

Decision 83 02 077 FEB 16 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Fidelity  
 Transportation Corp. and Willie O.  
 Cooksey (dba California  
 Transportation) for authority to  
 depart from the minimum rates,  
 rules and regulations of  
 Minimum Rate Tariff No. 17-A.

Application 83-01-34  
 (Filed January 18, 1983;  
 amended January 25, 1983  
 and February 9, 1983)

O P I N I O N

By this application, as amended, Fidelity Transportation Corporation (Fidelity) requests authority to charge less than the applicable rates in Minimum Rate Tariff 17-A (MRT 17-A) for the transportation of rock and sand from the Kaiser plant at Sisquoc to a construction site located six miles within Vandenberg Air Force Base for the account of Ball, Ball and Brosamer, Inc. The material will be used in the Runway Reconstruction Project currently in progress at the base. The runway is used for the space shuttle program. Ball, Ball and Brosamer, Inc. is the general contractor for the project which is being supervised by the Army Corps of Engineers.

By amendment filed January 25, Willie O. Cooksey, originally an applicant, was deleted as a party to this proceeding.

Fidelity states that the first phase of dump truck transportation for the project took place during the period July-September 1982. Cooksey was the prime carrier on phase one transportation having engaged Fidelity to perform the large majority of the movements. Fidelity will operate as prime carrier on this second (and final) phase of the rock and sand transportation.

Transportation is expected to begin in February and to total between 100,000 and 120,000 tons. Fidelity believes the current minimum rate applicable to this transportation is \$3.06 per ton; the carrier proposes to assess a rate of \$2.80 per ton, minimum weight 26 tons.

Fidelity believes that the data set forth in Appendix B to the application relating to the carrier's cost for the proposed transportation service conclusively demonstrate an operating ratio of under 90% for nine units of equipment which it has used and will use on this haul; that no operating costs have increased since the transportation began last July; and that in fact fuel costs have recently declined.

Fidelity cites several factors underlying the favorable circumstances surrounding the project:

1. A high volume movement, having required already the transportation of over 125,000 tons of concrete aggregates on the completed phase one.
2. A high frequency of trips, drivers transporting typically 6 to 7 loads per day.
3. Efficient loading at the Kaiser plant at Sisquoc where loading starts at 5:00 a.m. and continues at least until 3:00 p.m. and often until 5:00 p.m. Kaiser has dedicated two loaders to work in connection with the project; consequently, carriers do not have to wait for loaders and are thus able to avoid congestion.
4. Weighing and weight slips are computerized.
5. In case of breakdown of facilities, Kaiser maintains a 15,000-ton stockpile of aggregates, rendering carrier delays highly improbable.

These very favorable circumstances, Fidelity asserts, have resulted in an average loading time of five minutes from plant entry to plant exit. Fidelity asserts the loaded running time from

Kaiser to destination is about 45 minutes; that unloading at Vandenberg Air Force Base averages 8 minutes; and that average return time is 40 minutes, producing a total trip time of 98 minutes. Fidelity has included in the application representative freight tags which show loading, unloading and running times and which seem to confirm the carrier's statements regarding transit and terminal end times.

Fidelity has engaged and will continue to engage subhaulers in connection with the project. Subhaulers pulling their own trailers will be paid 95% of the sought rate; those pulling Fidelity trailers will be assessed a 17½% of revenue trailer rental charge.

Fidelity requests that the application be granted by ex parte action; however, should it be determined that a hearing on the matter is required, it urges the Commission to issue an interim order authorizing the sought rate so that transportation on the second phase will not be delayed.

Fidelity's revenue and expense statement for the transportation in question is shown below in Table 1.

