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Item TD-2
Agenda 5725788 6/8

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ORIGINAL

(MAILED 4/18/88)

Decision

88 06 026

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
COOKE'S CRATING, INC. for authority to)
depart from the minimum rates, rules)
and regulations of Minimum Rate Tariff)
4-C, pursuant to the provisions of)
Section 5195 of the Public Utilities)
Code.)

Application 87-05-030
(Filed May 18, 1987
amended November 30, 1987)

Daniel W. Baker, Attorney at Law, for Cooke's
Crating, Inc., applicant.
Edward J. Hegarty, Attorney at Law, for California
Moving and Storage Association, protestant.
Kenneth Koss, for the Transportation Division.

OPINION

Cooke's Crating, Inc. (applicant) is a motor carrier operating between points in California pursuant to permits and a certificate issued to it by the Commission under File No. T-139159. The authorities it possesses include a highway common carrier certificate and highway contract carrier and household goods carrier permits. A certified copy of its articles of incorporation was filed with the Commission under File T-139159. Applicant's principal place of business is located in Los Angeles, California.

Applicant has requested authority to deviate from the minimum (hourly) rates for a driver and helper-or helpers, applied to used household goods carriers in Item 320 of Minimum Rate Tariff (MRT) 4-C. The application alleges that the transportation of fine arts constitutes 98% of applicant's business; fine arts are defined as paintings, vases, statues, and other items of extreme historical and artistic value; many of the artifacts transported by applicant are valued at several hundred thousand dollars; the majority of applicant's drivers and helpers hold college degrees as either

Bachelors or Masters of Fine Arts; they are also trained in the methods of handling and preserving these treasures; applicant's trucks are smaller and are designed on the interior to protect the fine arts while in transit; the loads hauled are light in weight and take only a portion of the space available in the truck's cargo area; the truck can be loaded or unloaded in a fraction of the time required for a load of used household goods; and applicant does not compete with household goods carriers and provides a simpler and more specialized service.

Applicant proposes to charge deviated rates of \$37 per hour for a unit of equipment with driver, \$57 per hour for a unit of equipment with driver and helper, and \$20 per hour per man for extra helpers (Exhibit 2, as amended). The MRT 4-C rates (Item 320) depend on the distance from origin to destination and range from \$40.70 to \$49.55 per hour for a driver (one man) and truck, \$62.10 to \$77.50 for a driver and helper, and from \$18.50 to \$24.10 for each extra helper.

Applicant already has authority to charge the \$37.00, \$57.00, and \$20.00 rates it seeks to have authorized herein, under a cost justification authorizing the hauling of "Objects of Art and related displays and exhibits..." of unusual value as general freight (Exhibit 3) filed under General Order 147-A (CJ) 87-370, effective November 4, 1987.

Applicant included a projected financial statement as part of the application. It was amended on December 1, 1987 and placed in evidence as Exhibit 7. The exhibit (Page 2) indicates that applicant will attain an operating ratio of 93.73% charging the proposed deviated rate, for the hourly service of a driver and truck, 92.27% for a truck with a driver and helper, and 69.56% for each additional helper. The application is supported by letters from the Los Angeles County Museum of Art and the Museum of Contemporary Art, also located in Los Angeles.

It is alleged that applicant moves works of art almost exclusively; other hauling would not exceed 2%. Works of art are defined as paintings, drawings, sculpture, ancient art and artifacts, valuable glass works, vases, pots, wall reliefs, valences, fountains, freizes, tapestries, rugs, carpeting, architectural models, monuments, frames, etc.; articles may be transported between residences, or to office buildings, galleries, auction houses, museums, government buildings, churches, professional offices, artists or airports. The application was filed to have objects of art rated under the provisions of the used household goods tariff and to eliminate any ambiguity as to what tariff should relate to the transportation. The amendment was filed to limit the liability "for the transportation of objects of art when they fall within the classification of household goods to that which is described" in certain provisions of Commission Minimum Rate Tariff 4-C.

A protest was filed by the California Moving and Storage Association on June 24, 1987. The parties negotiated but could not reach an agreement and a public hearing was scheduled and held in San Francisco on December 21, 1987. The matter was submitted on opening and closing briefs, which have been filed. Testimony was provided by the president of Cooke's Crating, Inc. and a staff witness.

Applicant's witness testified as follows: Applicant's operation differs from that of a conventional household goods carrier in commodities transported, employees hired, and vehicles placed in service. Applicant uses small step-vans, which are too small for a conventional household goods service. Applicant may transport a single painting or tapestry worth hundreds of thousands of dollars, weighing less than 100 pounds. As noted in the application, applicant's drivers and helpers have earned degrees in fine arts to insure that they have the knowledge and interest to take proper care of the articles entrusted to them. Each employee

is conditioned to provide the special handling required to transport delicate objects of great value. Items frequently have to be partially or wholly dismantled for movement into or out of a building or room. Employees have to be versatile as loads have consisted of human bones, feathered items or clothing, slabs of metal, and items made of sandstone. Thirty percent of the objects transported move between dealers and auctioneers; the remainder to or from museums, art galleries, non-profit institutions, collectors, interior decorators, artists, and individuals. The witness described the transportation performed as 98% objects of art and the remaining 2% as primarily pedestals, frames, and other apparatus directly related to the art work or its display.

