

Decision 83 02 078 February 16, 1983

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Barbara L. Bibb, for)
authority to deviate from the)
minimum rates established in)
Minimum Rate Tariff 17-A for the)
transportation of crushed)
aggregate base for the account of)
Best Western Paving, Inc. under)
Section 3666 of the Public)
Utilities Code.)

Application 82-11-51
(Filed November 24, 1982;
amended January 6, 1983)

INTERIM OPINION

By this application as amended, Barbara L. Bibb, an individual doing business as Dispatch Trucking (Dispatch), requests authority to charge less than the applicable rate in Minimum Rate Tariff 17-A (MRT 17-A) for the transportation of crushed aggregate base from Conrock Company, Irwindale to Berths 121-126 (A.P.L. Terminal site), Los Angeles Harbor for the account of GOAL, Inc. doing business as Best Western Paving Company, a subcontractor for Continental-Meller Company which holds a contract with the Los Angeles Harbor Department to provide grading and asphaltic concrete paving at this harbor location. Approximately 412,000 tons are to be transported over a 13-1/2-month period.

In support of the sought authority, the application asserts that special circumstances exist, including favorable loading, unloading, and route conditions, and better than average

use of equipment resulting from the operation of two shifts. It states that, based on Dispatch's past experience on similar projects, the proposed rate is reasonable.

While no actual performance data for the transportation in issue were submitted, an analysis of the proposal was made using Dispatch's projected performance times and the most recent operational costs developed in Case 9819 - Pet. 52. The analysis indicated that the transportation under the proposed reduced rate may reasonably be expected to be profitable.

Dispatch operates 15 sets of bottom-dump trailers. Subhaulers would provide all power equipment and some of the trailing equipment for the proposed transportation. By amendment, Dispatch has submitted cost and operational data for a number of subhaulers supporting this application as required by Commission Resolution TS-284.

It has been the policy of the Commission generally to require carriers seeking a deviation from minimum rates to furnish data based upon actual performance of the transportation prior to authorizing the reduced rate. Here, because commencement of the public works harbor project is imminent, the Commission staff

recommends that the requested deviation be granted for an interim period of 120 days, including the request to pay subhaulers on the basis of the deviated rate, subject to the following conditions:

1. Unless appropriate cost showing for Dispatch and for subhaulers is furnished, no continuation of the authority will be authorized.
2. Dispatch agrees to pay subhaulers the full amounts provided in MKT 17-A for all transportation subject to this order in the event that results of operations during an appropriate test period should show the relief not to be justified.
3. Dispatch agrees to file, on or before the 25th day of each month following the calendar month in which transportation was performed, a statement, certified under penalty of perjury, whether all subhaulers engaged in the transportation have been paid in accordance with those provisions of Item 460, Minimum Rate Tariff 17-A, which relate to time of payment and if any of them have not been paid any amount due, their names and the reasons for such failure to pay will be shown.
4. The acceptance by Dispatch of the interim authority is evidence of its agreement to these conditions.

We agree with the staff recommendations. An appropriate test period would be the first 750 loads transported at the interim deviated rate. For each load transported, Dispatch shall furnish

the Commission with the information listed in attached Appendix B, which includes vehicle and driver identification, time and mileage, loading and unloading data, and relief and breakdown time.

The application and amendment were listed on the Commission's Daily Calendars of December 1, 1982 and January 7, 1983, respectively.

Formal protests have been filed by California Carriers Association, California Dump Truck Owners Association, and Lindeman Bros., Inc. (Lindeman). In an amendment to the application applicant has responded to the major points of the protests (subhauler's costs and operating performance data). However, Lindeman's main point of issue is the equipment utilization and productivity. Lindeman argues that the best evidence would be the data developed from actual operations and objects to an interim decision authorizing the transportation at the reduced rate.

Staff finds that the operational data, as amended, and the data presented by the subhaulers detailing their operational costs, indicate that performance under the reduced rate would be profitable. However, the staff recommends that an interim order contain protective provisions that would require payments to subhaulers as provided by MRT 17-A if performance under the reduced rate is not profitable.

Dispatch maintains it is ready and able to prove its statements and requests that interim authority be granted to justify the request. The following interim order does provide for a public hearing for the presentation of the financial and performance data referred to by the protestants.

This matter appears on the Commission's Public Agenda without notice as required by Section 306(b) of the Public Utilities Code in order to provide a vehicle for the application of less than minimum rates for the transportation of crushed aggregate base for the public works harbor project scheduled to start this month. This is an unforeseen emergency in that there is an immediate need to provide the relief sought.

Because of the urgent need for the interim authority, this order will be made effective on the date it is issued.

Findings of Fact

1. The proposed transportation involves unique circumstances.
2. Although Dispatch has not furnished actual performance times and cost data for the proposed transportation, some cost information has been provided, and based on this information, Dispatch's costs for this transportation are less than those used to set the rates in MRT 17-A.

