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Item TH-8a
Agenda 4/26

Decision 89 04 083 APR 26 1989

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 cement carrier rates 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-A.	ORIGINAL Application 87-12-052 (Filed December 28, 1987)

Edward J. Hegarty, Attorney at Law, for Frank C. Alegre Trucking, Inc., applicant.
Ronald C. Broberg, for Foothill Buck Transport, Inc.; Priscilla Ladeira, for Rich Ladeira Trucking, Inc.; and Silver, Rosen, Fischer & Stecher, by John Paul Fischer, Attorney at Law, for Frank E. Hicks Trucking, Inc.; protestants.
Silver, Rosen, Fischer & Stecher, by John Paul Fischer, Attorney at Law, for Les Calkins Trucking; Ellis Ross Anderson, Attorney at Law, for E. F. Mitchler, Inc.; Gary E. Haas, for Grimsley Trucking, Inc., Hollister, California and Dolo-Chem Trucking, Inc., Hollister, California; Stan Kody, for RMC Lonestar, Douglas J. Reynolds, for Kaiser Cement Corporation; and D. G. Redlingshafer, Transportation Consultant, for himself; interested parties.
Dan Callaghan, for the Transportation Division staff.

O P I N I O N

Frank C. Alegre Trucking, Inc. (Alegre) filed the present application on December 28, 1987, and filed an amendment to it on December 31, 1987. Since that time this Commission has issued two interim opinions pertaining to this application. The first, Decision (D.) 88-04-075, responded to a staff motion for an ex parte order which would direct Alegre to cease and desist from

soliciting and transporting cement in bulk or packages at the rates proposed in the present application until such time as this Commission might approve those rates. D.88-04-075 did not grant the motion, but ordered that the issues raised by the motion be severed from this proceeding and transferred to the Order Instituting Investigation and Order to Show Cause Re Cease and Desist Order and Notice of Hearing issued that day (generally referred to as the OII or I.88-04-065). We then held a hearing on the Order To Show Cause (OTSC) reserving other issues in the OII, for a later hearing. (These other issues involve whether Alegre violated Public Utilities Code Sections[1] 452, 452.1 and 494 by failing to assess correct rates and charges and whether Alegre's shippers therefore paid less than applicable rates, and if so what should be done about it.)

On May 11, 1988, after holding a hearing on the OTSC, we issued an Interim Opinion, effective that same day, ordering Alegre to cease and desist from "charging or soliciting to charge cement rates other than maximum reasonable rates as described in this decision unless and until this Commission issues a further order authorizing different rates" (D.88-05-033, mimeo. pp. 7-8). The hearing leading to the present decision was the forum for determining whether Alegre should be permitted to again charge those lower rates.

Alegre's application seeks authority to establish and maintain cement carrier rates which were originally established under this Commission's General Order (GO) 150. Since that time the Commission has adopted GO 150-A to implement the provisions of Assembly Bill (AB) 4033 which modified Sections 452.1 and 452.2 regarding the procedure for establishing a cement carrier rate that

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1 All other code references are to the Public Utilities Code unless otherwise specified.

is less than the maximum reasonable rate. By D.87-11-032 we clarified the effect of our adoption of GO 150-A, noting that all cement transportation rate reductions and their "me-toos" were cancelled unless justified on the basis of AB 4033 by December 31, 1987. Alegre had 45 rates which were established under GO 150. It seeks here to reinstitute those rates.

The applicable law prohibits a carrier from setting rates for the transportation of property at less than the maximum reasonable rate "except upon such showing as is required by the Commission and a finding by it that the rate is justified by transportation conditions." (Section 452.) When the carrier seeking authority is a cement carrier the law further requires this Commission to ascertain that the requested 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." (Section 452.1.) Further, the law states that "[t]he establishment of a less-than-maximum reasonable rate pursuant to Section 452.1 shall be for a period of not more than one year." (Section 452.2.)

A. The Parties' Positions

The issues raised here are twofold. The first issue is the accuracy of Alegre's cost showing. The second is the proper interpretation of the governing law, specifically, whether it is appropriate to infer that "stem costs", that is, the costs of arriving at and returning from the shipment origin point, should be considered in determining whether the proposed rates are "fully compensatory" as that term is used in the phrase "fully compensatory based solely upon the cost of transportation from origin to destination and return" in Section 452.1. Stem miles, or distances associated with stem costs, are also known as terminal miles.

1. Alegre's Position

Alegre asserts, as does the Commission's Transportation Division staff (Staff), that any interpretation of Section 452.1 which includes stem miles or any other costs besides the costs specifically attributable to that portion of cement transportation activity constituting a round trip between the origin of the load and the destination is improper, arguing that the shipping public should not pay for non-revenue miles which "could have and probably should have been avoided" by the carrier. Alegre disagrees, however, with all the other parties insofar as they allege that the rates Alegre proposes are not fully compensatory. It claims, in fact, that its proposed rates, which would reduce rates for all shipments of 200 miles or less, are set to recover all costs for double the mileage from each origin to each destination and to provide an additional "increment of profit".

Alegre acknowledges that its witness, Mr. Hays, used cost methodology similar to that used by the Commission in the development of the now-defunct Minimum Rate Tariff (MRT) 10 rates, but unlike Staff and Foothill Alegre contends that the methodology is appropriate. The costs enumerated include labor, vehicle fixed costs, vehicle running costs, indirect or overhead costs, gross revenue expenses, and productivity units as related to these various costs. Alegre's labor costs used wages from the Commission's Prevailing Wage Report 288-1, though it contends that it could have used the previous year's Report because of the filing date of its application. The resulting hourly driver labor cost was $16.728, including all "statutory and social" fringe benefits. This figure was applied to the vehicle running time (for covering twice the distance between the point the load originated and its destination) and to the load and unload times.

Alegre claims that its load and unload times were significantly overstated, providing a "margin of safety" and points to the testimony of Staff witness Russell Corning who observed four separate cement transportation operations and testified that the

loading times averaged 31.5 minutes and that the unloading times averaged 43.6 minutes. Alegre used 1 hour for loading and 2 hours for unloading, which are the maximum free times on Alegre's tariffs. Exhibit 13 shows that Mr. Hays tested to make sure actual times were within these times by reviewing the Alegre freight tags contained in Exhibit 5. Additionally, while recognizing that it must use figures from the Prevailing Wage Report, Alegre informs us that these costs are overstated because it does not pay wages as high as the Report assumes and does not pay holiday pay, pension benefits or other fringe benefits imputed in the prevailing wage.

As for vehicle fixed costs (equipment investment costs) Alegre states that it is this Commission's policy to allow a carrier to depreciate the value of tractor and trailer equipment, and on this basis it assigns a price to each vehicle which includes purchase, license and insurance but excludes tires. It makes this assignment to each vehicle, whether owned or leased, and then depreciates that cost annually. The annual cost thus derived is reduced by 15% to reflect salvage value. Alegre points out that it used the cost of new equipment and excluded used equipment in making these calculations, and states that this tends to overstate these costs.

Alegre claims that this methodology is consistent with GO 150-A, which, we note, makes no specific mention of the treatment of leased equipment. Alegre then converts annual fixed costs thus derived into a vehicle fixed cost per mile by dividing total annual costs by total annual miles. Then it converts this figure into a vehicle fixed cost per constructive mile,[2] since cement rates are based on constructive miles. Mr. Hays used a constructive mileage

2 Constructive miles include an adjustment factor which takes into account congestion, terrain and other variables that affect operating costs. MRT 10 adopted a figure of 1.07. Alegre points out that we adopted a statewide figure of 1.1 in D.87-01-066.

factor of 1.09 based on his view of increased congestion in northern California. The result is a $0.152 per constructive mile fixed cost. Both the use of depreciation costs for leased vehicles and the accuracy of the factor for conversion from actual to constructive miles were challenged in this proceeding.

Vehicle running cost includes fuel, miles per gallon of fuel consumed, oil, maintenance and repair, and tire costs. Alegre based its fuel cost estimate on its bulk fuel purchases for the nine months preceding the filing of its application and the following four months. It states that 85% of its fuel is purchased in bulk, and the rest is purchased on the road. Alegre did not assume a different cost per gallon for non-bulk purchased fuel, a fact which was challenged by protestants.

Fuel consumption was based on data gathered reflecting miles operated and gallons of fuel purchased by each unit of equipment in the cement fleet. Oil and related labor cost and tire cost per mile were separately calculated, apparently based on the records for the previous year as were the maintenance and repair costs. These costs per mile were added together to produce total running cost per mile and then this figure was adjusted to produce cost per constructive mile. Stem miles were used in the determination of the costs per mile of these various components, and the factor used for converting actual miles to constructive miles was 1.09, rather than the 1.07 used by Staff in its MRT 10 calculations. Both these assumptions were challenged by protestants.

To calculate indirect costs, or overhead, Alegre analyzed its calendar year 1987 expense statement and categorized each item as direct, indirect, or "other". It put gross revenue expense in the "other" category for purposes of this proceeding, and did not include it in the indirect category. This indirect expense thus derived was then expressed as a percentage of total expense. It was calculated at 16.64%. Protestants disagree with Alegre's

selection of items for the "other" category and therefore argue that Alegre understated total expenses.

Next Alegre developed a total cost per 100 pounds by length of haul for 25, 50, 75, 100 and 200 constructive miles. To do this it determined the number of load hours, unload hours, and enroute hours per trip, multiplied that by the hourly labor cost, added fixed and running vehicle cost per constructive mile to come up with total direct cost per trip. It then added the per-trip indirect cost factor of 16.64% and 0.35% for the "other" factor to arrive at a total cost per trip. That figure was divided by Alegre's average weight per shipment (which Hays calculated from a review of freight bills) to arrive at a total cost per 100 pounds. Exhibit 13 shows Alegre's comparison of this figure with its proposed rates, which include the required 3% surcharge. It shows Alegre's projected operating ratios to range from 92.6% to 97.7%.

Hays derived the average enroute hours per trip for each constructive mile category from Alegre's freight bills which showed length of hauls in constructive miles and transportation times for specific hauls. He calculated constructive miles per hour and plotted the resulting figures on a graph. A trend line was drawn on the graph to arrive at the enroute hours Alegre used for each category. Alegre claims that the trend line was drawn conservatively.

