

AUG 26 1988

ORIGINAL

Decision 88-08-069 August 24, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK C. ALEGRE TRUCKING, INC., a)
California corporation, for authority)
to establish a cement carrier rate)
less than the maximum reasonable rate)
pursuant to the provisions of)
Sections 452 and 452.1 of the Public)
Utilities Code and General Order 150)
and Resolution TS-672.)

Application 86-10-009
(Filed October 2, 1986;
amended July 9, 1987)

Edward J. Hegarty, Attorney at Law, for
applicant.

Silver, Rosen, Fischer & Stecher by John Paul
Fischer, Attorney at law, and Ronald C.
Broberg, for Frank E. Hicks Trucking, Inc.
and Les Calkins Trucking; and Priscilla
Ladeira, for Rich Ladeira Trucking, Inc.;
protestants.

Skaff & Anderson by Ellis Ross Anderson,
Attorney at Law, for CAP Transport, Inc. and
Universal Transport Systems, Inc.; Gary E.
Haas, for himself, and Jeannine Bergman, for
Miles & Sons; interested parties.

Kathleen Kiernan-Harrington, for the
Transportation Division.

O P I N I O N

Frank C. Alegre, Inc. (Alegre) seeks authority to publish
in its tariff a cement carrier rate less than the maximum
reasonable rate pursuant to the provisions of Public Utilities (PU)
Code Sections 452 and 452.1 and General Order (GO) 150-A.

Public hearings on the application as originally filed
were held before Administrative Law Judge (ALJ) O'Leary at San
Francisco on February 2 and 3, 1987. During the course of those
hearings it became apparent, during cross-examination, that
Alegre's cost witness could not support much of the data contained
in his justification statement (Exhibit 1). After the completion

of the cross-examination the then protestants: CAP Transport, Inc. (CAP); Universal Transport Systems, Inc. (Universal); Les Calkins Trucking, Inc. (Calkins); Frank E. Hicks Trucking, Inc. (Hicks); moved for dismissal of the application. After protestants moved for dismissal, Alegre proposed that it be allowed to amend the application. Protestants and the other parties agreed with the proposal and an amended application was filed on July 9, 1987. Public hearings on the amended application were held before ALJ O'Leary on October 20, 21, and 22 and November 5 and 9, 1987. At the commencement of the hearings CAP and Universal changed their appearance from protestants to interested parties and Rich Ladeira Trucking, Inc. (Ladeira) who had entered an appearance as an interested party changed its appearance to that of a protestant. The matter was submitted on January 12, 1988 with the filing of concurrent briefs by Alegre, Ladeira, and Hicks and Calkins jointly. On January 12, 1988, Alegre filed a petition to set aside submission of the matter as provided in Rule 84 of the Commission's Rules of Practice and Procedure. The filing was for the limited purpose of presenting evidence concerning the current price of fuel.

On April 8, 1988, ALJ O'Leary filed his proposed decision, which denied the petition to set aside submission and denied the application. Comments on the ALJ's proposed decision were filed by Alegre, Protestants Hicks and Calkins, and the Transportation Division. The denial of the application in the ALJ's proposed decision was premised on his interpretation of Section 452 of the PU Code.

Alegre's comments raise the primary issue as to whether the ALJ's proposed decision is correct with respect to the issue of whether or not the needs of commerce and public interest require the establishment of the proposed rate.

The comments of Protestants Hicks and Calkins support the decision of the ALJ but request that the decision be clarified as to the ALJ's interpretation of Section 452.

The comments of the Transportation Division state that the Transportation Division believes that a cost showing demonstrating that the reduced rates are profitable automatically upholds a finding that the needs of commerce are met and the reduced rate is in the public interest. The staff believes it is axiomatic that a reduced rate that is compensable meets the needs of commerce and is in the public interest.

Since the filing on July 9, 1987 is an amended application rather than an amendment to the application previously filed this decision will deal only with the amended application and the evidence adduced at the hearings held in October and November.

The rate Alegre seeks to publish would apply to bulk cement moving from Stockton to Union City. Table 1 sets forth a comparison of the existing rate and Alegre's proposed rate.

TABLE 1

<u>Description</u>	<u>Present</u>	<u>Proposed</u>
Rate per Hundredweight	\$0.4275	\$0.395
Surcharge	3%	0%
Rate plus Surcharge	\$0.4403	\$0.395
Free Time Loading in Minutes	Note 1	20
Free Time Unloading in Minutes	120	35

Note 1 - 30 minutes when consignor specifies time for loading

60 minutes when consignor does not specify time for loading

No change is proposed in the minimum weight of 52,000 pounds per unit of carrier's equipment or in the charge for excess loading and unloading time which is set forth in Item 100 of Alegre's tariff.

Mr. Thomas J. Hays (Hays), a transportation cost and economic analyst, was engaged by Alegre to replace its original cost witness. Hays' original cost data is set forth in Exhibit 4. The exhibit includes cost development in the areas of labor, vehicle fixed costs, vehicle running costs, indirect costs, gross revenue expenses, and productivity factors in relation to said costs. Table 2 sets forth the various cost and productivity factors.

TABLE 2

<u>Description</u>	<u>Amount</u>
Labor Cost (per hour)	\$16.276
Vehicle Fixed Cost (per mile)	0.233
Vehicle Running Cost(per mile)	0.327
Indirect Cost (% of total expense)	14.69%
Gross Revenue Expense (% of total expense)	.0049%
Productivity Factors	
Including Stem Time	
Time per Trip (hours)	4.67
Length of Trip (miles)	173.5
Excluding Stem Time	
Time per Trip (hours)	3.83
Length of Trip (miles)	138.5
Average Load Weight	53,394 lbs.

It should here be noted that the above amounts reflect any corrections made by Hays during cross-examination.

Alegre's labor cost, of \$16.218 per hour, is derived from Prevailing Wage Report 287-1 together with actual company experience for the cost of calculating the cost of California Unemployment Insurance and Workers' Compensation Insurance.

