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ORIGINALDecision 82 11 073 NOV 17 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of APEX BULK COMMODITIES,)
 a corporation, for authority to)
 deviate from the otherwise applicable)
 minimum rates in the transportation)
 of Gypsum for the account of SOUTH-)
 WESTERN PORTLAND CEMENT COMPANY.)

Application 82-04-40
 (Filed April 20, 1982;
 amended June 14, 1982)

Application of APEX BULK COMMODITIES,)
 a corporation, for authority to)
 deviate from the otherwise applicable)
 minimum rates in the transportation)
 of Sinter Mix and Gypsum for the)
 account of CALIFORNIA PORTLAND CEMENT)
 COMPANY.)

Application 82-04-58
 (Filed April 26, 1982;
 amended June 14, 1982)

Steve Gale, for applicant;
James D. Martens and J. M. Jenkins, for California
 Dump Truck Owners Association; William Mirze,
 for Riverside Cement Company; Sharon A. Testman,
 for Sunrise Transportation; Alvin L. Cox, for
 General Portland, Inc.; Paul E. Pence, for
 Southwest Portland Cement Company; Philip A.
Rivera and Carol Schmidt, for Par Trucking, Inc.
 and George G. Cross, for Bulk Transportation;
 interested parties.
Russell D. Corning, for the Commission staff.

O P I N I O N

Apex Bulk Commodities (Apex), a corporation, in Application (A.) 82-04-40 and A.82-04-58, both as amended, requests authority to charge less than the minimum rates in Minimum Rate Tariff 7-A (MRT 7-A) for certain transportation described below. The California Dump Truck Owners Association (CDTOA) filed protests to each application.

The two Apex applications were consolidated for hearing with requests by Par Trucking, Inc. in A.82-04-54, as amended, and by Bulk Transportation, a corporation, in A.82-05-26, for authority to charge less than the minimum rates in MRT 7-A for certain other similar type transportation. Hearing on the four matters was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on July 22 and 23, 1982. All were submitted on the second day. Because the evidence, arguments, and positions of parties relating to the requests by each applicant were heard separately and to avoid any confusion among the matters, this decision covers the two Apex applications only, and separate decisions will be issued for each of the other two applications.

We will first set forth the general background information of record for Apex. We will then take up each of its applications separately. The conclusions and findings will relate to both matters.

Apex Background

Apex has been in business for a number of years and has had considerable experience in the transportation field, including dump truck transportation. It holds dump truck carrier, cement carrier, agricultural carrier, highway contract carrier, and highway common carrier operating rights and has certain interstate authority from the Interstate Commerce Commission. Apex's main terminal is in Whittier, and it has some equipment based in San Diego. It operates 35 power units and 40 units or sets of trailing equipment, which include semi-end and bottom dump trailers and sets of double bottom dump and pneumatic trailers. Some of its equipment is leased from Management IV, which is an independent company owned by Apex's vice president and his brother. Management IV also leases equipment to other carriers, and its lease charges to them and to Apex are the same. Apex does not use subhaulers extensively.

As of December 31, 1981, Apex had assets of \$747,589, liabilities of \$582,844, and a net worth of \$164,745. For the year 1981, it had total operating revenue of \$4,926,404 and ordinary income of \$82,295, after income taxes.

A.82-04-40

By this application, as amended, Apex requests authority to assess a rate of \$10 per ton, minimum weight 24 tons, for the transportation of gypsum in dump truck equipment for Southwestern Portland Cement Company (Southwestern) from the production plant of U. S. Gypsum Company (USGC) at Plaster City to Southwestern's plant at Victorville. The applicable minimum rate, including a 16-1/2% surcharge, for this transportation in MRT 7-A at the time of the hearing was \$16.10 per ton, and the minimum weight was also 24 tons.

Following is a summary of the evidence presented by Apex's vice president and its accountant:

1. Apex now hauls cement on a daily basis for Monolith Portland Cement Company from Monolith to a ready-mix plant in San Diego under its cement certificate at the applicable rate in Western Motor Tariff Bureau, Inc. (WMTB) Tariff 17. The equipment used for this transportation now travels empty on the 223 miles return trip. With the deviation rate, Apex would have a revenue haul of gypsum from Plaster City to Victorville for each cement haul. This would amount to approximately 500 tons of gypsum per month, or about five loads per week, and would add to Apex's business and profit.
2. A two-axle tractor with a semi-pneumatic trailer and a pull pneumatic trailer would be used for the transportation. The equipment would be based in San Diego where the drivers reside. Apex would assign additional equipment to this movement if needed.