Alegre cites the testimony of four witnesses who testified on behalf of Alegre's proposal. They represented RMC Lone Star, a cement manufacturer; Kaiser Cement Corporation; Monier Roof Tile Company, a manufacturer of concrete roofing tiles; and Harbor Ready-Mix, a manufacturer of ready-mix concrete. Each of the witnesses testified that Alegre's lower rates would allow them to be more competitive, and both of the witnesses representing manufacturer-shippers talked about the increase in "proprietary trucking", that is trucking by the manufacturers themselves, which they believe is due to the high rates for cement common carrier

services. These witnesses stated they would prefer not engaging in or expanding their proprietary trucking.

2. Hicks and Calkins Position

Frank E. Hicks Trucking, Inc. (Hicks) and Les Calkins Trucking, Inc. (Calkins) are certificated cement common carriers operating in northern California who protest the Alegre application. They claim that Alegre's proposed rates are not compensatory and that the authorization of those rates would drive Alegre's competitors out of business. In making their argument that the costs to be considered in applying GO 150-A must include stem costs they state that "[t]he focus and intent of [AB 4033] was clearly to do away with the use of 'backhaul' revenues as a justification for finding that a reduced rate is compensatory." Making reference to the various proceedings we held leading up to the adoption and revision of GO 150-A they assert that it was our intent, pursuant to AB 4033, to eliminate unfair competition and the threat to smaller cement carrier operations. They conclude that it could not have been the intent of AB 4033 to permit the carrier to ignore stem costs, "which vary widely depending upon the location of the carrier's yard and the point of pick up" since to do so would simply substitute another practice that could "permit unfair competition and threaten smaller cement carrier operations."

In further support of this position, Hicks and Calkins state that stem costs have been historically included in the consideration of compensatory rates, and they also state that the "needs of commerce or public interest" as that phrase is used Section 452 would not be served by granting this application because the rates are not justified by transportation conditions. Further, they claim that the requirement in Section 452 that this Commission make "due and reasonable allowances" for the "added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency or transportation" is a direct mandate to consider

stem costs. Of course, this requirement applies only to situations where this Commission is directed to consider these "added or accessorial services" in determining the extent of competition when a carrier applies to charge less than a maximum reasonable rate "for the purpose of meeting the competitive charges of other carriers...". No allegation is made, however, that Alegre's purpose in the instant application is to meet the competitive charges of other carriers.

Hicks and Calkins base their stem cost arguments in part on their analysis of the legislative history of Section 452.1. In making this analysis these protestants, through their attorney, have filed a post-hearing brief which, without explanation, appends three documents which are not otherwise a part of the record in this matter. The inclusion of these documents is an inappropriate introduction of unsubstantiated hearsay evidence after the proceeding has been submitted. It violates both the rules of evidence and Applicant's constitutional right to due process. The hearing on this matter lasted for five days. Had protestants Hicks and Calkins believed these documents were necessary to the support of their position there was ample opportunity to produce them during that hearing when the proponent(s) of the documents could have been cross-examined by the other parties. Since protestants chose not to follow that course of action this Commission may not and will not now consider either the content of these documents or the arguments of protestants to the extent they rely on those documents.

For the record we note that these documents are (1) an unsigned two and one half page analysis of AB 4033 headed "Senate Committee on Energy and Public Utilities"; (2) a three and one half page "Committee Analysis" of AB 4033, apparently authored by a Committee consultant, headed "Assembly Committee on Utilities and Commerce"; and (3) a one and one half page letter from the author of AB 4033 to the Governor regarding the merits of the bill. All

of the documents contain dates indicating they were prepared in 1984.

Hicks and Calkins also argue that Alegre has not provided enough evidence to sustain a finding that the proposed rate will be fully compensatory. They cite Exhibit 7, Alegre's Annual Report for 1987 which at p. 11 shows a net operating loss from continuing operations before taxes of $280,000, and argue that this loss would have been even greater but for an equipment lease concession from Central Valley Bulk Transportation, Inc., a corporation 100% owned by two principals of Alegre, which reduced operating expenses by $40,000. Further, protestants argue that Exhibit 3, a comparative financial statement for the first three months of 1987 and 1988 only shows an improved net income in 1988 because of revenue from sources other than cement transportation, and in fact shows a $33,000 reduction in cement transportation revenue during 1988. They also argue that Exhibit 3 shows increases in all major operating expenses except lease expense during 1988 for cement transportation operations.

Alegre responds to these allegations by asserting that there is no evidence that its proposed rates are below out of pocket marginal costs and therefore predatory, that it appears that Alegre's operating loss in 1987 resulted from payment to "its stockholders, children of its stockholders, and an affiliated corporation owned by its stockholders, all standing in the capacity of equipment lessors" lease payments that were greater than what would have been required had Alegre bought and depreciated the same equipment. Alegre asserts that such added expense for leasing arrangements are not allowable expenses for rate purposes, and that they should not "reflect unfavorably on an otherwise financially healthy carrier."

3. Foothill's Position

Protestant Foothill Bulk Transport, Inc. (Foothill) was represented at the hearing by Ronald C. Broberg, who also testified

as Foothill's witness. Foothill's opposition to Alegre's application is two-pronged. First it disagrees with the cost figures Alegre has used, and second it contends that we would ignore the safety considerations underlying the enactment of Section 452.1 if we were to grant the requested rates.

With respect to the cost issue, Foothill is especially critical of Alegre's vehicle fixed cost determination. Foothill argues that it is appropriate to consider the financing costs of purchased equipment below the line as Alegre's depreciation cost method does when the carrier owns its operating equipment, but argues that since much of Alegre's operating equipment is leased, such depreciation methodology is an inappropriate means of justifying reduced freight rates which reduces costs actually incurred by more than one half and fails to recognize the actual lease obligation. Alegre's calculation of average annual investment cost for a complete tractor and trailer(s) unit is $9916 minus 15% salvage value, or $8440. Broberg does not produce an average figure for the combined units, but his figures would result in an annual investment cost of between $18,076 and $23,535, depending on the particular operating unit. Broberg's calculations result in total annual fixed costs of $22,834 as opposed to Alegre's $13,198.

Alegre's Hays claims that Broberg's treatment of leases accounts twice for license and registration fees and tires on eleven tractors. He adds that if lease costs are used they should be leases still in effect, and the lease amounts should be adjusted to reflect the economic service life of the piece of equipment where the leases are for a shorter term than the service life. He states that Broberg's analysis does neither.

Foothill's objection to Alegre's fixed cost determination is also based on the fact that, with one exception, these leases are not "capital leases", but rather "operating leases" on which Alegre pays no interest expense, and which, therefore, do not

provide an equity interest (i.e. an option to purchase upon expiration of the lease) in the equipment. The exception, Foothill reminds us, is the one lease held by a lessor (Signal Capital Corporation) which is not a corporation, partnership or sole proprietorship which includes Frank and/or Helen Alegre or their three sons as the only principals. The consequence of changes which Broberg makes in Alegre's vehicle fixed costs are shown in Exhibit 12. It raises this figure by $0.12 per mile, about 78% above Alegre's cost study cost.

Foothill also objects to Alegre's citing the Commission staff's 1967 report in Case Number 5440, which was held to establish minimum rates for for-hire cement carrier operations under MRT 10. Foothill finds it inappropriate to assume, as Alegre does, that since the staff methodology for establishing minimum rates excluded tire costs from fixed costs, for example, that tire costs should be excluded from the cost calculations of these leased vehicles.

Foothill's Broberg asserts that it is reasonable to assume that the tire costs per mile set out in the portion of Exhibit 12 showing vehicle running costs are not for initial tire costs but for repair and replacement. Thus he disputes Hays' contention in Exhibit 13 that tire costs are overstated. Broberg also argues that Alegre's vehicle running costs are understated because although 15% of its fuel purchases are made on the road rather than by bulk purchase, Alegre assessed a bulk rate for all its fuel costs and made no adjustment to account for the fact that on the road purchases would be higher than bulk purchases. Foothill increases the cost per gallon by $0.05, based upon "an admittedly inadequate check" of comparative costs. Hays counters by claiming that Alegre found no difference in bulk and on-road fuel costs during the time studied, but admitted on cross examination by Staff's Mr. Callaghan that he made no kind of sampling of road purchase prices.

Further, Broberg claims that Alegre's method of averaging the average miles per gallon figures for each unit of equipment rather than dividing total fleet gallons of fuel by total fleet miles is "questionable", and concludes that the running costs per mile would be increased by 4% if these two factors were properly calculated. The changes Broberg makes decrease Alegre's equipment fleet miles per gallon by $0.09, which results in an increase in total cost per mile.

Foothill states that its recalculation of Alegre's indirect expenses, based on more current data than Alegre used, i.e. the 1987 Annual Report, is more accurate and shows an increase in total operating costs for each length of haul. Foothill disputes Hays' statements in Exhibit 13 which claim that protestants have overstated these indirect expenses, and asserts that those recalculations properly distribute expenses to various activities which Alegre should have included but did not.

Addressing stem costs, Broberg states that even if Alegre's stem mile theory is used, the proposed rates, as analyzed by Foothill, are not compensatory at any length of haul. Like Hicks and Calkins, however, Foothill contends that stem miles must be considered in determining whether the proposed rates are compensatory. Foothill chides Alegre for using stem miles "where the effect is to hold down the depicted costs" such as in averaging annual miles per vehicle when calculating vehicle fixed costs per mile but then not applying these stem miles in calculating overall costs of operation.

Foothill claims that 58% of Alegre's miles of operation are empty stem miles. This figure was derived from Alegre's freight billing tags in Exhibit 5 which, according to Foothill, contained both constructive (distance table) mileages from origin to destination and actual mileages. Based on these data Foothill urges the use of 42.2%, which it views as actual, rather than the "synthetic" 49.9% which it claims Alegre used in Exhibit 5 for

determining the ratio of loaded to total miles. Foothill adds that this "synthetic data" "comprises a form of marginal cost pricing". Foothill's results would increase both Alegre's cost per trip figure and its cost per 100 pounds.

Alegre's Hays objects strongly to this calculation. He says Foothill is comparing apples and oranges and adds that Alegre does not have its own loaded-to-total ratio because it does not support this concept. He further argues that any such ratio based on Exhibit 5 data is necessarily flawed because the loaded miles shown on this document were determined on a constructive miles basis while the stem miles are actual miles, and because this document contains insufficient information to be used as Broberg has used it since 88 trips left the Alegre domicile point, but only 60 returns are shown. Hays adds that such incomplete data were sufficient for the only two uses Alegre made of them--the determination of average running speed, and the determination of loading and unloading times.