Vehicle fixed cost includes the following components: investment, licensing costs, federal highway use tax, and insurance costs. To arrive at the \$0.233 cost per mile figure, Hays used the data set forth in Table 3.

TABLE 3

A. Investment			
1. Tractor			
a. Cost	\$53,743		
b. Salvage Value (15%)	<u>8,061</u>		
c. Service Value	\$45,682		
d. Economic Life (years)	8		
e. Annual Investment			\$ 5,710
2. Trailer			
a. Cost	\$37,163		
b. Salvage Value (15%)	<u>5,574</u>		
c. Service Value	\$31,589		
d. Economic Life (years)	12		
e. Annual Investment			<u>2,632</u>
3. Total Tractor & Trailer			\$ 8,342
B. Annual License			
1. Tractor	\$1,030		
2. Trailer	<u>692</u>		\$ 1,723
C. Federal Highway Use Tax			550
D. Insurance			<u>6,126</u>
E. Total Annual Fixed Cost			\$16,741
F. Annual Miles			71,720
G. Fixed Cost per mile			\$0.233

The investment cost set forth in Table 3 is based upon the cost of 47 tractors, of which 37 are owned and 10 are leased, 6 semi-trailers and 28 sets of double trailers used in Alegre's cement fleet as of December 31, 1986. The 10 leased tractors were assigned purchase price values between \$54,218 and \$60,011 at the time the equipment was leased. The cost of the trailers is the average cost of the trailers. The 15% salvage value is based upon the escalation of new vehicle prices which has similarly driven up the price of new vehicles. Alegre points out that 15% was recently recognized by this Commission as appropriate in Decision (D.) 87-01-066, which was the last full-scale study of a segment of the trucking industry (transportation of used household goods). The economic life of 8 years for tractors and 12 years for trailers was selected as covering the Alegre's current fleet. The annual license cost and federal highway use tax were the actual costs per unit in 1986. Alegre maintains insurance coverage in excess of

that required by this Commission. For the purposes of developing insurance costs, Hays excluded \$70,000 in premium which is attributable to its umbrella or excess coverage. The annual insurance cost was determined by dividing the remaining annual premium by the 67 power units in the entire Alegre fleet, which includes units used in transportation other than cement. The annual mileage figure was derived from Alegre's monthly maintenance report which records miles by equipment number and enables isolation of the cement fleet. The annual miles for the cement fleet were taken from this report by calculating the average mileage for the 37 of the 47 power units that were in service for the entire year of 1986.

Vehicle running cost includes the following components: fuel, oil, maintenance and repair, and tires. To arrive at the \$0.327 cost per mile figure, Hays used the data set forth in Table 4.

TABLE 4

A. Fuel		
1. Cost per gallon	\$0.735	
2. Miles per gallon	5.01	
3. Cost per mile		\$0.147
B. Oil		
1. Annual cost	\$360	
2. Cost per mile		0.005
C. Tire cost per mile		0.039
D. Maintenance and Repair cost per mile		<u>0.136</u>
E. Running Cost per Mile		\$0.327

The fuel cost per gallon set forth in Table 4 is the average price paid during the month of April 1987. The miles per gallon figure was calculated by dividing the number of gallons purchased during 1986 by the total 1986 miles. Detailed records are not maintained with respect to oil consumption. Oil cost was estimated by assuming an oil change every 60 days, which is Alegre's policy, at a cost of \$60 per change resulting in an annual cost of \$360. The \$360 was then divided by the annual miles to

arrive at the per mile figure. The maintenance and repair and tire costs were abstracted from Alegre's 1986 maintenance and tire annual report.

The length and time of trip figures were determined through the use of trip performance reports to collect information concerning distance, running time, loading and unloading times. Hays accompanied drivers on four separate movements which are the basis of the performance reports which were received in evidence as Exhibits 7 through 10. The data contained in Exhibits 7 through 10 is summarized in Exhibit 11. Table 5 sets forth the time and distance factors set forth in Exhibit 11.

TABLE 5

Trip No.		Terminal to Origin	Load	Origin to Destination	Unload	Return to Terminal	Total
1.	Miles	19		70		94	183
	Time	0:30	0:13	1:29	0:31	1:59	4:42
2.	Miles	24		65		83	173
	Time	0:33	0:15	1:32	0:34	1:37	4:31
3.	Miles	15		60		80	155
	Time	0:31	0:13	1:29	0:30	1:54	4:37
(Exhibit 11 shows the time from terminal to origin as 29 minutes, the 31 minutes is the correct calculation.)							
4.	Miles	20		71		92	183
	Time	0:29	0:16	1:35	0:31	2:00	4:51

The information set forth in Table 5 was used to establish the following data:

1. Trip Time	
(including stem time)	4:40
(excluding stem time)	3:48
2. Trip Miles	
(including stem miles)	173.5
(excluding stem miles)	138.5
3. Loading Time	14.3 minutes
4. Unloading Time	31.5 minutes
5. Running Time	3:54
6. Average Speed	44.5 miles per hour

The average load figure was determined by computing the average weight of the 305 loads transported during 1986.

The data set forth in Table 2 was used to develop revenue and expense data which is set forth in Tables 6 and 7.

