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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of William L. Smith and William N. Smith dba Smith and Sons Trucking Company for authority to deviate from the otherwise applicable minimum rate shown in Minimum Rate Tariff 17-A for the transpórtion of rock, sand, and gravel.	Application 84-07-085 (Filed July 31, 1984)

William Lansing Smith and William Ned Smith, for Smith & Sons Trucking, applicants.
James D. Martens and J. M. Jenkins, for California Dump Truck Owners Association, protestant.
John M. Gaeta, for A&A Ready Mix Concrete, interested party.
George L. Hunt, for the Commission staff.

O P I N I O N

By this application, William L. Smith and William N. Smith (applicants) request authority to assess rates less than those named in Minimum Rate Tariff (MRT) 17-A when transporting rock, sand, and gravel in dump truck equipment from Los Angeles County Production Area 19-F to and for the account of A&A Ready Mix, located in Los Angeles County Delivery Zone 19220. The rate named in MRT 17-A for this transportation is $3.46 per ton. Applicants propose to assess a rate of $2.53 per ton, minimum weight 24 tons.

The application was formally protested by the California Dump Truck Owners Association (CDTOA). Additionally, the Commission staff opposed ex parte handling of the application. Accordingly, a duly noticed public hearing was held in Los Angeles on September 24 before Administrative Law Judge (ALJ) John Lemke. The matter was submitted subject to the receipt of late-filed Exhibit 1 by October 5, 1984.

Evidence

William N. Smith testified regarding the methodology used in determining the proposed rate. He stated that his own truck carries about 26½ tons of material, which at the rate of $3.46 per ton currently earns $91.69 per load. The round-trip distance between origin and destination is 62.3 miles. Thus, revenue received is $1.47 per driven mile. Assuming he completes a round trip in 75 minutes, he calculates he is earning $73.20 per hour, compared with the MRT 7-A hourly rate of $50.50 for dump truck transportation. If the round trip is completed in 90 minutes, revenue of $61.20 per hour is earned. He testified that applicants' earnings under the minimum rate tariffs for the past several years have been at the rate of about $1 per mile. The proposed rate will produce approximately this same revenue.

Applicants have been operating off and on since 1960 as a father and son partnership. Each partner generally operates two units of equipment consisting of two-axle tractors and bottom-dump trailers. The tractors presently operated by applicants are a 1974 Mack, a 1969 Peterbilt, a 1979 White Freightliner, and a 1967 Kenworth; however, the 1969 Peterbilt is being sold. The Mack and White Freightliner tractors are paid for and are fully depreciated. The Kenworth is being acquired on a lease/purchase plan.

Applicants do not intend to use subhaulers. It is expected that they will transport 150 to 200 tons per day, five days per week, 50 weeks per year. In developing information for this application, historical vehicle costs of $16,000 and $10,000 for tractor and trailers, respectively, were used. William N. Smith stated that the $16,000 figure is the amount it would cost to replace his 1974 Mack tractor today, although he paid $26,500 new. A brand new Mack tractor would cost about $70,000, fully equipped. A set of new bottom-dump trailers could cost as much as $30,000 to $40,000. Applicants perform all routine maintenance of their equipment, and perform their own driving along with another son.

John Gaeta, transportation manager for A&A Ready Mix, testified that the shipper is prepared to offer applicants all the loads they can handle at the proposed rate. A&A Ready Mix receives between forty and sixty loads per day from Blue Diamond Products in Production Area 19F. Origin and destination plants are open 24 hours per day.

Applicants' vehicle fixed costs were calculated on the basis of 283 miles per day. This figure includes 100 miles of hauling on jobs other than the work contemplated in this application. Smith conceded that he included this "other work" mileage based on average work performed in past years, and that bad weather and other factors can easily reduce this mileage to zero for extended periods of time.

Applicants in their initial pleading indicated a cost of $200 for each of the 18 tires on a unit of equipment, a total of $3,600, and divided that figure by 75,000 miles to develop a tire cost of 4.8 cents per mile. But applicants could not state the total number of miles operated annually by their equipment. William L. Smith testified that the actual cost of a tire and tube is approximately $168, and that because of the comparatively good operating conditions involved in this hauling, i.e., good roads, easy ingress and egress at origin and destination, etc. he believes his tire costs and maintenance costs are overstated.

Applicants have included an allowance of 25 minutes for loading and 15 minutes for unloading and propose that when this time is exceeded they shall be paid $17.50 per hour or fraction thereof.

William L. Smith testified that his 1979 White Freightliner was purchased new for $49,500, has been paid for and fully depreciated over a period of four years.

Testifying for CDTOA, J. N. Jenkins, a transportation cost consultant, stated that the Commission has traditionally employed a historical industry average equipment cost for minimum rate making purposes, based upon information obtained from the Department of Motor Vehicles. In the case of power units, equipment has been depreciated over a 10-year service life, while trailing equipment has been depreciated over 12 years. He testified that if the Commission were to establish rates without the imputation of historical vehicle costs, before very long there would be no money to replace equipment, and eventually a carrier would wind up "eating his truck." Jenkins believes that costs determined for purposes of deviations which do not contain historical vehicle costs may discriminate against the rest of the dump truck carrier industry. Jenkins noted that the historical average tractor cost used for developing minimum rates in Petition 67, Case 9819 (the most recent MRT 17-A rate offset proceeding) for a two-axle tractor was $30,556.

