

ORIGINALDecision No. 84493

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of STATEWIDE TRANSPORT SERVICE, INC., a corporation, for deviation from the minimum rates for the transportation of flattened car bodies from Rancho Cordova, California, to Oakland, California, for Schnitzer Steel Products, of Oakland, California, and for emergency deviation authority.

Application No. 55036
(Filed July 16, 1974;
amended August 23, 1974)

George M. Carr, Attorney at Law, for applicant.

Ken Bareilles, Attorney at Law, for Humboldt Pacific Transport, Inc., protestant.

Ed Bill, Arthur D. Maruna, and Herb Hughes, for the California Trucking Association, interested party.

B. I. Shoda, for the Commission staff.

O P I N I O N

Statewide Transport Service, Inc. operates as a highway contract carrier. By this application, as amended, it seeks authority to assess a less-than-minimum rate of 30 cents per 100 pounds, minimum weight 40,000 pounds, for the transportation of flattened or crushed automobile bodies for Schnitzer Steel Products, Inc. (Schnitzer) from the shipper's facility at Rancho Cordova, approximately seven miles east of Sacramento, to its yard at Oakland in lieu of the rate of 62 cents per 100 pounds provided in Minimum Rate Tariff 2 (MRT 2) for the transportation. The proposed deviation provides that all loading and unloading shall be performed by the consignor and consignee with power equipment at no expense to the carrier and that in all other respects, the rates and rules in MRT 2 shall be applicable. Humboldt Pacific Transport, Inc. (Humboldt) was granted deviation authority identical to that sought herein by Decision No. 82964 dated June 5, 1974 in Application No. 54565.

Public hearing was held before Examiner Mooney in San Francisco on August 30 and September 25, 1974. The matter was submitted subject to the filing of written closing statements on or before October 11, 1974, which have been received.

Applicant's Evidence

Applicant and Gillies Trucking Co. (Gillies), a partnership, are both owned by the president and vice president of applicant and are under common management and control. Gillies owns a terminal in Stockton which applicant shares under a lease arrangement, and which applicant uses as its principal place of business. It also leases terminal facilities in Richmond and southern California. Applicant owns a truck, service cars, and forklifts. Gillies owns 13 tractors and various trailers and employs 13 drivers. Applicant uses some of this equipment and these drivers under an arrangement whereby Gillies is a subhauler for it. Applicant also uses other subhaulers. It has three full-time dispatchers and three solicitors. The dispatcher in Stockton also performs dispatching services for Gillies. Applicant's balance sheet of March 31, 1974 shows assets of \$234,325.89, liabilities of \$154,160.60, and a net worth of \$80,165.29. For the year ending March 31, 1974, it had operating revenue of \$457,305.66, operating expenses of \$408,551.73, and a net profit of \$48,753.93 before income taxes.

Following is a summary of the testimony presented by applicant's president and vice president: Applicant has performed transportation services for Schnitzer for several years. When Schnitzer opened its facility at Rancho Cordova for flattening and crushing junk automobile bodies in September 1973, applicant was the primary carrier used for the hauling from there to Schnitzer's Oakland yard. Initially applicant assigned five units of equipment to this service, with each unit transporting between one and one-half and two loads per day. Two of the units were leased to

Schnitzer under the provisions of Minimum Rate Tariff 15 (MRT 15), and the shipper paid MRT 2 rates for the transportation performed by the other units. Since Humboldt obtained its authority to assess the sought 30 cent rate in June 1974, Schnitzer has continued the lease of the two trucks but will not give applicant any additional business at the higher MRT 2 rates. Prior to this time, applicant earned approximately 10 percent of its revenue from this haul. The loss of revenue from this account has seriously affected its financial position. The conditions surrounding the transportation in issue are extremely favorable. The movement is continuous, five days a week; all loading and unloading services are performed by Schnitzer with power equipment; Schnitzer weighs the shipments; two tiers of approximately 8 flattened car bodies each are transported in every shipment; the commodity is immune to damage; the route between origin and destination is entirely freeway; and other than the transportation, the only duty performed by the driver is securing the loads with cables.