TABLE 6

Revenue and Expense Data
Terminal to Terminal

Revenue (\$0.395 x 53,394 lbs)	\$210.906
Costs, Direct	
Labor (\$16.276 x 4.66 hours)	\$ 75.846
Vehicle	
Fixed (\$0.233 x 173.5 miles)	40.426
Running (\$0.327 x 173.5 miles)	<u>56.735</u>
Total Direct Costs	\$173.007
Total Direct & Indirect Costs	
(Total direct costs ÷ 85.31%)	\$202.087
Gross Revenue Expense (.49% x \$202.087)	<u>0.990</u>
Total Costs	<u>\$203.077</u>
Profit	\$ 7.829
Operating Ratio	96.3%

TABLE 7

Revenue and Expense Data
Origin to Destination and Return

Revenue (\$0.395 x 53,394 lbs)	\$210.906
Costs, Direct	
Labor (\$16.276 x 3.83 hours)	\$ 62.386
Vehicle	
Fixed (\$0.233 x 138.5 miles)	32.270
Running (\$0.327 x 138.5 miles)	<u>45.290</u>
Total Direct Costs	\$139.946
Total Direct & Indirect Costs	
(Total direct costs ÷ 85.31%)	\$164.044
Gross Revenue Expense (.49% x \$164.044)	<u>0.804</u>
Total Costs	<u>\$164.848</u>
Profit	\$ 46.058
Operating Ratio	78.2%

Alegre argues that it only needs to show costs of transportation as set forth in Table 6. Alegre relies on the wording of newly enacted Section 452.1 of the PU Code and GO 150-A which provides rules and regulations governing the transportation of cement and related commodities by cement carriers and cement contract carriers.

The three protestants are cement carriers, who are competitors of Alegre in the cement transportation business, and are authorized to transport cement between the points for which Alegre seeks to publish the rate which is the subject of this proceeding.

Protestants Hicks and Calkins presented cost evidence through Ronald C. Broberg (Broberg), a transportation and economic expert. Broberg disagrees with Hays' development of costs in the following areas:

1. Tractor Investment Cost

Broberg obtained the actual lease cost of the leased tractors from Alegre's 1986 annual report. The pertinent portion of the annual report reads as follows:

"In June of 1985, the corporation entered into a long-term lease arrangement with Signal Capital Corporation. The lease was to run for forty-eight (48) months and covers the lease of eight new Mack tractors and two new cab and chassis Mack tractors. Lease payments are charged at the rate of \$7,500 per month for the months of February, March and April of each year and \$15,100 per month for the balance of each twelve month period. The lease expires in June of 1989. There is an option to purchase the leased rolling stock at the end of the lease. The purchase price (contained in the purchase option) is to be determined based on fair market value of the equipment at the point of purchase option exercise in time. The 1987 annual lease commitment is \$158,400."
(Emphasis appears in the annual report.)

Broberg calculates the cost of the 10 leased tractors at \$7,920 each. The \$7,920 is arrived at by spreading the lease cost over the eight year life of the equipment used by Hays. Such a calculation would result in an increase in the annual tractor investment cost from \$5,710 to \$6,368.

2. \$70,000 Premium on Umbrella Coverage

Alegre's calculations for insurance costs do not include the premium for the umbrella insurance that it carries. Alegre's reasoning for not including such cost is that such coverage is not required by the Commission. Broberg recalculated the vehicle insurance costs to include the umbrella coverage. This increases the annual per vehicle insurance premium from \$6,126 to \$7,171 according to Broberg.

3. Cost of Fuel

Broberg contends that Alegre's price of fuel is grossly understated. Broberg urges that the most recent price of fuel be utilized in calculating costs with respect to the application. Broberg estimates the most recent cost of fuel to be 89.2 cents per gallon.

4. Indirect Costs

Broberg questions the allocation of certain expenses to indirect expense. He contends that the insurance deductible expense set forth in Exhibit 12 (Page 2, Line 22) is clearly allocable to indirect expense. He contends that if the insurance deductible expense is included as an indirect expense the indirect expense ratio increases to 14.96% from 14.69%.

5. Maintenance Costs

Broberg believes that the maintenance figures for the cement fleet may be understated. His belief is based upon data set forth in Alegre's 1986 annual report. That portion of the annual report entitled a Summary of Financial Data reveals the following maintenance-related accounts:

Vehicle Parts	\$523,337
Vehicle Maintenance/ Outside Vendors	150,288
Vehicle Repair and Service	<u>402,802</u>
TOTAL	\$1,076,427

This produces a fleet average of 24.36 cents per mile when divided by the total fleet miles (4,414,317).

Ladeira questions Alegre's costs as set forth below:

1. Cost of Fuel

Ladeira contends that in arriving at the per gallon cost of fuel only the cost of bulk fuel purchases have been considered by Alegre and that no provision has been made for outside purchases.

2. Cost of Oil

In its brief Ladeira contends that trucks use oil between changes. Well maintained trucks use approximately one gallon of oil per week. It further points out that the cost of disposing the waste oil was not considered in the Alegre presentation.

3. Payroll Taxes

Ladeira also contends that increases in FICA and Workers' Compensation Insurance took effect on January 1, 1988 and that the increased rates should be considered in this application.

4. \$70,000 Premium on Umbrella Coverage

Ladeira's concern in this regard is the same as that of Hicks and Calkins.

5. Delays in Transit

Ladeira points out that no provision has been included in Alegre's cost data for delays in transit because of either highway construction or traffic congestion.

Alegre presented rebuttal evidence through Hays in the form of revised Tables 1-A thru 5-A to Exhibit 4. Changes in the cost and productivity figures set forth in Table 2 are shown in Table 8.

TABLE 8

<u>Description</u>	<u>Table 2 Amount</u>	<u>Revised Amount</u>
Labor Cost (per hour)	\$16.276	\$16.218
Vehicle Fixed Cost (per mile)	0.233	0.214
Vehicle Running Cost (per mile)	0.327	0.325
Indirect Cost (% of total expense)	14.69%	14.73%
Gross Revenue Expense % of total expense)	.0049%	.0049%
Productivity Factors		
Including Stem Time		
Time per Trip (hours)	4.67	4.82
Length of Trip (miles)	173.5	173.5
Excluding Stem time		
Time per Trip (hours)	3.83	4.03
Length of Trip (miles)	138.5	138.5
Average Load Weight	53,394 lbs.	53,394 lbs.

The change in the labor cost is the result of using the latest Workers' Compensation experience of Alegre. The change in the fixed cost is the result of two adjustments as follows:

1. Allocating \$18,000 of the \$70,000 premium for the umbrella policy to the trucking operation.
2. Increasing the annual mileage figure per vehicle to 79,602 from 71,720.