Table 1

Revenue & Expense Statement  
Destination V.A.F.B. (Per Load)

	<u>Minutes</u>	<u>Miles</u>
1 Loading Kaiser	5	-0-
2 Run time - Kaiser	45	30
3 Unloading at VAFB	8	-0-
4 Run time - VAFB to Kaiser	<u>40</u>	<u>30</u>
	98	60

Development Cost to 100% Ratio:

	<u>Revenue</u>	
5 Equipment Cost - 60 miles @ .5812 per mile	\$34.87	
6 Driver Cost - 98 min. @ .2527 per min.	<u>24.76</u>	
7 Total Direct Cost	\$59.63	91.32%
8 Indirect Cost	<u>\$ 5.67</u>	8.68%
9 Total Cost	\$65.30	100.00%
10 Freight Revenue - \$2.80 per ton x 26.0 ton =	\$72.80	
11 Operating Profit	\$ 7.50	10.30%
12 Operating Ratio		89.70%

It will be noted that the carrier projects a profit of \$7.50 per load, which equates to an operating ratio of 89.7%.

On January 28, the California Dump Truck Association (CDTOA) filed its formal protest to the application. CDTOA refers to our Rule 42.1 as the basis for its protest. This rule provides that transportation performed under conditions which are unusually favorable or substantially different from those considered in establishing the minimum rates may justify authorization of a rate lower than the established minimum rate. CDTOA does not believe

these conditions are present in the circumstances underlying Fidelity's application. It believes the transportation proposed by Fidelity is typical for construction projects included in developing MRT 17-A cost developments.

CDTOA alleges the following deficiencies or infirmities exist in connection with Fidelity's application:

1. Proper documentation regarding time, distance and route of travel along with speed restriction postings.
2. Trip traverses showing time and mileages at major intersections along the route of movement.
3. A description of the type of delivery, i.e., whether to a readymix plant or a windrow-type delivery.
4. A description of type of roadway beyond the Vandenberg Air Force Base Main Gate, with any speed restrictions in effect there.
5. A basis for the 1,500 hours figure selected as annual working hours for both Fidelity and subhaulers.
6. A showing of owner wages for repair and servicing of equipment.
7. An indication of actual annual fuel expense, thereby including terminal off-route costs.
8. A basis for the 2% indirect expense shown in connection with subhaulers.
9. An indication of the types and number of units of equipment operated by each subhauler.
10. A basis for the 4.7 miles per gallon figure used.
11. Use of varying hourly wage rates by the indicated subhaulers.

Fidelity filed its formal reply to CDTOA's protest on February 4, 1983. Fidelity believes that the protest does not establish a basis for withholding issuance of an ex parte order granting the sought authority. Fidelity asserts the protest consists

essentially of a number of questions rather than a presentation of evidence or allegations that the proposed rate is unreasonable or unprofitable.

Fidelity also refers us to our Rule 42.1, and points to the high-frequency of trips expected in connection with the project, resulting in favorable use factors. The carrier asserts that drivers will achieve about 10.6 revenue hours for each day worked; that on a weekly basis this amounts to 53 revenue hours. It believes that this level of use constitutes a special circumstance justifying a deviation. Fidelity also asserts that this level of equipment use on an annual basis would exceed 2,500 hours, whereas Fidelity's own cost studies are based upon a much more conservative figure of 1,500 hours. Fidelity also notes that Commission staff cost studies for the Santa Barbara/San Luis Obispo County Hauling included in MRT 17-A are based upon a use factor of 1,800 hours.

Fidelity points to the already cited highly efficient loading conditions which characterize the project, and notes that staff cost studies for this area provide for 18-1/2 minutes of terminal end time, compared with its own experience of 13 minutes.

Fidelity also asserts that this high volume movement will provide a source of steady work for the industry during two of the slowest months of the year.

Fidelity states that its proposed rate is based upon actual performance data -- consisting of traverse and terminal end times gathered during the first phase of the haul -- and not on speculation.

Fidelity's reply answers CDTOA's question concerning the type of destination, stating that the facility there is in fact a batch plant.

In order to allay protestant's concern that Fidelity's application has not presented cost data in a manner which lends itself to a ready comparison with costs developed in the minimum rate

studies, Fidelity has set forth in its reply the appropriate data, which it alleges is already available in its application, in the format used in connection with minimum rate proceedings. This data is summarized in Table 2 below. It has shown total rates per ton, including profit, developed on the basis of 1,500 hours, 1,800 hours, and 2,500 hours.

