

ORIGINAL

Decision No. 52662

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of GUTHMILLER TRUCKING, INC., a California corporation, for authority to deviate from the provisions of Minimum Rate Tariff No. 2 in connection with transportation of empty glassware bottles.

Application No. 53620
(Filed October 4, 1972;
amended October 30, 1972 and
April 24, 1973)

Application of BLACKBURN TRUCK LINES, INC., a California corporation, CONTAINER EXPRESS, INC., a California corporation, and SCHALDACH CONTAINER CORPORATION, a California corporation, for authority to deviate from the provisions of Minimum Rate Tariff No. 2 in connection with transportation of empty glassware bottles.

Application No. 53724✓
(Filed December 4, 1972)

Eldon M. Johnson, Attorney at Law, for Guthmiller Trucking Co., Inc., and Knapp, Gill, Hibbert & Stevens, by Warren N. Grossman, Attorney at Law, for Blackburn Truck Lines, Inc., Container Express, Inc., and Schaldach Container Corporation, applicants.

Arthur D. Maruna, H. Hughes, and Arlo D. Poe, Attorney at Law, for California Trucking Association, and James Quintrall, for himself, interested parties.

J. L. Glovka and R. D. Corning, for the Commission staff.

O P I N I O N

These applications were heard and submitted May 29 and 30, 1973 before Examiner Thompson at San Francisco. Applicants seek authorization to charge less than the minimum rates for the transportation of empty glassware bottles in truckload quantities

on roller-bed, van-type semitrailers between points at railhead in Los Angeles and Orange Counties, on the one hand, and points at railhead in certain counties in and about the Central Valley and the San Francisco Bay area, on the other hand. Applicants desire to charge the rate published and maintained by railroads in Pacific Southcoast Freight Bureau Tariff 300 series applicable to the transportation of those commodities between those points. By interim order in Decision No. 80996 dated January 30, 1973, as amended by Decision No. 81498 dated June 19, 1973, applicants were authorized, pending hearings and further order herein, to charge a rate of \$0.63 per cwt, minimum weight 40,000 pounds per shipment, subject to a 2-1/2 percent surcharge, except that as to shipments to Fresno County the minimum weight shall be 30,000 pounds, between points at railhead, which was the rate then maintained by the rail carriers.

The authority is sought by applicants to permit them to charge the same rates as are being assessed by highway permit carriers for the transportation of the same commodities between the same points in flat-bed semitrailers. Under the provisions of Item 200 series of Minimum Rate Tariff 2, common carrier rates, except rates of coastwise common carriers by vessel, may be applied when they produce a lower aggregate charge for the same transportation than results from the application of rates tabulated in the minimum rate tariff. The provisions of Item 200 series are subject to the rules, limitations, and conditions provided in Item 240 series which provides in part:

"In the event under the provisions of Items 200 and 230, inclusive, a rate of a common carrier is used in constructing a rate for highway transportation, and such rate does not include accessorial services performed by the highway carrier, the following charges for such accessorial services shall be added....:

1. No additional charge shall be assessed when the shipment is loaded into and/or unloaded from the carrier's equipment and the bill of lading issued pursuant to Item 255 indicates that the shipment was loaded and/or unloaded under one of the following circumstances:

* * *

- (b) By the consignor and/or consignee with power equipment...furnished and used without expense to carrier, and when no services are performed at carrier expense, or by carrier personnel.

* * *

2. A charge of 4-1/2 cents per 100 pounds shall be assessed on the weight on which transportation charges are determined when the bill of lading is so annotated to indicate that the shipment was loaded or unloaded from the carrier's equipment under one of the following circumstances:

* * *

- (c) By use of a roller conveyor when said conveyor is built into and is an integral part of carrier's equipment, and shipment is placed onto or removed from said conveyor by consignor or consignee without expense to the carrier.

* * *

The 4-1/2 cents rate has increased since the filing of the applications. Effective January 1, 1974 it became 5-1/2 cents.

There are a number of manufacturers of glass bottles with plants in Los Angeles and Orange Counties. They ship large quantities of bottles to canners and warehouses in the Central Valley and in the San Francisco Bay area. There is also some traffic of the same type in the reverse direction. Much of the transportation is performed by highway carriers who may be engaged by either the manufacturer or the consignee. Applicants transport metal cans and other commodities requiring the use of van-type semitrailer equipment from northern California points to southern California. The equipment that they operate has roller conveyors installed in the beds so that palletized freight can be moved by hand within the van. This equipment is suitable for hauling bottles on pallets and the transportation of that commodity balances their southbound operations.