The annual mileage figure was adjusted because the ten leased power units were not in service for the entire year. In making the adjustment Hays eliminated the mileage attributable to said vehicles. The reduction in Vehicle Running Cost is the result of using the cost of fuel of 79.2 cents per gallon which Hays alleges is the average cost of fuel for the first nine months of 1987. Hays originally used the figure of 73.2 cents per gallon which was Alegre's cost of fuel in April 1987. In adjusting the fuel cost the performance factor of miles per gallon was increased from 5.01 miles per gallon to 5.26 miles per gallon which Hays alleges is the proper figure for the first nine months of 1987. In making the computations, Hays used Alegre's computer printouts for January 1987 through September 1987. The indirect cost increased to 14.73% because Hays eliminated the \$25,000 contamination loss from both direct and indirect cost figures to obtain the revised ratio of 14.73%. The trip time factors were revised upward because of the upward revision of the revised free time for loading and unloading reflected in the revised tariff item set forth in Exhibit 19.

As a result of the revised data Tables 6 and 7 are revised as set forth in Tables 9 and 10.

TABLE 9

Revenue and Expense Data
Terminal to Terminal

Revenue (\$0.395 x 53,394 lbs.)	\$210.906
Costs, Direct	
Labor (\$16.218 x 4.82 hours)	\$ 78.171
Vehicle	
Fixed (\$0.214 x 173.5 miles)	37.129
Running (\$0.325 x 173.5 miles)	<u>56.388</u>
Total Direct Costs	\$171.688
Total Direct & Indirect Costs	
(Total direct costs ÷ 85.27%)	\$201.346
Gross Revenue Expense (.49% x \$201.346)	<u>0.987</u>
Total Costs	<u>\$202.333</u>
Profit	\$ 8.573
Operating Ratio	95.9%

TABLE 10

Revenue and Expense Data
Origin to Destination and Return

Revenue (\$0.395 x 53,394 lbs.)	\$210.906
Costs, Direct	
Labor (\$16.276 x 4.03 hours)	\$ 65.359
Vehicle	
Fixed (\$0.214 x 138.5 miles)	29.639
Running (\$0.325 x 138.5 miles)	<u>45.013</u>
Total Direct Costs	\$140.011
Total Direct & Indirect Costs	
(Total Direct Costs ÷ 85.27%)	\$164.197
Gross Revenue Expense (.49% x \$164.197)	<u>0.805</u>
Total Costs	<u>\$165.002</u>
Profit	\$ 45.904
Operating Ratio	78.2%

Tables 11 and 12 set forth the data that is contained in Schedule 9 of Exhibit 20 which is witness Broberg's analysis of Alegre's Rebuttal Testimony.

TABLE 11

Revenue and Expense Data
Terminal to Terminal

Revenue (\$0.395 x 53,394 lbs)	\$210.91
Costs, Direct	
Labor (\$16.2937 x 4.82 hours)	\$ 78.54
Vehicle	
Fixed (\$0.222 x 173.5 miles)	\$ 38.51
Running (\$0.365 x 173.5 miles)	\$ 63.39
Total Direct Costs	\$185.44
Indirect Costs 15.5%	\$ 33.10
Gross Receipts Expense (\$210.91 X 0.43%)	\$ 0.91
Total Costs	\$214.44
Profit	(\$ 3.53)
Operating Ratio	101.7%

TABLE 12

Revenue and Expense Data
Origin to Destination and Return

Revenue (\$0.395 x 53,394 lbs)	\$210.91
Costs, Direct	
Labor (\$16.2937 x 4.03 hours)	\$ 65.66
Vehicle	
Fixed (\$0.222 x 138.5 miles)	\$ 30.75
Running (\$0.365 x 138.5 miles)	\$ 50.55
Total Direct Costs	\$146.96
Indirect Costs 15.5%	\$ 26.95
Gross Receipts Expense (\$210.91 X 0.43%)	\$ 0.91
Total Costs	\$174.82
Profit	\$ 36.09
Operating Ratio	82.9%

Discussion

This is the first application for new authority by a cement carrier to establish a rate less than a maximum reasonable rate since the enactment of PU Code Section 452.1. Section 452.1 provides:

"Whenever a cement carrier requests authority to establish a rate less than the maximum reasonable rate, the commission shall, in addition to the requirements of Section 452, require a showing that the rate is fully compensatory based solely upon the cost of transportation from origin to destination and return and the projected revenue to be derived from the requested rate.

"If the commission finds after public hearing, when a hearing is requested, that the proposed rate meets the requirements of Section 452 and this section, it shall authorize the establishment of the proposed rate subject to conditions the public interest may require."

The parties vigorously debated whether the language of this section requires that the costs of terminal mileage be excluded in determining whether a proposed rate is compensatory. Terminal mileage is the distance between a carrier's base of operations or yard and the origin of the load. The phrase "origin to destination" has historically been used to describe that portion of any transportation during which the carrier is responsible for the freight. As we discuss below, we find it unnecessary to resolve the question in this decision. We note only that Section 452.1 seems facially unambiguous, and the plain meaning of the words "fully compensatory based solely upon the cost of transportation from origin to destination and return..." would appear to exclude the costs incurred between a carrier's terminal and the points of origin and return.

We turn next to the comments of protestants and staff concerning the proposed decision of the ALJ. The ALJ believed that the enactment of Section 452.1 requires us to first make the

analysis required under Section 452 and then separately apply Section 452.1. In other words, he believed a finding that the proposed rate is justified by transportation conditions is required and must be made apart from any consideration of costs showing whether the rate is compensatory. The ALJ observed that the proposed rate would be little used, and only when rail facilities are unavailable. On that basis, he concluded that the rate was not justified, and he did not consider whether the rate was compensatory.

The staff argued that when a rate is shown to be compensatory, it automatically meets the test of being justified by transportation conditions. Staff does not believe that Section 452.1 requires us to perform the two tests sequentially.

