

Decision 82 04 030 APR - 6 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of ADAMS DELIVERY SERVICE, INC.,
for suspension and investigation
of rates of DI SALVO TRUCKING CO.
(RR-606)

(I&S)
Case 11046
(Filed November 16, 1981)

Silver, Rosen, Fischer & Stecher, by Ellis Ross
Anderson, Attorney at Law, for Di Salvo
Trucking Co., respondent.
Dunne, Phelps, Mills, Smith & Jackson, by
Marshall Berol, Attorney at Law, for Adams
Delivery Service, Inc., protestant.

O P I N I O N

Rate Reduction 606 (RR-606) filed October 29, 1981 by Di Salvo Trucking Co. (Di Salvo), a highway common carrier, contains reduced rates for the transportation of drugs, medicines, and toilet preparations tendered by one shipper in quantities of 5,000 pounds or more from Metropolitan Zone 113 to points within 525 constructive miles. By letter dated November 27, 1981, the Executive Director, under authority of Resolution M-4713, suspended the rates in RR-606 for a period of 45 days in response to a protest filed by Adams Delivery Service, Inc. (Adams). Decision (D.) 82-01-49 issued January 5, 1982 continued the suspension and deferred the use of RR-606 until further order of the Commission.

Public hearing was held before Administrative Law Judge Mallory in San Francisco on January 28, 29, and February 1, 1982, and the matter was submitted. Evidence was presented on behalf of Di Salvo and Adams.

Background

By D.90663 dated August 17, 1979 in Case (C.) 5432, Petition 884 et al., the Commission inaugurated a program for the reregulation of the State's transportation industry. Under that program motor carrier industry regulation was converted from a pricing system based on Commission-established minimum rates to a system of carrier-filed rates.

D.90663 established a transition period of indefinite length during which carriers must file and maintain rates which are not below the level of the minimum rates in effect at the time the program was established or the rates of other carriers, whichever are the lower. Carriers desiring to establish rates below such levels must furnish justification statements with their reduced rate filings which show that the proposed reduced rates will be compensatory and will meet the needs of commerce.

Tariffs containing rate reductions may be made effective immediately upon filing, if they contain rates no lower than the rates of competing carriers or rates in the transition tariffs. Tariff filings containing rates below such levels must be made effective on 30 days' notice unless specific authority is sought and granted to file such rate changes on shorter notice.

The reregulation order does not specify in detail the actions necessary to comply with the general provisions outlined above. Therefore, General Order (GO) 147 was adopted by the Commission effective December 13, 1981 by D.93766 in OIR 4, to implement the Commission's transportation reregulation program during the transition period from minimum rates to carrier-filed rates. GO 147 contains, among other things, rules governing the manner in which justification statements must be prepared.

Under the reregulation plan, Di Salvo filed RR-606 which contains rates below both the level of rates in Transition

Tariff (TT) 2 and rates of other carriers. Accompanying RR-606 was a justification statement setting forth cost and operational data designed to show that the proposed reduced rates would be compensatory and would meet the needs of commerce.

Following Adams' protest, Di Salvo filed a pleading entitled "Di Salvo's Amendment to its Rate Reduction Application 606 and Response to Adams' Amended Protest." The rates and rules in issue in this proceeding are those set forth in that pleading, which also are reproduced as Exhibit 1.

Evidence of Di Salvo

Di Salvo's president presented evidence in support of the reduced rate filing. The witness explained that the rate reduction is designed to retain to Di Salvo the business accorded it by William H. Rorr, Inc. (Rorr), a manufacturer of drugs and related products located at 1550 Factor Avenue, San Leandro (MZ113). The witness stated that when other carriers had approached Rorr for its business by offering it a rate reduction of 10% that offer was countered by Di Salvo with RR-606.

