

**ORIGINAL**Decision No. 83961

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 U.W.S. MATERIALS AND SUPPLY CO., INC.,  
 a corporation, for an order authorizing  
 departure from the rates, rules and  
 regulations of Minimum Rate Tariff No.  
 2, pursuant to the provisions of  
 Section 3666 of the Public Utilities  
 Code, for the transportation of sod  
 in rolls and stacked on pallets, from  
 Suisun, California, for Warren's  
 Turf Nursery.

Application No. 54760  
 (Filed March 28, 1974)

Handler, Baker & Green, by Daniel W. Baker,  
 Attorney at Law, for U.W.S. Materials and Supply  
 Co., Inc., applicant.  
Arthur D. Maruna and H. Hughes, for California Trucking  
 Association, interested party.

O P I N I O N

U.W.S. Materials and Supply Co., Inc. (UWS) requests authority under Section 3666 of the Public Utilities Code to deviate from the rates, rules, and regulations of Minimum Rate Tariff 2 (MRT 2) in the transportation of sod, in rolls stacked on pallets, from the vicinity of Suisun to points within 160 miles thereof for the account of Warren's Turf Nursery (Warren). In Decision No. 82738 dated April 16, 1974, we granted UWS interim authority to engage in such deviation pending a hearing on the matter which was subsequently held at San Francisco on October 18, 1974. California Trucking Association (CTA) appeared as an interested party.

The applicable minimum rate, found in Item 507 of MRT 2, is Class 35 and includes the services of one carrier employee to load and unload (Item 120, MRT 2). Extra charges are required to be

assessed if the carrier uses a forklift to load or unload at a site off of carrier's premises (Item 260, MRT 2). Free return of empty pallets is not permitted. An exception rating found in Item 860, Exception Ratings Tariff 1, provides for a Class 35.4 rate on sod in the event consignor performs the loading with mechanical means and the consignee performs the unloading with mechanical means. Free return of empty pallets is not permitted. UWS proposes to charge the Class 35.3 rate set out in Item 507 of MRT 2, minimum weight 45,000 pounds, loading to be performed by mechanical means by Warren and unloading to be performed off of carrier's premises by UWS's driver with a UWS forklift. Pallets are to be returned free of charge.

The witness for UWS stated that UWS is a dealer in building materials and supplies and that it operates under a radial highway common carrier permit authorizing statewide transportation of general commodities, with exceptions not here pertinent. The witness testified that UWS transports many of the products in which it deals, particularly wallboard, and has found it necessary to permanently equip its tractors with forklifts in order to effect delivery at jobsites, the majority of which do not have mechanical unloading devices available. A forklift is affixed to the rails behind the cab of each of UWS's tractors by means of a special device. Two such forklift-equipped tractors and two flatbed trailers currently in use in UWS's operations are available for use in the proposed operation. UWS's equipment is used interchangeably between its proprietary and for-hire operations. Under the proposal Warren will load the trailer with Warren's own forklift and will secure the load with a tarpaulin. The witness stated that as soon as the sod is skinned off of the ground it must be loaded and tarpaulined immediately to retard moisture evaporation. At destination UWS's driver will remove the tarpaulin and unload the shipment with a UWS forklift. The witness anticipated that UWS will handle between 150 and 300 truckloads of sod per year.

He testified that as of July 31, 1974 UWS had a net worth of approximately \$132,000 and for the nine months ending on that date had for-hire transportation gross operating revenue of \$576,000 for a net profit for that period of \$59,502, or an operating ratio of 89.7 percent.

The UWS witness testified that between July 16, 1974 and September 16, 1974 UWS transported 74 loads of sod for Warren under the aforementioned deviation authority. Seventy percent of the shipments were moved by a subhauler whose tractor is permanently equipped with a forklift using Warren's trailer lent free of charge for that purpose. The other 30 percent of the shipments were moved using UWS's men and tractors pulling Warren's trailer. UWS paid the subhauler 95 percent of the gross revenue. The witness submitted Exhibit 8, with underlying details, showing what the results of that operation would have been had all 74 loads been handled with UWS personnel and equipment. The witness explained that in arriving at the total gross revenue of \$17,177 from the 74 hauls as shown on the exhibit, each of the shipments transported prior to July 1, 1974 was adjusted to reflect the increase in Class 35.3 rates which became effective on that date. The witness stated that the direct costs in the exhibit were based on the actual miles traveled, loading, unloading and running time attributable to each of the movements. The exhibit shows direct costs of \$10,997 (\$5,134 drivers' wages, \$94 bridge tolls, \$1,758 vehicle and forklift fixed costs, and \$4,010 vehicle running costs), indirect costs of \$2,760 (25.1 percent of direct costs), and \$297 revenue costs (1.73 percent of revenue) for a total operating expense of \$14,054 resulting in a net operating revenue of \$3,123 (operating ratio of 81.82 percent). Seventy of the 74 hauls would have produced a profit. The witness stated that prior to the time the Commission granted interim deviation authority herein Warren had been hauling its own truckload lot shipments within the