While we are not prepared to say that in every conceivable case a rate which is compensatory is justified by transportation conditions, we do believe that the fact that a rate is compensatory gives rise to a very strong presumption that it meets the needs of commerce and is in the public interest. We believe that the fact that a rate is compensatory, absent facts to the contrary, largely determines whether the rate is justified by transportation conditions.

In this application, we are satisfied that the proposed rates are compensatory. Furthermore, we disagree with the ALJ's conclusion that the likelihood that the rate will be little used tends to prove that it is not justified by transportation conditions. It is the importance of the rate when needed, not the frequency of need, that shows that the rate is justified.

We conclude that Alegre has shown that the proposed transportation is compensatory, and this conclusion is based upon the evidence of record which both excludes and includes mileage to and from Alegre's terminal. Both Alegre and protestants' cost witnesses agree that the proposed rate is compensatory when costs for mileage to and from the terminal are excluded. As shown on

Tables 10 and 12, these cost witnesses calculate operating ratios of 78.2% and 82.9% respectively when mileage to and from the terminal is excluded. However, these two cost witnesses disagree on whether the rate is compensatory if mileage to and from the terminal is included in the cost showing. Under the Alegre analysis, as summarized in Table 9, the rate produces a profit and an operating ratio of 95.9%. Under protestants' analysis, as summarized in Table 11, the rate produces a small loss and an operating ratio of 101.7%. While perhaps not necessary in view of the prior discussion, we have made an analysis of the evidence and the rationale supporting these two cost presentations and have concluded that some of the costs have been overstated in the protestants' evidence and that the rate is compensatory even if mileage to and from the terminal were to be included.

One controversial item of cost is fuel cost. The Alegre cost justification used a nine-month average of fuel cost at \$.792 per gallon and the protestants used the highest price of \$.892 per gallon. The cost studies in evidence demonstrate that the ten cent per gallon differential in fuel cost affects the operating ratio by 1.8%. Stated another way, if all of the protestants' costs, except fuel, were to be accepted, and the Alegre nine-month average fuel cost was used, both Alegre and the protestants would agree that the rate is compensatory, even including mileage to and from the terminal (Table 11; $101.7\% \text{ Operating Ratio less } 1.8\% = 99.9\% \text{ Operating Ratio}$).

Costs other than fuel can also be reasonably reduced as presented by Alegre. For instance, vehicle fixed costs for equipment which Alegre leases have been increased by protestants to a figure which exceeds what depreciation charges would be if Alegre owned the equipment. As this Commission has previously ruled, we have no objection to a carrier leasing its equipment instead of purchasing the equipment, but the carrier's shippers should not be required to pay higher charges to meet the interest expense and

other added expenses of such a lease arrangement. (Lloyd B. Turner (Blue Truck Lines) (1958) 56 CPUC 475.) Reducing the Alegre vehicle fixed costs to regularly accepted depreciation charges would further reduce the operating ratio by almost one point.

Another 1.7% in operating ratio was added by protestants' witness by allocating a portion of mechanics wages to indirect expense for the repair of company cars and pickup trucks. However, review of the record reveals that such an allocation has no substantial evidentiary support. The same is true with regard to other costs used by protestants' witness such as use of a prospective workers' compensation insurance rate and the exclusion of lower repair, maintenance and tire costs on new tractor equipment operated by Alegre.

After careful consideration of the cost evidence of Alegre and protestants, we are of the belief and conclude that the rate proposed for the transportation subject to this application is compensatory whether mileage to and from the Alegre terminal is excluded or included from the calculations.

Findings of Fact

1. Alegre holds authority as a cement carrier.
2. Alegre seeks authority to publish in its tariff a less than maximum reasonable rate pursuant to the provisions of PU Code Sections 452, 452.1, and GO 150-A.
3. The rate Alegre seeks to establish is fully compensatory based solely upon the cost of transportation from origin to destination and return.
4. The needs of commerce or the public interest require the establishment of the sought rate.

Conclusions of Law

1. The petition to set aside submission should be denied.
2. The application should be granted as set forth in the ensuing order.

O R D E R

IT IS ORDERED that:

1. The petition to set aside submission is denied.
2. Frank C. Alegre Trucking, Inc. is authorized to publish the rate proposed in the application.
3. Tariff publications authorized to be made as a result of this order shall be filed not earlier than the effective date of this order and made effective on not less than five days after the effective date hereof on not less than five days' notice to the Commission and to the public.
4. The authority herein granted shall expire after one year. This order becomes effective 30 days from today.
Dated August 24, 1988, at San Francisco, 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 Weisser, Executive Director

AB

ORIGINAL

Decision 88 08 069 AUG 24 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
FRANK C. ALEGRE TRUCKING, INC., a)
California corporation, for authority)
to establish a cement carrier rate)
less than the maximum reasonable rate)
pursuant to the provisions of)
Sections 452 and 452.1 of the Public)
Utilities Code and General Order 150)
and Resolution TS-672.)

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amended July 9, 1987)

Edward J. Hegarty, Attorney at Law, for applicant.
Silver, Rosen, Fischer & Stecher by John Paul Fischer, Attorney at law, and Ronald C. Broberg, for Frank E. Hicks Trucking, Inc. and Les Calkins Trucking; and Priscilla Ladeira, for Rich Ladeira Trucking, Inc.; protestants.
Skaff & Anderson by Ellis Ross Anderson, Attorney at Law, for CAP Transport, Inc. and Universal Transport Systems, Inc.; Gary E. Haas, for himself, and Jeannine Bergman, for Miles & Sons; interested parties.
Kathleen Kiernan-Harrington, for the Transportation Division.

OPINION

Frank C. Alegre, Inc. (Alegre) seeks authority to publish in its tariff a cement carrier rate less than the maximum reasonable rate pursuant to the provisions of Public Utilities (PU) Code Sections 452 and 452.1 and General Order (GO) 150-A.