Cost and revenue data were presented by the president. He explained that the cost data was based on the experience of the Gillies' equipment used by applicant for the transportation in issue for hauling a 43,000 pound shipment, which is the current average weight per load, for a round-trip distance of 215 actual miles from applicant's terminal in Stockton, to origin, to destination, and back to the Stockton terminal. He testified that under these circumstances, a unit of equipment would most likely transport only one load for Schnitzer per day. According to the data, the revenue per trip at the sought rate would be \$129, the total cost per trip would be \$108.64, and the net profit per trip would be \$20.36. The president stated that approximately half of the loads would be handled by equipment from the Stockton terminal and the balance by equipment from the

Richmond terminal. He pointed out that the round-trip distance and resulting cost for the Richmond based equipment would be slightly less than that shown in the cost data. He testified that the distance from origin to destination is 95.6 actual miles and that the round-trip time between the two locations, including loading, weighing, securing the load, driving time, and average delay time, is under six hours. The witness asserted that applicant has freight available to it from the Oakland area to the Sacramento area; that the leased equipment is exclusively for Schnitzer's use and cannot be used for other transportation; and that if the sought authority is granted, any equipment hauling under the deviation could handle such freight as a return movement and earn additional revenue.

The president further testified that for the hauling it performed for Schnitzer under MRT 2 rates prior to June 1974, it used Gillies' equipment to perform approximately 50 percent of the transportation and other subhaulers for the remainder; that if the sought deviation is granted, it will assign a Gillies' unit to the haul and continue to use other subhaulers for this movement; that most of the other subhaulers it uses are regularly employed by it and have their own trailer equipment; that if applicant were to furnish a trailer to a subhauler, a charge would be made for it; that applicant would prefer using subhaulers located in Sacramento for this operation; and that it has in the past and would continue to pay subhaulers \$100 per load for this transportation. As to the operating costs of the other subhaulers, the witness stated that with the exception of overhead costs which they would not have, their costs per trip would most likely be similar to those he presented for Gillies' equipment, and he estimated them to be not over \$85 per trip.

The vice president of Schnitzer, who is also the general manager and one of the owners of the company, testified as follows: Schnitzer has a scrap yard, steel warehouse, and automobile body crusher at Rancho Cordova and a car shredder at its Oakland facility. There is no rail rate for flattened car bodies between the two locations. Schnitzer's business is very competitive, and it is important to keep costs down. It has spent substantial sums on loading, unloading, and other equipment to make its operation efficient. It has used Humboldt since it obtained its deviation authority. While Schnitzer ships an average of 10 loads a day from its Rancho Cordova facility, the actual number shipped per day varies, and it is not known in advance exactly how many will be shipped on any given day. For this reason, the additional flexibility of another carrier who can haul at the deviation rate is essential in order to assure that sufficient equipment will be available when needed. Both Humboldt and applicant give good service, and Schnitzer will use both if the sought authority is granted. Schnitzer does not wish to lease additional equipment because its transportation needs between its two facilities are such that it is probable sufficient use would not be made of the equipment, and it would be paying for a good deal of idle time under such an arrangement.

Protestant's Evidence

The president of Humboldt testified in protest to the application as follows: The cost data presented by Humboldt in support of its deviation request was based on each unit of equipment transporting two loads per day. However, it is hauling only one shipment per unit of equipment per day and is barely breaking even at the deviation rate. If two shipments a day are carried, it would make money on the haul. It has a holding yard in Sacramento. There is no telephone or permanently assigned equipment there. Humboldt has obtained

additional equipment for the Schnitzer account. It does use sub-haulers for this movement, pays them \$100 a load, and furnishes trailers to them at no charge. Two carriers with deviation authority cannot make money on this haul.

No evidence was presented by the other participants in the hearing.

Closing Statements

Written closing statements were filed by all parties. Both the California Trucking Association (CTA) and Humboldt recommended that the application be denied. The Commission staff recommended that the application be granted subject to the condition that the authority be restricted to transportation performed by Gillies for applicant.

In support of its position, CTA argued that Schnitzer's allegation that it requires the flexibility of an additional carrier who can transport the flattened bodies at the deviation rate is without merit. In this connection, CTA asserted that Schnitzer's witness had testified at the Humboldt proceeding that if Humboldt were granted the deviation authority, it would have exclusive rights to the transportation. CTA further argued that applicant has not demonstrated any favorable or special circumstances surrounding this transportation which differ from those experienced by other carriers in transporting flattened car bodies for other shippers; that owner-operators would be used to perform a substantial amount of this transportation; that the only cost data presented was for Gillies' equipment; and that the Commission has heretofore held that cost data based on transportation performed by an applicant with its own equipment are not reasonably representative of costs actually incurred in the performance of the service as a whole when 75 percent of the service is provided by subhaulers. Cost data based in part upon the experience of an affiliated company not involved in the proceeding is not an acceptable basis upon which a finding may be made that a sought less-than-minimum rate is reasonable. (Direct Delivery System (1955) 54 CPUC 377.)

