ltc

Decision No. 84549 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of John J. Perry, Jr., for an order authorizing departure from rates, rules and regulations of Minimum Rate Tariff No. 2, pursuant to Section 3666 of the Public Utilities Code.	Application No. 55295 (Filed November 6, 1974; amended February 25, 1975; March 18, 1975; and April 23, 1975)

E. H. Griffiths, for applicant.
Ronald C. Broberg, for California Trucking Association, interested party.
Russell D. Corning, for the Commission staff.

O P I N I O N

John J. Perry, Jr. (Perry), doing business as John Perry Trucking, conducts trucking operations under a radial highway common carrier permit which authorizes the transportation of general commodities throughout California. Perry seeks authorization to deviate from the minimum rates, rules, and regulations in Minimum Rate Tariffs 1-B, 2, and 15 (MRTs 1-B, 2, and 15)[1/] to enable him to charge an hourly vehicle tractor rental rate, with driver, for the transportation of unladen, shipper owned, semitrailers, chassis, converter gears, dollies, and other auxiliary equipment including containers when mounted on container trailers or chassis when transported new or for repairs, between origin and destination points located within a radius of 200 miles of Oakland.

1/ At the hearing the application was amended to include MRTs 1-B and 15.

A public hearing on the matter was held in San Francisco before Examiner Bernard A. Peeters on April 25, 1975 and was submitted on that date.

<u>The Evidence</u>

Perry's only operation consists of the delivery of new and used trailers and other trailing equipment to and from vendors and repair shops. No freight is transported. The transportation is accomplished with a 2-axle tractor equipped with a fifth wheel, trailer hitch, trailer braking mechanisms, electrical connections, and such other attachments as required by law. The business is conducted solely by Perry, from his home, with the part-time assistance of his wife.

The balance sheet attached to the second amended application shows that as of December 31, 1974 Perry had total current assets of $6,256.50 of which $3,788.30 was cash; total current liabilities amounted to $984.05; proprietary capital amounted to $7,903.75. The statement of earnings as of December 31, 1974 shows $14,624 earnings before income taxes.

Perry proposes to assess a charge of $21.50 per hour for the use of the 2-axle tractor and driver, with a minimum charge of one hour, for a round trip when a trailer is towed in one direction. If a second trailer is moved for the same shipper in the opposite direction, the proposed rate is one and one-half times the basic hourly rate, or $32.25 per hour for the time consumed in the entire round trip, including hitching and unhitching.

Exhibit 1 is a restatement of the statement of earnings attached to the application (Exhibit B), which breaks down the expenses into directand indirect expenses to develop an expansion factor of 16.5 percent for overheads which is used in the development of expenses and revenues for trips of varying distances and hours in Exhibit D attached to the application.

Direct labor and fixed vehicle expenses are developed in Exhibit C attached to the application. These expenses are at the current rates. Annual labor expense amounts to $15,475.20 at a rate of $7.44 per hour for 2,080 hours. Fixed cost per hour is $.4006, running cost per mile is $.196, and insurance cost per mile is $.042. Utilizing the above costs, Perry developed the estimated cost and revenue for various round trips ranging from 20 miles to 400 miles. Estimated round-trip time ranges from one hour for 20 miles to ten and one-half hours for 400 miles (Exhibit D attached to application). The tabulation below is a brief summarization of Exhibit D:

Time Miles	1 hr. 20	2 hrs. 60	2¼ hrs. 72	2½ hrs. 80	3 hrs. 100	5½ hrs. 200
Direct Costs	$14.78	$35.10	$40.76	$45.27	$55.43	$106.23
Revenue	22.79	45.58	51.28	56.98	68.37	125.35
Gross Profit	8.01	10.48	10.52	11.71	12.94	19.12
Operating Ratio	64.8%	77%	79.4%	79.4%	81%	84.7%

Perry stated that approximately 75 percent of his operation is performed within a 20-mile round-trip limit, and about 25 percent is between 20 and 60 miles, with a few trips exceeding this distance. Seventy-five percent of the trips involve the movement of trailers in both directions. It was not stated whether the shipments of trailers in both directions involve the same shipper so that the $32.25 hourly rate would apply.

Exhibit 2 is a comparison of charges for the transportation of trailers for varying distances as computed from MRT 2 and MRT 15 with Perry's proposed hourly charge. In all instances the charges under the proposal are less than those derived from the MRTs.

Perry pointed out that the MRT requirements of signed written agreements in advance of transportation, a four-hour minimum requirement, and the distance rates which produce higher charges are all factors which inhibit his operation and deprive the shippers of the economies of the type of operation conducted.

Exhibit 3 consists of five shipper letters in support of Perry's application. Exhibit 4 is a list of 15 shippers for whom Perry performs his specialized transportation. There is testimony that the shippers will not pay the higher MRT rates for the type of transportation involved. Some shippers use their own tractor and mechanics instead.

Discussion

We have set forth certain guidelines in Major Truck Lines (1970) 71 CPUC 447 to be followed in determining whether requests for deviation from the minimum rates should be granted. These are:

1. Is the proposed rate compensatory when measured against the cost of the particular transportation?

2. Is there a cost savings directly attributable to the particular transportation which would justify deviation?

3. What circumstances and conditions exist attendant to the particular transportation which are not present in the usual or ordinary transportation of the commodity involved?

