

Decision No. 80406

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
WEST COAST WAREHOUSE CORPORATION, a
California corporation, for authority
to deviate from minimum rates pursuant
to Section 3666 of the Public Utilities
Code, for specified shipper.

Application No. 53182
(Filed February 29, 1972;
Amended April 27, 1972)

Russell & Schureman by Carl H. Fritze, Attorney
at Law, for applicant.
Frank A. Riehle, Jr., Attorney at Law, for Pacific
Salt & Chemical Co.; R. S. Wilson, for Southwest
Salt Co.; and D. Livengood, for West Coast Salt
and Milling Co.; protestants.
Knapp, Gill, Hibbert & Stevens, by Karl K. Roos,
Attorney at Law, for Bulk Freightways; Richard W.
Smith, and A. D. Poe, Attorneys at Law, and
H. F. Kollmyer, for California Trucking Association;
Roy L. Blake and George C. Blake, for Geo. C. Blake
Trucking, Inc.; Richard Reyes, for Russ Phillips
Trucking; Warren Goodman, for Ventura Transfer Co.;
Milton W. Flack, Attorney at Law, for Tom Utsuki
Trucking, Inc.; Donald R. Swortwood, Attorney at Law,
for Western Salt Company and Long Beach Salt Company;
Chester W. Jenkins, for Ocean Salt Co., Inc.;
James S. Blaine, for Leslie Salt Co.; and Thomas E.
Carlton, for Morton Salt Company; interested parties.
Norman B. Haley, Raymond Toohey and Leonard Diamond,
for the Commission staff.

O P I N I O N

In this proceeding West Coast Warehouse Corporation (West Coast), a radial highway common carrier, seeks modification and extension of its authority to charge less than minimum rates for the transportation of sodium chloride (salt) in bulk in dump truck equipment from Long Beach to points in Southern California

for Ocean Salt Co., Inc. Said authority was initially granted by Decision No. 78649, dated May 4, 1971, in Application No. 52579, and was extended by Decision No. 79285, dated October 27, 1971.^{1/}

The application herein was heard on a common record with Order Setting Hearing 700 in Case No. 5432, before Examiner Mallory in Los Angeles on May 10 and 11, and June 7, 1972. The application was submitted on the latter date and OSH 700 in Case No. 5432 was temporarily removed from the calendar, pending ruling on motions to discontinue and to broaden said proceeding. Application No. 53182 will be decided herein, and the issues presented in OSH 700 will be the subject of a separate order.

The relief heretofore granted to West Coast is authority to assess hourly rates for the transportation of salt in dump trucks from Long Beach to points in Los Angeles and Orange Counties. In the amendment to Application No. 53182, West Coast seeks authority to assess yearly vehicle unit rates lower than the minimum rates otherwise prescribed in Minimum Rate Tariffs 2 and 15.^{2/}

^{1/} Said decision provided that the authority granted therein shall expire 60 days after the effective date of decision in Petition No. 41, Case No. 7783, unless West Coast Warehouse Corporation, prior to the termination of said 60-day period, files application for further authority to deviate from the minimum rates applicable to the transportation of sodium chloride which it performs for Ocean Salt Company. In the latter event the authority therein granted shall continue in effect until terminated or changed by further order of the Commission.

Petition No. 41 in Case No. 7783 was decided by Decision No. 79451, dated December 14, 1971; and the application herein was filed within 60 days after said date.

^{2/} MRT 15 contains yearly vehicle unit rates for the transportation of salt in packages in equipment other than dump trucks. MRT 15 contains no rates for transportation in dump truck equipment.

Applicant desires to apply said yearly vehicle unit rates for transportation of salt within a radius of 250 air miles of Long Beach, using a single unit of equipment. It also seeks to continue to assess an hourly rate, subject to a minimum charge of three hours per load, for the use of a small truck having a weight-carrying capacity of under 20,000 pounds. Said truck would be used for occasional small loads from Long Beach to points within Los Angeles and Orange Counties.

Pacific Salt & Chemical Co. (Pacific Salt) opposed the sought authority to assess yearly vehicle unit rates within a radius of 250 air miles of Long Beach. Pacific Salt produces crude salt at Trona and markets this salt in Southern California in competition with Ocean Salt and other salt companies.^{3/} Pacific Salt urged that the granting of the authority to apply yearly rates to points within 250 air miles of Long Beach will provide lower rates to Ocean Salt to points which now fall within the exclusive marketing area of Pacific Salt. Pacific Salt's current exclusive marketing area assertedly encompasses those points which are closer to Trona than to the other points in Southern California where major salt producers are located, and covers principally San Bernardino and Ventura Counties. Other producers are located in Bakersfield, San Diego and in Los Angeles. Pacific Salt has no objection to the sought authority if yearly vehicle unit rates are limited to the present geographical extent of West Coast's rate deviation authority, namely, Los Angeles and Orange Counties. A representative of Blake Trucking Co., which hauls salt in bulk for Pacific Salt also protested the proposed yearly vehicle unit rates on the basis that some traffic now hauled for Pacific Salt would be lost to West Coast if the authority is granted.

