

Decision No. 84318**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 TRAILS TRUCKING, INC., a California
 corporation, for an Order authorizing
 Applicant to deviate from certain
 minimum rates on shipments transported
 for Nabisco, Inc., pursuant to Section
 3666 of the Public Utilities Code of
 the State of California.

Application No. 54710
 (Filed March 5, 1974)

Fred E. Mackensen, for Trails Trucking Inc., applicant.
R. C. Broberg and H. W. Hughes, for California Trucking
 Association, interested party.
Elmer Sjostrom, Attorney at Law, and Joel D. Anderson,
 for the Commission staff.

O P I N I O N

Decision No. 82916, issued on May 29, 1974 in this proceeding, dismissed the request of Trails Trucking, Inc. (Trails) for ex parte authority to charge less than the established minimum rates provided in Minimum Rate Tariff 2 (MRT 2) for the transportation of bakery goods from Buena Park to Brisbane for Nabisco, Inc. By Decision No. 83287 dated August 6, 1974 the Commission granted Trails petition for rehearing of Decision No. 82916. In ordering rehearing of this matter the Commission stated:

"The Commission will expect Trails to support its application with specificity on all of its alleged justifications for the deviation, including but not limited to the costs and revenues directly attributable to the transportation...as well as the special circumstances which would justify a deviation...Major Truck Lines, Inc. (1970) 70 CPUC 447 at 453."

Public hearing of Application No. 54710 was held on March 6, 1975 before Examiner Gagnon at Los Angeles. Trails introduced cost and revenue data pertaining to the transportation in question as well as evidence relative to the special favorable circumstances under which Trails performs transportation services for Nabisco. The sought relief, as amended, is not opposed.

The class rates governing the transportation of bakery goods from Buena Park to Brisbane named in MRT 2 for constructive distances over 450 but not over 475 miles are: (1) the Class 55 rate of 152 cents per 100 pounds, minimum weight 20,000 pounds; and (2) the Class 35 rate of 130 cents per 100 pounds, minimum weight 30,000 pounds. The freight charges resulting under the application of MRT 2 rates are currently subject to a six percent surcharge. Under the alternative application of common carrier rate provisions of the tariff common carrier rates may be applied in lieu of the rates named in the tariff when such common carrier rates produce lower aggregate charges for the same transportation. Item 210(b) of MRT 2 provides that when the origin is located on-rail and the destination is off-rail there must be added to the rail rate applicable from origin to any team track the rate named in MRT 2 applicable to the weight of the entire shipment for the distance from such team track to the off-rail destination of the shipment.

Trails states that it has transported bakery goods from Nabisco's bakery plant located at Buena Park to its former distribution plant at San Francisco for approximately nine years. The Buena Park bakery is directly served by rail and the former San Francisco distribution facility was also served by rail. For performing such transportation Trails assessed the applicable rail rate under the alternative provisions named in Item 200 of MRT 2. Since Nabisco's new distribution facility at Brisbane is not served by rail, Trails initially sought ex parte authority to assess the Buena

Park - San Francisco rail rate to the intermediate off-rail point at Brisbane. In effect, Trails would apply a rail rate of 121 cents per 100 pounds, minimum 20,000 pounds, in lieu of the otherwise governing minimum rates of 152 or 130 cents per 100 pounds, minimum 20,000 pounds and 30,000 pounds, respectively. In addition, the off-rail minimum distance rate factor applicable in conjunction with the 121 cents rail rate to the off-rail facility at Brisbane would be waived.

Trails presented cost and revenue data pertaining to the transportation in question which was not previously offered in justification for the original sought ex parte relief. The director of Transportation for Nabisco and the vice president for Trails also presented testimony pertaining to the favorable conditions and circumstances under which the transportation is performed. The Commission's Transportation Division staff and the California Trucking Association were jointly concerned over Trails' efforts to justify the use of railhead-to-railhead rates to an off-rail destination on the basis of generally unfounded allegations of undue discrimination and long- and short-haul statutory violations. This concern was especially pertinent when it became clear from the facts of record that an appropriate alternative form of relief was available and apparently justified. Accordingly, Trails amended its original sought relief and requested authority to deviate from the provisions of MRT 2 as follows:

TABLE 1

MRT 2 Distance Class Rates Applicable and
Proposed for the Transportation of Bakery Goods
from Buena Park to Brisbane by Trails
Trucking, Inc.