Humboldt set forth generally the same arguments in its closing statement as CTA and additionally asserted that it has used mostly its own equipment for the Schnitzer haul; that applicant is presently transporting approximately one-half of the loads for Schnitzer; that as a result, much of the additional equipment it acquired for this transportation is idle; that if the application is granted, Humboldt will lose more of this traffic; that Humboldt is capable of handling all of these shipments; and that there is no need to grant the deviation authority to an additional carrier.

The staff in its closing statement pointed out that according to the equipment list filed by applicant with the Commission, it does not own, lease, rent, or actually operate any carrier equipment. It argued that the shipper has shown a need for the additional service; that the record establishes that the proposed rate is compensatory for transportation performed with Gillies' equipment; that because of the unity of ownership, management, and control that exists between applicant and Gillies, they should not be considered separate entities for the purposes of this proceeding; and that because an adequate cost showing has not been made for subhaulers other than Gillies, any authority granted to applicant should not authorize the use of such other carriers.

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

Discussion

We are of the opinion that the application should be granted.

As we have heretofore held in our decision in the Application of Major Truck Lines, Inc. (1970) 71 CPUC 447, 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 and ordinary transportation performed by highway carriers under the applicable minimum rates. The record before us does establish such differences. According to the evidence, the only services applicant would perform are furnishing and driving the equipment and tying down the load with cables; Schnitzer would load and unload the shipments with power equipment and weigh the loads; all of the transportation would be on freeways; and the flattened car bodies are not subject to damage. We do not agree with CTA's theory that because other carriers may transport flattened car bodies for other shippers under conditions similar to those herein, these circumstances cannot be considered special conditions that would justify the granting of a rate deviation. The term "usual and ordinary" as used in our decision in the Major Truck Lines proceeding does not necessarily mean identical transportation. It refers to the transportation conditions contemplated by the minimum rates generally. Furthermore, we have granted relief to Humboldt for the same transportation.

The evidence supports a finding that the proposed rate is reasonable as required by Section 3666 of the Public Utilities Code. A less-than-minimum rate is reasonable if the transportation to be performed at the sought rate is compensatory. (Karl A. Weber (1962) 60 CPUC 59.) This is established by a showing that the revenue to be earned under the sought rate reasonably exceeds the cost of performing the proposed transportation. The cost data furnished by applicant meets this test. It shows a profit of \$20.36 per load and an operating ratio of 84 percent. We are mindful that the cost data was based on the experience of Gillies' equipment in performing the transportation in issue as a subhauler for applicant and our decision in 1955,

referred to by CTA, wherein we declined to consider cost data based in part upon the experience of an affiliated company not involved in the proceeding. (Direct Delivery System, supra.) However, we agree with the staff that because of the unity of ownership, management, and control that has been shown to exist between applicant and Gillies, their separate identities should be disregarded for the purposes of this proceeding. This we have consistently done in investigation and other proceedings where such unities are shown to exist between two companies and recognition of their separate identities would result in the evasion, circumvention, or frustration of regulatory law. While these reasons are not present here, it would be patently unjust to limit our application of the alter ego theory to instances wherein such circumstances do exist. For this reason, we have accepted the cost data presented by applicant. Additionally, since the same two individuals are equal owners of applicant and Gillies, they would ultimately receive the benefit of any profit accruing under the rate proposal, irrespective of the arrangements between their two companies.