Addressing constructive miles, Foothill states that a constructive mileage ratio of 1.06 ought to be used rather than the 1.07 Alegre's Hays computed or the 1.09 he testified ought to apply based on his judgment on changes in travel conditions. Broberg arrived at the 1.06 figure from the freight tags in Exhibit 5, as revised for correction of errors which he found in the constructive mileages. Broberg's computation found a ratio of 1.06 using Hays' data and 1.056 using the corrected constructive mileages. Hays claims that Foothill did not use the same data that Alegre relied on to arrive at this ratio.

Turning to the safety question, and the intent of Section 452.1, Foothill's post-hearing brief recites a list of legislation passed in California over the years to "strengthen the regulation of cement carriers in the public interest", and concludes that:

> "[W]ithout exception, the legislative enactments have sought to strengthen the ability of these carriers to provide effective services at

> reasonable rates, insulating them from rigorous forms of price and entry competition that have characterized other types of transportation in the state."

Foothill views the interpretation of governing legislation which Alegre supports as a sudden abandonment of the longtime "protectionistic posture" of the legislature toward the cement industry since it will result in new less-than-maximum reasonable cement carrier rates which recover only part of the carrier's total costs of performing transportation service. Foothill cites a letter from the author of AB 4033 which was introduced as Exhibit 6 in A.84-11-036 in which the assembly member describes one of the bill's purposes as being to "address particular problems facing the cement industry with respect to non-compensatory rates being filed and accepted, thereby endangering the public on the highway...". Foothill concludes that 452.1 must be read to require the recovery of stem costs. Unlike the letter from this assembly member which Hicks and Calkins attempt to include in this record without foundation, it is possible for us to take official notice of this exhibit from a previous Commission proceeding, for the purpose of showing the belief of the author regarding the purpose of AB 4033.

Like Hicks and Calkins, Foothill urges us to recognize that the intent of Section 452.1 was primarily to eliminate the use of backhaul revenues to justify reduced rates, and to require that cement carrier rates not be set below the maximum reasonable level except when it can be shown that they are fully compensatory without subsidy such as that provided by including backhaul revenues in the calculation. Thus, Foothill sees an interpretation of Section 452.1 which does not require consideration of stem miles as defeating the very purpose for which the statute was enacted.

Foothill also points out that a safety check made before an Alegre vehicle leaves for a point of origin is not included in Alegre's cost study, and argues that that is inconsistent with the Legislature's stated concern for highway safety.

Finally, Foothill claims that the language of Section 452 which requires that proposed rates that are less than those of competitors must be justified by "transportation conditions" must be read to require that the rate will "cover its share of fully allocated costs or at least...exceed out-of-pocket costs."

4. Staff's Position

The Commission's Transportation Division staff argues that any claim that Section 452.1 either requires consideration of stem costs or permits consideration of backhaul revenue to offset revenue derived from rates charged for an outbound haul is a "strained interpretation" of that Section which ignores the "clear and unequivocal" use of the term "fully compensatory". Staff also disputes the claim that its interpretation of Section 452.1 in any way conflicts with the general provisions governing common carrier reduced rates in Section 452. Staff argues that since the instant application does not involve establishing a rate for the purpose of meeting competitive charges of others, the only requirement of Section 452 which need be considered is the requirement that we determine that reduced rates are required by "the needs of commerce or public interest". Staff asserts that "[r]educed rates inherently serve the needs of commerce and the public unless there exists reliable evidence to the contrary." It goes on to claim that "no such evidence of negative effects have been provided by any party", and concludes that reduced rates are, therefore, required by the needs of commerce or public interest.

Despite its position on the issue of stem miles, Staff does not endorse Alegre's application. It arrives at its position due to its conclusion that Alegre has failed to demonstrate that its proposed rates will be compensatory even with its more generous interpretation of Section 452.1. Specifically Staff, like the protestants, criticizes Alegre for excluding costs it actually incurred in performing services and for relying on "techniques used to develop minimum rates for an entire industry" to justify these

exclusions. For example, staff points to Alegre's use of hypothetical rather than actually incurred costs for leased vehicles which assigned the market value of the vehicle as if it had been purchased rather than leased, resulting in a cost reduction of $0.12 per mile from the actually incurred cost.

Staff also objects to Alegre's dividing total running costs from origin to destination and vehicle fixed costs by total miles traveled by the vehicles, including stem miles and non-revenue miles. Staff agrees with Foothill that this process improperly improves Alegre's cost profile by halving the per-mile costs while at the same time inconsistently excluding these same stem miles from its labor cost calculations to again produce the lowest per-unit cost.

Likewise, Staff finds fault with Alegre's 2% upward adjustment to the "carefully derived" constructive miles it computed, in order to again reduce its cost per mile. Staff adds that the conversion from actual to constructive miles appropriately places cost and revenue on the same unit of measurement since revenue is calculated based on constructive miles in Commission Distance Table 8. However, any adjustment effectively adjusts the distance table. Finally, Staff also objects to Alegre's failure to provide actual costs for the 15% of its total fuel purchases which are road purchases that are "generally agreed to cost more than bulk purchases."

B. Discussion

Hicks and Calkins convincingly point out that while much time was devoted to the question of backhaul revenues, the issue of stem costs was not addressed in the Commission hearings leading up to our adoption of GO 150-A. They infer from this that we did not mean to change the then-existing treatment of these costs. The interpretation urged by these protestants and Foothill requires that we consider the word "origin" to refer to the origin of the carrier's vehicle rather than the origin of the shipment. Such an

interpretation does not conflict with the language of any statute of which we are aware, nor does it conflict with the language of GO 150-A. In fact, Appendix B to GO 150-A seems to contemplate such an interpretation in the first part of the sample form entitled "Summary of Revenues and Expenses". Under the "Revenue" entry the carrier is instructed to set out front haul revenue and actual round trip mileage including mileage to and from the terminal and any other empty miles. Then the carrier is instructed to divide that mileage by the front haul revenue.

There is an additional revenue entry entitled "Revenue Per Other Unit of Measurement if any" with instructions to divide front haul revenue by such units of measurement where they apply. The unit of measurement which applies in the case of Alegre's application is constructive mileage, which is derived by application of the appropriate scaling factor to the actual miles. It is not intended, as Alegre's interpretation would require, that this entry be used for dividing front haul revenue by constructive mileage excluding stem miles, or perhaps all empty miles. The purpose of GO 150-A is to implement the provisions of Sections 452.1 and 452.2. As we have just indicated GO 150-A interprets those sections to include stem miles. We will not change that interpretation today. We thus reject the argument of Alegre on this issue. The cases cited by Alegre in support of a different result are, to the extent they appear inconsistent of this interpretation, merely dicta. We conclude that compensatory rates must include consideration of stem miles.

In order to promote increased competition among carriers we are inclined to allow carriers the flexibility to set their own competitive rates. However, in this instance we are constrained by the terms of Section 452.1 and GO 150-A, which are imposed upon on us by law. GO 150-A requires that the economic calculations supporting fully compensatory rates be "based solely upon the cost of transportation from origin to destination and return", ignoring

any carrier efficiencies due to backhaul revenues or scheduling of multiple hauls in a driver shift. Those additional revenues might to some degree offset stem mile costs, but the Code does not allow us that flexibility.

As a technical matter, if stem miles were excluded from consideration then the mileage in a rate calculation would have to be twice the loaded miles to account for the imputed empty return trip. However, because we have determined that the term "origin" in Section 452.1 means the carrier's terminal, then "return" must also mean direct return to the terminal without necessarily returning through the shipment pickup point. Thus for a single load the total trip miles must be the initial stem miles (from the terminal to the shipment pickup point) plus loaded miles plus ending stem miles (from the shipment destination back to the terminal). We interpret Section 452.1 to require consideration of single loads only.

It is clear from the first paragraph of Appendix B to GO 150-A that the proponent of scales of distance rates, such as Alegre, must provide a summary of revenues and expenses for each of the rate bands it proposes, showing that each is compensatory.

Thus we must determine whether Alegre's showing provides sufficient data to determine how much the actual mileage should be increased in order to determine constructive mileage which includes stem miles. If constructive miles can be properly determined from the available data then the revenues and expenses for each of the five mileage bands must be calculated. If this can be done, then we can determine whether Alegre's proposed rates are compensatory even when stem miles are included in calculating its costs of operation.

We know of no specific guideline or recommendation on this record that will assist us in determining the appropriate stem miles that must be added to loaded miles to reach total mileage in the calculation of compensatory costs. However, Exhibit 5 does

contain adequate information to develop a reasonable estimate of stem miles for the present case. In Exhibit 5 Alegre witness Hays presents trip data for 140 driver shifts, of which 60 shifts include complete stem mile and loaded mile information. Of those, 40 shifts were driven between a single pickup-destination pair. Our analysis of the data is shown in Appendix A to this decision.

We choose to create a total mile factor (TMF) which when multiplied by one-way loaded miles will yield a reasonable estimate of total miles upon which to base calculations of compensatory costs. The TMF is simply the ratio of total single load miles for the 40 shifts (excluding data for 4 shifts where the shift starting point and ending point are clearly not the same) divided by the sum of the one-way loaded miles for the same data. Total miles are determined using the stem mile conventions discussed above. For the present case the data in Appendix A yield a TMF equal to 2.291.

In the cost calculations the TMF is then applied to en route hours as well as vehicle fixed and running costs. Loading and unloading hours are excluded. In theory separate factors could be computed for stem miles and stem time, but this complexity is unnecessary. Exhibit 5 shows that stem running speeds are slightly higher than loaded speeds, which makes intuitive sense, so application of the TMF to determine the driver's stem time will not underestimate compensatory costs.

Table 2 to Exhibit 2 shows annual vehicle mileage, including stem miles, for all Alegre's cement vehicles to be 79,357. That number is not disputed by the other parties. Alegre shows an average overall vehicle fixed cost per mile of $0.166. When that is divided by Alegre's proposed constructive mileage factor of 1.09 the result is $0.152 per constructive mile. In Exhibit 12 Foothill comes up with separate average fixed costs per mile for each of 50 tractors and 37 trailers. Using a proposed constructive mileage factor of 1.06, figuring each piece of equipment separately, and including stem miles Foothill arrives at

an overall vehicle cost per constructive mile of $0.272--nearly double Alegre's figure.