Perry's costs for the transportation appear to be understated. For example, the labor cost of $7.44 per hour was taken from a staff study (Exhibit 833-17 in Case No. 5432, Pet. No. 833, and Case No. 5441, Pet. No. 327 dated March 27, 1975) found in Table 1-B which is only the basic wage for a driver of a tractor and semitrailer. Fringe benefits, premium pay, compensation insurance, payroll taxes, and pensions were not included by Perry. The inclusion of such items would bring the labor cost up to $10.965 per hour as shown in the staff exhibit above. Perry justified the use of the basic wage rate on the grounds that he is a sole proprietor-operator and therefore does not pay payroll taxes or compensation insurance. However, he does take a vacation of two weeks a year, and has a Keogh retirement plan. Therefore, the hourly wage rate should be increased by $.943 for vacation, holidays, and sick leave, and $.577 for Perry's Keogh plan resulting in an hourly wage rate of $8.96. Thus, Exhibit 1 should be adjusted to show drivers' wages as $18,636.80, total expenses as $40,428.80, profit as $11,462.20, operating ratio as 77.9 percent and expansion factor of 15.1.

The running costs per mile of $.196 shown on Exhibit C to the application were taken from Table 2-B of the staff study referred to above. Running costs developed from Exhibit 1 are $.214 per mile. Applying the wage, running cost, and expansion factor adjustments to Exhibit D attached to the application, the above summary restated is as follows:

	Time	1 hr.	2 hrs.	2¼ hrs.	2½ hrs.	3 hrs.	5½ hrs.
	Miles	20	60	72	80	100	200
Direct Costs		$16.77	$39.43	$45.67	$50.76	$62.09	$118.72
Revenue		22.79	45.58	51.28	56.98	68.37	125.35
Gross Profit		6.02	6.15	5.61	6.22	6.28	6.63
Operating Ratio		73.6%	86.5%	89.1%	89.1%	90.8%	94.7%

The proposed hourly rates produce a profit before income taxes even though the restated costs are higher. Perry stated that he paid $4,680 of income tax in 1974. It was also stated that approximately $25,000 was drawn from the business as his income.

Turning to the second and third criteria set forth above, it is apparent that the cost savings directly attributable to the type of operation here flow from the fact that this is a sole proprietorship with few overhead expenses, no terminal investment, no labor costs other than the hourly charge Perry pays himself, and the fact that there is no loading and unloading of freight involved, only the hitching and unhitching of the trailer which is accomplished in a quarter of an hour or less. The minimum rates, from which Perry seeks to deviate, include a factor for loading and unloading the freight which is transported. Here, Perry transports unladen trailers which do not involve the loading and unloading contemplated in the minimum rates. The transportation is merely the towing of empty trailers and empty containers. Thus, there are unusual and different conditions than contemplated under the minimum rates.

Findings

1. The rates, rules, and charges named in MRTs 1-B, 2, and 15, insofar as they conflict with the proposed hourly rate and minimum charge, are not appropriate, reasonable, or otherwise proper for the towing service performed by Perry.

2. The sought exemption from the otherwise governing provisions of MRTs 1-B, 2, and 15 for the towing of unladen trailers and containers has been shown to be justified.

3. The minimum rate exemption authority as proposed by Perry conforms with the criteria prescribed in Major Truck Lines (1970) 71 CPUC 447.

Conclusion

The sought exemption from the minimum rates should be granted. Since transportation conditions might change, the authority to be granted by the order herein should be made subject to an expiration date of June 30, 1976.

O R D E R

IT IS ORDERED that:

1. John J. Perry, Jr., doing business as John Perry Trucking, is authorized to tow unladen trailers at rates less than and different from the otherwise governing minimum rates to the extent and in the manner set forth in Appendix A attached hereto and by this reference made a part hereof.

2. The authority granted shall expire on June 30, 1976 unless sooner modified or canceled by order of the Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17th day of JUNE, 1975.

Vernon L. Sturgeon
President

William Symons Jr.

Leonard Ross

Robert Batinovich

Commissioners

APPENDIX A

JOHN J. PERRY, JR.
DBA
JOHN PERRY TRUCKING

Minimum Hourly Rates

Application

The hourly rates herein apply to the towing of trailers, semitrailers, and chassis, converter gears, dollies, and empty containers mounted on container trailers or chassis, within a 200-mile radius of Oakland.

Rates apply on a round-trip basis.

Rules and Restrictions

The hourly rate includes the services of a 2-axle tractor and driver, and hitching and unhitching the towed equipment.

Where towing is performed in both directions of the round trip for the same shipper, the charge shall be computed as follows: the hourly rate for a round trip for the first trailer plus one-half the hourly rate for a round trip for the second trailer.

The minimum charge per tow is the rate for one hour.

To the extent the rates, rules, and regulations contained in Minimum Rate Tariffs 1-B, 2, and 15 do not conflict with the hourly rate herein, said rates, rules, and regulations shall be applicable.

Rates

$21.50 per hour plus 6 percent surcharge.

Note: Bridge tolls shall be in addition to the hourly charge.