3. Subhaulers are to provide all power equipment and some trailing equipment for the proposed transportation.

4. The application contains the signatures of 122 carriers seeking to perform subhauling services. No cost or operating data were furnished for these carriers.

5. The amendment contains cost and operating performance data for 40 carriers seeking to perform subhauling services.

6. Subject to further review upon consideration of evidence which may be received at a public hearing and the conditions set forth in the following order, the proposed rate is reasonable.

Conclusions of Law

1. Dispatch should be granted interim authority for a period of 120 days as provided in the following order.

2. A hearing should be scheduled in this proceeding at which Dispatch should present: (a) performance and cost data experienced by Dispatch and the subhaulers used in performing the transportation in issue, and (b) other material evidence in support of the sought authority.

3. Because there is an immediate need for the interim authority, the following order should be made effective today.

INTERIM ORDER

IT IS ORDERED that:

1. Barbara L. Bibb, doing business as Dispatch Trucking, may depart from the rates in MRT 17-A by charging not less than the rate in Appendix A, subject to the following conditions:

- a. Unless appropriate cost showing for Dispatch and for subhaulers are furnished, no continuation of the authority will be authorized.
- b. Barbara L. Bibb, dba Dispatch Trucking shall pay subhaulers the full amounts provided in MRT 17-A for all transportation subject to this order in the event that results of operations for the first 750 loads transported at the authorized rate should show the relief not justified.
- c. Barbara L. Bibb, dba Dispatch Trucking shall file, on or before the 25th day of each month following the calendar month in which transportation was performed, a statement, certified under penalty of perjury, whether all subhaulers engaged in the transportation have been paid in accordance with those provisions of Item 460, Minimum Rate Tariff 17-A which relate to time of payment, and if any of them have not been paid any amount due, their names and the reasons for such failure to pay shall be shown.
- d. Barbara L. Bibb, dba Dispatch Trucking shall furnish the Commission with the information listed in Appendix B within ten days after the last load referred to therein is delivered.

- e. The acceptance by Barbara L. Bibb, dba Dispatch Trucking of the interim authority is evidence of her agreement to these conditions.

2. This authority shall expire 120 days after the effective date, unless sooner cancelled by the Commission after hearing.

3. A public hearing on this application will be scheduled for the receipt of evidence regarding: (1) performance and cost data experienced by Dispatch and subhaulers it engages in performing the transportation in question, and (2) other material issues, including determination of a reasonable rate for the future for the transportation in issue should the actual performance and cost data not support the rate authorized.

4. The staff is directed to monitor the transportation in question to ensure that the subhaulers are being paid within the time frame set forth in Item 460 of Minimum Rate Tariff 17-A. Upon receipt of evidence from the staff that the subhaulers are not being timely paid, the Commission will consider suspending this authority granted by this order.

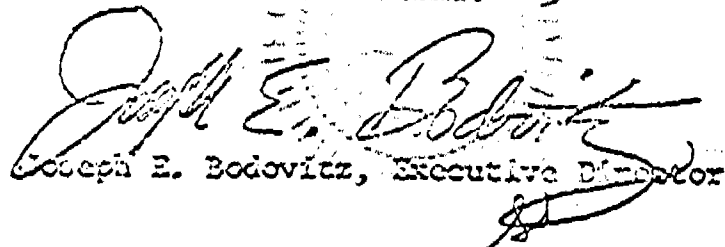
This order is effective today.

Dated February 16, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. Bodovitz, Executive Director

APPENDIX A
Page 1

Carrier: Barbara L. Bibb, dba Dispatch Trucking
Commodity: Crushed Aggregate Base
From: Conrock Company, Irwindale
To: Los Angeles Harbor - Berths 121-126
Minimum Weight: 25 tons per unit of equipment
Rate: \$3.40 per ton

Conditions:

1. The minimum weight shall apply per unit of carrier's equipment consisting of a tractor and one or more gravity dump semi- or full trailers.
2. Applicant has indicated that subhaulers are necessary and will be engaged, but applicant has not submitted costs for all of the subhaulers. Therefore, if any of the below-named subhaulers are employed, they shall receive 95% of the deviated rate authorized. If applicant provides trailing equipment, she may deduct an additional 20% for the use of the trailing equipment.
3. If any subhaulers other than those named on pages 2 and 3 of this Appendix are employed, they shall be paid not less than the authorized deviated rate.