Public hearings on the application as originally filed were held before Administrative Law Judge (ALJ) O'Leary at San Francisco on February 2 and 3, 1987. During the course of those hearings it became apparent, during cross-examination, that Alegre's cost witness could not support much of the data contained in his justification statement (Exhibit 1). After the completion

of the cross-examination the then protestants: CAP Transport, Inc. (CAP); Universal Transport Systems, Inc. (Universal); Les Calkins Trucking, Inc. (Calkins); Frank E. Hicks Trucking, Inc. (Hicks); moved for dismissal of the application. After protestants moved for dismissal, Alegre proposed that it be allowed to amend the application. Protestants and the other parties agreed with the proposal and an amended application was filed on July 9, 1987. Public hearings on the amended application were held before ALJ O'Leary on October 20, 21, 22, November 5 and 9, 1987. At the commencement of the hearings CAP and Universal changed their appearance from protestants to interested parties and Rich Ladeira Trucking, Inc. (Ladeira) who had entered an appearance as an interested party changed its appearance to that of a protestant. The matter was submitted on January 12, 1988 with the filing of concurrent briefs by Alegre, Ladeira, and Hicks and Calkins jointly. On January 12, 1988, Alegre filed a petition to set aside submission of the matter as provided in Rule 84 of the Commission's Rules of Practice and Procedure. The filing was for the limited purpose of presenting evidence concerning the current price of fuel.

On April 8, 1988, ALJ O'Leary filed his proposed decision, which denied the petition to set aside submission and denied the application. Comments on the ALJ's proposed decision were filed by Alegre, Protestants Hicks and Calkins and the Transportation Division. The denial of the application in the ALJ's proposed decision was premised on his interpretation of Section 452 of the PU Code.

Alegre's comments raise the primary issue as to whether the ALJ's proposed decision is correct with respect to the issue of whether or not the needs of commerce and public interest require the establishment of the proposed rate.

Mr. Thomas J. Hays (Hays), a transportation cost and economic analyst, was engaged by Alegre to replace its original cost witness. Hays' original cost data is set forth in Exhibit 4. The exhibit includes cost development in the areas of labor, vehicle fixed costs, vehicle running costs, indirect costs, gross revenue expenses, and productivity factors in relation to said costs. Table 2 sets forth the various cost and productivity factors.

TABLE 2

<u>Description</u>	<u>Amount</u>
Labor Cost (per hour)	\$16.276
Vehicle Fixed Cost (per mile)	0.233
Vehicle Running Cost(per mile)	0.327
Indirect Cost (% of total expense)	14.69%
Gross Revenue Expense % of total expense)	.0049%
Productivity Factors	
Including Stem Time	
Time per Trip/(hours)	4.67
Length of Trip (miles)	173.5
Excluding Stem Time	
Time per Trip (hours)	3.83
Length of Trip (miles)	138.5
Average Load Weight	53,394 lbs.

It should here be noted that the above amounts reflect any corrections made by Hays during cross-examination.

Alegre's labor cost, of \$16.218 per hour, is derived from Prevailing Wage Report 287-1 together with actual company experience for the cost of calculating the cost of California Unemployment Insurance and Worker's Compensation Insurance.

Vehicle fixed cost includes the following components: investment, licensing costs, federal highway use tax and insurance costs. To arrive at the \$0.233 cost per mile figure, Hays used the data set forth in Table 3.

that required by this Commission. For the purposes of developing insurance costs, Hays excluded \$70,000 in premium which is attributable to its umbrella or excess coverage. The annual insurance cost was determined by dividing the remaining annual premium by the 67 power units in the entire Alegre fleet, which includes units used in transportation other than cement. The annual mileage figure was derived from Alegre's monthly maintenance report which records miles by equipment number and enables isolation of the cement fleet. The annual miles for the cement fleet were taken from this report by calculating the average mileage for the 37 of the 47 power units that were in service for the entire year of 1986.

Vehicle running cost includes the following components: fuel, oil, maintenance and repair, and tires. To arrive at the \$0.327 cost per mile figure, Hays used the data set forth in Table 4.

TABLE 4

A. Fuel		
1. Cost per gallon	\$0.735	
2. Miles per gallon	5.01	
3. Cost per mile		\$0.147
B. Oil		
1. Annual cost	\$360	
2. Cost per mile		0.005
C. Tire cost per mile		0.039
D. Maintenance and Repair cost per mile		<u>0.136</u>
E. Running Cost per Mile		\$0.327

The fuel cost per gallon set forth in Table 4 is the average price paid during the month of April 1987. The miles per gallon figure was calculated by dividing the number of gallons purchased during 1986 by the total 1986 miles. Detailed records are not maintained with respect to oil consumption. Oil cost was estimated by assuming an oil change every 60 days, which is Alegre's policy, at a cost of \$60 per change resulting in an annual cost of \$360. The \$360 was then divided by the annual miles to

The information set forth in Table 5 was used to establish the following data:

1. Trip Time	
(including stem time)	4:40
(excluding stem time)	3:48
2. Trip Miles	
(including stem miles)	173.5
(excluding stem miles)	138.5
3. Loading Time	14.3 minutes
4. Unloading Time	31.5 minutes
5. Running Time	3:54
6. Average Speed	44.5 miles per hour.

The average load figure was determined by computing the average weight of the 305 loads transported during 1986.

The data set forth in Table 2 was used to develop revenue and expense data which is set forth in Tables 6 and 7.