3. Loading and unloading facilities for the fronthaul and backhaul are open 24 hours a day, Monday through Friday, which assures maximum use of equipment. Unloading would be by gravity.
4. The time for the complete round trip would be about 15 to 16 hours, including approximately 12 hours driving time and the balance for loading and unloading, fueling, and maintaining equipment. Drivers would comply with the provisions of the limitations on driving hours in Vehicle (V) Code § 21702(b) which require eight hours off after driving 12 hours consecutively or spread over 15 consecutive hours. Should the maximum driving time limitation be reached, the driver would stop for the required eight hours. Any vehicle used for this transportation would have a sleeper cab. No overtime premium or per diem allowance would be paid to drivers.
5. The proposed gypsum haul at the sought rate without the cement haul would not be profitable, and Apex would not haul it. Together they are profitable. In this regard the revenue from the present cement haul, based on the round-trip distance of 446 miles, is approximately \$1 per mile, and the revenue from this plus the gypsum haul, based on a round-trip cycle distance of 631 miles, is almost \$1.10 per mile. In both instances the cost per mile would be substantially identical.
6. Apex does not anticipate using subhaulers for this transportation. If it did, it would pay them 100% of the deviated rate.

According to the cost data developed by Apex, the route, distances, revenues, total cost, net income, and operating ratio for the proposed 631-mile round-trip cycle are as shown in the following tabulation:

<u>Route</u>	<u>Miles</u>	<u>Commodity</u>	<u>Revenue</u>
San Diego to Plaster City	104	Empty	
Plaster City to Victorville	216	Gypsum	\$240.00 ^{1/}
Victorville to Monolith	88	Empty	
Monolith to San Diego	<u>223</u>	Cement	<u>448.50</u> ^{2/}
Total miles	631		
Total revenue			688.50
Total cost			<u>543.32</u>
Net income			145.18
Operating ratio			79%

^{1/} At proposed rate of \$10/ton, 24-ton minimum weight.

^{2/} At Item 3,000, WMTB Tariff 17, Southern Territory rate of 86.25¢/100 lbs. (\$17.25/ton), 52,000 lbs. (26-ton) minimum weight.

The traffic manager of Southwestern, who has been with the company for 19 years, testified that his company uses a substantial amount of gypsum each week and that if the sought rate is authorized, it will use Apex's service.

The Commission staff presented a written opening statement of position and assisted in the development of the record. In its statement the staff asserted that it would be opposed to the proposed reduced rate unless Apex meets the standards for justifying such requests enunciated by the Commission in various policy decisions, which it summarized as follows:

1. The combined revenue from the total operation must be profitable to the carrier.
2. The combined traffic is not only expected but is assured.
3. Either the combined traffic is controlled by a single shipper or the transportation at the proposed rate is so related to the other transportation as to constitute an integrated operation.

Based on the unique facts and circumstances surrounding the transportation in issue, we are of the opinion that the application, as amended, should be granted subject to several conditions discussed below. The evidence and cost data of record presented by applicant establish that:

1. The combined revenue from the total operation, gypsum at the proposed rate and cement at the applicable tariff rate, will be profitable.
2. Apex now transports the cement from Monolith to San Diego on a daily basis and will continue to do so. Southwestern will use Apex to transport gypsum from Plaster City to Victorville at the proposed rate.
3. Both hauls are an integrated operation. There will be a cement haul for every gypsum haul. In the event this should not be so for any reason, Apex would not haul the gypsum at the proposed rate.

The main concern of CDTQA was that Apex did not present any costs for subhaulers. In this connection a guide for filing rate deviation applications was adopted by Commission Resolution TS-284 dated January 24, 1978. It provides in part that if subhaulers are to be used to provide any of the proposed transportation at a lesser rate than that sought, certain subhauler information, including their costs for providing the service, shall be furnished with the application. However, as stated by Apex's witness, his company does

not anticipate using subhaulers for any of this transportation, and if it did, it would pay them 100% of the sought rate.

To avoid any misunderstanding regarding the application of the sought rate and the possible use of subhaulers, the authority granted will include the following conditions:

1. Rate applies only when there is also a truckload shipment of cement from Monolith to San Diego at the applicable tariff rate in the same unit of equipment on the same round-trip cycle.
2. Any subhaulers employed shall be paid no less than the rate authorized without any deduction for use of Apex's trailing equipment.
3. In all other respects, the rates and rules in MRT 7-A shall apply.

A.82-04-58

By this application, as amended, Apex requests authority to provide the following transportation at the less than minimum rates shown for California Portland Cement Company (Cal Cement) to its plant at Creal.

