standpoint of the cost of providing the service, the policy of maintaining an adequate and dependable transportation system through providing equal opportunity to all transportation agencies to compete would be frustrated. A finding of reasonableness, as that term is used in Section 3666, contemplates something more than a determination that the rate will provide the carrier with something more than its cost of providing the service. In a proceeding to authorize a lesser rate than the established minimum rate the principal cost consideration is the cost savings directly attributable to the transportation involved

and not to the ability of an individual carrier to operate at lower costs than other carriers similarly situated. (William E. Daniel, 63 Cal. P.U.C. 147.)

The briefs contain numerous citations to decisions on applications for authorities under Section 3666. Review of those decisions discloses that in instances when the authority has been granted there were circumstances and conditions attendant to the transportation not present in the usual or ordinary transportation performed by public utility carriers or performed by highway carriers under the applicable minimum rates. Those circumstances involved such things as unusual or extraordinary conditions of tender or of delivery, transportation conditions under which the traffic was not available to public utility carriers or other for-hire carriers, the application of common carrier rates or of the minimum rates was unduly restrictive to permit the traffic under consideration to move, the conditions of transportation were such that the application of the minimum rates would be excessive. In the latter circumstance where it has been shown that the traffic is available to other for-hire carriers under the same circumstances and conditions it has been the policy of the Commission to establish commodity minimum rates for such transportation so that all interested carriers will have equal opportunity to compete for the traffic. (Roland Hougham, et al., 55 Cal. P.U.C. 34.)

Even though there may be unusual circumstances and conditions in the transportation under consideration which may indicate a need for the proposed rate, a showing that the proposed rate is compensatory is required. W. Alves, 54 Cal. P.U.C. 376. In that connection, normally only the transportation conditions and circumstances surrounding the traffic tendered by the shipper will be considered in the determination of whether the proposed rate is

reasonable, and unrelated traffic expected to be received from other shippers, but not assured and not directly involved, does not afford a reasonable basis for offsetting revenue deficiencies which would result from the less-than-minimum rate. (Karl A. Weber, 60 Cal. P.U.C. 59; The Paper Transport Co., 63 Cal. P.U.C. 690.)

As the word "normally" implies, there are and there have been exceptions to what might be called the general rule. Recitation of the facts in two cases will provide some understanding of the bases for such exceptions.

In Devine & Son Trucking Co., 67 Cal. P.U.C. 441, the Commission authorized Devine to charge less than the minimum rates for transportation of unprocessed bark for Vita-Bark, Inc., to Elk Creek from Potter Valley, Anderson and Red Bluff. The decision states that Devine transports a large volume of lumber for Glenco Forest Products at Elk Creek as a highway common carrier (public utility carrier) and has facilities, including equipment and personnel, at that location in connection with said highway common carrier operation. Glenco has a large lumber mill operation at Elk Creek and by-products of that operation include wood chips and bark. Devine transports wood chips from Glenco's mill at Elk Creek to Ukiah. Also, it transports wood chips from Paskenta to Anderson. The transportation of wood chips is not subject to minimum rates and Devine hauls that commodity as a highway contract carrier at rates negotiated with the shippers. For such transportation it acquired special trailer equipment with a hydraulic hoist for end dumping. Vita-Bark is engaged in the production of soil additives and nutrients, among other things, which are made from bark and sawmill residue. It has plants at Elk Creek, Truckee and Shingle Springs. The plant at Elk Creek is adjacent to Glenco. Devine transports bark and sawmill residue for Vita-Bark at rates less than

minimum authorized by the Commission to the Elk Creek plant from mills at Ukiah and Paskenta. It also transports Vita-Bark's products from Elk Creek. Vita-Bark uses its own trucks to transport raw material and the finished products to and from its plants at Truckee and Shingle Springs. The finished products have a low value in the market place and the minimum rates exceed that which the raw materials can bear. Devine proposed to transport the raw materials to the Elk Creek plant only as a return from an outbound load of wood chips. Vita-Bark in no way controls the shipment of wood chips. The special equipment utilized for wood chip hauls is also ideally suited for the transportation of unprocessed bark and sawmill residue. The proposed rates would not be compensatory for the movement of unprocessed bark and sawmill residue standing alone; however, when performed as an integrated operation with the movement of wood chips the transportation of bark and residue will be compensatory.