The staff in its closing statement adopted a neutral position on the application, except that it believes the mileage for "other work" should be excluded from consideration in estimating applicants' costs. Staff further believes that applicants' maintenance cost should include an expense for labor performed by them.

Discussion

The issues here concern cost allocations. Specifically, they involve the questions (1) whether additional mileage operated by the same equipment used to perform the transportation involved in this application may be considered in developing total equipment fixed and running costs; (2) whether maintenance work performed by applicants on their equipment must be assigned a labor expense; and (3) what vehicle historical investment cost and resultant annual depreciation expense should be used for the purposes of this proceeding.

By Decision (D.) 64012, dated July 24, 1962 in Application (A.) 44207 we stated:

> "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."

Further,

> "Unrelated traffic expected to be received from other shippers, but not assured and not directly involved...does not afford a reasonable basis of offsetting revenue deficiencies which would result from the proposed less-than-minimum rate." (Application of Karl Weber, 60 CPUC 59.)

Applicants used a figure of 70,750 miles per year in developing their equipment fixed and running costs. This figure contemplates three trips per day at a round-trip distance of 62.3 miles (186.9 miles), plus 100 miles per day in "other work," five days per week for 50 weeks. Subtracting the 100 miles involving "other work" results in 46,725 annual miles per unit of equipment for the subject hauling.

Staff refers us to the Weber decision as the basis for excluding the 100 miles per day of "other work." But a reading of Weber shows that return haul <u>revenue</u> was excluded from the carrier's total round-trip revenue estimate because it was not guaranteed. In the case before us, applicants propose to include other mileage for the purpose of determining total costs. We will exclude that mileage but for the reason that applicants could not inform us what miles were operated by them during previous years. We have never held that reasonably based annual vehicle mileage estimates may not be used as the basis for determining operating expenses.

With respect to the question of maintenance costs, staff urges that a labor expense should be included for the time spent by applicants in performing that function. The figure suggested by staff is $125-$150 per week. It is based upon testimony that applicants spend an hour each day and several hours on weekends performing routine maintenance, and that amount is approximately what it would cost to have the work done by a hired mechanic.

The record is unclear concerning applicants' maintenance and repair costs, either on a total annual or a cost-per-mile basis. The dollar figure shown for "Parts" in the profit and loss statement attached to applicants' Answer to Protest for fiscal year July 1, 1983 to June 30, 1984 is $3,649. But in their development of running costs applicants used an annual cost of $5,836 for maintenance and repairs.

William L. Smith testified that the Profit and Loss statement covered both his and his son's operations for the year (Tr. 67). But, William N. Smith stated that the $5,836 cost is the annual amount projected for one truck, based upon a cost of .0825 cents per mile times 70,750 miles. He could not explain how the figure of .0825 was derived. This is a critical element in our consideration of applicants' request because, aside from fuel, maintenance and repair is the greatest running expense. We note that the repair cost shown in Petition 67 is 1.550 cents per mile.

Applicants were unable to explain how their estimated indirect expense of 15% was developed. Apparently it was imputed as an average industry truckload amount for overhead expenses.

Applicants have used $16,000 as their "historical" tractor cost because that is the amount it would take to purchase a 1974 Mack tractor in the condition of the one owned by William N. Smith. We do not take exception to the use of this figure for the Mack tractor;

however, it would not be appropriate to use that figure by itself when other equipment is also being used. William L. Smith testified that his 1979 White Freightliner cost $49,500 new, is paid for, and was fully depreciated in four years. He did not inform the record what it would cost to purchase his 1979 tractor today. The 1969 Peterbilt is in the process of being sold and the 1967 Kenworth is being acquired on a lease/purchase arrangement. If there were evidence regarding the replacement of the 1979 White Freightliner and the Kenworth, that information would be useable in determining an average tractor "historical" cost for this application.

The evidence of record does not inform us of (1) the replacement cost of the 1979 White Freightliner or the 1967 Kenworth tractors which will be used in this transportation, (2) applicants' actual maintenance and repair costs, or (3) applicants actual indirect expenses. In these circumstances we cannot determine whether the proposed rate is compensatory and we will deny the request, but will urge applicants to return with the probative information necessary to sustain their burden of proof in these expense areas. We have encouraged carriers who experience favorable operating circumstances to seek deviations from the minimum rates; however, such parties must be prepared to validate the cost data contained in their applications.

<u>Findings of Fact</u>

1. Applicants request authority to assess a a rate of $2.53 per ton, minimum weight 24 tons, rather than the rate of $3.46 named in MRT 17-A for the transportation of rock, sand, and gravel from Los Angeles County Production Area 19-F to Los Angeles County Delivery Zone 19220.

2. Applicants have not sustained their burden of proof in connection with the determination of either the historical or maintenance and repair costs associated with their motor vehicle equipment, nor with the indirect expenses incurred in their business, and have not demonstrated that assessment of the proposed rate is compensatory.

Conclusion of Law

The application should be denied, without prejudice.

O R D E R

IT IS ORDERED that Application 84-07-085 is denied, without prejudice.

This order becomes effective 30 days from today.

Dated DEC 5 1984, at San Francisco, California.

DONALD VIAL
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
FREDERICK R. DUDA
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director