

Decision No. 84361

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of DOLPHIN TRANSPORTATION, INC.,  
a California corporation, for an  
order authorizing applicant to  
deviate from certain minimum  
rates on shipments transported  
for Standard Brands Paint Co.,  
Inc., pursuant to Section 3666  
of the Public Utilities Code of  
the State of California.

Application No. 55031  
(Filed July 11, 1974)

Murchison & Davis, by Fred H. Mackensen,  
for applicant.

R. C. Broberg, H. W. Hughes, and A. D. Poe,  
Attorney at Law, for California Trucking  
Association, interested party.

Frank M. Nyuleesy, for the Commission staff.

### O P I N I O N

Dolphin Transportation, Inc. operates as a radial highway common carrier and as a highway contract carrier. By this application it seeks authority to charge less than the minimum rates for the transportation of paints, paint materials, and other articles for Standard Brands Paint Company (Standard) from the shipper's facility in Torrance to its retail outlets in Hayward, San Jose, El Cerrito, Sacramento, Oakland, Colma, Mountain View, Pleasant Hill, San Mateo, San Rafael, and North Sacramento. The sought rate is 74 cents per 100 pounds subject to a minimum weight of 42,000 pounds, and the commodities are listed in Exhibit 2. The proposed deviation provides that all loading and unloading is to be performed by Standard; that

Standard must affix a seal to the carrier's trailer and note on the bill of lading "shipper load and count"; that applicant's liability for the shipments is limited to damage caused by vehicle accidents, provided the seals are intact when the vehicle reaches destination; and that Standard must tender at least 36 loads to applicant per quarter.

Public hearing was held before Examiner Mooney in Los Angeles on August 20, 1974. The matter was submitted upon the receipt of written closing statements on or before September 16, 1974.

Applicant's Evidence

Applicant has a terminal in Long Beach and an office and dispatcher at a truck stop in Tracy. It operates 8 tractors, 12 sets of double vans, 3 reefer trailers, 5 flat-rack trailers, various other trailers, and a bobtail truck. It also uses owner-operator tractors. Applicant's balance sheet of April 30, 1974 shows assets of \$187,592.71, liabilities of \$158,191.05, and a net worth of \$29,401.66. For the year ending April 30, 1974, applicant had operating revenue of \$269,313.66 and a net loss of \$7,898.00. For the period February 1 to April 30, 1974, it had operating revenue of \$90,840.24 and a net income of \$2,103.26.

The president of applicant testified that Joyco Enterprises (Joyco) has heretofore been authorized to assess the identical less-than-minimum rate as that sought herein for the same transportation it performs for Standard.<sup>1/</sup> He explained, however, that in addition to the conditions set forth in applicant's proposal, the authority granted Joyco includes an additional condition which requires Standard to tender two backhaul shipments of titanium dioxide to it for each three loads it transports north under the deviation rate. The witness

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<sup>1/</sup> The authority was originally granted to Joyco in 1969 by Decisions Nos. 75342 and 76052 in Application No. 50866 and has been subsequently extended by further order of the Commission.

stated that this commodity is now in short supply; that for this reason, the condition has not been included in applicant's sought deviation; and that, in any event, applicant has substantial southbound traffic, in addition to any that Standard might give it, and does not need this condition in order to assure sufficient southbound shipments to match northbound shipments under the sought rate. He testified that the only other difference between Joyco's authority and applicant's proposal is that several additional destinations are named in the requested deviation. It is noted that they are in the same general area as the San Francisco Bay area - Sacramento points Joyco is authorized to serve.

The witness stated that Joyco has been unable to perform all of the transportation service required by Standard; that because of this inability, applicant has been transporting three or four shipments a week for Standard on an emergency basis and has been charging the applicable minimum rates and charges for this service; and that Standard has informed applicant that it would be given substantially more loads if it obtains the sought deviation. He explained that three tractors and three 40-foot trailers or sets of doubles are now used for this transportation; that applicant leaves empty trailers with the shipper; that the only function applicant performs is to hook up the loaded trailers at Standard's warehouse to its tractors and pull them to their destinations; that the elapsed time calculated from when a tractor leaves applicant's terminal until it arrives with its load at destination is approximately 10 hours; that when the equipment arrives at destination, the driver goes to sleep and is awakened when the unloading is completed; and that he then telephones the dispatcher for a backhaul.

The president testified that the sought rate would be subject to all applicable charges in Minimum Rate Tariff 2 for any services not covered by the proposal.

He explained that although Standard would not separately itemize the commodities shipped on the bills of lading, it does have truck scales and would determine the total weight for each shipment. He asserted that the sought rate is compensatory and that Joyco has found it to be profitable. He admitted, however, that if the equipment were to return empty, the revenue under the proposed rate for the northbound load would not be sufficient to cover the round-trip cost and that its profitability is, therefore, dependent on a backhaul.