The manufacturers of glass bottles have plants at railhead and most of the consignees are at railhead so that much of the traffic is governed by the provisions of Item 200 which authorizes the application of railroad carload rates providing for lower charges. The 4-1/2 cents rate in Item 240, however, prevented applicants from obtaining very much of this traffic for their van-type equipment. There normally is sufficient flat-bed equipment available from other carriers to move the traffic and the 4-1/2 cents rate does not apply when that equipment is utilized. The freight is palletized and is loaded by consignor and unloaded by consignee with power equipment.

Representatives of the bottle manufacturers testified at the hearing. They stated that whether or not the carrier's equipment is a flat-bed or roller-van semitrailer, the palletized freight is placed upon the equipment by power fork lift operated by shipper personnel. They asserted that until applicants received their interim authorities carriers operating flat-bed equipment were hired in preference to applicants because of the difference in the freight rates. Only one shipper stated that with equality of rates the company preferred shipping via roller-bed equipment because that equipment could be loaded quicker and clear the loading area sooner than flat-bed equipment. This was considered to be favorable on days of high shipping volume because the plant had only three loading spots. The other shippers stated that with equality of rates it made no difference to them whether or not the equipment used is roller-bed or flat-bed.

Applicants presented evidence showing that the transportation at the rates sought is compensatory. They also showed that the time from arrival at the loading and/or unloading site to departure is less for the roller-bed equipment than for flat-bed equipment.

In proceedings brought under Section 3666 of the Public Utilities Code by a carrier desiring to charge or assess a lesser rate than the minimum rate, the authority is granted upon a showing that the proposed rate is reasonable. In Application of Majors Truck Lines, Inc. (1970) 70 CPUC 447, the Commission stated that the meaning of the term "reasonable" used in the context of Section 3666 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 was also stated that the finding that a lesser rate than the minimum rate is reasonable contemplates showings that the proposed rate is compensatory and that there are circumstances and conditions attendant to the transportation not present in the usual or ordinary transportation performed by common carriers or by highway carriers under the applicable minimum rates.

Here the unusual or extraordinary conditions attendant to the transportation do not involve the commodity, the traffic, nor the manner of tender thereof. Simply stated the circumstance is that four highway permit carriers have specialized equipment with which they can transport glass bottles between points at railhead at a profit at rates which are charged by other carriers using flat-bed equipment; and the four carriers are unable to compete for that traffic at the minimum rates applicable to transportation performed in their specialized equipment. In essence, applicants have proved that the minimum rates applicable to their operation in the transportation of glass bottles between points at railhead are noncompetitive and that it is necessary that the lower rates of their competitors be made available to them in order for them to have equal opportunity to compete for the traffic. In those circumstances, and where as in this case it has been shown that the traffic is available to other for-hire carriers, 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. (Major Truck Lines, Inc., supra, cit. Roland Hougham, et al. (1956) 55 CPUC 34.) There is evidence and argument in this record that such policy should not be followed in this particular case.

Highway carrier transportation of empty bottles from the manufacturers at southern California to canneries and warehouses in northern California normally has been and is performed with flat-bed equipment. In every instance the shipments are loaded by the manufacturer with power equipment and in almost every instance are unloaded by the consignee with power equipment. Applicants are the only known highway permit carriers that desire to participate in this traffic utilizing specialized roller-bed van-type semitrailers. The specialized nature of the semitrailers together with the uniform practices for loading and unloading are the circumstances under which the costs of transporting the commodity in roller-bed equipment are equivalent to the costs of transporting the commodities on flat-bed equipment, and under which the transportation at the proposed rate is compensatory for applicants. Furthermore, in this particular case it has been shown that given equality of rates the roller-bed equipment operator has very little competitive advantage over carriers utilizing flat-bed equipment. It would be exceedingly difficult in the establishment of a commodity minimum rate for glass bottles to prescribe rules and conditions which would limit the application of that rate to the particular and peculiar circumstances related above. Failure to accomplish that task with precision could result in the application of such a rate to traffic for which it would not be intended and for which it would not be reasonable. Inasmuch as applicants are the only known carriers requiring this equitable relief, the establishment of a minimum commodity rate on glass bottles is not necessary nor desirable at this time.

At the hearing the form of the relief to be granted by applicants was discussed. In the interim order in Decision No. 80996 applicants were authorized to charge what was then the effective rate in Pacific Southcoast Freight Bureau Tariff 300 for movements between railheads. Since that decision the railroad tariff rates have been increased. It was suggested that applicants be authorized to charge less than the minimum rates but not lower than the rates and charges provided in PSFB Tariff 300, and reissues thereof, in effect at the time of movement. That suggestion is intended to remove the possibility of applicants being authorized to charge a lower rate than required of competing highway carriers using flat-bed equipment at such times as the rail rates may increase. It has merit. Applicants have shown that they should be allowed equal opportunity, no more and no less, to compete for the traffic with carriers operating flat-bed equipment.