The witness testified that Rorr now uses the split-delivery provisions of Di Salvo's tariff under which it combines as one master-billed shipment up to 40 component parts destined to points in the greater Los Angeles area and intermediate points. The split-delivery provisions produce lower charges than if the several components were billed as separate shipments.^{1/} The line-haul rate for a split-delivery shipment is computed from point of origin to

- 1/ The split-delivery rule permits the application of a line-haul rate applicable to the combined weight of all component parts. To the shipment charge based on that rate is added a split-delivery charge for each component part. The total charge for the split-delivery shipment is generally less than the charges computed as if each component was a separate shipment. To use the split-delivery tariff provisions, at least 5,000 pounds must be shipped at one time from one point of origin.

the last point of destination, via the points of destination of all component parts. Shippers and carriers assertedly experience difficulty in rating split-delivery shipments because of the need to compute mileages over all possible routes that the split-delivery shipment could move in order to ascertain the shortest route. In addition, shippers must determine whether inclusion of a component in a split-delivery shipment will result in a total charge less than if that component had been excluded. Therefore, the witness believes that it is to the advantage of both Rorr and Di Salvo to eliminate the complex computations needed to properly rate split-delivery shipments. Negotiations between Rorr and Di Salvo indicated that Di Salvo could retain the Rorr account if Di Salvo published rates which would produce approximately the same overall revenues as Rorr is now paying, but would eliminate the complex and time-consuming computations associated with the billing of split-delivery shipments.

As a consequence, Di Salvo developed the volume tender rate proposal in RR-606. That proposal produces approximately the same overall revenues as those now received by Di Salvo. Exhibit 4 contains a recapitulation of all shipments handled by Di Salvo for Rorr during the month of September 1981. The recapitulation includes both straight shipments and split-delivery shipments. It shows revenues received under present tariff provisions and under the volume tender proposal in RR-606, as follows:

<u>Week Ending</u>	<u>Number of Shipments</u>	<u>Total Weight (Pounds)</u>	<u>Revenue As Billed</u>	<u>RR-606 Proposed Revenue</u>
9-04-81	84	40,873	\$ 3,272.42	\$ 3,267.16
9-11-81	103	59,838	4,675.36	4,431.80
9-18-81	171	117,593	8,278.48	8,079.53
9-25-81	176	136,898	8,346.42	8,331.44
Total	534	355,202	24,572.68	24,109.93

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Exhibit 4 also contains a comparison of the estimated costs of performing the service with the revenues under present and proposed rates for two split-delivery shipments transported for Rorr under master bills issued September 23, 1981. The rate comparison shows the following:

Master Bill Shown In	Total Miles	Weight (Pounds)	Revenue	
			As Billed	Under RR-606
Exhibit 6	636	6,201	\$ 619.57	\$ 601.40
Exhibit 5	781	34,394	1,546.49	1,578.31
Total	1,417	40,595	2,166.06	2,179.71

The study developed total costs for handling the two split-delivery shipments of \$1,789.18, producing a cost/revenue ratio of 82.1%, indicating the proposed transportation service will be compensatory.

Adams' Evidence

An employee of Adams presented evidence designed to show that RR-606 results in substantial rate reductions and that the rate proposal would not produce compensatory rates. In Adams' Exhibits 8 and 9, the witness selected several components of the split-delivery shipment in Exhibit 5 and compared the total charges for such components rated as separate split-delivery shipments and rated under RR-606. The comparison in Exhibit 8 covers 8 components weighing a total of 14,002 pounds transported for a distance of 480 miles. The split-delivery revenue is \$669.98, and the RR-606 revenue is \$555.09, or a reduction of 17%. Similarly, Exhibit 9 includes 13 components weighing a total of 29,023 pounds transported for a distance of 590 miles. The split-delivery revenue is \$1,306.09 and the RR-606 revenue is \$1,096.73, or a reduction of 16 percent.

Adams' Exhibit 7 compares charges for straight shipments in weight groups of 5,000 pounds, 10,000 pounds, and 20,000 pounds under Di Salvo's present tariff and under RR-606. In this comparison RR-606 rates are 30% less than Di Salvo's present rates for the same distances and weight groups. Based on these analyses, it is Adams' contention that the proposed rates are noncompensatory.