Table 2

	<u>At Use Factor</u>		
	<u>1500 hrs</u>	<u>1800 hrs</u>	<u>2500 hrs</u>
Distance: 30 miles (one way miles)			
Round Trip (Running) Time: 85 minutes			
Cost per Ton Mile	.0300	.0300	.0300
Cost per Ton Minute	.01678	.01574	.01430
Mileage Cost per Ton	.9000	.9000	.9000
Time Cost per Ton	1.4263	1.3379	1.2155
Terminal End Cost per Ton	<u>.2241</u>	<u>.2106</u>	<u>.1919</u>
Total Cost per ton	<u>2.5504</u>	<u>2.4485</u>	<u>2.3074</u>
Rate per Ton	<u>\$2.77</u>	<u>\$2.66</u>	<u>\$2.51</u>

Fidelity believes, based upon this showing, that the sought deviation rate of \$2.80 per ton is patently reasonable.

The Commission staff and protestant had expressed concern over actual transit times indicated by Fidelity in its application. To allay any doubts, Fidelity has invited a member of the staff to ride in one of the carrier's trucks and personally observe total round-trip times.

On February 10, 1983 Chuck Wilcox of the Commission's Santa Barbara office drove over the route to be traversed by the trucks on this job in order to determine the running time from origin to the dump site and return. He made two trips in a state car, observing

all traffic laws, and the conditions were ideal weatherwise. In addition, his runs were made with light traffic (between 9 a.m. and 1 p.m.), and because the job is not now operating, there were no trucks on the road. He attempted to maintain the maximum speed limit whenever possible.

For the first trip, Wilcox's total running time was 87 minutes, and for the second trip, total running time was 88 minutes.

Staff has been informed by the California Highway Patrol that when this job begins, they intend to periodically monitor it to ensure that the trucks do not violate the speed laws.

Concerning protestant's argument that Fidelity failed to reflect time spent by owner-operators servicing their vehicles, Fidelity asserts that the costs included in the revenue and expense statements of the subhaulers are the actual total annual expenses for repair and maintenance. Fidelity believes the question whether to include an individual's personal time in its cost development is a prerogative of each subhauler as an independent businessman. But Fidelity maintains that the inclusion or exclusion of such a factor could not seriously affect the profitability of the transportation.

With respect to fuel costs, Fidelity alleges that during Phase I of the project it had charged subhaulers \$1.15 per gallon, but that it presently charges only \$1.10. Fidelity asserts, therefore, that this reduced fuel cost will mean that subhauler costs will be lower than as shown in their individual revenue and expense statements. Fidelity believes that this reduction in fuel expense amounts to between 65¢ and 85¢ per trip. Fidelity has employed the same figure of 4.7 miles per gallon as was shown in the most recent Commission cost study.

Protestant questioned the use of a 2% indirect expense figure for owner-operators. Fidelity meets this issue by referring us to Decision (D.) 83-02-031, dated February 2, 1983 in Application



(A.) 82-03-50 and A.82-04-35, where authority was granted to pay subhaulers rates lower than contained in MRT 7-A, based in part upon a subhauler indirect expense of 2%.

CDTOA questions the use of varying imputed labor costs for owner-operators. Fidelity states that this is true of five owner-operators, three having chosen a wage level higher, and two lower than \$10.

Fidelity has satisfactorily answered the individual points raised in CDTOA's protest. The costs appear to be correctly developed and the rate of \$2.80 per ton will produce a reasonable profit on the transportation in question. Furthermore, the cost data furnished in connection with the 26 independent contractor subhaulers who desire to perform this transportation at the deviated rate for Fidelity appear reasonably compensatory, producing net profits per load ranging from a low of \$2.31 to a high of \$18.64. All but five of the 26 subhaulers intend to pull Fidelity trailers.

Almost all of the independent owner-operators have agreed to work for \$10 per hour; one has stipulated a wage of \$15 per hour, which translates to a net profit per load of \$3.72; another for \$12.50 per hour; one for \$9 and one for \$11.

However, while the revenue and expense statements for the individual owner-operators and for Fidelity show that the operation will make money at the proposed rate, the entire proposal is based upon a total round-trip time of 98 minutes. If actual time takes in excess of 98 minutes, it follows that the carriers' individual net profits per load will be reduced.

We have recently encouraged dump truck carriers who find themselves operating in favorable cost circumstances to request authority to depart from minimum rates. (Decision 82-10-028 dated October 6, 1982, Case 5437, Petition 315, et al.) We further advised the industry that we would endeavor to process such deviation applications as expeditiously as possible.

The Commission's Transportation Division has reported that a member of the staff has verified the carrier's allegation that the total transportation service, exclusive of terminal end time, can be performed in approximately 85 minutes while observing posted speed limits.

In order to further allay the concerns of protestant and staff concerning adequate compensation to subhaulers, Fidelity has agreed by its second amendment to assess independent owner-operators only 17.5% of gross revenue for trailer rental instead of 20%. Fidelity has further agreed to indemnify the independent owner-operators by guaranteeing that in the event an average of 98 minutes per round-trip is not achieved on an average monthly basis, the owner-operators will nevertheless be compensated for time in excess of 98 minutes on the basis of the hourly rate named in MRT 7-A. This provision appears reasonable.

The staff has informed us that the California Highway Patrol has advised it intends to monitor this transportation in order to ensure that posted speed limits are observed.

In granting the application we will base compensation to subhaulers on times determined from shipper's computerized scale sheets. On the last trip of each day performed by subhaulers, drivers will be required to enter the time of commencement of unloading on the shipping document.

This matter did not appear on the Commission's Public Agenda as required by § 306(b) of the Public Utilities Code. However, the application was noticed on the Commission's Daily Transportation Calendar, and copies of the application and amendments were served on four carrier associations. An emergency need exists to issue this decision as soon as possible because the proposed transportation is scheduled to commence immediately.

Findings of Fact

1. The proposed transportation involves unique circumstances.
2. Fidelity has furnished performance and cost data underlying the circumstances surrounding the proposed transportation for both its own equipment and drivers, and for independent owner-operators who will be engaged.
3. The performance and cost data furnished by Fidelity show that the rate of \$2.80 per ton, minimum weight 26 tons per load, will be compensatory.
4. Fidelity's offer to assess only 17-1/2% to subhaulers for trailer rental, and to compensate them for excess time when average round-trip time exceeds 98 minutes, on the basis of 75% of hourly rates named in MRT 7-A when pulling Fidelity's trailers, and 95% of said rates when pulling their own trailers is reasonable and should be adopted.

Conclusions of Law

1. The application, as amended, should be granted. A public hearing is not necessary.
2. The authority should be conditioned by requiring Fidelity to compensate subhaulers on the basis of Finding of Fact 4, with the average time computed on a biweekly basis instead of monthly, as an added precaution. However, total subhauler compensation need not exceed the amount which subhaulers would have received at the applicable zone rate.
3. Because there is an immediate need for this authority, the following order should be made effective today.

O R D E R

IT IS ORDERED that:

1. Fidelity is authorized to depart from the provisions of MRT 17-A to the extent set forth in Appendix A.
2. In all other respects, the provisions of MRT 17-A shall apply.

3. If Fidelity engages subhaulers other than those named in Appendix A, such carriers shall be paid in accordance with the provisions of MRT 17-A.

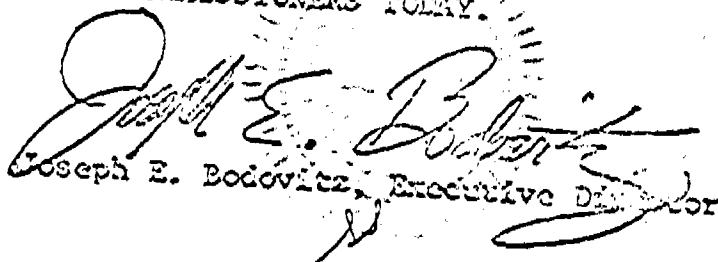
4. The staff of the Transportation Division is directed to make periodic on-site inspections and examine the records of the applicant and its subhaulers to determine compliance with the Commission's rules and regulations, including the documentation rules provided in Item 400, MRT 17-A.

