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Decision No. 79257

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application }
of E. B. WILLS CO., INC. to }
Remove Restrictions in Permit. }

Application No. 52497
(Filed March 11, 1971)

William H. Kessler, Attorney at Law, for applicant.
Richard W. Smith, A. D. Poe, Attorneys at Law, and
H. F. Kollmyer, for California Trucking Association,
interested party.
Kenneth K. Henderson, for the Commission staff.

O P I N I O N

Applicant conducts operations as a for-hire carrier pursuant to a radial highway common carrier permit. Item (11) of said permit contains the following restriction:

"Whenever permittee engages other carriers for the transportation of property of Edwin B. Wills or E. B. Wills Co., Inc. or customers or suppliers of said individual or corporation, permittee shall not pay such carriers less than 100% of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers".

Applicant request that this restriction be modified so that it would be authorized to engage sub-haulers at less than 100 percent of the applicable minimum rates and charges established by the Commission for the transportation of property belonging to customers or suppliers of E. B. Wills Co., Inc.

Public hearing was held before Examiner O'Leary at Fresno on June 17, 1971. It was submitted subject to the filing of concurrent briefs which were filed on August 16, 1971. The matter is now ready for decision.

Applicant's president testified that applicant is engaged in five types of business as follows in order of dollar volume:

1. Steel fabrication and erection.
2. Proprietary and for-hire trucking.
3. Buying, preparing and selling scrap.
4. Manufacture and sale of boat trailers and other types of trailers.
5. Manufacture and sale of fibreglass racing automobile bodies.

The witness also testified that the trucking equipment operated by applicant is used first to transport the property of applicant and second to transport the property of others in for-hire service. The witness further testified that approximately 70 percent of its gross revenue, in for-hire transportation, is derived from shipments transported for applicant's customers and suppliers. Said shipments are not transported to, from, or for the account of applicant. The only interest of applicant in such shipments is that of a for-hire carrier, performing a transportation service. Applicant requests modification of the restriction so that it will not be required to pay subhaulers 100 percent of the minimum rate on shipments for its customers and suppliers when the only role of applicant in such shipments is that of for-hire carrier.

It has been a long established policy of the Commission to restrict the permits of carriers who are also shippers or carriers who are controlled by an alter ego shipper by requiring that they pay subhaulers engaged to transport shipments for the carrier/shipper entity, its customers or suppliers 100 percent of the minimum rates. The policy was established because the Commission found that the uncontrolled use of subhaulers by an integrated carrier/shipper entity is very susceptible to devices to circumvent minimum rate regulation. The Commission has previously stated:

"From the standpoint of enforcing minimum rates it is not necessary, in our judgment, that it be shown that a particular transaction has resulted in that which the statute condemns but only that the transaction be reasonably susceptible of resulting in the evil sought to be avoided." (Investigation of J & V Trucking Company, Decision No. 63227, 59 Cal. P.U.C. 507.)

Section 3663 of the Public Utilities Code provides that:

"In the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

Therefore highway permit carriers may assess the published rates of rail common carriers, however many such rates are subject to a minimum weight in excess of the carrying capacity of highway carrier equipment. A portion of applicant's transportation consists of the transportation of steel to its customers and suppliers in Fresno from mills located in Northern and Southern California. Applicant's brief sets forth the following rates for said transportation:

From \ To	Fresno	San Francisco (2)		
	Minimum Weight (1) 80	Minimum Weights (1) 30	(1) 40	(1) 60
Los Angeles	49	86	80	60
San Francisco	32			

(1) Minimum weights are in thousands of pounds.

(2) Rates apply between San Francisco and Los Angeles.

With respect to an 80,000 pound shipment from San Francisco to Fresno transported partially by a subhauler (40,000 lbs.) and partially in its own equipment (40,000 lbs.), applicant would charge \$256 for the entire shipment (80,000 lbs. x .32 cwt). It interprets Item 11 of its permit to require payment to the subhauler of the 80,000 pound rate (32 cents) applicable to the entire shipment subject to a minimum weight of 45,000 pounds, or a total of \$144. Applicant's basis for the 45,000 pound minimum weight is derived from the exception set forth in Item 290 of Minimum Rate Tariff No. 2. Said exception applies only in connection with ratings set forth in the

Governing Classification or the Exception Ratings Tariff. Applicant's brief does not set forth the source of the 80,000 pound rate. If in fact said rate was derived from a rating in the Governing Classification or Exceptions Rating Tariff, which is doubtful, the interpretation is correct. If, however, the 80,000 pound rate is a rail common carrier commodity rate, Item 11 of applicant's permit would require payment of the entire \$256 to the subhauler even though it only performed 50 percent of the transportation. A payment based on the 40,000 pound rate set forth in applicant's brief would be in excess of \$256. Said interpretation is also advanced by CTA and the staff. A careful analysis of the wording of Item 11 of applicant's permit leads us to the same conclusion.

Although the instant application will be denied the evidence shows that Item 11 of applicant's permit should be amended to correct the situation heretofore described.

After consideration the Commission finds that:

1. Applicant is engaged in five types of business, namely, steel fabrication and erection; proprietary and for-hire trucking; purchase, preparation and sale of scrap; manufacture and sale of trailers; and manufacture and sale of fibreglass racing automobile bodies.
2. Applicant's trucking equipment is used first to transport its own property and second to transport the property of others in for-hire transportation.
3. Seventy percent of applicant's gross revenue in for-hire transportation is derived from shipments transported for applicant's customers and suppliers. Said shipments are not transported to, from or for the account of applicant.
4. The uncontrolled use of subhauliers by an entity that is both a shipper and carrier is very susceptible to devices to circumvent minimum rate regulation.

5. A large portion of applicant's transportation consists of shipments of steel from points in Northern and Southern California to its customers and suppliers in Fresno.

6. Many of the shipments set forth in Finding 5 move at rates subject to an 80,000 pound minimum weight.

7. When applicant utilizes another carrier (subhauler) to transport a portion of the type of shipment described in Finding 6 it is required to pay the carrier utilized the minimum rate for the transportation performed by said other carrier because of the requirement set forth in Item 11 of its permit.

8. In certain instances the requirement set forth in Item 11 of applicant's permit may result in payment to the carrier engaged as a subhauler in an amount disproportionate to the transportation actually performed.

Based on the above findings the Commission concludes:

1. The application should be denied.
2. Item 11 of applicant's radial highway common carrier permit should be revised as set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. Application No. 52497 is denied.
2. Item 11 of applicant's radial highway common carrier permit is revised as follows:

"Whenever permittee engages other carriers for the transportation of property of, to or from Edwin B. Wills or E. B. Wills Co., permittee shall not pay such carriers less than 100% of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers.

"Whenever permittee engages other carriers for the transportation of property of the customers or suppliers of said Edwin B. Wills or E. B. Wills Co., permittee shall pay such carriers not less than a percentage of the applicable minimum charge for the entire shipment equal to the percentage of transportation actually performed by such other carriers."

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

Dated at San Francisco, California, this 19th day of OCTOBER, 1971.

[Signature]
Chairman
William H. Brown, Jr.
[Signature]
James L. Sturgeon
[Signature]
Commissioners