Applicant has been transporting objects of art as general freight since 1980 when it adopted Commission Transition Tariff (TT) 2. Item 1004 of TT-2 (Exhibit 9) provides that "the rules and rates" of MRT 4-B (the used household goods tariff) shall apply under TT-2 to all transportation of objects of art. On December 10, 1986 the Commission staff cited applicant after a disagreement regarding the proper rates to apply. This proceeding was filed as part of an effort to determine the rate to be charged and identify the commodity transported.

Protestant provided a definition of "Household goods carrier" from Section 5109 of the Public Utilities Code.

"5109. 'Household goods carrier' includes every corporation or person, ...engaged in the transportation for compensation or hire as a business by means of a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects, office, store, and institution furniture and fixtures over any public highway in this state."

Protestant emphasized the difference between applicant's operation and that of a household goods carrier. The latter transports "used household goods", personal effects and furniture. The former frequently handles newly completed paintings, sculpture,

or other works of art. Finally, protestant states that applicant is already charging rates under authority of the 147-A General Order Filing, that it is seeking to charge as a rate deviation in this proceeding. Shippers and the applicant will not be affected if this application is denied.

The staff witness identified the commodity hauled as general freight, not used household goods. Various definitions were quoted and it was stated that shipper intent, commodity description, and the special care required in moving and packing the items transported support the conclusion that applicant is not transporting used household goods. The staff also recommended that the application be denied. ✓

After the matter was submitted, applicant wrote to request a finding that shipments consisting of objects of art exclusively, are not used household goods, "and cannot be transported under the rates in Minimum Rate Tariff 4-C, or under a household goods carriers's permit". The suggested finding is not supported by the record. There are occasions when objects of art may be retained as household goods (i.e., antique beds, furniture, plates, carving sets, paintings, sculpture, etc.).

The decision was mailed to the parties prior to consideration by the Commission as required by law. Comments were filed by the applicant on May 5, 1988, and a reply opposing the comments was received from the California Moving and Storage Association on May 13, 1988.

Applicant argues that it transports "(1) objects of art and related displays and exhibits handled as household goods; and (2) furniture and fixtures transported for specific shippers." Applicant classifies its action as an effort to obtain authority to transport household goods at the deviated rate requested. The identical rate in its highway common carrier tariff applies only to objects of art. Applicant complains that a denial of this application will inconvenience everyone since objects of art will

go for one rate and used household goods for a higher noncompetitive rate.

Protestant argued that the comments filed by the applicant provide no suggested findings, conclusions of law, or citations as required and that the draft decision should remain as written since no evidence was produced at the hearing to indicate that applicant's shippers intend to move used household goods.

It is evident that applicant prefers to haul objects of art exclusively, along with the necessary display equipment (pedestals, stands, platforms, etc.). If the valued artifact is also used as furniture (antique beds, chairs, desks, tables, cabinets, etc.), either rate would apply. There is no evidence that applicant seeks to become a part-time household goods carrier. The suggestions filed by applicant are not persuasive. The decision should remain as written.

Findings of Fact

1. Applicant holds a highway common carrier certificate and highway contract carrier and household goods carrier permits.
2. Applicant hauls objects or works of art almost exclusively. The term is defined as including paintings, drawings, sculpture, ancient art and artifacts, tapestries, rugs, monuments, and other items of great artistic or historical value.
3. The artifacts are transported between dealers and auctioneers (30% of applicant's business), and to or from museums, art galleries, nonprofit institutions, collectors, interior decorators, artists, government buildings, churches, and airports.
4. Applicant has requested authority to deviate from the minimum (hourly) rates charged by used household goods carriers under Item 320 of MRT 4-C. This tariff applies solely to the transportation of used household goods.
5. Applicant has been transporting objects of art as general freight since 1980 when it adopted Commission TT-2.

6. Applicant has been charging the exact rates it has applied to have authenticated herein, under a General Order 147-A Filing made effective November 4, 1987.

7. Applicant's operation differs from that of a used household goods carrier in vehicles used, employees hired, methods of carrying and packing loads, size of loads carried, and the value of commodities carried.

8. Applicant is not transporting used household goods and the rates in MRT 4-C are not applicable to the transportation.

Conclusion of Law

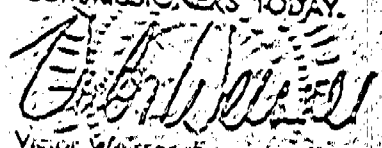
The application should be denied.

ORDER

IT IS ORDERED that Application 87-05-030 is denied.
This order becomes effective 30 days from today.
Dated June 8, 1988, at Carson, California. ✓

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Weiss, Executive Director

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Conclusion of Law

The application should be denied.

ORDER

IT IS ORDERED that Application 87-05-030 is denied.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.

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Conclusion of Law

The application should be denied.

ORDER

IT IS ORDERED that Application 87-05-030 is denied.

This order becomes effective 30 days from today.

Dated JUN 8 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners