ALJ/km/ks

Decision 82 11 062 NOV 17 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Universal Transport System, Inc., for the authority pursuant to the provisions of Sections 452, 453 and 491 of the Public Utilities Code, to depart from the minimum rates, rules and regulations of Minimum Rate Tariff 10, to transport cement at less than minimum rates.	Application 61057 (Filed November 18, 1981; amended February 18, 1982)

Marshall G. Berol, Attorney at Law, for Universal Transport System, Inc., applicant.
Daniel W. Baker, Attorney at Law, for Miles & Son Trucking Service, Inc. and Alan Edelstein, Attorney at Law, for California Teamsters Public Affairs Council, protestants.
C. D. Gilbert and H. Hughes, for California Trucking Association, interested party.
Harry E. Cush, for the Commission staff.

OPINION

Universal Transport System, Inc. (Universal), a cement carrier, requests authority to depart from the minimum rates, rules, and regulations of Minimum Rate Tariff 10 (MRT 10) to the extent of reducing its tariff rates by 10% for the transportation of cement in bulk, in pneumatic trailers, from West Sacramento, Metropolitan Zone (MZ) 134, and MZ 105 to the Sacramento Extended Area. Copies of the application were served on California Trucking Association, Western Motor Tariff Bureau (WMTB), Pacific Motor Tariff Bureau, and Granite Construction Company (Granite). All three proposed rate reductions are protested by Miles & Son Trucking Service, Inc. (Miles) and California Teamsters Public Affairs Council. A hearing was held on the matter on February 23 and 24, 1982 before Administrative Law Judge Pilling in San Francisco.

The document docketed "Application 61057" which initiated this proceeding should have been docketed as a Petition for Modification in Case No. 5440 since it involved a request by a cement carrier to depart from the rates and rules in MRT 10 in the publication of its cement carrier tariffs.[1] However, after the document was filed and before hearing on it, the Commission in Decision (D.) 82-02-134 dated February 17, 1982 ordered MRT 10 discontinued effective April 1, 1982 and adopted a substitute regulatory system of individual carrier-filed rates. At the hearing the parties stated they were familiar with the pending cancellation of MRT 10 but agreed to proceed with the case as an application to reduce tariff rates under Commission procedures applicable before the adoption of the new reregulation program.

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[1] When a common carrier obtains a rate lower than the applicable minimum rate it applies to all potential shippers, and under alternative application it is available to other common carriers. It becomes the minimum rate. Accordingly, requests to deviate from minimum rates when common carriers are involved are, in essence, requests to change the minimum rate and are docketed in the ongoing proceeding where the particular minimum rates were established.

Present and Proposed Rates

Present Rates
Rates in Cents per 100 Pounds

Commodity	From	To	Rate
Cement, in bulk	West Sacramento	Sacramento	20
Minimum Weight	MZ 134	Sacramento	66 3/4
47,500 pounds	MZ 105	Sacramento	71 3/4

Proposed Rates
Rates in Dollars per 100 Pounds

Commodity	From	To	Rate
Cement, in bulk	West Sacramento	Sacramento	$0.1800
Minimum Weight	MZ 134	Sacramento	$0.6010
53,000 pounds	MZ 105	Sacramento	$0.6458

The present rates that Universal seeks to change are found in WMTB Tariff No. 17, Cal. P.U.C. No. 21. If this application is granted, Universal will flag out of those present rates in that tariff and publish the reduced rates in its Universal Transport Tariff No. 201, Cal. P.U.C. 2.

The application states that the proposed reduced rates will apply principally on shipments moving to and for the account of Granite as consignee located in the Sacramento Extended Area from (a) Kaiser Cement Corporation (Kaiser) located at Permanente near Cupertino in MZ 134 and from (b) Lone Star Industries, Inc. (Lone Star) located in Redwood City in MZ 105, and in West Sacramento. Miles' protest is directed primarily at the proposed rate reduction on moves from MZ 134 to Granite and secondarily on moves from the other two locations.

Cost Summaries

Attached Appendix A contains comparative summaries of the actual and estimated costs and revenue Universal will experience in the Kaiser-Granite haul under the proposed reduced rates according to

Universal's calculations (Column 1) and according to Universal's calculations adjusted to reflect the evidence (Column 2).

The Issues

Protestants contend that the proposed point-to-point rates are unreasonable, noncompensatory, and unjust, and request the application be denied. Protestants assail Universal's actual and estimated costs (Column 1, Appendix A) as being incorrect in the following categories:

A. Total average round-trip hours - loading and unloading times.

B. Fixed expense per hour - number of hours and number of vehicles used in calculating hourly rate.

C. Running expense per mile - fuel cost per mile.

D. Labor expense - driver's wages.

Protestants further contend that the application should be denied for the following additional reasons:

E. Universal's equipment operates at excessive speed in the Kaiser-Granite operation.

F. The proposed rates will violate the long- and short-haul provision of Public Utilities (PU) Code § 461.5.

G. The proposed rates will violate PU Code § 453(a) respecting a carrier's giving preference and advantage to a shipper.

H. The proposed rates will establish an unreasonable difference in rates between localities in violation of PU Code § 453(c).

I. The proposed rates are in violation of PU Code § 452 as not being required by the needs of commerce or public interest and not justified by transportation conditions.

Average Loading and Unloading Times

The average loading and unloading times in the Kaiser-Granite operation are estimated by Universal to be .333 hours to load and 1.19 hours to unload (Appendix A). Miles contends these times should be .59 hours to load and 1.62 hours to unload (late-filed Exhibit 10). The effect of using Miles' figures will be to increase Universal's average round-trip time from 6.88 hours to 7.52 hours and result in an increase of Universal's fixed and indirect expense.

The witness for Universal testified that Universal estimated its average loading time based on the times it took to load 26 sample shipments at Kaiser between January 20, 1981 and February 2, 1982 and that it based its estimated average unloading time on the times it took to unload those shipments. The first 16 sample shipments were destined to Pacific Ready-Mix in Sacramento, and the last 10 shipments were destined to Granite. No details of the loading and unloading times were put into evidence.

Miles' late-filed Exhibit 10 includes copies of the tachograms pertaining to each of the 26 shipments handled by Universal's equipment from Kaiser to Granite between November 10, 1981 and February 2, 1982. The exhibit also contains a listing of the times taken from the tachograms as they relate to the loading and unloading involved in each movement. The listing shows that the average loading time was .59 hours and the average unloading time was 1.62 hours. None of the loading times shown were as low as the .333 hours claimed by Universal and only 3 of the unloading times were as low as 1.19 hours claimed by Universal.

It is evident that Universal understated its average loading and unloading times in the Kaiser-Granite operation and that the tachograms taken from Universal's equipment engaged in that operation reveal what those actual average times are. We find, therefore, that

Universal's average loading and unloading times are, respectively, .59 hours and 1.62 hours.

Fixed Expense - Per Hour -
Number of Total Hours Used

Universal applied a 2,475-hour equipment use factor in its cost study (Exhibit 2, page 2) in determining its fixed expense of $5.39 per hour. The use factor was based, in part, on Universal's estimation that it would haul 1,185 loads in the Kaiser-Granite operation during 1982, even though it hauled only 26 loads in that operation between November 11, 1981 and February 2, 1982. The witness for Universal admitted that the construction industry as well as the business of transporting cement are currently in a very depressed state, but hoped that the year 1982 would see a substantial upswing in both businesses. Universal's estimated 1,185 movements in 1982 are based upon this hope.

Miles' witness described Universal's projected 1,185 shipments for 1982 as being unreasonable and unrealistic. Miles had enjoyed the Kaiser-Granite traffic from 1964 until November 6, 1981, and was the only carrier involved in that traffic in 1981 until November 6, 1981. Miles carried 353 shipments from Kaiser to Granite in 1981. Miles projected that if it retained the Kaiser-Granite business in 1982, it would transport only 450 shipments during 1982. Miles contends that Universal's equipment use factor (Exhibit 2, page 2) should be reduced 306 hours to bring it in line with Miles' more realistic projection. This would result in an increase of $0.81 per hour in the fixed expense per hour.

It would have been very helpful if not entirely determinative in deciding this issue had Universal produced evidence from Granite indicating how many loads Granite anticipated the Kaiser-Granite movement might involve. The lack of this evidence leaves an important gap in Universal's case which Universal has attempted to gloss over by giving its estimate of hoped-for future volume of traffic, to which we accord little weight. We are more inclined to accept Miles' estimate of 1982 traffic as Miles had many years experience in handling the traffic and Miles' estimate of 450 loads is more in keeping with the 1981 movement (353 loads by Miles and 26 by Universal totaling 379 loads) and the sustained economic downswing in the economy, particularly the construction industry. Therefore, we accept Miles' estimate of the probable volume of 1982 traffic in the Kaiser-Granite move as opposed to Universal's estimate and find that Universal's fixed expense should be $6.20 per hour.