TABLE 6

Revenue and Expense Data
Terminal to Terminal

Revenue (\$0.395 x 53,394 lbs)	\$210.906
Costs, Direct	
Labor (\$16.276 x 4.66 hours)	\$ 75.846
Vehicle	
Fixed (\$0.233 x 173.5 miles)	40.426
Running (\$0.327 x 173.5 miles)	<u>56.735</u>
Total Direct Costs	\$173.007
Total Direct & Indirect Costs	
(Total direct costs + 85.31%)	\$202.087
Gross Revenue Expense (.49% x \$202.087)	<u>0.990</u>
Total Costs	<u>\$203.077</u>
Profit	\$ 7.829
Operating Ratio	96.3%

TABLE 7

Revenue and Expense Data
Origin to Destination and Return

Revenue (\$0.395 x 53,394 lbs)	\$210.906
Costs, Direct	
Labor (\$16.276 x 3.83 hours)	\$ 62.386
Vehicle	
Fixed (\$0.233 x 138.5 miles)	32.270
Running (\$0.327 x 138.5 miles)	<u>45.290</u>
Total Direct Costs	\$139.946
Total Direct & Indirect Costs	
(Total direct costs = 85.31%)	\$164.044
Gross Revenue Expense (.49% x \$164.044)	<u>0.804</u>
Total Costs	<u>\$164.848</u>
Profit	\$ 46.058
Operating Ratio	78.2%

Alegre argues that it only need to show costs of transportation as set forth in Table 6. Alegre relies on the wording of newly enacted Section 452.1 of the PU Code and GO 150-A which provides rules and regulations governing the transportation of cement and related commodities by cement carriers and cement contract carriers.

The three protestants are cement carriers, who are competitors of Alegre in the cement transportation business, and are authorized to transport cement between the points for which Alegre seeks to publish the rate which is the subject of this proceeding.

Protestants Hicks and Calkins presented cost evidence through Ronald C. Broberg (Broberg), a transportation and economic expert. Broberg disagrees with Hays' development of costs in the following areas:

3. Cost of Fuel

Broberg contends that Alegre's price of fuel is grossly understated. Broberg urges that the most recent price of fuel be utilized in calculating costs with respect to the application. Broberg estimates the most recent cost of fuel to be 89.2 cents per gallon.

4. Indirect Costs

Broberg questions the allocation of certain expenses to indirect expense. He contends that the insurance deductible expense set forth in Exhibit 12 (Page 2, Line 22) is clearly allocable to indirect expense. He contends that if the insurance deductible expense is included as an indirect expense the indirect expense ratio increases to 14.96% from 14.69%.

5. Maintenance Costs

Broberg believes that the maintenance figures for the cement fleet may be understated. His belief is based upon data set forth in Alegre's 1986 annual report. That portion of the annual report entitled a Summary of Financial Data reveals the following maintenance-related accounts:

Vehicle Parts	\$523,337
Vehicle Maintenance/ Outside Vendors	150,288
Vehicle Repair and Service	<u>402,802</u>
TOTAL	\$1,076,427

This produces a fleet average of 24.36 cents per mile when divided by the total fleet miles (4,414,317).

Ladeira questions Alegre's costs as set forth below:

1. Cost of Fuel

Ladeira contends that in arriving at the per gallon cost of fuel only the cost of bulk fuel purchases have been considered by Alegre and that no provision has been made for outside purchases.

2. Cost of Oil

In its brief Ladeira contends that trucks use oil between changes. Well maintained trucks use approximately one gallon of oil per week. It further points out that the cost of disposing the waste oil was not considered in the Alegre presentation.

3. Payroll Taxes

Ladeira also contends that increases in FICA and Workman's Compensation Insurance took effect on January 1, 1988 and that the increased rates should be considered in this application.

4. \$70,000 Premium on Umbrella Coverage

Ladeira's concern in this regard is the same as that of Hicks and Calkins.

5. Delays in Transit

Ladeira points out that no provision has been included in Alegre's cost data for delays in transit because of either highway construction or traffic congestion.

Alegre presented rebuttal evidence through Hays in the form of revised tables 1-A thru 5-A to Exhibit 4. Changes in the cost and productivity figures set forth in Table 2 are shown in Table 8.

TABLE 8

<u>Description</u>	<u>Table 2 Amount</u>	<u>Revised Amount</u>
Labor Cost (per hour)	\$16.276	\$16.218
Vehicle Fixed Cost (per mile)	0.233	0.214
Vehicle Running Cost (per mile)	0.327	0.325
Indirect Cost (% of total expense)	14.69%	14.73%
Gross Revenue Expense % of total expense)	.0049%	.0049%
Productivity Factors		
Including Stem Time		
Time per Trip (hours)	4.67	4.82
Length of Trip (miles)	173.5	173.5
Excluding Stem time		
Time per Trip (hours)	3.83	4.03
Length of Trip (miles)	138.5	138.5
Average Load Weight	53,394 lbs.	53,394 lbs.

The change in the labor cost is the result of using the latest Workers' Compensation experience of Alegre. The change in the fixed cost is the result of two adjustments as follows:

1. Allocating \$18,000 of the \$70,000 premium for the umbrella policy to the trucking operation and
2. Increasing the annual mileage figure per vehicle to 79,602 from 71,720.

The annual mileage figure was adjusted because the ten leased power units were not in service for the entire year. In making the adjustment Hays eliminated the mileage attributable to said vehicles. The reduction in Vehicle Running Cost is the result of using the cost of fuel of 79.2 cents per gallon which Hays alleges is the average cost of fuel for the first nine months of 1987. Hays originally used the figure of 73.2 cents per gallon which was Alegre's cost of fuel in April, 1987. In adjusting the fuel cost the performance factor of miles per gallon was increased from 5.01 miles per gallon to 5.26 miles per gallon which Hays alleges is the proper figure for the first nine months of 1987. In making the computations, Hays used Alegre's computer printouts for January 1987 thru September 1987. The indirect cost increased to 14.73% because Hays eliminated the \$25,000 contamination loss from both direct and indirect cost figures to obtain the revised ratio of 14.73%. The trip time factors were revised upward because of the upward revision of the revised free time for loading and unloading reflected in the revised tariff item set forth in Exhibit 19.

Discussion

This is the first application for new authority by a cement carrier to establish a rate less than a maximum reasonable rate since the enactment of PU Code Section 452.1. Section 452.1 provides:

"Whenever a cement carrier requests authority to establish a rate less than the maximum reasonable rate, the commission shall, in addition to the requirements of Section 452, require a showing that the rate is fully compensatory based solely upon the cost of transportation from origin to destination and return and the projected revenue to be derived from the requested rate.