The next issue requiring discussion is whether any authority granted to applicant should specifically exclude the use of subhaulers. We do not agree that such a restriction is warranted. We are aware that the cost data presented by applicant projects a cost of \$108.64 per load, whereas, applicant will pay subhaulers \$100 per trip; that the proposed transportation will be performed by Gillies and other carriers as subhaulers; and that there is no evidence regarding owner-operator costs other than the statement by applicant's president that he thought their costs would be \$85 per load. While CTA recommended denial of the application, it is apparently its position that should any authority be granted, it should, because of the lack of reliable owner-operator costs, prohibit the use of subhaulers, including Gillies,

in the performance of the service. Although the staff does not object to the granting of the sought deviation, it does, for the same reason, recommend a condition therein restricting the use of any carrier as a subhauler other than Gillies. As pointed out by CTA, we have heretofore held that where a substantial amount of the transportation is to be performed by subhaulers, cost data based upon the experience of applicant's own equipment are not reasonably representative of the costs which would actually be incurred in the performance of the service as a whole. (Direct Delivery System, supra.) However, the application of this rule to the facts herein would not be appropriate. Applicant has been using subhaulers for the exact haul for which the authority is sought. It has paid them the same \$100 per load which it proposes to continue. Humboldt has been using subhaulers for the identical transportation and has been and is now also paying them \$100 per load. We note that Humboldt will furnish trailers to its subhaulers at no charge, whereas, all of the subhaulers used by applicant have their own trailers. While it is apparent that this would cause some difference in the per load cost for the subhaulers each employs, the record does not show what the difference might be. Since subhaulers have been and are evidently willing to continue performing the transportation at \$100 per load, it is reasonable to presume that all are not doing this at a loss. Obviously, there are differences in the operating costs of various carriers. Efficiency, size, type of equipment, and innumerable other factors influence such costs, and it is possible the \$100 payment might be adequate for some but not for others. Furthermore, the record does not show or infer that the sought authority is a device or sham to enhance the profit of applicant by providing the shipper with a less-than-minimum rate to obtain the transportation and passing off transportation costs to subhaulers in excess of the amount paid

them. Our determination herein regarding subhaulers is based on the factual situation before us and not on general policy.

We are not persuaded by the other arguments presented by Humboldt and CTA concerning the amount of traffic Humboldt is handling and whether it should have exclusive rights to any deviation authority for such traffic. In this connection, the shipper's witness testified that Schnitzer has been on strike and that when it is over, there will be traffic available for both carriers. We concur with the staff that consideration should be given to the shipper's transportation needs.

Findings

1. The type of service applicant would perform under the proposal herein is different from that contemplated by the minimum rates generally.
2. Applicant leases two units of equipment to Schnitzer pursuant to the provisions of MRT 15.
3. The equipment list filed by applicant with the Commission shows that it does not have any highway operating equipment.
4. The cost data presented by applicant in support of its proposal are based on the actual experience of performing the transportation in issue with Gillies' equipment.
5. Because of the unity of ownership, management, and control that exists between applicant and Gillies, their separate identities will be disregarded for the purposes of this proceeding.
6. For the reasons stated in Finding 5, the cost data presented by applicant is an acceptable basis on which to determine whether applicant can perform the proposed service at a profit.
7. The proposed rate is compensatory for applicant.
8. The proposed rate is reasonable and justified.
9. Applicant should not be prohibited from using any subhaulers in connection with transportation it performs under the proposed rate.

10. Humboldt has heretofore been granted the identical deviation authority as that sought herein.

11. Schnitzer will have traffic available for both Humboldt and applicant at the deviation rate.

Conclusions

1. The application should be granted.

2. Because the conditions under which the transportation is to be performed may change, the authority to be granted should be limited to a period of one year unless sooner canceled, modified, or extended by order of the Commission.

O R D E R

IT IS ORDERED that:

1. Statewide Transport Service, Inc. 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 made a part hereof.

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

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

Dated at San Francisco, California, this 3rd day of JUNE, 1975.

Vernon L. Stevenson
President
William J. Symons, Jr.
STED
Leonard Ross
John F. ...
Commissioners

APPENDIX A

Carrier: Statewide Transport Service, Inc.

Consignor: Schnitzer Steel Products, Inc.

Point of Origin: Rancho Cordova.

Consignee: Schnitzer Steel Products, Inc.

Point of Destination: Oakland.

Commodity: Flattened or crushed automobile bodies.

Rate: 30 cents per hundred pounds, minimum weight 40,000 pounds.

Note 1. Shipments to be power loaded by consignor at no expense to carrier.

Note 2. Shipments to be power unloaded by consignee at no expense to carrier.

In all other respects the rates and rules in Minimum Rate Tariff 2 shall apply.