

**ORIGINAL**Decision No. 84098

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of OSBORNE HIGHWAY EXPRESS, A  
California Corporation, for  
authority to deviate from the  
provisions of Minimum Rate Tariff 2  
in connection with transportation  
of recyclable scrap or waste paper,  
under the provisions of Section  
3666 of the Public Utilities Code.

Application No. 55208  
(Filed September 26, 1974)

Eldon M. Johnson, Attorney at Law, for applicant.  
R. W. Smith, Attorney at Law, R. C. Broberg, and  
H. W. Hughes, for California Trucking Association,  
and Patrick W. Pollock, for Fibreboard Corporation,  
interested parties.  
Russell D. Corning and Harry E. Cush, for the  
Commission staff.

### O P I N I O N

Osborne Highway Express is authorized to operate as a radial highway common and highway contract carrier for the statewide transportation of property governed by the provisions of Minimum Rate Tariff 2 (MRT 2). Applicant requests authority to deviate from the minimum rates established in MRT 2 for the transportation of scrap or waste paper not sensitized, for recycling, for Fibreboard Corporation from Independent Paper Stock Company at Long Beach, and from Pacific Paper Grading at Sun Valley and Lancaster, to Fibreboard Corporation at Antioch, Crown Zellerbach at Antioch, Fibreboard Corporation at Stockton, and Inland Container Corporation at Newark.

Public hearing was held before Examiner O'Leary at San Francisco on November 26, 1974 at which time the matter was submitted.

The origin points involved are not served by rail spurs but are within three miles of a railhead. The destination points are served by rail spurs. Utilizing the provisions of Item 210, MRT 2, the applicable minimum rate is a combination rate of 40 cents per hundred-pound rail rate plus 29 cents per hundred-pound MRT 2 rate plus a one percent surcharge<sup>1/</sup> applicable to the 29-cent MRT 2 rate minimum weight 100,000 pounds. Further shipments destined to Antioch and Newark are subject to an additional surcharge (Central Coast) of \$7.35 plus 90 cents for each 10,000 pounds or fraction thereof in excess of 100,000 pounds.

Applicant seeks authority to assess 112.5 percent of the applicable rail rate subject to a minimum weight of 50,000 pounds per shipment.

Applicant alleges that the commodities involved have a very low intrinsic value and cannot support either the MRT 2 rate of \$.72/\$.83 per hundred pounds or the rail alternative rate plus the local charges, which total \$.69 per hundred pounds. While there is a fluctuation in price of this scrap or waste paper, the present price of these commodities is \$40.00 to \$45.00 per ton (\$.02 to \$.0225 per pound). Faced with this low value of the commodities involved, the shipper has consistently tendered to for-hire carriers only on-rail to on-rail movements (presently at a rate of \$.40 per hundred pounds) and has reserved for its own private or affiliated equipment shipments moving from off-rail origins in the Los Angeles area. The shipper has found that the 72.5 percent differential between the \$.40 rate for on-rail points and the \$.69 for off-rail to on-rail points makes it totally uneconomical to tender the off-rail movements to for-hire carriers.

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<sup>1/</sup> Effective February 1, 1975 rates and charges provided by Minimum Rate Tariff 2 became subject to a 6 percent surcharge. (Decision No. 83985 dated January 14, 1975 in Case No. 5432, Petition 821.)

Applicant has transported northbound shipments at the 40-cent rail-to-rail rate and has negotiated with the shipper in arm's-length bargaining that a mutually advantageous rate of \$.45 per hundred pounds for the off-rail movements would lower, if not eliminate, proprietary or affiliated trucking. This rate of \$.45 per hundred pounds is 12.5 percent more than the presently received rail-to-rail rate, which would be attractive to both applicant and the shipper in that the shipper desires to use for-hire carriage, rather than the previous proprietary or affiliated operations concerning said movements. Applicant alleges that from an operational point of view the 12.5 percent differential is attractive because applicant has no additional costs or expenses from the off-rail origin points. The requested rate of 112.5 percent of the applicable rail rate will provide for possible increases in the applicable rail rate. The proposed transportation will be subject to the following conditions:

1. No split-pickup or split-delivery shipments will be transported.
2. Shipments will be paid for by the shipper on a prepaid basis.
3. Shipments are to be loaded by equipment furnished and utilized without expense to applicant, with applicant having the right to drop trailer equipment for shipper loading.
4. Shipments will have a 50,000-pound minimum weight.
5. Shipments will have a released value of \$75.00 per 50,000-pound load in the event of loss or damage.

In negotiations concerning this deviation application, applicant has recognized that there are certain favorable circumstances concerning this transportation not found in shipments of other commodities. Among other things is the fact that the involved commodities are transported in great volume, but with no particular time pressure, as is present with most commodities. It is alleged that the involved scrap and waste paper materials can be scheduled to applicant's convenience, as opposed to the scheduling of movements for the shipper's convenience.

Applicant transports a substantial volume of traffic southbound from Ukiah and the San Francisco Bay area to the Los Angeles area for other shippers unrelated to Fibreboard Corporation. The transportation is performed in carrier-owned trailers and driver-owned tractors. Applicant's northbound shipments for Fibreboard Corporation constitute a backhaul for the aforementioned southbound traffic. The tractor drivers operate exclusively for applicant and are considered to be "company drivers" owning their tractor equipment. A summary of the carrier-subcontractor agreement between applicant and its drivers is set forth in Exhibit 2.