According to applicant's Exhibits 6 and 7, the actual average weight of the Standard shipments it has transported is 38,000 pounds; the average distance to the 11 destination stores is 437 miles; for this distance, the average revenue per shipment at the sought 74-cent rate, based on the 42,000 pound minimum weight, plus applicable surcharges would be \$316.27; the average cost per load is \$276.92; and the resulting average net profit per shipment under the proposal would be \$39.35. The cost data shown in Exhibit 7 are based on applicant's overall operations and are listed under the six following broad categories: equipment maintenance, transportation, terminal, traffic, insurance, and administration and general. The president testified that these are the six categories listed in the Commission's accounting regulations. Other than generalized statements by the president, no specific detailed cost breakdown for any of the categories was furnished.

The president testified that 25 percent of the Standard loads are pulled with applicant's power units and the remaining 75 percent are pulled by owner-operator tractors; that all trailers are furnished by applicant, and no charge is made to the owner-operator for them; that the owner-operators are paid approximately 65 percent of the line-haul revenue; and that the trip lease agreements with the owner-operators do not show their operating costs, but their costs would approximate those shown in Exhibit 7 for applicant's equipment. No details regarding owner-operator costs were furnished other than the

assertion by the president that they purchase fuel from applicant at a lower price than they would pay elsewhere and that many participate in applicant's insurance.

The warehousing and distribution manager of Standard testified as follows: Standard manufactures paint and related commodities. The number of its company-owned retail stores has been increasing. It ships over 10,000 paint, decorating, and related items to them from its Torrance warehouse, and it would be extremely difficult and costly to list the multitude of commodities in each shipment on the bill of lading. Orders from the various stores are received by computer telephone at night and are shipped the next day. The number of loads for a day are not known until the freight starts flowing to the dock. It is essential to have empty trailers at the warehouse between 6:00 a.m. and 6:30 a.m. and prompt pickup when they are loaded because of limited dock space. Service to the stores is extremely important. The trailers are unloaded at off-hours when the store is closed and must be away from the front of the store before it opens. Generally, deliveries are scheduled to arrive at the stores between midnight and 2:00 a.m. Joyco has been unable to expand its operation to meet the growing need by Standard for service. It can handle only several loads per day. Applicant is now being used to handle the overflow shipments and is paid applicable rates for this. Applicant's service is excellent, and it would be given more business if it could charge the same rate as Joyco. If the sought authority is granted, a program would be set up to give Joyco the first load each day to the stores it could handle, and the balance of the shipments would be given to applicant. The number of shipments per day from the warehouse ranges up to 26. Standard's own equipment handles shipments within 220 miles and pickups within the Los Angeles area. There will be approximately three to five shipments each day for Joyco and applicant. Although titanium dioxide is now in short supply, Standard has other commodities

which it ships back from northern California, and these amount to about 75 percent of its northbound shipments. Standard tries to route this transportation via Joyco or applicant as return hauls for them and pays applicable charges for this.

Closing Statements

The California Trucking Association (CTA), in its closing statement, recommended that the application be denied. It presented the following arguments in support of its position: The purported reason for the deviation is to place applicant on a competitive basis with Joyco which now has the authority. However, there is a significant difference between the two. The authority held by Joyco requires certain return hauls; whereas, applicant's proposal does not. Applicant admitted that transportation performed at the proposed rate would not be profitable without a backhaul. Other than the self-serving statement by applicant's president that he anticipated no difficulty in obtaining backhauls, no evidence was presented regarding return traffic. In this connection, the Commission has heretofore held in its decision in the Application of Major Truck Lines, Inc. (1970) 71 CPUC 447, that it will not consider revenue from backhaul traffic in less-than-minimum rate proceedings unless the backhauls were assured and performed for the same shipper, or if performed for an unrelated shipper, the customer must be one of long standing. Clearly, applicant has not met these criteria. Furthermore, the cost data presented by applicant are deficient. They are merely generalized data based on systemwide averages and not related directly to the traffic in issue. Also, although owner-operators will perform 75 percent of the actual transportation, no specific cost data were presented for them. On this point, the Commission in its decision denying the Application of Direct Delivery System (1955) 54 CPUC 377, stated that

cost data based on transportation performed by an applicant with its own equipment are not reasonably representative of costs actually incurred when 75 percent of the service is provided by subhaulers.

The Commission staff set forth generally the same arguments in its closing statement as the CTA and also recommended that the sought authority be denied.

Applicant's closing statement asserted that the facts and circumstances surrounding the involved transportation clearly establish that the requested deviation is reasonable and should be granted.

#### Discussion

We agree with both the CTA and the staff that the application should be denied. Section 3666 of the Public Utilities Code provides that upon a finding that a proposed less-than-minimum rate is reasonable, the Commission shall authorize the rate. The finding of reasonableness is a condition precedent to the granting of such authority. The burden is upon the applicant to establish the reasonableness of the sought rate. We are not persuaded by the record herein that applicant has met this requirement.

One of the factors considered in rate deviation applications is whether there are circumstances and conditions attendant to the transportation in issue which are not present in the usual or ordinary transportation performed by highway carriers under the applicable minimum rates. (Major Truck Lines, supra.) The record before us does establish such differences. According to the evidence presented by applicant, the only services applicant will perform are furnishing empty trailers and pulling loaded trailers; the shipper will load, weigh, and unload the trailers; numerous commodities will be included in each shipment; transportation charges will be based on a minimum weight of 42,000 pounds per shipment; the shipper will tender at least 36 shipments per quarter; and the carrier's liability to the shipper will be limited. However, such a showing is not enough. It is

indispensable to a finding that a proposed less-than-minimum rate is reasonable to show that the transportation to be performed at the sought rate is compensatory. (Karl A. Weber (1962) 60 CPUC 59.) That a rate is compensatory is established by showing that the revenue to be earned under the sought rate reasonably exceeds the cost of performing the proposed transportation. We concur with CTA and the staff that the cost data are deficient, and it is not possible to make such a determination with any degree of certainty. The cost data are too general in nature and are based on systemwide operations. Other than some generalized statements by applicant's president, no specific details or breakdown of the cost elements included in each of the broad categories used in Exhibit 7 were presented. The broad categories used are for accounting purposes. A more detailed study and analysis is required to justify rate deviations. Also, it is a general rule that a cost study to support a rate deviation from the established minimum rates must cover costs for the transportation under consideration only. (Trojan Freight Lines (1958) 56 CPUC 398.) The difference, if any, between the average costs in Exhibit 7 and those involved in performing the proposed service has not been sufficiently demonstrated by the record to warrant an exception to the general rule. We have only the statement by the president that they are very close.

The fact that Joyco has been authorized to assess the identical less-than-minimum rate sought by applicant is irrelevant and in no way lessens the burden on applicant to fully justify its request. Section 3666 authority may be exercised only by the individual carrier to whom it was granted. Any other carrier seeking the same authority must establish that, based entirely upon its own operations under the proposal and not those of someone else, the sought deviation is reasonable for it. Furthermore, applicant's proposal includes no requirement that Standard furnish it with any return



shipments as does Joyco's authority, and applicant has admitted that the proposed transportation would not be profitable without backhaul traffic. As pointed out by CTA and the staff, we have consistently held that revenue from backhaul traffic will not be considered unless the backhaul is assured and is performed for the same shipper or if for a different shipper, the other shipper must be a customer of long standing. (See Major Truck Lines, Inc., supra, Devine & Sons Trucking Co. (1967) 67 CPUC 441, and Ragus Trucking, Inc. (1966) 66 CPUC 319.) This has not been established. Applicant's evidence on this issue is vague. Its president stated that it has no difficulty in obtaining backhauls but presented no further explanation or evidence regarding this. Standard's witness did state that his company has southbound shipments and attempts to route them via applicant or Joyco. However, he could give no assurance that Standard would definitely have sufficient southbound loads in the future to balance the northbound transportation for it by applicant should the authority be granted.

Having determined, based on the above infirmities, that the application should be denied, disposal of the issue raised by CTA regarding applicant's intent to employ tractor owner-operators to perform 75 percent of the proposed hauling for Standard is unnecessary.

#### Findings

1. With the exception of the requirement in Joyco's authority regarding backhaul traffic and the several additional destination points named in applicant's request, Joyco has heretofore been granted the same rate deviation as that sought by applicant.

2. Section 3666 authority may be exercised only by the carrier to whom it is granted.

3. The fact that Joyco may assess the same less-than-minimum rate sought by applicant does not lessen the burden on applicant to fully justify its request.

4. The type of service applicant would perform under the proposal herein is different from that contemplated by the minimum rates.

5. The cost data presented by applicant in support of its proposal are based on its overall operations, and their relationship to the costs of performing the proposed service has not been adequately shown.

6. A cost study to support a rate deviation from the established minimum rates must cover the costs for the transportation involved.

7. Revenue earned under the sought rate would not be sufficient to cover the cost of the round-trip transportation without a revenue-producing backhaul.

8. Minimum rate relief will not be granted unless it is shown that the round-trip operation would be profitable and that if this is dependent on revenue from backhaul traffic not involved in the deviation, such traffic must be assured and performed for the same shipper or if for another shipper, the other shipper must be a customer of long standing.

9. Applicant has not shown that the backhaul traffic it anticipates receiving is definitely assured or whether it would all be for Standard or for a customer or customers of long standing.

10. Standard has not shown that it will definitely have sufficient southbound shipments for applicant in the future to match all northbound loads applicant might transport for it should the sought authority be granted.

11. It has not been demonstrated that the proposed operations under the sought deviation would in fact be compensatory.

12. The proposed rate has not been shown to be reasonable.

Conclusion

The application should be denied.

O R D E R

IT IS ORDERED that Application No. 55031 is denied.

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

Dated at San Francisco, California, this 22<sup>nd</sup> day of APRIL, 1975.

Vernon L. Stegman  
President  
William Lyons Jr.  
Donald  
Leonard Voz  
Robert  
Commissioners

*I dissent on this  
minimum rate request.*  
Robert  
Commissioner