1. Gypsum from the plant of USGC at Plaster City at a rate of \$13 per ton, minimum weight 24 tons.
2. Sinter mix, (mill scale) which is listed in MRT 7-A, from the plant of Kaiser Steel (Kaiser) at Fontana at a rate of \$9 per ton, minimum weight 24 tons.

At the time of the hearing, the applicable minimum tonnage rates, including a 16-1/2% surcharge, in MRT 7-A for the gypsum haul was \$20.88 and for the sinter mix haul was \$9.34. Both are subject to the same 24-ton minimum weight that would apply to the proposed rates.

The evidence presented by the vice president of Apex regarding the proposed gypsum haul for Cal Cement was substantially

the same as that presented by him for the one for Southwestern in A.82-04-40. The equipment to be used would be based in San Diego where the drivers live. There is a sufficient supply of cement at Monolith for hauling to San Diego to assure a return load for every gypsum haul. While the proposed gypsum transportation would not be profitable by itself, the two loads together would be. Apex would not haul the gypsum at the sought rate without the return cement haul. Drivers would comply with the limitations on driving hours in V Code § 21702(b).

The only variations in the revenue and cost data developed by Apex for the gypsum haul for Cal Cement from that shown in A.82-04-40 result from the differences in mileages and the proposed rates. The mileages for this haul are 104 empty from San Diego to Plaster City, then 286 for the gypsum haul to Creal, then 13 empty to Monolith, and then 223 for the cement haul to San Diego. For the entire cycle, the distance is 626 miles. According to the round-trip data, the revenue would be \$312 for the gypsum at the proposed \$13 per ton rate and \$448.50 for the cement at the same WMTB Tariff 17 rate for the Southwestern haul for a total of \$760.50, the cost would be \$555.67, the net income would be \$204.83, and the operating ratio would be 73%.

Similar evidence was presented by Apex's vice president for the sinter mix haul. The equipment to be used is stationed at Apex's Whittier terminal. Apex now hauls soda ash from Trona to Saugus in sufficient volume, three to four loads a day, to assure a backhaul of this commodity for every load of sinter mix. As with the gypsum, the proposed sinter mix haul by itself would not be profitable without the return soda ash haul, and Apex would not haul it at the sought rate without the backhaul.

Again Apex developed the revenue and cost data for the sinter mix haul in the same manner as for the gypsum haul in A.82-04-40. The only variations are in the mileages, the soda ash

rate, and the proposed sinter mix rate. The mileages for this haul are 44 empty from Whittier to Fontana, then 119 for the sinter mix haul to Creal, then 91 empty to Trona, then 146 for the soda ash haul to Saugus, and then 45 empty to Whittier. The total round-trip cycle is 445 miles. According to the round-trip data for this haul, the revenue would be \$216 for the sinter mix at the proposed \$9 per ton rate and \$299 for the soda ash at \$11.50 per ton, which was authorized in Rate Reduction 272, for a total of \$515, the cost would be \$392.51, the net income would be \$122.49, and the operating ratio would be 76%.

The following additional evidence regarding both proposed hauls was presented by Apex's vice president:

1. Apex does not anticipate using subhaulers for either movement. If any should be used, they would be paid 100% of the deviated rates.
2. There would be no overtime premium or layover pay for drivers on either haul.
3. It is anticipated that approximately 500 tons of each of the commodities would be transported monthly which would be at least three to five loads of each per week.
4. All loading and unloading facilities for both round trips are open 24 hours a day, Monday through Friday. This assures maximum use of equipment. All unloading would be by gravity.
5. The proposed hauls will reduce costly empty miles and add to Apex's profit. This will also increase the fuel efficiency of its operations.

Cal Cement informed the Commission by letter that it supports the application and will use Apex's service if the sought rates are granted.

The staff presented the same written opening statement of position referred to in A.82-04-40 and assisted in the development of the record. CDTQA's main concern here was also the absence of costs for subhaulers.

We are of the opinion, based on the special facts and circumstances of record, that the proposed rates should be granted subject to similar conditions as those stated for the A.82-04-40 gypsum haul. According to the evidence, the combined revenue for each of the round trips will be profitable, Apex now handles both backhauls and will continue to do so, and both hauls in each of the round-trip cycles are an integrated operation.

Findings of Fact

1. Applicant seeks authority to assess rates less than the minimum rates in MRT 7-A for the transportation of: (1) gypsum from the plant of USGC at Plaster City to Southwestern at Victorville and to Cal Cement at Creal, and (2) sinter mix from the plant of Kaiser at Fontana to Cal Cement at Creal.

2. The commodities will be transported in dump truck equipment and will be gravity unloaded.

3. Apex would transport approximately 500 tons per month at the sought rates on each of the three proposed hauls.

4. Each of the three proposed hauls at the sought rates are to be handled as part of a round-trip cycle with a shipment of: (1) cement from Monolith to San Diego at the applicable tariff rate for all Plaster City to Victorville or Creal gypsum hauls, and (2) soda ash from Trona to Saugus at the rate authorized in Rate Reduction 272 for every Fontana to Creal sinter mix haul. Each round-trip cycle is to be handled by the same unit of equipment.

5. All loading and unloading facilities for each of the three round-trip cycles described in Finding 4 are open 24 hours per day, Monday through Friday.

6. Cost data of record indicate that the proposed gypsum and sinter mix transportation at the sought rates will be compensatory provided it is handled as part of a round-trip cycle as described in Finding 4.

7. Apex does not intend to use subhaulers for any of the transportation in issue. Should it do so, it intends to pay them 100% of the sought rates.

8. The transportation in issue involves unique circumstances.

9. The sought rates are reasonable provided the proposed gypsum and sinter mix shipments are transported as part of round-trip cycles as described in Finding 4.

10. The total time for at least some of the round-trip cycles in issue may exceed the limitations on driving hours in V Code § 21702(b) unless the rest time stated in the section is taken when required.

11. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusions of Law

1. A.82-04-40 and A.82-04-58, both as amended, should be granted to the extent set forth in the following order.

2. Since transportation conditions may change, this authority should expire in one year.

3. This order should be effective on the date signed because there is an immediate need for rate relief.

O R D E R

IT IS ORDERED that:

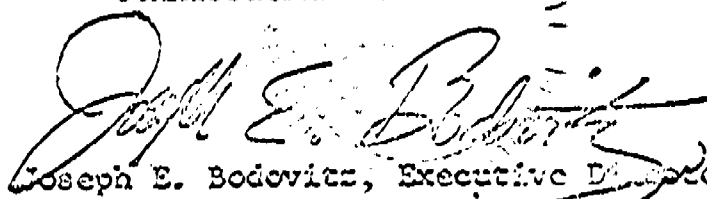
1. Apex Bulk Commodities (Apex), a corporation, may depart from the rates in MRT 7-A by charging not less than the rates in Appendixes A, B, and C.
2. This authority shall expire one year after the effective date of this order.
3. Apex shall comply with the limitations on driving hours in Vehicle Code § 21702(b).

This order is effective today.

Dated NOV 17 1982, at San Francisco, California.

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

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


Joseph E. Bodovitz, Executive Director

APPENDIX A

Carrier: Apex Bulk Commodities (Apex), a corporation.

Commodity: Crude gypsum, not further processed than crushed.

Origin: U. S. Gypsum Company, Plaster City.

Destination: Southwestern Portland Cement Company, Victorville.

Rate: \$10 per ton.

Minimum Weight: 24 tons.

Conditions:

1. Rate applies only when there is a truckload shipment of cement from Monolith to San Diego at the applicable tariff rate in the same unit of equipment on the same round-trip cycle.
2. Any subhauler employed shall be paid no less than the rate authorized without any deduction for the use of Apex's trailing equipment.
3. In all other respects, the rates and rules in Minimum Rate Tariff 7-A shall apply.

(END OF APPENDIX A)

APPENDIX B

Carrier: Apex Bulk Commodities (Apex), a corporation.

Commodity: Crude gypsum, not further processed than crushed.

Origin: U. S. Gypsum Company, Plaster City.

Destination: California Portland Cement Company, Creal.

Rate: \$13 per ton.

Minimum Weight: 24 tons.

Conditions:

1. Rate applies only when there is a truckload shipment of cement from Monolith to San Diego at the applicable tariff rate in the same unit of equipment on the same round-trip cycle.
2. Any subhauler employed shall be paid no less than the rate authorized without any deduction for the use of Apex's trailing equipment.
3. In all other respects, the rates and rules in Minimum Rate Tariff 7-A shall apply.

(END OF APPENDIX B)

APPENDIX C

Carrier: Apex Bulk Commodities (Apex), a corporation.

Commodity: Mill scale (sinter mix).

Origin: Kaiser Steel, Fontana.

Destination: California Portland Cement Company, Creal.

Rate: \$9 per ton.

Minimum Weight: 24 tons.

Conditions:

1. Rate applies only when there is a truckload shipment of soda ash from Trona to Saugus at the rate authorized in Rate Reduction 272 in the same unit of equipment on the same round-trip cycle.
2. Any subhauler employed shall be paid no less than the rate authorized without any deduction for the use of Apex's trailing equipment.
3. In all other respects, the rates and rules in Minimum Rate Tariff 7-A shall apply.

(END OF APPENDIX C)