Fixed Expense - Per
Hour - Number of Tractors

Universal's witness testified it uses 13 tractor-trailer units and has one additional tractor which it uses as a standby replacement. It has only 13 trailer units. In estimating its depreciation expense, it included all 14 tractors but in estimating its use factor per hour it used only 13 tractors (Exhibit 2, page 2). Miles claims that the standby tractor should have been included when computing the use factor per hour.

We would agree with Miles if the 14th tractor was used as a supplemental tractor rather than a standby replacement tractor. Since Universal will have at the maximum only 13 tractors in use at any one time, the use factor is properly calculated using only 13 tractors.

Fuel Expense

Table III of Universal's Exhibit 2 shows its fuel expense per running mile to be $.2024. This item is footnoted (Exhibit 2, page 4) to say that Universal's fuel cost is $1.12 per gallon and that its average miles per gallon (mpg) is 5 mpg. But $1.12 divided by 5 mpg does not equal \$.2024; it equals \$.224. Miles contends an arithmetical error was made and the fuel expense per running mile should be corrected to read \$.224, thus increasing the total running expense per mile to \$0.4735 from \$0.4519.

The first witness for Universal testified that Universal averages "five miles [per gallon] less fuel for pneumatic" but thought that Universal's mileage was better than 5 mpg. He stated that Universal gets 5.9 mpg on fuel efficient equipment but deferred to a subsequent Universal witness as to the correct mpg figure. The subsequent Universal witness testified that 5 mpg was Universal's historical mileage but could not explain the apparent error in mathematics. This witness deferred to a third Universal witness to explain the discrepancy. This third Universal witness stated that 5 mpg was, indeed, Universal's historical mileage but that a survey of its most recent six-month operation revealed that it was getting 5.5 mpg. She stated that dividing \$1.12 by 5.5 "comes out with 2.036 cents per gallon, which is very close to our actual costs of 2.024."

Universal's attempted explanation of the apparent discrepancy in its fuel cost per mile calculation, rather than clarifying the situation, merely adds further uncertainty as to what that cost is. It is not uncommon for errors to creep into finished exhibits, and we are liberal in allowing exhibits to be corrected or explained at the hearing (witness, Exhibit 7). In this case, however, even if we were to accept the statement of Universal's last witness that Universal gets 5.5 mpg average, the computation still does not work out. The only logical conclusion we can make is to take the footnote on page 4 of Exhibit 2 at its face value and correct the fuel cost per mile of \$.2024 to read \$.2240 in line with the footnote explanation.

Driver Labor Expense

The issue here is whether Universal's driver labor expense should be calculated using the wage rate and benefits set out in the Teamsters Cement Carriers Supplemental Agreement (supplemental agreement), as contended by Miles and the Teamsters, or, as contended by Universal, the wage rate and benefits set out in a "rider" to the supplemental agreement entered into between Universal and Teamsters Local 439 (the local). The rider, which became effective August 1, 1981 and permits its wage rate and benefits to be paid starting on that date, contains a lower wage rate than that provided for in the supplemental agreement. The wage rate in the rider, which Universal used in costing its labor expense, is based on a flat percentage of revenue. The wage rate in the supplemental agreement, which expires May 15, 1982, is based on an hourly rate. If Universal is required to calculate its labor expense in accordance with the supplemental agreement, all three operations (assuming Universal's other costs are as it contends) each will result in an operating loss.

The witness for Miles testified that Miles had enjoyed the Kaiser-Granite traffic from 1964 until November 6, 1981 when Granite, which controlled the traffic, took the traffic away from Miles and gave it to Universal. Miles contends Universal won the Kaiser haul because of Universal's promise to Granite to reduce the rate and that this promise was based on Universal's expectation of being able to pay the lower wage rate and benefits set out in the rider. The witness for Universal acknowledged that prior to getting the traffic, Universal had agreed with Granite that Universal would file an application seeking a reduced rate on the Kaiser-Granite haul. Miles takes the position that Universal used the rider against Miles, a bargaining unit carrier, and will thus have to pay the level of driver wage and benefits costs according to the supplemental agreement when hauling the Kaiser-Granite traffic.

A representative of the local was subpenaed by Miles and acknowledged the existence of the rider. He stated that union procedure requires the rider to be presented by the local to the Rider Committee of the Teamsters Western Conference for approval or disapproval for use in future operation. He stated that as of the date of hearing the Rider Committee had not acted on the rider but that he had been informed by several members of the Rider Committee that it would approve the rider subject to the condition that the rider could only be used when Universal handled new business and/or nonbargaining unit work. He stated that in the event the rider was approved with the anticipated restriction in it, Universal could not use the rider's wage scale in the Kaiser-Granite haul as Universal had taken the haul away from Miles, which is a bargaining unit carrier.

Miles was granted permission to file a late-filed exhibit (Exhibit 9) containing a copy of the rider as approved by the Rider Committee. However, in lieu of the amended rider, Miles filed a letter under the letterhead of the Teamsters Western Conference which reads as follows:

"March 4 1982

"Mr. Robert Plummer, Secretary-Treasurer
Teamsters Local Union #439
Post Office Box 1611
Stockton, California 95201

"Dear Bob:

"It has come to the attention of the Freight Division of the Western Conference of Teamsters that Universal Transport Company is using a Rider which was discussed between the Company, Local #439 and the Freight Division of the Western Conference.

"This Rider was submitted to the Freight Division for approval for new business and/or non-bargaining unit work only and approved on that basis. However, Universal Transport has seen fit to use this Rider aganst a bargaining unit carrier, which is in direct violation of the approved verbage [sic]. Therefore, unless Universal Transport corrects this problem, the Freight Division will withdraw its' [sic] approval of this Rider.

"Awaiting your earliest reply, I remain

"Fraternally yours,

"Gene Shepherd, Co-Chairman
Western Master Freight Division

"GS/rad

"cc: Universal Transport"

As previously indicated, the parties agreed that actual carrier wage costs would be used to evaluate the reduced-rate proposals, rather than the use of "prevailing wage costs," as provided in the reregulation program adopted in D.82-02-134. Since no evidence was presented that the traffic from West Sacramento or from MZ 105 was bargaining unit work, we find that Universal is indisputably correct in using the wage rate and benefits set out in the rider to calculate its driver labor expense for those hauls.

We also find that Universal is correct in using the rider's wage and benefits to calculate its driver labor expense for the Kaiser-Granite haul. During the last three months it transported the Kaiser-Granite traffic and as of the date of hearing Universal was obligated to pay its drivers only in accordance with the rider. The letter (Exhibit 9) is inconclusive that there has been a change in this obligation, or, as a matter of fact, that the Rider Committee has ever acted on the rider. In the letter the Freight Division threatens to withdraw its approval of the rider. Our best interpretation of the letter is that as of the date of the letter the rider was still working its way up through the union hierarchy and nothing has been finalized as to the rider. So, for the purposes of this rate case, Universal's claim is valid that its driver labor expense for the Kaiser-Granite haul should be calculated using the wage and benefits set out in the rider.

Excessive Speeds

Miles late-filed Exhibit 10, page 3 contains summaries of the tachograms taken from Universal's vehicles when performing the 26 Kaiser-Granite hauls during the latter part of 1981 and early part of 1982. It shows that Universal's loaded equipment exceeded the 55 miles per hour maximum speed limit on the average of 1.45 hours during each 2.57-hour en route haul. The average maximum speed per haul was 64.2 miles per hour with a high of 72 miles per hour. Miles contends the "Commission will not authorize reduced rates which are based upon operations at vehicle speeds which exceed the lawful limits and data based thereon is unacceptable as support for the reasonableness of the proposed charges."

It is evident Universal operated at excessive speeds in handling the 26 loads and we do not condone such actions. Were its drivers paid an hourly wage, such excessive speeds would have a profound effect on Universal's labor expense by reducing that expense below what it would be if the driver stayed within the speed limit. Universal, however, pays its drivers a percentage of revenue so that the excessive speeds do not affect its labor expense. Whatever effect excessive speed has on other cost items is immeasurable based on the evidence we have before us and Miles has directed our attention to no specific costs which would be affected in particular. Therefore, we will not deny the application because of such excessive speeds.

Long- and Short-Haul Provision;
Unreasonable Difference

Miles gives us no specifics to back up its contentions respecting these elements of its protest. Nor do we believe that the carrier-proponent of a rate reduction has the burden of going forward, absent some showing to the contrary, that its proposed rate reduction does not violate the three subject precepts. No contrary showing has been made so we disaffirm Miles' contentions respecting these elements of its protest.

Public Interest or Needs of
Commerce: Transportation Conditions

PU Code § 452 reads as follows:

> "452. Nothing in this part shall be construed to prohibit any common carrier from establishing and charging a lower than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction of the commission may establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which is less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as is required by the commission and a finding by it that the rate is justified by transportation conditions. In determining the extent of such competition the commission shall make due and reasonable allowance for added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation."

In D.82-02-134, where we canceled MRT 10, we stated at mimeo page 6:

> "The regulatory plan proposed by the staff is similar to the program of competitive individual carrier-filed rates we adopted by D.90663 for the transportation of general freight, except that it provides for no period of transition from minimum rates to carrier-filed rates. Such reregulation program will be reasonable for the transportation of cement."

The cancellation of MRT 10 and the adoption of carrier-filed tariff rates as the primary vehicle in regulating cement carrier rates was merely part of the Commission's trucking rate reregulation program announced in D.90663 (2 CPUC 2d 249) and carried through to D.82-02-134 and other decisions. The basis of that program is stated in D.91861 at 3 CPUC 2d 779, which reads in part as follows:

> ". . . It is our belief that carriers, as businessmen, could better serve the overall public interest if they could negotiate with shippers and submit their rates for our approval." (Emphasis added.)

Universal and Granite did negotiate for the reduced rates (see section on driver labor expense) and for that reason have satisfied the public interest requirements of PU Code § 452.

But, as shown by our calculations in Column 2 of Appendix A, the proposed Kaiser-Granite reduced rate is noncompensatory and Universal made no showing that the noncompensatory rate is justified by transportation conditions. Hence, we will withhold authority to publish the proposed rate.

General Discussion - The Kaiser-Granite Rate Reduction

The proposed reduced rate of $0.6010 in the Kaiser-Granite operation, as shown by our adjusted calculations in Column 2 of Appendix A, is too low to make the operation compensatory for

Universal. This does not mean that Universal's request for a reduced rate should be denied in its entirety. We are free to authorize any part of a requested rate reduction which we find to be compensatory and reasonable. In this case, we will allow Universal to publish a rate no lower than $0.63 for the Kaiser-Granite move. A $0.63 rate will allow Universal a gross revenue per haul of $333.90 (530 x .63) for a profit of $14.37 and an operating ratio of .958% (319.77 divided by 333.90). The rate of $0.63 will be compensatory and will be within the zone of reasonableness. It is therefore justified by transportation conditions.

Rates from West
<u>Sacramento and MZ 105</u>

Universal's summaries of revenue and costs covering the operation from West Sacramento and MZ 105 show that it will experience an operating ratio of 67.4% and 95.1%, respectively, in those operations. Even when its costs are increased to reflect the average loading and unloading times and fixed and running expense adjustments which we have found necessary to do in respect to the Kaiser-Granite operation, Universal will still experience a profit on each haul at an operating ratio, respectively, of 72% and 97%.

The witness for Universal testified that it had not moved any loads from Lone Star at Redwood City and West Sacramento to Granite and that Universal expected to handle only "emergency" shipments in those two proposed operations. No evidence was given on how often these "emergency" shipments might be expected to move based on past experience or future expectation, or, indeed if there ever will be such a movement.

Under the circumstances, we believe the proposed reduced rates from the Lone Star locations will be "paper rates" under which no showing was made that traffic will ever move. Universal's request for these two rate reductions is based on mere speculation and, therefore, does not afford a legitimate basis for a rate reduction. We will deny the request to publish these two rate reductions.

Findings of Fact

1. Universal requests authority to publish reduced rates on cement, in bulk, in pneumatic trailers, from West Sacramento, MZ 105, and MZ 134 to the Sacramento Extended Area.

2. The levels of the proposed rates as well as the present rates which the proposed rates will supplant are as previously indicated in the forward part of this opinion.

3. The proposed rates, negotiated between Universal and Granite, will apply principally on shipments moving to and for the account of Granite in the Sacramento Extended Area from (a) Kaiser in MZ 134 and (b) Lone Star in MZ 105 and in West Sacramento.

4. Miles and the Teamsters protest the granting of the application.

5. Universal, in justification of the proposed rates, presented a summary of its revenue and costs in each of the operations it intends to engage in under the proposed rates.

6. Column 1 of Appendix A is a copy of the summary of costs and revenue presented by Universal in justification of the proposed rate reduction in the Kaiser-Granite movement.

7. Column 1 of Appendix A incorrectly reflects Universal's costs in the Kaiser-Granite operation in the following respects:

a. Average loading time is understated by .21 hours.

b. Average unloading time is understated by .43 hours.

c. Total average round trip-hours are understated by .64 hours.

d. Hourly fixed expense is understated by $0.81 per hour.

e. Running expense per mile is understated by $0.0216.

8. Universal's wage expense is predicated on a rider to the supplemental agreement entered into between Universal and Teamsters Local 439. No evidence of a restriction limiting the use of the rider to new business and/or nonbargaining unit work has been presented.

9. The use by Universal of the rider in computing wage expense is proper.

10. In calculating its fixed expense per hour Universal correctly used 13 tractors.

11. No showing was made that the excessive speeds of Universal's loaded equipment operating from Kaiser to Granite had any measurable effect on Universal's costs.

12. Column 2 of Appendix A sets forth Universal's revenue and costs in the Kaiser-Granite operation amended to reflect the findings in Finding 7.

13. The proposed Kaiser-Granite rate of $0.6010 is noncompensatory.

14. The proposed Kaiser-Granite rate of $0.6010 is unreasonably low.

15. The proposed Kaiser-Granite rate of $0.6010 is not justified by transportation conditions.

16. A rate of $0.63 in the Kaiser-Granite operation will allow Universal a profit of $14.13 per trip.

17. A rate of $0.63 in the Kaiser-Granite operation is:

a. Within the zone of reasonableness.

b. Compensatory.

c. Justified by transportation conditions.

d. Required by public interest.

18. No showing was made that the proposed rates or any rate in an amount between the proposed and present rates violate the PU Code respecting its provisions pertaining to:

a. Long- and short-haul.

b. Preference and prejudice.

c. Unreasonable difference.

19. No showing was made that there will be any movement of traffic under the proposed rates from West Sacramento or from MZ 105.

Conclusions of Law

1. Universal's request to publish its proposed Kaiser-Granite rate should be denied.

2. Universal should be permitted to publish a reduced rate no lower than $0.63 on the Kaiser-Granite movement.

3. Universal's request to publish a reduced rate from West Sacramento and from MZ 105 should be denied.

4. Since there is a need for the reduced rate authorized by this decision the following order should be effective today.

O R D E R

IT IS ORDERED that:

1. Universal Transport System, Inc. is authorized to reduce its tariff rate for the transportation of cement, in bulk, in pneumatic trailers, minimum weight 53,000 pounds from Metropolitan Zone 134 to the Sacramento Extended Area from $0.6675 per 100 pounds to $0.63 per 100 pounds.

2. The application in all other respects is denied.

This order is effective today.

Dated NOV 17 1982, at San Francisco, California.

I dissent.

PRISCILLA C. GREW, Commissioner

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

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

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director

APPENDIX A

Comparative Summaries of Revenue and Estimated and Actual Costs MZ 134 to Sacramento

		Universal's Calculations (Taken from Exhibit 7)	Adjusted Calculations
1.	Round Trip Miles	254	254
2.	Average Speed - MPH	47.8	47.8
3.	Average En route Hours	5.31	5.31
4.	Average Load & Weigh Hours	.38	.59
5.	Average Unloading & Delay Hours	1.19	1.62
6.	Total Average Round-Trip Hours	6.88	7.52
1.	Fixed Expense ($5.39 per Hour)	$ 37.08	-
2.	Fixed Expense ($6.20 per Hour)		$ 46.62
3.	Running Expense ($0.4519 per Mile)	114.78	-
4.	Running Expense ($0.4735 per Mile)		120.27
5.	Pneumatic Expense	6.10	6.10
6.	Labor Expense	96.42	96.42
7.	Total Direct Round-Trip Expense	254.38	269.41
8.	Total Indirect Expense (16% of Direct)	40.70	43.11
9.	Gross Revenue Expense	7.01	7.01
10.	Total Direct & Indirect Expense	302.09	319.53
11.	Revenue per Trip	318.53	318.53
12.	Profit (Loss) per Shipment	$ 16.44	$ (1.00)
13.	Operating Ratio	94.8%	100.3%

are protested by Miles & Son Trucking Service, Inc. (Miles) and California Teamsters Public Affairs Council. A hearing was held on the matter on February 23 and 24, 1981 before Administrative Law Judge Pilling in San Francisco.

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Discussion - Fixed Expense - Per
Hour - Number of Total Hours Used

It would have been very helpful if not entirely determinative in deciding this issue had Universal produced evidence from Granite indicating how many loads Granite anticipated the Kaiser-Granite movement might involve. The lack of this evidence leaves an important gap in Universal's case which Universal has attempted to gloss over by giving its estimate of hoped-for future volume of traffic, to which we accord little weight. We are more inclined to accept Miles' estimate of 1982 traffic as Miles had many years experience in handling the traffic and Miles' estimate of 450 loads is more in keeping with the 1981 movement (353 loads by Miles and 26 by Universal totaling 379 loads) and the sustained economic downswing in the economy, particularly the construction industry. Therefore, we accept Miles' estimate of the probable volume of 1982 traffic in the Kaiser-Granite move as opposed to Universal's estimate and find that Universal's fixed expense should be $6.20 per hour.