Di Salvo's Rebuttal Testimony

Di Salvo's witness developed comparisons of the estimated costs of performing the hypothetical movements described in Adams' Exhibits 8 and 9. These comparisons show that the proposed charges of \$555.09 for the eight components in Exhibit 8 exceed the estimated costs of \$529.19 resulting in a cost/revenue ratio of 95.0%. Similarly, the proposed charges of \$1,096.73 for the 13 components in Exhibit 9 exceed the estimated costs of \$818.29, producing a cost/revenue ratio of 74.6%.

The witness also explained that changing the basis for computing rates for Rorr shipments would produce both higher and lower charges on individual components or straight shipments than existing rates. Respondent's effort in developing the rate proposals in RR-606 was to achieve approximately the same total revenues under proposed rates as it now receives while eliminating the onerous chore of rating and billing split-delivery shipments. It is respondent's view that the rates in RR-606 are compensatory and are required in order for it to retain Rorr's traffic.

Adams' Position

Adams argues that the proposed rates are discriminatory as they are designed to meet the needs of a single shipper. Adams also is concerned that similar rates will be proposed for drug shipments originating in the Los Angeles area and delivered to northern California points. Adams argues that Di Salvo has not complied with the Commission's requirements for rate reduction filings because Di Salvo's cost data were not prepared in the manner specified in ~~GO~~ 147.

Discussion

The record shows that the transportation service under the volume tender rates proposed in RR-606 will be compensatory if

Di Salvo retains all of Rorr's traffic now transported by it. There is no contention by Adams that Di Salvo will not retain that traffic.

Adams' showing is not persuasive. It attempts to isolate parts of Rorr's traffic for rate comparisons and does not show the revenue effect of the proposal in total. Adams does not participate in the Rorr traffic, nor does it engage in any transportation service which would be directly affected by RR-606. Adams' concern seems to be that, at future time, Di Salvo may seek to publish volume tender rates on northbound traffic which could adversely affect Adams. Adams' concerns should be addressed whenever such a rate filing is made by Di Salvo, not in this proceeding.

Adams contends that RR-606 is discriminatory as it is designed to serve the needs of a single shipper. Di Salvo indicated that two other drug shippers are located in MZ-113 whose shipments could meet the requirements of RR-606, and that RR-606 rates would be applied to such shippers if their traffic is offered to Di Salvo.

GO 147 was issued after RR-606 was filed and after the cost data in the support statement were prepared. The cost data did not comply with GO 147 in that they did not provide cost/revenue data for representative mileages. However, the cost data are sufficient for this proceeding. It would be unreasonable to withhold consideration of RR-606 for failure to comply with GO 147 in these circumstances.

Findings of Fact

1. RR-606 was filed in compliance with the Commission's rate reregulation plan in D.90663.
2. The rates in RR-606 are below both the level of rates maintained by competing carriers and the rates set forth in TT2.
3. Respondent has supplied cost and economic data sufficient to show that the rates in RR-606 will be compensatory and will meet the needs of commerce, in compliance with the requirements of D.90663.

4. There is no showing that the rates in issue will result in undue discrimination.

5. The rates in RR-606 will be just, reasonable, and non-discriminatory.

6. RR-606 has been suspended until further order of the Commission, pending completion of the investigation ordered in this proceeding.

7. In view of Finding 4 and because the rates are required to retain the traffic to respondent, the rates in Exhibit 1 should be permitted to become effective as soon as possible.

Conclusions of Law

1. The suspension of RR-606 should be vacated.
2. The following order should be effective on the date of issuance.

O R D E R

IT IS ORDERED that:

1. The suspension of Rate Reduction 606 is vacated.
2. Di Salvo Trucking Co. may establish the rates and rules set forth in Exhibit 1 in this proceeding.

This order is effective today.

Dated APR 6 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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

Joseph E. Bodovitz
Joseph E. Bodovitz, Executive Director