If the commission finds after public hearing, when a hearing is requested, that the proposed rate meets the requirements of Section 452 and this section, it shall authorize the establishment of the proposed rate subject to conditions the public interest may require."

The parties vigorously debated whether the language of this section requires that the costs of terminal mileage be excluded in determining whether a proposed rate is compensatory. Terminal mileage is the distance between a carrier's base of operations or yard and the origin of the load. The phrase "origin to destination" has historically been used to describe that portion of any transportation during which the carrier is responsible for the freight. As we discuss below, we find it unnecessary to resolve the question in this decision. We note only that Section 452.1 seems facially unambiguous, and the plain meaning of the words "fully compensatory based solely upon the cost of transportation from origin to destination and return..." would appear to exclude the costs incurred between a carrier's terminal and the points of origin and return.

We turn next to the comments of protestants and staff concerning the proposed decision of the ALJ. The ALJ believed that

the enactment of Section 452.1 requires us to first make the analysis required under Section 452 and then separately apply Section 452.1. In other words, he believed a finding that the proposed rate is justified by transportation conditions is required and must be made apart from any consideration of costs showing whether the rate is compensatory. The ALJ observed that the proposed rate would be little used, and only when rail facilities are unavailable. On that basis he concluded that the rate was not justified, and he did not consider whether the rate was compensatory.

The staff argued that when a rate is shown to be compensatory it automatically meets the test of being justified by transportation conditions. Staff does not believe that Section 452.1 requires us to perform the two tests sequentially.

While we are not prepared to say that in every conceivable case a rate which is compensatory is justified by transportation conditions, we do believe that the fact that a rate is compensatory gives rise to a very strong presumption that it meets the needs of commerce and is in the public interest. We believe that the fact that a rate is compensatory, absent facts to the contrary, largely determines whether the rate is justified by transportation conditions.

In this application, we are satisfied that the proposed rates are compensatory. Furthermore, we disagree with the ALJ's conclusion that the likelihood that the rate will be little used tends to prove that it is not justified by transportation conditions. It is the importance of the rate when needed, not the frequency of need that shows that the rate is justified.

We conclude that Alegre has shown that the proposed transportation is compensatory, and this conclusion is based upon the evidence of record which both excludes and includes mileage to and from Alegre's terminal. Both Alegre and protestants' cost witnesses agree that the proposed rate is compensatory when costs

for mileage to and from the terminal are excluded. As shown on Tables 10 and 12, these cost witnesses calculate operating ratios of 78.2% and 82.9% respectively when mileage to and from the terminal is excluded. However, these two cost witnesses disagree on whether the rate is compensatory if mileage to and from the terminal is included in the cost showing. Under the Alegre analysis, as summarized in Table 9, the rate produces a profit and an operating ratio of 95.9%. Under protestants' analysis, as summarized in Table 11, the rate produces a small loss and an operating ratio of 101.7%. While perhaps not necessary in view of the prior discussion, we have made an analysis of the evidence and the rationale supporting these two cost presentations and have concluded that some of the costs have been overstated in the protestants' evidence and that the rate is compensatory even if mileage to and from the terminal were to be included.

One controversial item of cost is fuel cost. The Alegre cost justification used a nine month average of fuel cost at \$.792 per gallon and the protestants used the highest price of \$.892 per gallon. The cost studies in evidence demonstrate that the ten cent per gallon differential in fuel cost affects the operating ratio by 1.8%. Stated another way, if all of the protestants' costs, except fuel, were to be accepted, and the Alegre nine month average fuel cost was used, both Alegre and the protestants would agree that the rate is compensatory even including mileage to and from the terminal (Table 11; $101.7\% \text{ Operating Ratio less } 1.8\% = 99.9\% \text{ Operating Ratio}$)

Costs other than fuel can also be reasonably reduced as presented by Alegre. For instance, vehicle fixed costs for equipment which Alegre leases have been increased by protestants to a figure which exceeds what depreciation charges would be if Alegre owned the equipment. As this Commission has previously ruled, we have no objection to a carrier leasing its equipment instead of purchasing the equipment, but the carrier's shippers should not be

required to pay higher charges to meet the interest expense and other added expenses of such a lease arrangement. Lloyd B. Turner (Blue Truck Lines), (1958) 56 CPUC 475. Reducing the Alegre vehicle fixed costs to regularly accepted depreciation charges would further reduce the operating ratio by almost one point.

Another 1.7% in operating ratio was added by protestants' witness by allocating a portion of mechanics wages to indirect expense for the repair of company cars and pickup trucks. However, review of the record reveals that such an allocation has no substantial evidentiary support. The same is true with regard to other costs used by protestants' witness such as use of a prospective worker's compensation insurance rate and the exclusion of lower repair, maintenance and tire costs on new tractor equipment operated by Alegre .

After careful consideration of the cost evidence of Alegre and protestants, we are of the belief and conclude that the rate proposed for the transportation subject to this application is compensatory whether mileage to and from the Alegre terminal is excluded or included from the calculations.

Findings of Fact

1. Alegre holds authority as cement carrier.
2. Alegre seeks authority to publish in its tariff a less than maximum reasonable rate pursuant to the provisions of PU Code Sections 452, 452.1, and GO 150-A.
3. The rate Alegre seeks to establish is fully compensatory based solely upon the cost of transportation from origin to destination and return.
4. The needs of commerce or the public interest require the establishment of the sought rate.

Conclusions of Law

1. The petition to set aside submission should be denied.

2. The application should be granted as set forth in the ensuing order.

ORDER

IT IS ORDERED that:

1. The petition to set aside submission is denied.
2. Frank C. Alegre Trucking, Inc. is authorized to publish the rate proposed in the application.
3. Tariff publications authorized to be made as a result of this order shall be filed not earlier than the effective date of this order, and may be made effective on not less than five days after the effective date hereof on not less than five days' notice to the Commission and to the public.
4. The authority herein granted shall expire after one year.

This order becomes effective 30 days from today.

Dated AUG 24 1988, at San Francisco, California.

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