The difference between $0.152 and $0.272 is mainly due to differences in each party's treatment of leased equipment as well as lesser differences in tire costs, fuel costs, the measurement of miles per gallon, etc.

Although the critics make an appealing argument that Alegre should be required to show its lease payments as direct annual vehicle fixed costs, we are reluctant to do so since it would have the effect of showing costs many times higher than the purchase price in several instances. There is no specific direction for the treatment of lease payments in either the statutes or GO 150-A. However, it is clear that the intent of both these rules would not be advanced by imputing costs which are disproportionate to the value of the equipment. Having been presented no other figure, we use the purchase price proposed by Alegre. Alegre's choice to use investment costs reduced by salvage value to calculate average vehicle fixed costs per mile is reasonable. Use of lease costs might also be reasonable in other circumstances, but we caution parties that calculations based on lease costs should be done carefully, especially where the lessor might have shared financial interests with the carrier. Lease costs used in affiliated ownership situations must be arm's length transactions, not obscured by other business considerations.

Alegre's average vehicle fixed cost per mile is $0.166. That figure must be divided by a constructive mileage factor. We are unpersuaded by the arguments of either Alegre or Foothill advocating a change from the reference rate of 1.07 which they both cite. While MRT 10 is no longer in effect, the study underlying it still appears to be valid with respect to establishing an appropriate constructive mileage factor. There is no convincing basis in the record before us for establishing any different figure so we will apply that 1.07 reference rate. The resultant average

vehicle fixed cost per constructive mile using Alegre's data is $0.155 per constructive mile.

Turning to the next major cost input factor, vehicle running cost per mile, we note that Alegre has based its fuel cost per gallon solely on the cost of the 85% of its fuel which was purchased in bulk, and produced no record of the costs of the other 15% of its fuel. Relying on Alegre's fuel cost, along with its averaged miles per gallon and its tire cost per mile, all of which were challenged, and adjusting Alegre's running cost only to reflect a 1.07 constructive mileage factor, the result becomes $0.332 per constructive mile.

By replacing the fixed and running vehicle costs Alegre uses in Table 4 of Exhibit 13 with these newer costs, and by adjusting the en route hours and trip mileage by the TMF, the total direct costs per trip in each of the five constructive mile length-of-haul categories are increased. The figures are as follows: for 25 constructive miles the cost changes from $102.906 to $133.67, for 50 miles it changes from $144.588 to $191.70, for 75 miles it changes from $184.764 to $247.65, for 100 miles it changes from $225.609 to $304.52, and for 200 miles it changes from $385.300 to $526.95. These and subsequent calculations are shown in Appendix B to this decision.

In Table 4 of Exhibit 13 Alegre then makes two adjustments to these figures. The first is an adjustment for indirect expenses, which Alegre calculates to be 16.64 pe total expenses. The second is 0.35 percent for "other" expenses. When we make these adjustments to the expense figures above and then divide the results by 53,565 (Alegre's uncontested average shipment weight) a total cost per 100 pounds can be derived. Those costs are $0.250 for 25 miles, $0.358 for 50 miles, $0.462 for 75 miles, $0.569 for 100 miles, and $0.984 for 200 miles. The resulting ratios of cost to revenue at Alegre's proposed rates are 101.0%, 103.7%, 103.2%, 104.1% and 113.6% respectively.

Finally, the derived costs per constructive mile must be compared to a standard to determine whether or not the requested rates are compensatory. In her proposed decision the Administrative Law Judge (ALJ) used 7% as a reasonable carrier profit margin, implying that the operating ratios calculated in Appendix B cannot exceed 93% for the requested rates to be compensatory. We reject that recommendation. Section 452.1 requires only that rates cover the cost of transportation. We interpret that requirement strictly, without including profit or return on investment as a cost. Alegre must show that the derived operating ratio does not exceed 100%.

As shown in Appendix B, the derived operating ratios exceed 100% for every haul distance from 25 to 200 miles. The proposed rates are not compensatory.

With expenses this close to costs, the accuracy of these inputs increases in significance. Understated fuel costs, for example, could adversely affect these ratios. We find Alegre's fuel costs questionable for two reasons. First, we agree with protestants that there ought to be some documentation of the cost of the 15% of fuel Alegre purchases on the road rather than in bulk. Perhaps the costs do not differ, though it seems unlikely that a carrier would bother with bulk purchases if there were no economic advantage in doing so. In any case, there is no data in this record about the cost of that substantial amount of fuel. Second, we believe that Alegre's combining averaged figures for miles per gallon per piece of equipment rather than dividing total fleet gallons of fuel by total
fleet miles also understates costs per mile by overstating miles per gallon, and ultimately understates running cost per mile.

Hays testified that the Alegre expense figures shown in Table 5 of Exhibit 2, while mostly reflecting cement equipment (he guessed about 90%) also include some dump truck equipment. That

fact could alter the percentage of "indirect" or "other" expenses, thereby further altering the operating ratios.

For all of these reasons we conclude that Alegre has failed to demonstrate that its proposed rates are compensatory, and we will deny its application.

C. Comments

Applicant Alegre filed a motion to strike the reply comments to the ALJ's Proposed Decision of protestant Foothill Bulk Transport, Inc., which was six pages long, on the ground that it violates the five-page maximum set out in Rule 77.5 of our Rules of Practice and Procedure. By letter dated April 1, 1989, Foothill responded to Alegre's motion, invoking Rule 87 and requesting that the Commission liberally construe Rule 77.5, on the basis that Foothill's technical violation of the Rule was inadvertent and easily remedied. Nonetheless, we grant Alegre's motion to the extent that we have ignored the sixth page of Foothill's reply in our review. However, since the substance of Foothill's arguments is found in the first five pages of the reply, this result has enabled us to consider all of Foothill's arguments. We have otherwise carefully reviewed all the comments and reply comments filed by the parties.

Alegre correctly points out arithmetic errors made by the ALJ in the areas of constructive mile factor and salvage value which require changes in a number of subsequent calculations. We have made those changes in the text of the discussion, above. None of these changes, however, alter the conclusions we reached as a result of those calculations. The parties also point out what appears to be a requirement in the ALJ's decision that a profit margin be shown. We have clarified this decision with respect to that issue. We have added Appendices A and B to the decision to show our analysis of the stem mile data on the record, and to clarify the resulting cost calculations. In all other respects, we have herein adopted the decision of the ALJ.

Findings of Fact

1. By its adoption of General Order (GO) 150-A this Commission has interpreted Public Utilities Code (PU) Sections 452.1 and 452.2 to require the inclusion of stem miles in calculating costs for the purpose of establishing less than maximum rates for cement carriers.

2. The data provided by applicant Alegre is sufficient to determine the effect of including the cost of stem miles in establishing its cost of cement operations.

3. Alegre proposes to treat leased equipment as if it were owned, while protestants urge that actual lease payments be included as expenses.

4. Both Alegre and protestants propose using a factor for converting from actual to constructive miles which differs from the 1.07 factor which this Commission has commonly used in recent times.

5. The accuracy of Alegre's cost to revenue ratios could be adversely affected by understated fuel costs, inappropriate allocation of indirect or "other" expenses, or the inappropriate calculation of total hours per trip. The accuracy of Alegre's determination of each of these items cannot be verified by the record before the Commission.

6. All of the cost to revenue ratios at Alegre's proposed rates, using its data, but accounting for stem costs and using a 1.07 constructive mileage factor are more than 100%.

7. Alegre filed a motion to dismiss the reply comments submitted by Foothill.

Conclusions of Law

1. The cost of stem miles is included in the calculation of a "fully compensatory [rate] based solely upon the cost of transportation from origin to destination and return and the projected revenue to be derived from the requested rate" as that phrase is used in Section 452.1.

2. It is appropriate to treat leased equipment as if it were owned for purposes of establishing annual expenses.

3. The arguments of the parties regarding appropriate constructive mileage factors are not persuasive. We will retain the 1.07 factor which we have commonly used in recent times.

4. Alegre's application for authority to establish cement rates at less than the maximum reasonable rate does not meet the requirements of PU Sections 452, 452.1, and 452.2 in that it does not show that the proposed rates are fully compensatory. It should therefore be denied.

5. Alegre's motion to dismiss the reply comments submitted by Foothill should be granted to the extent that no more than five pages of text should be considered.

O R D E R

IT IS ORDERED that:

1. The application of Frank C. Alegre Trucking, Inc. for authority to establish cement rates less than the maximum rate is denied.

2. Applicant's motion to dismiss the reply brief of Foothill is granted to the extent that only the first five pages have been considered herein.

This order is effective today.

Dated April 26, 1989, at San Francisco, California.

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

Commissioner Patricia M. Eckert present but not participating.

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

Victor Weisser, Executive Director

APPENDIX A
Page 1

Analysis of Stem Mile Data
Frank C. Alegre Trucking, Inc.

Data source: Exhibit 5, all shifts driven between a single pickup-destination pair for which stem miles data are reported.

Data No.	Equipment No.	Initial Stem Miles	Loaded Miles	Ending Stem Miles	One Load Shift Miles
1	A70	91	142	53	286
2	A70	91	125	36	252
3	A66	211	202	11	424
4	A66	91	172	87	350
5	A56	91	128	39	258
6	A56	91	101	50	242
7	A34	128	116	25	269
8	A34	128	116	25	269
9	A34	128	116	25	269
10	A27	137	115	87	339
11	A27	91	101	50	242
12	A27	91	96	50	237
13	A27	91	96	50	237
14	A37	128	116	31	275
15	A37	128	116	31	275
16	A37	128	116	31	275
17	A37	128	116	31	275
18	A37	128	116	31	275
19	A47	137	128	40	305
20	A47	91	126	37	254
21	A47	91	101	50	242
22	A61	91	125	36	252
23	A65	91	128	39	258
24	A67	91	67	59	217
25	A67	125	96	50	271
26	A35	*8	*114	*25	*
27	A28	*8	*116	*55	*
28	A48	67	124	57	248
29	A71	*8	*124	*57	*
30	A68	*41	*124	*57	*
31	A30	91	126	37	254
32	A74	91	154	138	383
33	A78	91	164	103	358
34	A73	137	116	21	274
35	A20	115	115	87	317
36	A36	91	142	53	286
37	A36	91	125	36	252

38	A68	91	172	87	350
39	A68	91	101	50	242
40	A68	137	115	87	339
	Total	3,910	4,431	1,810	10,151
	Total Mile Factor (TMF) =			2.291	

* Data excluded from totals; initial stem miles unreasonable.

(END APPENDIX A)

APPENDIX B

Operating Ratio Calculations
Frank C. Alegre Trucking, Inc.

Total mile factor (TMF) = 2.291

Line	Item	Length of haul - constructive miles 25	50	75	100	200
1	Load hours	1.00	1.00	1.00	1.00	1.00
2	Unload hours	2.00	2.00	2.00	2.00	2.00
3	En route hours 1/	1.72	2.78	3.75	4.76	8.58
4	Total hours per trip 2/	4.97	6.18	7.30	8.45	12.83
	Direct cost per trip:					
5	Labor, $16.728 per hour	$83.14	$103.45	$122.04	$141.39	$214.59
6	Vehicle fixed cost, 3/ $0.155 per constr. mile	$8.88	$17.76	$26.63	$35.51	$71.02
7	Vehicle running cost, 3/ $0.332 per constr. mile	$19.02	$38.03	$57.05	$76.06	$152.12
8	Subtotal directs per trip	$111.04	$159.24	$205.72	$252.97	$437.74
9	Direct and indirect costs per trip @ 16.64%	$133.20	$191.03	$246.79	$303.46	$525.12
10	Total cost per trip @ 0.35% "other"	$133.67	$191.70	$247.65	$304.52	$526.95
11	Avg. wt. per shipment, lb.	53,565	53,565	53,565	53,565	53,565
12	Total cost per 100 lb.	$0.250	$0.358	$0.462	$0.569	$0.984
13	Proposed rates, incl. 3% surcharge	$0.247	$0.345	$0.448	$0.546	$0.866
14	Operating ratio, %	101.0	103.7	103.2	104.1	113.6

1/ Round trip hours, excluding stem hours.
2/ Including total mile factor applied to one-way en route hours.
3/ Including total mile factor applied to haul length miles.

(END APPENDIX B)

is less than the maximum reasonable rate. By D.87-11-032 we clarified the effect of our adoption of GO 150-A, noting that all cement transportation rate reductions and their "me-toos" were cancelled unless justified on the basis of AB 4033 by December 31, 1987. Alegre had 45 rates which were established under GO 150. It seeks here to reinstitute those rates.

The applicable law prohibits a carrier from setting rates for the transportation of property at less than the maximum reasonable rate "except upon such showing as is required by the Commission and a finding by it that the rate is justified by transportation conditions." (Section 452.) When the carrier seeking authority is a cement carrier the law further requires this Commission to ascertain that the requested 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." (Section 452.1.) Further, the law states that "[t]he establishment of a less-than-maximum reasonable rate pursuant to Section 452.1 shall be for a period of not more than one year." (Section 452.2.)

A. The Parties' Positions

The issues raised here are twofold. The first issue is the accuracy of Alegre's cost showing. The second is the proper interpretation of the governing law, specifically, whether it is appropriate to infer that "stem costs", that is, the costs of arriving at and returning from the shipment origin point, should be considered in determining whether the proposed rates are "fully compensatory" as that term is used in the phrase "fully compensatory based solely upon the cost of transportation from origin to destination and return" in Section 452.1. Stem miles, or distances associated with stem costs, are also known as terminal miles.

1. Alegre's Position

Alegre asserts, as does the Commission's Transportation Division staff (Staff), that any interpretation of Section 452.1 which includes stem miles or any other costs besides the costs specifically attributable to that portion of cement transportation activity constituting a round trip between the origin of the load and the destination is improper, arguing that the shipping public should not pay for non-revenue miles which "could have and probably should have been avoided" by the carrier. Alegre disagrees, however, with all the other parties insofar as they allege that the rates Alegre proposes are not fully compensatory. It claims, in fact, that its proposed rates, which would reduce rates for all shipments of 200 miles or less, are set to recover all costs for double the mileage from each origin to each destination and to provide an additional "increment of profit".

Alegre acknowledges that its witness, Mr. Hays, used cost methodology similar to that used by the Commission in the development of the now-defunct Minimum Rate Tariff (MRT) 10 rates, but unlike Staff and Foothill Alegre contends that the methodology is appropriate. The costs enumerated include labor, vehicle fixed costs, vehicle running costs, indirect or overhead costs, gross revenue expenses, and productivity units as related to these various costs. Alegre's labor costs used wages from the Commission's Prevailing Wage Report 288-1, though it contends that it could have used the previous year's Report because of the filing date of its application. The resulting hourly driver labor cost was $16.728, including all "statutory and social" fringe benefits. This figure was applied to the vehicle running time (for covering twice the distance between the point the load originated and its destination) and to the load and unload times.

Alegre claims that its load and unload times were significantly overstated, providing a "margin of safety" and points to the testimony of Staff witness Russell Corning who observed four separate cement transportation operations and testified that the

loading times averaged 31.5 minutes and that the unloading times averaged 43.6 minutes. Alegre used 1 hour for loading and 2 hours for unloading, which are the maximum free times on Alegre's tariffs. ~~The basis for Alegre's selection of the times used for loading and unloading is not clear, but~~ Exhibit 13 shows that Mr. Hays tested to make sure actual times were within these times by reviewing the Alegre freight tags contained in Exhibit 5. Additionally, while recognizing that it must use figures from the Prevailing Wage Report, Alegre informs us that these costs are overstated because it does not pay wages as high as the Report assumes and does not pay holiday pay, pension benefits or other fringe benefits imputed in the prevailing wage.

As for vehicle fixed costs (equipment investment costs) Alegre states that it is this Commission's policy to allow a carrier to depreciate the value of tractor and trailer equipment, and on this basis it assigns a price to each vehicle which includes purchase, license and insurance but excludes tires. It makes this assignment to each vehicle, whether owned or leased, and then depreciates that cost annually. The annual cost thus derived is reduced by 15% to reflect salvage value. Alegre points out that it used the cost of new equipment and excluded used equipment in making these calculations, and states that this tends to overstate these costs.

Alegre claims that this methodology is consistent with GO 150-A, which, we note, makes no specific mention of the treatment of leased equipment. Alegre then converts annual fixed costs thus derived into a vehicle fixed cost per mile by dividing total annual costs by total annual miles. Then it converts this figure into a

vehicle fixed cost per constructive mile,[2] since cement rates are based on constructive miles. Mr. Hays used a constructive mileage factor of 1.09 based on his view of increased congestion in northern California. The result is a $0.152 per constructive mile fixed cost. Both the use of depreciation costs for leased vehicles and the accuracy of the factor for conversion from actual to constructive miles were challenged in this proceeding.

Vehicle running cost includes fuel, miles per gallon of fuel consumed, oil, maintenance and repair, and tire costs. Alegre based its fuel cost estimate on its bulk fuel purchases for the nine months preceding the filing of its application and the following four months. It states that 85% of its fuel is purchased in bulk, and the rest is purchased on the road. Alegre did not assume a different cost per gallon for non-bulk purchased fuel, a fact which was challenged by protestants.

Fuel consumption was based on data gathered reflecting miles operated and gallons of fuel purchased by each unit of equipment in the cement fleet. Oil and related labor cost and tire cost per mile were separately calculated, apparently based on the records for the previous year as were the maintenance and repair costs. These costs per mile were added together to produce total running cost per mile and then this figure was adjusted to produce cost per constructive mile. Stem miles were used in the determination of the costs per mile of these various components, and the factor used for converting actual miles to constructive miles was 1.09, rather than the 1.07 used by Staff in its MRT 10 calculations. Both these assumptions were challenged by protestants.

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2 Constructive miles include an adjustment factor which takes into account congestion, terrain and other variables that affect operating costs. MRT 10 adopted a figure of 1.07. Alegre points out that we adopted a statewide figure of 1.1 in D.87-01-066.

To calculate indirect costs, or overhead, Alegre analyzed its calendar year 1987 expense statement and categorized each item as direct, indirect, or "other". It put gross revenue expense in the "other" category for purposes of this proceeding, and did not include it in the indirect category. This indirect expense thus derived was then expressed as a percentage of total expense. It was calculated at 16.64%. Protestants disagree with Alegre's selection of items for the "other" category and therefore argue that Alegre understated total expenses.

Next Alegre developed a total cost per 100 pounds by length of haul for 25, 50, 75, 100 and 200 constructive miles. To do this it determined the number of load hours, unload hours, and enroute hours per trip, multiplied that by the hourly labor cost, added fixed and running vehicle cost per constructive mile to come up with total direct cost per trip. It then added the per-trip indirect cost factor of 16.64% and 0.35% for the "other" factor to arrive at a total cost per trip. That figure was divided by Alegre's average weight per shipment (which Hays calculated from a review of freight bills) to arrive at a total cost per 100 pounds. Exhibit 13 shows Alegre's comparison of this figure with its proposed rates, which include the required 3% surcharge. It shows Alegre's projected operating ratios to range from 92.6% to 97.7%.

Hays derived the average enroute hours per trip for each constructive mile category from Alegre's freight bills which showed length of hauls in constructive miles and transportation times for specific hauls. He calculated constructive miles per hour and plotted the resulting figures on a graph. A trend line was drawn on the graph to arrive at the enroute hours Alegre used for each category. Alegre claims that the trend line was drawn conservatively.

Alegre cites the testimony of four witnesses who testified on behalf of Alegre's proposal. They represented RMC Lone Star, a cement manufacturer; Kaiser Cement Corporation; Monier

Roof Tile Company, a manufacturer of concrete roofing tiles; and Harbor Ready-Mix, a manufacturer of ready-mix concrete. Each of the witnesses testified that Alegre's lower rates would allow them to be more competitive, and both of the witnesses representing manufacturer-shippers talked about the increase in "proprietary trucking", that is trucking by the manufacturers themselves, which they believe is due to the high rates for cement common carrier services. These witnesses stated they would prefer not engaging in or expanding their proprietary trucking.

2. Hicks and Calkins Position

Frank E. Hicks Trucking, Inc. (Hicks) and Les Calkins Trucking, Inc. (Calkins) are certificated cement common carriers operating in northern California who protest the Alegre application. They claim that Alegre's proposed rates are not compensatory and that the authorization of those rates would drive Alegre's competitors out of business. In making their argument that the costs to be considered in applying GO 150-A must include stem costs they state that "[t]he focus and intent of [AB 4033] was clearly to do away with the use of 'backhaul' revenues as a justification for finding that a reduced rate is compensatory." Making reference to the various proceedings we held leading up to the adoption and revision of GO 150-A they assert that it was our intent, pursuant to AB 4033, to eliminate unfair competition and the threat to smaller cement carrier operations. They conclude that it could not have been the intent of AB 4033 to permit the carrier to ignore stem costs, "which vary widely depending upon the location of the carrier's yard and the point of pick up" since to do so would simply substitute another practice that could "permit unfair competition and threaten smaller cement carrier operations."

In further support of this position, Hicks and Calkins state that stem costs have been historically included in the consideration of compensatory rates, and they also state that the "needs of commerce or public interest" as that phrase is used

Section 452 would not be served by granting this application because the rates are not justified by transportation conditions. Further, they claim that the requirement in Section 452 that this Commission make "due and reasonable allowances" for the "added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency or transportation" is a direct mandate to consider stem costs. Of course, this requirement applies only to situations where this Commission is directed to consider these "added or accessorial services" in determining the extent of competition when a carrier applies to charge less than a maximum reasonable rate "for the purpose of meeting the competitive charges of other carriers...". No allegation is made, however, that Alegre's purpose in the instant application is to meet the competitive charges of other carriers.

Hicks and Calkins base their stem cost arguments in part on their analysis of the legislative history of Section 452.1. In making this analysis these protestants, through their attorney, have filed a post-hearing brief which, without explanation, appends three documents which are not otherwise a part of the record in this matter. The inclusion of these documents is an inappropriate introduction of unsubstantiated hearsay evidence after the proceeding has been submitted. It violates both the rules of evidence and Applicant's constitutional right to due process. The hearing on this matter lasted for five days. Had protestants Hicks and Calkins believed these documents were necessary to the support of their position there was ample opportunity to produce them during that hearing when the proponent(s) of the documents could have been cross-examined by the other parties. Since protestants chose not to follow that course of action this Commission may not and will not now consider either the content of these documents or the arguments of protestants to the extent they rely on those documents.

For the record we note that these documents are (1) an unsigned two and one half page analysis of AB 4033 headed "Senate Committee on Energy and Public Utilities"; (2) a three and one half page "Committee Analysis" of AB 4033, apparently authored by a Committee consultant, headed "Assembly Committee on Utilities and Commerce"; and (3) a one and one half page letter from the author of AB 4033 to the Governor regarding the merits of the bill. All of the documents contain dates indicating they were prepared in 1984.

Hicks and Calkins also argue that Alegre has not provided enough evidence to sustain a finding that the proposed rate will be fully compensatory. They cite Exhibit 7, Alegre's Annual Report for 1987 which at p. 11 shows a net operating loss from continuing operations before taxes of $280,000, and argue that this loss would have been even greater but for an equipment lease concession from Central Valley Bulk Transportation, Inc., a corporation 100% owned by two principals of Alegre, which reduced operating expenses by $40,000. Further, protestants argue that Exhibit 3, a comparative financial statement for the first three months of 1987 and 1988 only shows an improved net income in 1988 because of revenue from sources other than cement transportation, and in fact shows a $33,000 reduction in cement transportation revenue during 1988. They also argue that Exhibit 3 shows increases in all major operating expenses except lease expense during 1988 for cement transportation operations.

Alegre responds to these allegations by asserting that there is no evidence that its proposed rates are below out of pocket marginal costs and therefore predatory, that it appears that Alegre's operating loss in 1987 resulted from payment to "its stockholders, children of its stockholders, and an affiliated corporation owned by its stockholders, all standing in the capacity of equipment lessors" lease payments that were greater than what would have been required had Alegre bought and depreciated the same

equipment. Alegre asserts that such added expense for leasing arrangements are not allowable expenses for rate purposes, and that they should not "reflect unfavorably on an otherwise financially healthy carrier."

3. Foothill's Postion

Protestant Foothill Bulk Transport, Inc. (Foothill) was represented at the hearing by Ronald C. Broberg, who also testified as Foothill's witness. Foothill's opposition to Alegre's application is two-pronged. First it disagrees with the cost figures Alegre has used, and second it contends that we would ignore the safety considerations underlying the enactment of Section 452.1 if we were to grant the requested rates.

With respect to the cost issue, Foothill is especially critical of Alegre's vehicle fixed cost determination. Foothill argues that it is appropriate to consider the financing costs of purchased equipment below the line as Alegre's depreciation cost method does when the carrier owns its operating equipment, but argues that since much of Alegre's operating equipment is leased, such depreciation methodology is an inappropriate means of justifying reduced freight rates which reduces costs actually incurred by more than one half and fails to recognize the actual lease obligation. Alegre's calculation of average annual investment cost for a complete tractor and trailer(s) unit is $9916 minus 15% salvage value, or $8440. Broberg does not produce an average figure for the combined units, but his figures would result in an annual investment cost of between $18,076 and $23,535, depending on the particular operating unit. Broberg's calculations result in total annual fixed costs of $22,834 as opposed to Alegre's $13,198.

Alegre's Hays claims that Broberg's treatment of leases accounts twice for license and registration fees and tires on eleven tractors. He adds that if lease costs are used they should be leases still in effect, and the lease amounts should be adjusted

to reflect the economic service life of the piece of equipment where the leases are for a shorter term than the service life. He states that Broberg's analysis does neither.

Foothill's objection to Alegre's fixed cost determination is also based on the fact that, with one exception, these leases are not "capital leases", but rather "operating leases" on which Alegre pays no interest expense, and which, therefore, do not provide an equity interest (i.e. an option to purchase upon expiration of the lease) in the equipment. The exception, Foothill reminds us, is the one lease held by a lessor (Signal Capital Corporation) which is not a corporation, partnership or sole proprietorship which includes Frank and/or Helen Alegre or their three sons as the only principals. The consequence of changes which Broberg makes in Alegre's vehicle fixed costs are shown in Exhibit 12. It raises this figure by $0.12 per mile, about 78% above Alegre's cost study cost.

Foothill also objects to Alegre's citing the Commission staff's 1967 report in Case Number 5440, which was held to establish minimum rates for for-hire cement carrier operations under MRT 10. Foothill finds it inappropriate to assume, as Alegre does, that since the staff methodology for establishing minimum rates excluded tire costs from fixed costs, for example, that tire costs should be excluded from the cost calculations of these leased vehicles.

Foothill's Broberg asserts that it is reasonable to assume that the tire costs per mile set out in the portion of Exhibit 12 showing vehicle running costs are not for initial tire costs but for repair and replacement. Thus he disputes Hays' contention in Exhibit 13 that tire costs are overstated. Broberg also argues that Alegre's vehicle running costs are understated because although 15% of its fuel purchases are made on the road rather than by bulk purchase, Alegre assessed a bulk rate for all its fuel costs and made no adjustment to account for the fact that

on the road purchases would be higher than bulk purchases. Foothill increases the cost per gallon by $0.05, based upon "an admittedly inadequate check" of comparative costs. Hays counters by claiming that Alegre found no difference in bulk and on-road fuel costs during the time studied, but admitted on cross examination by Staff's Mr. Callaghan that he made no kind of sampling of road purchase prices.

Further, Broberg claims that Alegre's method of averaging the average miles per gallon figures for each unit of equipment rather than dividing total fleet gallons of fuel by total fleet miles is "questionable", and concludes that the running costs per mile would be increased by 4% if these two factors were properly calculated. The changes Broberg makes decrease Alegre's equipment fleet miles per gallon by $0.09, which results in an increase in total cost per mile.

Foothill states that its recalculation of Alegre's indirect expenses, based on more current data than Alegre used, i.e. the 1987 Annual Report, is more accurate and shows an increase in total operating costs for each length of haul. Foothill disputes Hays' statements in Exhibit 13 which claim that protestants have overstated these indirect expenses, and asserts that those recalculations properly distribute expenses to various activities which Alegre should have included but did not.

Addressing stem costs, Broberg states that even if Alegre's stem mile theory is used, the proposed rates, as analyzed by Foothill, are not compensatory at any length of haul. Like Hicks and Calkins, however, Foothill contends that stem miles must be considered in determining whether the proposed rates are compensatory. Foothill chides Alegre for using stem miles "where the effect is to hold down the depicted costs" such as in averaging annual miles per vehicle when calculating vehicle fixed costs per mile but then not applying these stem miles in calculating overall costs of operation.

Foothill claims that 58% of Alegre's miles of operation are empty stem miles. This figure was derived from Alegre's freight billing tags in Exhibit 5 which, according to Foothill, contained both constructive (distance table) mileages from origin to destination and actual mileages. Based on these data Foothill urges the use of 42.2%, which it views as actual, rather than the "synthetic" 49.9% which it claims Alegre used in Exhibit 5 for determining the ratio of loaded to total miles. Foothill adds that this "synthetic data" "comprises a form of marginal cost pricing". Foothill's results would increase both Alegre's cost per trip figure and its cost per 100 pounds.

Alegre's Hays objects strongly to this calculation. He says Foothill is comparing apples and oranges and adds that Alegre does not have its own loaded-to-total ratio because it does not support this concept. He further argues that any such ratio based on Exhibit 5 data is necessarily flawed because the loaded miles shown on this document were determined on a constructive miles basis while the stem miles are actual miles, and because this document contains insufficient information to be used as Broberg has used it since 88 trips left the Alegre domicile point, but only 60 returns are shown. Hays adds that such incomplete data were sufficient for the only two uses Alegre made of them--the determination of average running speed, and the determination of loading and unloading times.

Addressing constructive miles, Foothill states that a constructive mileage ratio of 1.06 ought to be used rather than the 1.07 Alegre's Hays computed or the 1.09 he testified ought to apply based on his judgment on changes in travel conditions. Broberg arrived at the 1.06 figure from the freight tags in Exhibit 5, as revised for correction of errors which he found in the constructive mileages. Broberg's computation found a ratio of 1.06 using Hays' data and 1.056 using the corrected constructive mileages. Hays

claims that Foothill did not use the same data that Alegre relied on to arrive at this ratio.

Turning to the safety question, and the intent of Section 452.1, Foothill's post-hearing brief recites a list of legislation passed in California over the years to "strengthen the regulation of cement carriers in the public interest", and concludes that:

> "[W]ithout exception, the legislative enactments have sought to strengthen the ability of these carriers to provide effective services at reasonable rates, insulating them from rigorous forms of price and entry competition that have characterized other types of transportation in the state."

Foothill views the interpretation of governing legislation which Alegre supports as a sudden abandonment of the longtime "protectionistic posture" of the legislature toward the cement industry since it will result in new less-than-maximum reasonable cement carrier rates which recover only part of the carrier's total costs of performing transportation service. Foothill cites a letter from the author of AB 4033 which was introduced as Exhibit 6 in A.84-11-036 in which the assembly member describes one of the bill's purposes as being to "address particular problems facing the cement industry with respect to non-compensatory rates being filed and accepted, thereby endangering the public on the highway...". Foothill concludes that 452.1 must be read to require the recovery of stem costs. Unlike the letter from this assembly member which Hicks and Calkins attempt to include in this record without foundation, it is possible for us to take official notice of this exhibit from a previous Commission proceeding, for the purpose of showing the belief of the author regarding the purpose of AB 4033.

Like Hicks and Calkins, Foothill urges us to recognize that the intent of Section 452.1 was primarily to eliminate the use of backhaul revenues to justify reduced rates, and to require that cement carrier rates not be set below the maximum reasonable level except when it can be shown that they are fully compensatory

without subsidy such as that provided by including backhaul revenues in the calculation. Thus, Foothill sees an interpretation of Section 452.1 which does not require consideration of stem miles as defeating the very purpose for which the statute was enacted.

Foothill also points out that a safety check made before an Alegre vehicle leaves for a point of origin is not included in Alegre's cost study, and argues that that is inconsistent with the Legislature's stated concern for highway safety.

Finally, Foothill claims that the language of Section 452 which requires that proposed rates that are less than those of competitors must be justified by "transportation conditions" must be read to require that the rate will "cover its share of fully allocated costs or at least...exceed out-of-pocket costs."

4. Staff's Position

The Commission's Transportation Division staff argues that any claim that Section 452.1 either requires consideration of stem costs or permits consideration of backhaul revenue to offset revenue derived from rates charged for an outbound haul is a "strained interpretation" of that Section which ignores the "clear and unequivocal" use of the term "fully compensatory". Staff also disputes the claim that its interpretation of Section 452.1 in any way conflicts with the general provisions governing common carrier reduced rates in Section 452. Staff argues that since the instant application does not involve establishing a rate for the purpose of meeting competitive charges of others, the only requirement of Section 452 which need be considered is the requirement that we determine that reduced rates are required by "the needs of commerce or public interest". Staff asserts that "[r]educed rates inherently serve the needs of commerce and the public unless there exists reliable evidence to the contrary." It goes on to claim that "no such evidence of negative effects have been provided by any party", and concludes that reduced rates are, therefore, required by the needs of commerce or public interest.

Despite its position on the issue of stem miles, Staff does not endorse Alegre's application. It arrives at its position due to its conclusion that Alegre has failed to demonstrate that its proposed rates will be compensatory even with its more generous interpretation of Section 452.1. Specifically Staff, like the protestants, criticizes Alegre for excluding costs it actually incurred in performing services and for relying on "techniques used to develop minimum rates for an entire industry" to justify these exclusions. For example, staff points to Alegre's use of hypothetical rather than actually incurred costs for leased vehicles which assigned the market value of the vehicle as if it had been purchased rather than leased, resulting in a cost reduction of $0.12 per mile from the actually incurred cost.

Staff also objects to Alegre's dividing total running costs from origin to destination and vehicle fixed costs by total miles traveled by the vehicles, including stem miles and non-revenue miles. Staff agrees with Foothill that this process improperly improves Alegre's cost profile by halving the per-mile costs while at the same time inconsistently excluding these same stem miles from its labor cost calculations to again produce the lowest per-unit cost.

Likewise, Staff finds fault with Alegre's 2% upward adjustment to the "carefully derived" constructive miles it computed, in order to again reduce its cost per mile. Staff adds that the conversion from actual to constructive miles appropriately places cost and revenue on the same unit of measurement since revenue is calculated based on constructive miles in Commission Distance Table 8. However, any adjustment effectively adjusts the distance table. Finally, Staff also objects to Alegre's failure to provide actual costs for the 15% of its total fuel purchases which are road purchases that are "generally agreed to cost more than bulk purchases."

B. Discussion

Hicks and Calkins convincingly point out that while much time was devoted to the question of backhaul revenues, the issue of stem costs was not addressed in the Commission hearings leading up to our adoption of GO 150-A. They infer from this that we did not mean to change the then-existing treatment of these costs. The interpretation urged by these protestants and Foothill requires that we consider the word "origin" to refer to the origin of the carrier's vehicle rather than the origin of the shipment. Such an interpretation does not conflict with the language of any statute of which we are aware, nor does it conflict with the language of GO 150-A. In fact, Appendix B to GO 150-A seems to contemplate such an interpretation in the first part of the sample form entitled "Summary of Revenues and Expenses". Under the "Revenue" entry the carrier is instructed to set out front haul revenue and actual round trip mileage including mileage to and from the terminal and any other empty miles. Then the carrier is instructed to divide that mileage by the front haul revenue.

There is an additional revenue entry entitled "Revenue Per Other Unit of Measurement if any" with instructions to divide front haul revenue by such units of measurement where they apply. The unit of measurement which applies in the case of Alegre's application is constructive mileage, which is derived by application of the appropriate scaling factor to the actual miles. It is not intended, as Alegre's interpretation would require, that this entry be used for dividing front haul revenue by constructive mileage excluding stem miles, or perhaps all empty miles. The purpose of GO 150-A is to implement the provisions of Sections 452.1 and 452.2. As we have just indicated GO 150-A interprets those sections to include stem miles. We will not change that interpretation today. We thus reject the argument of Alegre ~~and staff~~ on this issue. The cases cites by Alegre in support of a different result are, to the extent they appear inconsistent of

this interpretation, merely dicta. We conclude that compensatory rates must include consideration of stem miles.

In order to promote increased competition among carriers we are inclined to allow carriers the flexibility to set their own competitive rates. However, in this instance we are constrained by the terms of Section 452.1 and GO 150-A, which are imposed upon on us by law. GO 150-A requires that the economic calculations supporting fully compensatory rates be "based solely upon the cost of transportation from origin to destination and return", ignoring any carrier efficiencies due to backhaul revenues or scheduling of multiple hauls in a driver shift. Those additional revenues might to some degree offset stem mile costs, but the Code does not allow us that flexibility.

As a technical matter, if stem miles were excluded from consideration then the mileage in a rate calculation would have to be twice the loaded miles to account for the imputed empty return trip. However, because we have determined that the term "origin" in Section 452.1 means the carrier's terminal, then "return" must also mean direct return to the terminal without necessarily returning through the shipment pickup point. Thus for a single load the total trip miles must be the initial stem miles (from the terminal to the shipment pickup point) plus loaded miles plus ending stem miles (from the shipment destination back to the terminal). We interpret Section 452.1 to require consideration of single loads only.

~~We further note, however, that i~~ It is clear from the first paragraph of Appendix B to GO 150-A that the proponent of scales of distance rates, such as Alegre, must provide a summary of revenues and expenses for each of the rate bands it proposes, showing that each is compensatory.

Thus we must determine whether Alegre's showing provides sufficient data to determine how much the actual mileage should be increased in order to determine constructive mileage which includes

stem miles. If constructive miles can be properly determined from the available data then the revenues and expenses for each of the five mileage bands must be calculated. If this can be done, then we can determine whether Alegre's proposed rates are compensatory even when stem miles are included in calculating its costs of operation.

We know of no specific guideline or recommendation on this record that will assist us in determining the appropriate stem miles that must be added to loaded miles to reach total mileage in the calculation of compensatory costs. However, Exhibit 5 does contain adequate information to develop a reasonable estimate of stem miles for the present case. In Exhibit 5 Alegre witness Hays presents trip data for 140 driver shifts, of which 60 shifts include complete stem mile and loaded mile information. Of those, 40 shifts were driven between a single pickup-destination pair. Our analysis of the data is shown in Appendix A to this decision.

We choose to create a total mile factor (TMF) which when multiplied by one-way loaded miles will yield a reasonable estimate of total miles upon which to base calculations of compensatory costs. The TMF is simply the ratio of total single load miles for the 40 shifts (excluding data for 4 shifts where the shift starting point and ending point are clearly not the same) divided by the sum of the one-way loaded miles for the same data. Total miles are determined using the stem mile conventions discussed above. For the present case the data in Appendix A yield a TMF equal to 2.291.

In the cost calculations the TMF is then applied to en route hours as well as vehicle fixed and running costs. Loading and unloading hours are excluded. In theory separate factors could be computed for stem miles and stem time, but this complexity is unnecessary. Exhibit 5 shows that stem running speeds are slightly higher than loaded speeds, which makes intuitive sense, so application of the TMF to the driver's stem time will not underestimate compensatory costs.

Table 2 to Exhibit 2 shows annual vehicle mileage, including stem miles, for all Alegre's cement vehicles to be 79,357. That number is not disputed by the other parties. Alegre shows an average overall vehicle fixed cost per mile of $0.166. When that is divided by Alegre's proposed constructive mileage factor of 1.09 the result is $0.152 per constructive mile. In Exhibit 12 Foothill comes up with separate average fixed costs per mile for each of 50 tractors and 37 trailers. Using a proposed constructive mileage factor of 1.06, figuring each piece of equipment separately, and including stem miles Foothill arrives at an overall vehicle cost per constructive mile of $0.272--nearly double Alegre's figure.

The difference between $0.152 and $0.272 is mainly due to differences in each party's treatment of leased equipment as well as ~~their treatment of~~ lesser differences in ~~indirect expenses and such vehicle running costs as~~ tire costs, fuel costs, ~~and~~ the measurement of miles per gallon, etc.

Although the critics make an appealing argument that Alegre should be required to show its lease payments as direct annual vehicle fixed costs, we are reluctant to do so since it would have the effect of showing costs many times higher than the purchase price in several instances. There is no specific direction for the treatment of lease payments in either the statutes or GO 150-A. However, it is clear that the intent of both these rules would not be advanced by imputing costs which are disproportionate to the value of the equipment. ~~On the other hand, there is no logic in providing for a "salvage value" where the terms of Alegre's leases clearly do not allow it to retain any interest in the equipment at the expiration of the lease period. We thus conclude that the appropriate means of accounting for this leased equipment is to use a reasonable purchase price, depreciated over the standard life of the equipment, but not to reduce the equipment cost by any salvage value.~~ Having been presented ~~by~~ no

other figure, we use the purchase price proposed by Alegre. ~~The average overall vehicle cost per mile based on~~ Alegre's choice to use investment costs reduced by salvage value to calculate average vehicle fixed costs per mile is reasonable. Use of lease costs might also be reasonable in other circumstances, but we caution parties that calculations based on lease costs should be done carefully, especially where the lessor might have shared financial interests with the carrier. Lease costs used in affiliated ownership situations must be arm's length transactions, not obscured by other business considerations.