^{3/} Trona is located in San Bernardino County approximately 30 miles east of Ridgecrest, and 130 miles north of San Bernardino.

A witness appearing for Ocean Salt testified that it is presently shipping salt in packages under yearly vehicle unit rates in MRT 15, and that if MRT 15 contained vehicle unit rates for dump truck equipment it would use said rates for bulk salt. The witness pointed out that minimum rates in MRT 15 are applicable to a radius of 250 air miles from base of operations. The witness stated that Ocean Salt intends to use one unit of equipment under the proposed yearly vehicle unit rate and that the company has no objection to such a limitation in the authority. The witness further testified that in the event the sought authority is not granted Ocean Salt intends to acquire a dump truck unit and to operate said unit in proprietary service.

Witnesses appearing for applicant presented evidence concerning the nature and extent of West Coast's operations for Ocean Salt and data designed to show that the proposed yearly and hourly vehicle unit rates will be compensatory. The cost development for the use of a dump-truck and transfer-trailer unit of equipment shows that the proposed yearly rates will exceed the estimated annual operating costs of said unit. Said annual operating costs are comparable to the existing minimum yearly vehicle unit rate in MRT 15 for a similar unit of equipment consisting of a two-axle diesel tractor and a set of hopper trailers. The record shows that hourly service is performed with a converted flat-bed truck, which is used on the average of twice weekly for hauling salt in bulk and the balance of the time is used in other service. The data submitted with respect to said vehicle indicates that the proposed hourly rate subject to a three-hour minimum exceeds the average hourly costs of operating said vehicle.

Discussion

Pacific Salt and the carrier transporting salt for said company oppose the granting of the proposed yearly rate applicable within a radius of 250 air miles of Long Beach because they believe lower rates will accrue thereunder to Ocean Salt, which will permit

that seller to invade the current exclusive marketing area of Pacific Salt. The evidence shows that Ocean Salt desires the flexibility of a truck and trailer unit devoted exclusively to its service for the hauling of bulk salt, Ocean cannot efficiently use such unit on an exclusive use basis unless such unit operates over as wide a radius as possible; and that Ocean will acquire its own unit of equipment if West Coast does not receive the authority sought herein.

The foregoing indicates that Pacific Salt would be in no better competitive position if the yearly rate authority is denied or is limited to Los Angeles and Orange Counties than if the requested authority is granted, because Ocean Salt intends to engage in proprietary operations with its own vehicle in the event the requested authority is denied. The record shows that Leslie Salt currently operates a fleet of proprietary vehicles which includes vehicles equipped to handle bulk salt.

Pacific Salt cited Major Truck Lines, Inc., Decision No. 77767, dated September 22, 1970, in Application No. 51685, in support of its request that the instant authority be denied.^{4/} That decision states as follows:

"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."

^{4/} Said decision denied a request to charge less than minimum rates for Morton Salt Company for the transportation of salt in packages from Newark to Los Angeles.

Decision No. 77767 found that the form of the rate proposed therein was the same as the prescribed minimum rate, only lower. The situation is different herein; the form of the rate is different, as is the service contemplated under said rate. The carrier will devote a unit of equipment to the shipper for its exclusive use, under yearly rates. In the event the rate relief is not granted, the shipper will gain substantially the same service by placing its own unit in operation. The record shows that the shipper would also discontinue use of other vehicles operated by West Coast under yearly rates which are used for hauling packaged salt. Thus, West Coast would lose not only the bulk salt traffic of Ocean Salt, but also the packaged salt traffic of Ocean Salt. The transportation circumstances in this application are clearly distinguishable from the transportation circumstances described in Major Truck Lines, Inc., cited in support of denial of this application.

Findings and Conclusion

1. West Coast currently performs transportation of bulk salt for Ocean Salt under authority to deviate from minimum rates granted in Application No. 52579. Under Decision No. 79285 in said application, the authority will expire when a final decision is issued in this proceeding. The current authority is limited to Los Angeles and Orange Counties and provides for the application of hourly rates for the transportation of bulk salt.

2. West Coast currently performs transportation of packaged salt for Ocean Salt under minimum yearly vehicle unit rates set forth in MRT 15, which apply from Long Beach to points within 250 air miles thereof.

3. West Coast proposes to assess yearly vehicle unit rates for the use of a single unit of trucking equipment consisting of a dump truck and transfer trailer for the transportation of bulk salt for Ocean Salt. MRT 15 does not provide minimum yearly vehicle unit rates for a unit of equipment consisting of a dump truck and transfer trailer. Therefore, authority under Section 3666 of the Public Utilities Code is required in order to assess a yearly vehicle unit rate for such equipment unit.

4. The evidence shows that the proposed yearly and hourly vehicle unit rates will exceed the estimated annual or hourly costs of operating said vehicles. Therefore, said proposed rates will be compensatory.

5. Pacific Salt & Chemical Co., competing seller of bulk salt, opposes the granting of the rate relief sought herein on the basis that lower rates resulting from the application of yearly vehicle unit rates will permit Ocean Salt to sell bulk salt at a lower delivered price at points currently within an area considered by Pacific Salt to be its exclusive territory for sales of bulk salt.

6. The record shows that if the yearly vehicle unit rate authority sought by West Coast is not granted, Ocean Salt will acquire a unit of trucking equipment to haul bulk salt.

7. Pacific Salt would face the same geographical competition from Ocean Salt if Ocean operates its own vehicle for the hauling of bulk salt as Pacific would face if the yearly vehicle unit rate applicable within a radius of 250 air miles of Long Beach is granted herein.

8. In the event the yearly vehicle unit authority sought herein is denied, West Coast would lose not only the transportation of bulk salt from Ocean, but would also lose the transportation of packaged salt now performed for Ocean.

9. The authority to deviate from minimum rates requested in the application herein will be reasonable within the meaning of Section 3666 of the Public Utilities Code, and said authority is justified by transportation conditions.

The Commission concludes that the application should be granted subject to the condition that the yearly vehicle unit rate shall be limited to one vehicle unit and that the authority shall expire in one year.

O R D E R

IT IS ORDERED that:

1. West Coast Warehouse Corporation is authorized to transport sodium chloride, in bulk, in dump truck equipment, for the account of Ocean Salt Company at rates and charges less than the established minimum rates and charges otherwise applicable but not less than those set forth in and subject to the conditions specified in Appendix A, attached hereto and by this reference made a part hereof.

2. The authority granted herein shall supersede the authority granted by Decision No. 79285 and shall expire October 1, 1973, unless modified or extended by further order of the Commission.

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

Dated at San Francisco, California, this 29th day of AUGUST, 1972.

Samuel L. Sturgeon
President
William J. Murphy, Jr.
John A. Martin
Thomas H. ...
Commissioners

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Authorized Rates and Charges and
Conditions Applicable Thereto

Carrier: WEST COAST WAREHOUSE CORPORATION

Shipper: Ocean Salt Company, 1250 Panorama Drive, Long Beach,
California, 90802.

PART I

Territory:

Radius of 250 air miles from the base of operations
designated in the written agreement.

Commodity:

Sodium Chloride, in bulk.

Authorized Rates: (Subject to Notes 1 and 2)

Yearly vehicle unit rates lower than minimum rates
otherwise prescribed in Minimum Rate Tariffs 2 and 15.

Equipment:

Type of Carrier's Motor Power Equipment:

Three-Axle Diesel Dump Truck

Type of Trailer or Semi-Trailer Equipment:

Transfer Dump Truck and Trailer

Base Vehicle Unit Rates, per Calendar Month:

Base rates in dollars per unit of carrier's equipment
per calendar month.

Base rate, per calendar month, \$2,169.

Mileage rate, 24 cents (in cents per mile).

Note 1. Said charges authorized by this order for the base Yearly
Vehicle Unit rates, or the per mile rate, shall be increased
effective concurrently with increases authorized in Minimum
Rate Tariff 15 occurring after February 1, 1973 as follows:
The mileage rate shall be increased by the same amount as
applicable to a two-axle diesel tractor pulling carrier-
owned hopper doubles trailers. The base vehicle unit rate
shall increase by the same percentage as that applicable
to a two-axle diesel tractor-pulling carrier-owned hopper
doubles trailers, Rate Basis 3.

Note 2. In all other respects the provisions of rates and charges
of Minimum Rate Tariff 15 shall apply.

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Sodium Chloride, in bulk, in dump trucks. Includes transportation in hydraulic truck unit equipped with side boards, and dumps by means of a hydraulic hoist which is an integral part of the unit.