Fixed Expense - Per
Hour - Number of Tractors

Universal's witness testified it uses 13 tractor-trailer units and has one additional tractor which it uses as a standby replacement. It has only 13 trailer units. In estimating its depreciation expense, it included all 14 tractors but in estimating its use factor per hour it used only 13 tractors (Exhibit 2, page 2). Miles claims that the standby tractor should have been included when computing the use factor per hour.

Discussion - Fixed Expense -
Per Hour - Number of Tractors

We would agree with Miles if the 14th tractor was used as a supplemental tractor rather than a standby replacement tractor. Since Universal will have at the maximum only 13 tractors in use at any one time, the use factor is properly calculated using only 13 tractors.

Fuel Expense

Table III of Universal's Exhibit 2 shows its fuel expense per running mile to be $.2024. This item is footnoted (Exhibit 2, page 4) to say that Universal's fuel cost is $1.12 per gallon and that its average miles per gallon (mpg) is 5 mpg. But $1.12 divided by 5 mpg does not equal \$.2024; it equals \$.224. Miles contends an arithmetical error was made and the fuel expense per running mile should be corrected to read \$.224, thus increasing the total running expense per mile to \$0.4735 from \$0.4519.

The first witness for Universal testified that Universal averages "five miles [per gallon] less fuel for pneumatic" but thought that Universal's mileage was better than 5 mpg. He stated that Universal gets 5.9 mpg on fuel efficient equipment but deferred to a subsequent Universal witness as to the correct mpg figure. The subsequent Universal witness testified that 5 mpg was Universal's historical mileage but could not explain the apparent error in mathematics. This witness deferred to a third Universal witness to explain the discrepancy. This third Universal witness stated that 5 mpg was, indeed, Universal's historical mileage but that a survey of its most recent six-month operation revealed that it was getting 5.5 mpg. She stated that dividing \$1.12 by 5.5 "comes out with 2.036 cents per gallon, which is very close to our actual costs of 2.024."

Discussion - Running Expense -
<u>Per Mile - Fuel Cost Per Mile</u>

Universal's attempted explanation of the apparent discrepancy in its fuel cost per mile calculation, rather than clarifying the situation, merely adds further uncertainty as to what that cost is. It is not uncommon for errors to creep into finished exhibits, and we are liberal in allowing exhibits to be corrected or explained at the hearing (witness, Exhibit 7). In this case, however, even if we were to accept the statement of Universal's last witness that Universal gets 5.5 mpg average, the computation still does not work out. The only logical conclusion we can make is to take the footnote on page 4 of Exhibit 2 at its face value and correct the fuel cost per mile of \$.2024 to read \$.2240 in line with the footnote explanation.

work only and approved on that basis. However, Universal Transport has seen fit to use this Rider aganst a bargaining unit carrier, which is in direct violation of the approved verbage [sic]. Therefore, unless Universal Transport corrects this problem, the Freight Division will withdraw its' [sic] approval of this Rider.

"Awaiting your earliest reply, I remain

"Fraternally yours,

"Gene Shepherd, Co-Chairman
Western Master Freight Division

"GS/rad

"cc: Universal Transport"

Discussion - Driver Labor Expense

As previously indicated, the parties agreed that actual carrier wage costs would be used to evaluate the reduced-rate proposals, rather than the use of "prevailing wage costs," as provided in the reregulation program adopted in D.82-06-021. Since no evidence was presented that the traffic from West Sacramento or from MZ 105 was bargaining unit work, we find that Universal is indisputably correct in using the wage rate and benefits set out in the rider to calculate its driver labor expense for those hauls.

We also find that Universal is correct in using the rider's wage and benefits to calculate its driver labor expense for the Kaiser-Granite haul. During the last three months it transported the Kaiser-Granite traffic and as of the date of hearing Universal was obligated to pay its drivers only in accordance with the rider. The letter (Exhibit 9) is inconclusive that there has been a change in this obligation, or, as a matter of fact, that the Rider Committee has ever acted on the rider. In the letter the Freight Division threatens to withdraw its approval of the rider. Our best interpretation of the letter is that as of the date of the letter the rider was still working its way up through the union hierarchy and nothing has been finalized as to the rider. So, for the purposes of this rate case, Universal's claim is valid that its driver labor expense for the Kaiser-Granite haul should be calculated using the wage and benefits set out in the rider.