Alegre's ~~data with no salvage value imputed thus changes from~~ average vehicle fixed cost per mile is $0.166 ~~to $0.185~~.

That figure ~~is~~ must be divided by a constructive mileage factor. We are unpersuaded by the arguments of either Alegre or Foothill advocating a change from the reference rate of 1.07 which they both cite. While MRT 10 is no longer in effect, the study underlying it still appears to be valid with respect to establishing an appropriate constructive mileage factor. There is no convincing basis in the record before us for establishing any different figure so we will apply that 1.07 reference rate. The resultant average vehicle fixed cost ~~per constructive mile~~ using Alegre's data is $0.173 $0.155 per constructive mile.

Turning to the next major cost input factor, vehicle running cost per mile, we note that Alegre has based its fuel cost per gallon solely on the cost of the 85% of its fuel which was purchased in bulk, and produced no record of the costs of the other 15% of its fuel. Relying on Alegre's fuel cost, along with its averaged miles per gallon and its tire cost per mile, all of which were challenged, and adjusting Alegre's running cost ~~per constructive mile~~ only to reflect a 1.07 constructive mileage factor, the result becomes $0.332 per constructive mile.

By replacing the fixed and running vehicle costs Alegre uses in Table 4 of Exhibit 13 with these newer costs, and by

adjusting the en route hours and trip mileage by the TMF, the total direct costs per trip in each of the five constructive mile length-of-haul categories ~~is somewhat~~ are increased. The figures are as follows: for 25 constructive miles the cost changes from $102.906 to ~~$104.206~~ $133.67, for 50 miles it changes from $144.588 to ~~$147.188~~ $191.70, for 75 miles it changes from $184.764 to ~~$188.664~~ $247.65, for 100 miles it changes from $225.609 to ~~$230.809~~ $304.52; and for 200 miles it changes from $385.300 to ~~$395.710~~ $526.95. These and subsequent calculations are shown in Appendix B to this decision.

In Table 4 of Exhibit 13 Alegre then makes two adjustments to these figures. The first is an adjustment for indirect expenses, which Alegre calculates to be 16.64 percent of total expenses. The second is 0.35 percent for "other" expenses. When we make these adjustments to the expense figures above and then divide the results by 53,565 (Alegre's uncontested average shipment weight) a total cost per 100 pounds can be derived. Those costs are ~~$0.234~~ $0.250 for 25 miles, ~~$0.331~~ $0.358 for 50 miles, ~~$0.424~~ $0.462 for 75 miles, ~~$0.519~~ $0.569 for 100 miles, and ~~$0.889~~ $0.984 for 200 miles. The resulting ratios of cost to revenue at Alegre's proposed rates are ~~94.7%, 95.9%, 94.6%, 95% and 102.7%~~ 101.0%, 103.7%, 103.2%, 104.1% and 113.6% respectively.

Finally, the derived costs per constructive mile must be compared to a standard to determine whether or not the requested rates are compensatory. In her proposed decision the Administrative Law Judge (ALJ) used 7% as a reasonable carrier profit margin, implying that the operating ratios calculated in Appendix B cannot exceed 93% for the requested rates to be compensatory. We reject that recommendation. Section 452.1 requires only that rates cover the cost of transportation. We interpret that requirement strictly, without including profit or return on investment as a cost. Alegre must show that the derived operating ratio does not exceed 100%.

As shown in Appendix B, the derived operating ratios exceed 100% for every haul distance from 25 to 200 miles. The proposed rates are not compensatory.

~~Clearly the proposed rate for 200 constructive miles is not compensatory. None of the remaining ratios produce the 7% profit margin which, as Mr. Hays points out, we have historically targeted for the trucking industry. While Alegre only needs to show that its proposed rates are compensatory, and does not need to show any particular margin of profit in the instant case, the ratios we have calculated here depend upon the accuracy of several cost inputs which are in dispute.~~ With expenses this close to costs, the accuracy of these inputs increases in significance. Understated fuel costs, for example, could adversely affect these ratios. We find Alegre's fuel costs questionable for two reasons. First, we agree with protestants that there ought to be some documentation of the cost of the 15% of fuel Alegre purchases on the road rather than in bulk. Perhaps the costs do not differ, though it seems unlikely that a carrier would bother with bulk purchases if there were no economic advantage in doing so. In any case, there is no data in this record about the cost of that substantial amount of fuel. Second, we believe that Alegre's combining averaged figures for miles per gallon per piece of equipment rather than dividing total fleet gallons of fuel by total fleet miles also understates costs per mile by overstating miles per gallon, and ultimately understates running cost per mile.

~~Furthermore,~~ Hays testified that the Alegre expense figures shown in Table 5 of Exhibit 2, while mostly reflecting cement equipment (he guessed about 90%) also include some dump truck equipment. That fact could alter the percentage of "indirect" or "other" expenses, thereby further altering the operating ratios. ~~And, finally, it is likely that our recalculation of mileage to include stem miles will change the constructive mileage category assignment which Alegre has made for~~

~~each trip. This fact could change Alegre's calculation for total hours per trip and ultimately affect the operating ratio. Considering the imprecision of the data before us we are unwilling to assume that the error rate is insignificant. We believe that an error rate of 7% is likely to be sufficient to account for this imprecision. That is the percentage we have historically used to assure that there is a profit margin for trucking operations. This surrogate for compensatory rates does not suggest that there is a profit margin in the present case. Rather, we are stating that we are not confident that the figures shown here are reliable within a range of less than 7%.~~

For all of these reasons we conclude that Alegre has failed to demonstrate that its proposed rates are compensatory, and we will deny its application.

C. Comments

Applicant Alegre filed a motion to strike the reply comments to the ALJ's Proposed Decision of ~~P~~protestant Foothill Bulk Transport, Inc., which was six pages long, on the ground that it violates the five-page maximum set out in Rule 77.5 of our Rules of Practice and Procedure. By letter dated April 1, 1989, Foothill responded to Alegre's motion, invoking Rule 87 and requesting that the Commission liberally construe Rule 77.5, on the basis that Foothill's technical violation of the Rule was inadvertent and easily remedied. Nonetheless, we grant Alegre's motion to the extent that we have ignored the sixth page of Foothill's reply in our review. However, since the substance of Foothill's arguments is found in the first five pages of the reply, this result has enabled us to consider all of Foothill's arguments. We have otherwise carefully reviewed all the comments and reply comments filed by the parties.

Alegre correctly points out ~~an~~ arithmetic errors made by the ALJ in the areas of constructive mile factor and salvage value which require changes in a number of subsequent calculations. We

have made those changes in the text of the discussion, above. ~~The~~ None of these changes, however, ~~are slight and do not~~ alter the conclusions we reached as a result of those calculations. The parties also point out what appears to be a requirement in the ALJ's decision that a profit margin be shown. We have clarified this decision with respect to that issue. We have added Appendices A and B to the decision to show our analysis of the stem mile data on the record, and to clarify the resulting cost calculations. In all other respects, we have herein adopted the decision of the ALJ.

Findings of Fact

1. By its adoption of General Order (GO) 150-A this Commission has interpreted Public Utilities Code (PU) Sections 452.1 and 452.2 to require the inclusion of stem miles in calculating costs for the purpose of establishing less than maximum rates for cement carriers.

2. The data provided by ~~A~~applicant Alegre is sufficient to determine the effect of including the cost of stem miles in establishing its cost of cement operations.

3. Alegre proposes to treat leased equipment as if it were owned, while protestants urge that actual lease payments be included as expenses.

4. Both Alegre and protestants propose using a factor for converting from actual to constructive miles which differs from the 1.07 factor which this Commission has commonly used in recent times.

~~5. This Commission has historically targeted a 93% ratio of cost to revenue for the trucking industry.~~

~~6.~~ 5. The accuracy of Alegre's cost to revenue ratios could be adversely affected by understated fuel costs, inappropriate allocation of indirect or "other" expenses, or the inappropriate calculation of total hours per trip. The accuracy of Alegre's determination of each of these items cannot be verified by the record before the Commission.

~~7. An error rate of 7% is likely to be sufficient to account for the imprecision of the calculations made in this decision based upon data in the record.~~

~~8.~~ 6. ~~None~~ All of the cost to revenue ratios at Alegre's proposed rates, using its data, but accounting for stem costs ~~and using a 1.07 constructive mileage factor are 93% or better, and one shows costs which~~ are more than 100% ~~of revenues~~.

~~9.~~ 7. Alegre filed a motion to dismiss the reply comments submitted by Foothill.

Conclusions of Law

1. The cost of stem miles is included in the calculation of a "fully compensatory [rate] based solely upon the cost of transportation from origin to destination and return and the projected revenue to be derived from the requested rate" as that phrase is used in Section 452.1.

2. It is appropriate to treat leased equipment as if it were owned for purposes of establishing annual expenses ~~except that salvage value should not be imputed where the lease agreement does not provide for a proprietary interest in the equipment~~.

3. The arguments of the parties regarding appropriate constructive mileage factors are not persuasive. We will retain the 1.07 factor which we have commonly used in recent times.

~~4. A 7% error rate in the calculations of the ratio of cost to revenue is reasonable in light of this record.~~

~~5.~~ 4. Alegre's application for authority to establish cement rates at less than the maximum reasonable rate does not meet the requirements of PU Sections 452, 452.1, and 452.2 in that it does not show that the proposed rates are fully compensatory. It should therefore be denied.

~~6.~~ 5. Alegre's motion to dismiss the reply comments submitted by Foothill should be granted to the extent that no more than five pages of text should be considered.

O R D E R

IT IS ORDERED that:

1. The application of Frank C. Alegre Trucking, Inc. for authority to establish cement rates less than the maximum rate is denied.

2. ~~Alegre's~~ Applicant's motion to dismiss the reply brief of Foothill is granted to the extent that only the first five pages have been considered herein.

This order becomes effective 30 days from today.

Dated APR 26 1989, at San Francisco, California.

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

Commissioner Patricia Eckert
present but not participating