For subhaul services applicant's tractor drivers would receive their established division of 65 percent of the proposed rate. Taxes, insurance, and other allied expenses will be borne by applicant. The tractor driver subhaul costs per mile based on one-way mileage, as developed by applicant, are considerably less than their anticipated revenue per mile earnings under the sought relief.

The California Trucking Association urges that the application be denied because the Commission has previously held that a showing that the proposed rate is compensatory is required, and such showing has not been made in this case. 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. (Re Major Truck Lines, Inc. (1970) 71 CPUC 447.)

There are exceptions to the general rule that unrelated traffic will not be considered in determining whether a proposed deviation will be compensatory.

The movement of recyclable materials should be encouraged for ecological reasons. The transportation of waste paper proposed by applicant at less than the established minimum rates is in the public interest and is justified by transportation conditions.

The Commission staff recommended that, if the application is granted, the minimum weight should be the same as that applicable to the rail rate (100,000 pounds). This recommendation will be adopted.

#### Findings

1. The commodity involved herein is waste paper for recycling.
2. The revenue and cost data submitted by applicant are based upon the movement from origins to destinations only.
3. The proposed transportation would assure return loads from a previously transported southbound shipment.
4. The movement of recyclable materials should be encouraged.
5. The proposed rates subject to a minimum weight of 100,000 pounds have been shown to be reasonable within the meaning of Section 3666 of the Public Utilities Code under the circumstances set forth in the preceding opinion.

The Commission concludes that the application should be granted as set forth in the ensuing order. As conditions may change, the authority will be made to expire at the end of one year unless sooner canceled, modified, or extended by order of the Commission.

O R D E R

IT IS ORDERED that:

1. Osborne Highway Express is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 to the extent set forth in Appendix A, attached hereto and by this reference made a part hereof.

2. To the extent not granted herein Application No. 55208 is denied.

3. The authority granted herein shall expire one year after the effective date of this order.

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

Dated at San Francisco, California, this 19th  
day of FEBRUARY, 1975.

William L. Springer  
President  
William J. Givens  
Edward J. Givens  
Leonard Ross  
Commissioners

APPENDIX A  
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Carrier: Osborne Highway Express.

Shipper: Fibreboard Corporation.

Commodity: Scrap or waste paper, not sensitized. (National Motor Freight Classification 100-A, Item 151390, Sub 7.)

Rate: One hundred twelve and one-half percent (112.5%) of the rail rate per hundred pounds.

Origins: Independent Paper Stock Company, Long Beach.  
Pacific Paper Grading, Sun Valley.  
Pacific Paper Grading, Lancaster.

Destinations: Fibreboard Corporation, Antioch.  
Crown Zellerbach, Antioch.  
Fibreboard Corporation, Stockton.  
Inland Container Corporation, Newark.

Conditions:

1. Not applicable to split-pickup or split-delivery shipments.
2. Shipments will be paid for by the shipper on a prepaid basis.
3. Shipments are to be loaded by equipment furnished and utilized without expense to carrier, with carrier having the right to drop trailer equipment for shipper loading.
4. Shipments will have a 100,000-pound minimum weight.
5. Shipments will have a released value of \$75.00 per 50,000-pound load in the event of loss or damage.
6. Rate shall apply only when commodity is transported in carrier-owned trailers and by driver-owned tractors under existing Subcontractor Agreement (see Condition 10).
7. Northbound shipments under this rate authority must be performed immediately subsequent to a prior southbound shipment from Ukiah or the San Francisco Territory (as defined in Item 270-3 of Minimum Rate Tariff 2) to the Los Angeles Territory (as defined in Item 270-3 of Minimum Rate Tariff 2) performed in carrier-owned trailers and driver-owned tractors under the existing Subcontractor Agreement.
8. Subcontractor (driver-tractor) shall not receive less than 65 percent of the revenue accruing to the applicant for the portion of the shipment transported by the subcontractor, such portion being subject to a minimum weight of 50,000 pounds.
9. Consignor must annotate the bill of lading with the recycling clause:

"The involved materials are being transported  
for purposes of recycling in a movement from  
\_\_\_\_\_ to \_\_\_\_\_."

APPENDIX A  
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10. General provisions of Subcontractor Agreement are:

a. Carrier Provides:

1. Trailers with all tires (fully licensed).
2. All accessories for trailer, including U-boards, tie-down equipment, tarps.
3. Full maintenance of trailing equipment.
4. All administration and sales.
5. Collection of all accounts receivable, with payment to subcontractor whether or not account is collected.
6. Payment of all revenue taxes.
7. Payment of all insurance premiums (with shared deductible), including:
  - Public liability and property damage
  - Fire and theft
  - Comprehensive
  - Bobtail
  - Cargo

b. Subcontractor (driver-tractor)

1. Tractor (required to be sleeper equipped, with three hundred horsepower engine, 140" wheelbase, sliding fifth wheel, headrack, and 22" tubeless tires).
  2. Fuel (sold by carrier at cost from two keylock supplies).
  3. Maintenance on tractor.
  4. All tires on tractor.
  5. Tractor licenses.
  6. Driver.
11. Any revision of the Subcontractor Agreement which would change the terms of compensation to either carrier or subcontractor shall not apply to this rate authority unless such change is approved in advance by written order of the Commission.
12. To the extent not otherwise specifically provided herein the provisions of Minimum Rate Tariff 2 shall apply.