Rates and Territory:

Sodium Chloride, in bulk, in dump trucks, transported between or within Los Angeles and Orange Counties, subject to Notes 1, 2, 3, 4 and 5:

	<u>Weight in Pounds</u>	<u>Rates in Cents Per Hour</u>
	0 to 20,000 pounds	1639
Note 1.	Subject to a minimum charge of three (3) hours for each load.	
Note 2.	Weight in pounds is the greatest (heaviest) gross weight of the property transported by the unit of carrier's equipment at one time during a single transaction.	
Note 3.	(a) The total of the loading, unloading and driving time computed from the arrival of carrier's equipment at point of origin or first point of origin when more than one point of origin is involved, to the time unloading is completed at point of destination, or last point of destination when more than one point of destination is involved, subject to paragraph (b) hereof, shall be used to compute charges.	
	(b) In computing time under the basis outlined in paragraph (a) hereof, the various time factors shall be not less than the actual time involved in minutes. After the total time has been determined under the provision of paragraph (a) hereof, it shall be converted into hours and fractions thereof. Fractions of an hour shall be determined in accordance with the following table:	
	Less than 8 minutes omit	
	8 minutes or more but less than 23 minutes shall be 1/4 hour	
	23 minutes or more but less than 38 minutes shall be 1/2 hour	
	38 minutes or more but less than 53 minutes shall be 3/4 hour	
	53 minutes or more shall be 1 hour	

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- Note 4. Between the hours of 6:00 P.M. and 7:00 A.M., and on Saturdays, Sundays, and the holidays of New Year's Day, Washington's Birthday, Memorial Day, July 4, Labor Day, Thanksgiving, the day after Thanksgiving, December 24, and Christmas Day, an additional charge at the rate of \$4.00 per hour (or fraction thereof) shall be assessed.
- Note 5. Rates named herein are subject to an additional charge at the rate of \$8.00 per man-hour, minimum charge \$4.00, when carrier furnishes help in addition to the driver. The time for computing the additional charge shall be not less than the actual time in minutes the helper or helpers are engaged in performing the services. The total time so computed shall be converted into hours and fractions thereof. Fractions of an hour shall be determined in accordance with the table provided by Note 3(b).

Prior to the transportation of the property, OCEAN SALT CO., INC. must enter into a written agreement with WEST COAST WAREHOUSE CORPORATION to ship at rates no lower than those provided herein, stating specifically the class of service desired. No single agreement shall cover shipments transported over a period in excess of 31 days.

The agreement shall be in substantially the following form, and the original or a copy thereof shall be retained and preserved by the carrier, subject to the Commission's inspection, for a period of not less than three (3) years from the date of its issuance.

In accordance with these provisions, I hereby elect to have Sodium Chloride transported by WEST COAST WAREHOUSE CORPORATION from Long Beach, California, to points in Los Angeles and Orange Counties, California, at the rates and charges set forth in Decision No. _____ of the Public Utilities Commission of California.

Shipper: OCEAN SALT CO., INC. By _____

Confirmed:
WEST COAST WAREHOUSE CORPORATION By _____

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SAMPLE AGREEMENT

PART I

Date _____

In accordance with the provisions of Minimum Rate Tariff 15, as modified by Decision No. _____ of the Public Utilities Commission, State of California, or subsequent Orders modifying or superseding said Decision, I hereby elect to have Sodium Chloride, in bulk transported by West Coast Warehouse Corporation under rates and charges at a level no lower than those of said tariff, as modified, subject to the following terms:

Date transportation service is to commence _____

Duration of Agreement

Base of Operations 1250 Panorama Drive Long Beach, Calif.
 (Street Address) (City)

Type of Carrier's Motor Power Equipment and Identification
Three-Axle Diesel Truck

Type of Trailer or Semi-Trailer Equipment and Identification,
when applicable Dump Truck and Transfer Trailer

Lineal Loading Space Over 26 feet

Base Rate (per calendar month)

Yearly: \$2,169 , per calendar month.

Rate Per Mile (In Cents)	24
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Said charges for the base monthly vehicle unit rates, or the per mile rate, authorized by the Order of the Public Utilities Commission, State of California, in Decision No. _____, or subsequent Orders modifying or superseding said decision shall be increased effective concurrently with increases authorized in Minimum Rate Tariff 15, occurring after February 1, 1973 as follows: The

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mileage rate shall be increased by the same amount as applicable to a two-axle diesel tractor pulling a carrier-owned set of hopper doubles trailers. The base vehicle unit rate shall be increased by the same percentage as that applicable to a two-axle diesel tractor pulling a carrier-owned hopper doubles trailers. In all other respects the provisions, rates and charges of Minimum Rate Tariff 15 shall apply.

The property transported under this agreement is released by the shipper at a valuation of not in excess of 50 cents per pound per article.

In the event that a change is made in the minimum rates, as modified by Decision No. _____ of the Public Utilities Commission, State of California, or subsequent orders modifying, amending, or superseding said Decision, the portion of the week or month prior to the effective date of the change will be prorated at the former rates and the remaining days in the week or month will be prorated at the new rates.

Shipper: Ocean Salt Co., Inc. By _____
(Name in Full)

Confirmed:

Carrier: West Coast Warehouse
Corporation By _____
(Name in Full)