<u>Class Rating</u>	<u>Minimum Weight (in pounds)</u>	<u>Rates (in cents per 100 lbs.) (See Note)</u>
<u>Applicable MRT 2 Rates</u>		
55	20,000	152
35	30,000	130
<u>Proposed Class Rates</u>		
35.1	20,000	123
35.2	30,000	109

- Note: (1) Charges resulting under application of current governing minimum rates and proposed class rates are subject to a current surcharge of 6 percent.
- (2) To the extent not exempted herein the provisions of MRT 2 apply.

Trails introduced a series of statements (Exhibits 3, 4, and 5) showing its operating revenues and expenses attributable to the transportation services performed for Nabisco between Buena Park and Brisbane during 1974 and a like projected 1975 test year. The statements show that the Nabisco traffic is profitable when charges are based on either the existing MRT 2 rates or the original proposed lower rail rates. However, the results of operations under the proposed rail rates would produce only marginal profits, if any, for the 1975 test year. Such marginal results would be considerably improved under Trails' revised request for authority to assess the MRT 2 distance Class 35.1 and 35.2 rates as shown in Table 1 hereof.

Evidence presented by Trails also demonstrates the favorable operating conditions under which Trails transports the Nabisco traffic. The shipments of bakery goods are 100 percent palletized. Loading and unloading operations are performed by shipper.

Trails assigns a man to the Buena Park plant for the spotting of trailers for loading at an average cost of \$48 per day. An average of 6 sets of trailers are loaded per day with 2½ loads per week destined to Brisbane. Shipments are picked up at Buena Park between 5:00 a.m. and 8:30 p.m. with delivery the next day at Brisbane between 7:00 a.m. and 4:00 p.m. Pickup and delivery times are arranged with the shipper one day in advance. Upon delivery of shipment at Brisbane the driver returns to the carrier's San Jose terminal for his rest period. Southbound back-haul shipments are thereafter picked up from either Nabisco's Oakland plant or Owens Corning Fibreglass. Except on very few occasions, Trails does not experience an empty back-haul movement to its terminal at Montebello. For shipments from Buena Park to Brisbane, Trails pays its drivers a basic wage of \$5.40 per hour for a maximum of 10 hours pay. It is stated that the Trails overall operation has developed around its Nabisco account.

The northbound Nabisco traffic from Buena Park to Brisbane during 1974 amounted to 2,798,000 pounds. The southbound back-haul traffic transported by Trails from Nabisco's Oakland facility amounted to 3,129,035 pounds for the year 1974 (Exhibit 6). Trails has no objections to having its sought deviation authority, as amended, made subject to the restriction that the annual southbound back-haul Nabisco traffic from Oakland may not be less than the annual northbound Nabisco traffic from Buena Park to Brisbane.

Findings

1. The favorable circumstances attendant to the transportation performed by Trails Trucking, Inc. for Nabisco from Buena Park to Brisbane are not generally present in the usual or ordinary transportation services performed by highway carriers under the governing provisions of Minimum Rate Tariff 2.

2. Trails' rate proposal has been shown to be reasonable and justified by transportation conditions.

The Commission concludes that the authority requested in Application No. 54710, as subsequently amended by Trails, should be granted. Since transportation conditions may change, the authority should be made subject to an expiration date of approximately one year.

O R D E R

IT IS ORDERED that:

1. Trails Trucking, Inc is authorized to transport bakery goods for Nabisco from and to the points and at the rate specified in Appendix A of this decision.

2. The authority granted herein shall expire with May 30, 1976 unless sooner canceled, modified, or extended by order of the Commission.

3. The Commission's original order of dismissal in Decision No. 82916 issued May 29, 1974 in this proceeding is rescinded.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15th
day of APRIL, 1975.

Vernon L. Stevenson
President
William J. Quinn Jr.
Stedman
Leonard Key
Robert A. Kunk
Commissioners

APPENDIX A

Carrier: Trails Trucking, Inc.

Shipper: Nabisco, Inc.

Commodities: Bakery goods

From: Buena Park, California

To: Brisbane, California

Rate: Minimum Rate Tariff 2 Class 35.1 and Class 35.2
distance rates.

Minimum Weight: Class 35.1 - 20,000 pounds
Class 35.2 - 30,000 pounds

Rules

1. All shipments must be palletized.
2. Loading and unloading to be performed by shipper.
3. The total annual tonnage transported northbound from Buena Park to Brisbane shall not exceed the total annual back-haul tonnage transported southbound from Nabisco's Oakland facilities.
4. Transportation to be performed in carrier-owned equipment operated by carrier employees.
5. All other provisions of Minimum Rate Tariff 2 shall apply.