We find that:

1. Applicants are highway permit carriers of empty glassware bottles from points in Los Angeles and Orange Counties to points and places in the Central Valley and in the San Francisco Bay area. They conduct those operations with van-type semitrailer equipment that has rollers or roller conveyors built into the beds as integral parts of the semitrailers.
2. Applicants compete for the traffic with other highway carriers that utilize flat-bed semitrailer equipment.
3. The shipments of empty glassware bottles are loaded by the consignor onto applicants' special trailers, and unloaded by consignees from the trailers, with power equipment furnished and used by the consignor and consignee at no expense to applicants in the same manner as shipments are loaded onto and unloaded from flat-bed equipment operated by applicants' highway carrier competitors.

4. Whether or not the shipments of empty glassware bottles are transported by applicants' equipment or by flat-bed semitrailer equipment is of little or no significance to the shippers.

5. The going rate for the transportation of truckload quantities of empty glassware bottles from railhead in Los Angeles and Orange Counties to railhead at points in the Central Valley and in the San Francisco Bay area is the rate published and maintained by railroad corporations in PSFB Tariff 300 series in effect at the time; and the shippers of such traffic will tender shipments to highway carriers only at the going rate.

6. Under the provisions of Item 200 series of Minimum Rate Tariff 2 the minimum rate for such transportation is the aforementioned going rate, subject to the rates and rules provided in Item 240 of the minimum rate tariff.

7. Under the provisions of Item 240, an additional charge is applicable to the transportation of empty glassware bottles in applicants' specialized semitrailer equipment, whereas no such additional charge is applicable to transportation of such shipments in flat-bed semitrailer equipment operated by applicants' highway carrier competitors.

8. Transportation of empty glassware bottles by applicants in their specialized semitrailer equipment between points at railhead in Los Angeles and Orange Counties and points at railhead in the Central Valley and in the San Francisco Bay area, when such shipments are loaded and unloaded with power equipment by the consignor and consignee at no expense to applicants, at the carload rates maintained in PSFB Tariff 300 series, has been shown to be compensatory.

9. The rates published and maintained in PSFB Tariff 300, and available to for-hire carriers under the provisions of Items 200 series and 240(1)(b) series of Minimum Rate Tariff 2, are reasonable for the transportation by applicants of empty glassware bottles, NOI, other than cut, one gallon or less, between points

at railhead in Los Angeles and Orange Counties, on the one hand, and points at railhead in counties in the Central Valley and in the San Francisco Bay area, on the other hand, when transported in van-type semitrailers with rollers or roller conveyors built into the bed as an integral part of the semitrailers, and when the bill of lading issued pursuant to Item 255 of Minimum Rate Tariff 2 indicates that the shipment was loaded and/or unloaded by the consignor and/or consignee with power equipment furnished and used without expense to applicants.

10. Applicants are the only highway permit carriers known to be willing and able to transport empty glassware bottles between the points at the rates described herein with the specialized semitrailer equipment also described herein.

We conclude that the applications should be granted as provided in the order which follows. We also conclude that the authority granted should be uniform as to each applicant and that inasmuch as the form of the authority will result in any changes in the level of the rates of applicants' competitors concurrently being effective as to the level of rates permitted applicants, an expiration date of the authority is not necessary and should not be prescribed.

O R D E R

IT IS ORDERED that:

1. Guthmiller Trucking, Inc., Blackburn Truck Lines, Inc., Container Express, Inc., and Schaldach Container Corporation, and each of them, are authorized to charge less than the established minimum rates, but not less than the rates and charges provided in Pacific Southcoast Freight Bureau Tariff No. 300, and reissues thereof, in effect at the time of movement and available to highway carriers under the provisions of Items 200 series and 240 (1)(b) of Minimum Rate Tariff 2, for the transportation in van-type

semitrailers equipped with rollers or roller conveyors built into the beds as integral part of the equipment, of empty glassware bottles, NOI, other than cut, one gallon or less, between points at railhead in the counties of Los Angeles and Orange, on the one hand, and points at railhead in the counties of Alameda, Contra Costa, Sacramento, San Francisco, San Joaquin, Santa Clara, Solano, and Fresno, on the other hand, when shipment is loaded into and/or unloaded from the carrier's equipment by the consignor and/or consignee with power equipment furnished and used without expense to the carrier, and the bill of lading issued pursuant to Item 255 of Minimum Rate Tariff 2 indicates that the shipment was loaded and/or unloaded under those circumstances.

2. In all other respects the transportation described hereinabove shall be governed by the rates and rules prescribed in Minimum Rate Tariff 2.

3. Concurrently with the effective date of this order the authority granted in Decision No. 80996, as amended by Decision No. 81498, is cancelled. ✓

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

Dated at San Francisco, California, this 2nd day of 1 APRIL, 1974.

Vernon L. Stinson
President
William J. Stinson
J. W. Stinson
Stinson
Commissioners