The decision recites the circumstances which place this case as an exception to the general rule. Although Devine is not a highway common carrier of wood chips or of bark, it does conduct a substantial highway common carrier operation out of Elk Creek and has facilities, including equipment and personnel, at that location in connection with such operation, and the revenues from the integrated transportation of wood chips and bark will substantially contribute to the offsetting of the expense of maintaining said facilities. There is no other carrier that might be able to obtain the transportation and, in the absence of authorization to charge the proposed rates, the transportation of bark, sawmill residue and the finished products thereof to and from Vita-Bark's plant at Elk Creek may be diverted from regulated highway carriers.

Bark and sawmill residue are by-products which have little or no use except for processing into products such as soil additives and have customarily been disposed of as waste by burning. In recent years the intrusion of smoke into the atmosphere by the burning of wastes has been considered to be contrary to the best interests of the public.

It should be noted that prior to making the required statutory finding that the proposed rates are reasonable, the Commission made the preliminary findings that the proposed rate is compensatory and,

> "4. The transportation of bark and sawmill residue proposed by petitioner at less than the established minimum rates is in the public interest and is justified by transportation conditions."

The second case we will discuss, and the one relied upon by applicant, is Ragus Trucking, Inc., (1966) 66 Cal. P.U.C. 319).[4/] In this decision Ragus Trucking, Inc., was authorized to charge $225 per load in carrier's single unit of equipment for the transportation of freight in all kinds for The Akron from the latter's warehouse in Sun Valley to its retail store at San Francisco subject to the conditions: (1) single unit of equipment shall be a tractor and two 27-foot van-trailers moving as a single unit, (2) transportation shall be performed each weekday and minimum charge shall be for 20 loads per calendar month, (3) The Akron must perform loading at origin and unloading at destination, and lading to move under The Akron's seal, subject to The Akron's load and count, and (4) all loads to be prepaid by The Akron.

4/ It should be noted that this decision has been amended and supplemented several times. See Decision No. 73214, dated October 19, 1967, and Decision No. 72734, dated February 14, 1968, in Application No. 49685; Decision No. 75191, dated January 14, 1969, in Application No. 50751; and Decision No. 75834, dated February 20, 1970, in Application No. 51556.

The decision recites that The Akron is a combination discount and department store having nine retail outlets in southern California and one at San Francisco which are served by a central distributing warehouse located at Sun Valley. The Akron retails hundreds of different articles, many of which are fragile, light, bulky and imported. Distribution from the warehouse to the retail stores is in mixed lots, weighing between 10,000 and 15,000 pounds, containing a cross-section of the hundreds of various articles handled by The Akron. Under the governing provision of Minimum Rate Tariff No. 2, these articles would have to be classified and described on the shipping documents in terms of the governing classification. This would be extremely difficult, time-consuming and impractical. A rail tariff named a rate on a trailer-on-flat car (piggyback) movement of $231.50 per car for the transportation of "Freight, All Kinds..."; however, the use of piggyback service under that rate would not be satisfactory to The Akron because the unloading dock at the store in San Francisco will not accommodate trailers exceeding 30 feet in length. Because of the numerous restrictive rules in the rail tariff governing the application of the rate, Ragus Trucking, Inc., is precluded from assessing said rate for the transportation under the alternative application of rate provisions of Minimum Rate Tariff No. 2. Ragus has daily loads of sugar moving from Crockett to Los Angeles. In order for the $225 charge to be fully compensatory or profitable it depends upon the southbound sugar hauling, which traffic has been shown to be reasonably assured. The charge of $225, in many instances, would exceed the charges under the minimum rates for the transportation involved, and compares favorably with the freight charges resulting from the alternative use of the rail trailer-on-flat car charge of $231.50 per car and the charges resulting from

the otherwise applicable minimum class rates. The Commission found that the northbound hauling for The Akron and the southbound hauling of sugar will be closely integrated and that the $225 rate is compensatory.