Excessive Speeds

Miles late-filed Exhibit 10, page 3 contains summaries of the tachograms taken from Universal's vehicles when performing the 26 Kaiser-Granite hauls during the latter part of 1981 and early part of 1982. It shows that Universal's loaded equipment exceeded the 55 miles per hour maximum speed limit on the average of 1.45 hours during each 2.57-hour en route haul. The average maximum speed per haul was 64.2 miles per hour with a high of 72 miles per hour. Miles contends the "Commission will not authorize reduced rates which are based upon operations at vehicle speeds which exceed the lawful limits and data based thereon is unacceptable as support for the reasonableness of the proposed charges."

Discussion - Excessive Speeds

It is evident Universal operated at excessive speeds in handling the 26 loads and we do not condone such actions. Were its drivers paid an hourly wage, such excessive speeds would have a profound effect on Universal's labor expense by reducing that expense below what it would be if the driver stayed within the speed limit. Universal, however, pays its drivers a percentage of revenue so that the excessive speeds do not affect its labor expense. Whatever effect excessive speed has on other cost items is immeasurable based on the evidence we have before us and Miles has directed our attention to no specific costs which would be affected in particular. Therefore, we will not deny the application because of such excessive speeds.

Discussion - Needs of Commerce, Etc.

In D.82-02-134, wherein we canceled MRT 10, we stated at mimeo page 6:

> "The regulatory plan proposed by the staff is similar to the program of competitive individual carrier-filed rates we adopted by D.90663 for the transportation of general freight, except that it provides for no period of transition from minimum rates to carrier-filed rates. Such reregulation program will be reasonable for the transportation of cement."

The cancellation of MRT 10 and the adoption of carrier-filed tariff rates as the primary vehicle in regulating cement carrier rates was merely part of the Commission's trucking rate reregulation program announced in D.90663 (2 CPUC 2d 249) and carried through to D.82-02-134 and other decisions. The basis of that program is stated in D.91861 at 3 CPUC 2d 779, which reads in part as follows:

> ". . . It is our belief that carriers, as businessmen, could better serve the overall public interest if they could negotiate with shippers and submit their rates for our approval." (Emphasis added.)

Universal and Granite did negotiate for the reduced rates (see section on driver labor expense) and for that reason have satisfied the public interest requirements of PU Code § 452.

But, as shown by our calculations in Column 2 of Appendix A, the proposed Kaiser-Granite reduced rate is noncompensatory and Universal made no showing that the noncompensatory rate is justified by transportation conditions. Hence, we will withhold authority to publish the proposed rate.

General Discussion - The Kaiser-Granite Rate Reduction

The proposed reduced rate of $0.6010 in the Kaiser-Granite operation, as shown by our adjusted calculations in Column 2 of Appendix A, is too low to make the operation compensatory for

Universal. This does not mean that Universal's request for a reduced rate should be denied in its entirety. We are free to authorize any part of a requested rate reduction which we find to be compensatory and reasonable. In this case, we will allow Universal to publish a rate no lower than $0.63 for the Kaiser-Granite move. A $0.63 rate will allow Universal a gross revenue per haul of $333.90 (530 x .63) for a profit of $14.37 and an operating ratio of .958% (319.77 divided by 333.90). The rate of $0.63 will be compensatory and will be within the zone of reasonableness. It is therefore justified by transportation conditions.

Rates from West
Sacramento and MZ 105

Universal's summaries of revenue and costs covering the operation from West Sacramento and MZ 105 show that it will experience an operating ratio of 67.4% and 95.1%, respectively, in those operations. Even when its costs are increased to reflect the average loading and unloading times and fixed and running expense adjustments which we have found necessary to do in respect to the Kaiser-Granite operation, Universal will still experience a profit on each haul at an operating ratio, respectively, of 72% and 97%.

The witness for Universal testified that it had not moved any loads from Lone Star at Redwood City and West Sacramento to Granite and that Universal expected to handle only "emergency" shipments in those two proposed operations. No evidence was given on how often these "emergency" shipments might be expected to move based on past experience or future expectation, or, indeed if there ever will be such a movement.

Discussion - Rates from
West Sacramento and MZ 105

Under the circumstances, we believe the proposed reduced rates from the Lone Star locations will be "paper rates" under which