160-mile radius area and subsequent to that time UWS has been handling the shipments. According to the witness Warren had told him that if continued authority to deviate was not granted to UWS, Warren would revert to hauling the shipments in its proprietary carriage. The witness also stated that Warren has given UWS permission to use the Warren trailer free of charge when UWS performs a backhaul where the outbound move involves the use of Warren's trailer.

The representative of CTA contends that since 70 percent of the moves under interim authority were made by a subhauler and not by UWS's equipment, the use of UWS's operating cost data does not reasonably represent the costs actually incurred in the performance of the service as a whole, citing Application of Direct Delivery System, 54 CPUC 377 at page 379, and that UWS failed to show the presence of any special situation not generally encountered by other carriers which would permit UWS to perform the subject transportation at a cost lower than would normally be encountered by other carriers, citing Application of R. Bernstein, 66 CPUC 565, all of which result in a failure of proof necessary to sustain UWS's case. Additionally, CTA questions whether the proposed operation is a proper radial highway common carrier permit service. UWS, in answer, contends that evidence of its subhauler's cost is not necessary to maintain its case; that the forklift-equipped tractors, so equipped for reasons other than for performing service for Warren, offer the unique situation to render lower cost transportation service; and that the proposed operations would be proper if performed under a radial highway common carrier permit.

#### Findings

1. In the conduct of its proprietary operations UWS finds it necessary to have a forklift on each of its tractors.
2. The specially equipped tractors, not generally furnished by for-hire carriers, constitute a special situation which gives UWS the ability to unload palletized shipments of sod in the field at a cost lower than could normally be encountered by other carriers.

3. A further cost saving in the proposed operation will be encountered when the shipper loads the trailers.

4. UWS's cost of operation study was based on the actual time of driving, loading, and unloading, as well as the actual miles traveled in the movement of 74 shipments, 22 of which were handled by UWS's drivers and tractors.

5. The cost saving in the proposed operation occurs in the area of off-highway operations, namely in the loading and unloading of equipment.

6. The over-the-road transportation of the subject commodity presents no special problems and is performed with standard flatbed trailers and over-the-road tractors.

7. UWS's cost data is reasonably related to the proposed relatively uncomplex operation.

8. The proposed rates are reasonable and compensatory.

9. The proposed operations are those of a radial highway common carrier.

10. Since conditions under which the service is performed may change at any time, the authority granted in the ensuing order should expire at the end of one year unless sooner canceled, modified, or extended by order of the Commission.

#### Conclusions

1. The proposed rate is reasonable.

2. The application, as amended at the hearing, should be granted as set out in the ensuing order for a period not to exceed one year from the effective date of this order.

3. Decision No. 82738 dated April 16, 1974 should be canceled.

#### O R D E R

IT IS ORDERED that:

1. UWS Materials and Supply Co., Inc. is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging those rates set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, or regulations except as specifically set forth in Appendix A.

2. The authority granted shall expire one year after the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

3. Decision No. 82738 dated April 16, 1974 is canceled.

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

Dated at San Francisco, California, this 7th  
day of JANUARY, 1975.

James L. Stinson  
President  
William J. Lyons Jr.

Commissioners

APPENDIX A

Carrier: U.W.S. Materials and Supply Co., Inc.

Commodity: Sod, in rolls, stacked on pallets.

Shipper: Warren's Turf Nursery.

Point of Origin: Suisun, California.

Points of Destination: Points within 160 miles of Suisun, California.

Authorized Rates: Class 35.3 rates set forth in Item 507 of Minimum Rate Tariff 2, including all applicable surcharges.

Minimum Weight: 45,000 pounds per unit of equipment.

Conditions:

- (a) Shipments will be loaded on applicant's trailers by the shipper. Unloading will be performed by carrier's employees with forklift equipment furnished by the carrier.
- (b) Empty pallets and shipper-owned trailers will be transported without charge when returning to the point of origin of an outbound shipment.
- (c) In all other respects, the provisions of Minimum Rate Tariff 2 will be applicable.