The conditions and circumstances of transportation in Devine are different from those in Ragus; however, the point they have in common is that the traffic could not freely move at the minimum rates or the published rates of common carriers. In that connection, the Commission in a number of other instances has found that certain types of traffic of retailers consisting of numerous articles would not move freely under the rules governing the minimum rates and required a rate on "Freight of All Kinds" (See Otto Turk, Decision No. 64248 in Application No. 44382, unreported; Dart Transportation Co., Decision No. 59621 in Application No. 41426; Robertson Drayage Co., 55 Cal. P.U.C. 60). The fact that traffic may be lost by an individual carrier or by for-hire carriers is not controlling. As was stated in Beaman Bros., 39 C.R.C. 673, if the threatened diversion of traffic to proprietary trucks (assuming such threat to exist) justifies relief being granted to a carrier under Section 3666, it justifies the same relief to all other carriers in the same position. In Ragus and in Devine this threat was apparent, but in addition thereto was the circumstance that there were no other carriers, particularly public utility carriers, available to perform the type of service required by the shipper.

We do not imply that the circumstances of Devine and Ragus are the only circumstances that will provide an exception to the so-called general rule, or that will justify the granting of authority under Section 3666. California Trucking Association seeks a statement from the Commission clarifying its "policy" in matters of

this type. We are unable to accommodate CTA with the concise statement it desires. In an application under Section 3666 a finding of the reasonableness of a proposed rate involves weighing the considerations surrounding the transportation with the considerations of the regulatory purposes set forth in Section 3502 of the Public Utilities Code and hereinbefore discussed. We cannot foretell each and every situation that may justify a finding that a rate proposed under Section 3666 is reasonable. We can say that, standing alone and without any other circumstances involved, a mere showing that the carrier will make a profit from performing the transportation at the proposed rate and that if the authority to charge the proposed rate is not granted the traffic may be diverted to proprietary carriage is not sufficient to justify a finding that the proposed rate is reasonable in a proceeding brought under Section 3666.

Applicant contends that the factual circumstances of the transportation by it of salt from Morton are the same as the transportation involved in Ragus. We find that such is not the case. Morton tenders salt to applicant in the same manner that it would tender its shipments to any carrier, including a public utility carrier. The form of the proposed rate is the same as that maintained by public utility carriers and as prescribed in the minimum rates. The only difference is that it is lower. If the authority is granted the results would be that applicant would have the traffic, to the exclusion of any competition from other carriers, and would be able to realize a profit from such operation; and that Morton would pay lower rates for the transportation of salt and thereby obtain an advantage over its competitors in the market place. It should be noted that if a public utility carrier sought to provide Morton a lower rate, such rate would have to be published and available to any other shipper similarly situated (Leslie Salt,

for example) and the carrier would also be responsible that such rate would not discriminate against or place an undue disadvantage upon other salt shippers or other localities. Such is not the case in connection with a rate authorized under Section 3666. Furthermore, a rate maintained by a public utility carrier may be met by other carriers, which is not the case in the type of rate sought here. It would seem apparent that if the authority sought here is granted that other shippers of salt could be expected to seek a permitted carrier especially situated to perform their transportation at less than the minimum rates so as to maintain their position in the market place.

On the other side of the coin, what might result if the authority is denied? It was stated that Morton might engage in proprietary transportation or that it may change its distribution so as to ship salt in carloads to a warehouse in Los Angeles under rail rates and distribute its product in southern California from that point. If applicant, whose principal operation is between the Bay Area and Los Angeles, has direct costs of operation in connection with the haul such that the proposed rate would be compensatory only when considered with a back-haul for each load transported, it would seem doubtful that Morton could experience costs of operation that would not exceed 63 cents per 100 pounds. If Morton changes its distribution as indicated, applicant may compete with other carriers for the carload traffic from Newark to Los Angeles at the rail rate under the same circumstances and conditions, and may also compete for the traffic from the distribution center at Los Angeles under the same circumstances and conditions as obtain for other carriers.

We find that it has not been shown that the proposed rate is reasonable within the meaning of that term in Section 3666 of the Public Utilities Code. We conclude that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 51685 of Major Truck Lines, Inc. is denied.

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

Dated at San Francisco, California, this 22nd day of SEPTEMBER, 1970.

Chairman

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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