This order is effective today.

Dated FEB 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
PRISCILLA C. CREW  
DONALD VIAL  
Commissioners

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

  
Joseph E. Bodovitz, Executive Director

APPENDIX A  
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Carrier: Fidelity Transportation Corporation  
Commodity: Rock, Sand and Gravel  
From: Kaiser Plant, Sisquoc (Production Area 42-A)  
To: Vandenberg Air Force Base  
Minimum Weight: 26 tons per load  
Rate: \$2.80 per ton  
Conditions:

1. In connection with transportation performed by the following subhaulers, Fidelity shall compensate such carriers on the basis of the rate authorized less 5%, and less an additional 17½% when pulling Fidelity's trailers.

Schaufel, Donald J.	134,407	Dysart, Elmer W.	103,236
Fontana, Leo	100,812	Willis, William	110,021
Davidson, Wendell	134,171	Farr, Morrill N.	104,573
Byrd, Marvin E.	127,423	Wright, Chester B.	102,518
Zimmerman, Edmund C.	93,861	Newsome, Billy J.	88,802
Lightsey, Wilbur L.	133,313	Gotchal, Mike	97,949
Villines, Billy Gene	97,035	Johnson, Harrell	96,654
Lona, Jack K.	135,117	Omo, Thern J.	73,941
Davidson, Ted D.	136,183	Tiboni, Frank D.	138,519
St. Clair, Duane E.	81,278	Myer, Edward	112,665
Harris, Robert	137,713	Crosby, LaVern P.	119,139
Gotchal, Ross	62,389	Rock Transport	136,434
Kendrick, Steven	137,119	(Herbert R. Davis by	
Loretz, Allan D.	139,627	Jack C. Ecroyd)	

APPENDIX A  
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2. In the event average round-trip times, calculated on a biweekly basis, experienced by subhaulers shown in Condition 1 exceed 98 minutes, such carriers shall be paid 75% of the 5-axle, Southern Region hourly rate contained in Item 390 of MRT 7-A for the time determined in excess of 98 minutes when pulling Fidelity's trailers, and 95% of said rate when pulling their own trailers, for such excess time. However, total compensation need not exceed, in the aggregate, the amounts which subhaulers would have received at the applicable MRT 17-A zone rate.
3. Loading, unloading and running times calculated in connection with this transportation shall be based upon data contained on shipper's scale sheets. Subhaulers shall enter on the shipping document each day the time of commencement of unloading on the last trip.

(END OF APPENDIX A)

The Commission's Transportation Division has reported that a member of the staff has verified the carrier's allegation that the total transportation service, exclusive of terminal end time, can be performed in approximately 85 minutes while observing posted speed limits.

In order to further allay the concerns of protestant and staff concerning adequate compensation to subhaulers, Fidelity has agreed by its second amendment to assess independent owner-operators only 17.5% of gross revenue for trailer rental instead of 20%. Fidelity has further agreed to indemnify the independent owner-operators by guaranteeing that in the event an average of 98 minutes per round-trip is not achieved on an average monthly basis, the owner-operators will nevertheless be compensated for time in excess of 98 minutes on the basis of the hourly rate named in MRT 7-A. This provision appears reasonable.

The staff has informed us that the California Highway Patrol has advised it intends to monitor this transportation in order to ensure that posted speed limits are observed.

In granting the application we will base compensation to subhaulers on times determined from shipper's computerized scale sheets. On the last trip of each day performed by subhaulers, drivers will be required to enter the time of commencement of unloading on the shipping document.

This matter could not be processed in time for inclusion on the public agenda. However, the application was noticed on the Commission's Daily Transportation Calendar, and copies of the application and amendments were served on four carrier associations. An emergency need exists to issue this decision as soon as possible because the proposed transportation is scheduled to commence immediately.

APPENDIX A

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3. Loading, unloading and running times calculated in connection with this transportation shall be based upon data contained on shipper's scale sheets. Subhaulers shall enter on the shipping document each day the time of commencement of unloading on the last trip.

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