APPENDIX A
Page 2

T-124,500 Mark H. Uyekawa	T-129,512 Payne Trucking
T-139,100 Otto Lugo & Robert Taylor	T-130,613 Rascon & Sons Trucking
T-130,301 Viking Trucking	T-125,313 H & P Trucking
T-135,301 John Chavira	T-100,414 Raul D. Soto
T-136,002 O. M. Trucking	T-130,714 Tom Wetzel Trucking
T-139,102 A. F. & J. deLeon	T- 67,214 Ronald J. Christiansen
T-128,803 Phuong T. Le	T-118,114 Mark IV Trucking Co.
T-109,305 Cleveland & Sons	T- 81,915 Joe Mann
T- 97,407 Boyd E. Watkins, Jr.	T-132,817 Griffin Trucking
T- 41,108 Riphagen & Sons	T-136,318 Robert E. Peterson
T- 84,909 Phillip Alaimo	T- 83,919 Harold W. Goodman
T-126,209 Ronald D. Brown	T-135,322 Daryle W. Goodman
T-130,610 Marshall Hayden	T- 90,823 Carl E. Vaughan
T- 90,112 Enio Ranzolin	T-132,823 U. S. Trucking
T-137,028 Bennett W. Howard	T-132,250 Marion C. Maloy
T-115,528 Wayne D. Mardin	T-138,053 Jennie Chambers
T- 68,529 John/Margie Norwood	T-132,558 S & J Trucking
T- 79,229 Frederick Morris	T-121,659 JRS Truck Line
T-109,429 Ruben Lomeli	T-126,559 K & S Equipment
T-133,432 Milton H. Boy	T- 94,460 B & P Freight & Produce
T-103,732 Jennings Trucking Co.	T- 60,861 Robert L. McCool
T-124,932 Eladio Becerra	T-130,862 Williams Trucking
T-129,833 Howard Beech	T-134,763 John E. Haynes
T-121,034 Ayala & Sons	T- 84,964 Richard Amparan
T-118,835 B & A Trucking	T- 18,964 Stanley A. Cunningham
T-139,135 Robert E. Binger	T-134,965 Fred Wright, Jr.
T-130,137 Hector Carrillo Trucking	T-102,066 McCloskey & Sons
T- 95,737 Boyd Trucking	T-136,466 Toles Trans.
T-105,937 Tyrone Sheperd	T-137,366 Thomas C. McGee
T-124,838 Kregers Trucking	T- 84,169 John W. Carlson
T- 82,739 Fred Tedford	T-133,669 Z. Lara Trucking
T- 95,442 B & E Trucking	T-123,471 Kruizneg Trucking
T-137,242 Baber Brothers	T-125,872 Tom Montgomery
T-118,142 D. J. Chambers Trucking	T-138,772 Forrest M. Perry
T-131,343 Miguel C. Elias	T- 69,573 Roy R. Martin
T- 92,243 Bobby D. McGrady	T-118,875 Orantes Trucking
T-136,643 Roland & Son	T-124,577 L & B Bibb Trucking
T-132,044 Alan J. Hogan	T-125,178 Ken Williams
T-134,944 Rhodes Bros., Inc.	T-134,379 Willie B. Hood
T-115,144 Smith & Son	T-125,179 Parker Trucking
T-136,455 T N P Trucking	T-135,579 Albert R. Steveson

APPENDIX A
Page 3

T- 77,744	Santiago C. Arvizu	T-114,980	James M. Owen
T-137,844	M & B Trucking	T-130,781	Militello Trucking
T-131,245	Allen Lee	T-132,581	R. E. Kist Trucking Co.
T- 86,446	Bobbie F. Martin	T- 32,882	Lester E. Bonty
T- 97,546	Roadway Construction Co., Inc.		
T- 74,347	Virgil L. Hampton	T-119,583	Bivens Trucking
T-125,447	Robert H. Jones	T-134,184	Allen Millender
T-126,747	Russell A. Tavares	T-134,285	Otis Dorsey
T-101,148	Gerald F. Smith	T-130,286	Phillip W. Trautman
T-126,248	William R. Atkins	T-129,786	Guindon Trucking
T-121,749	John Rock & Bruce Degler	T-125,387	Dirty Book Trucking
T-125,549	Batups & Son	T-136,187	Wooten Trucking Co.
T-101,450	Carter Bros. Trucking	T- 61,788	Bill Brown
T- 97,993	Kenneth Poole	T- 73,619	Lorin Colwell
T-134,294	Lynwood Commodities Trans.	T-134,622	Roberto Gimeno
T-125,594	Richard Kaspar	T- 61,998	Richard Rivera
T-130,495	O. C. Graves	T-120,813	Harold Finnigan
T-130,995	H.N.T. Trucking	T- 77,421	William N. Smith
T-127,295	H & H Trucking	T-127,449	Fred Kelley
T-122,897	Paul W. Christian	T-127,253	David Harlan
T- 95,497	Cale Coeho	T-126,557	Amos Dorsey
T-129,797	Vellema Transport	T-129,833	Howard Beech
T- 61,998	Richard Rivera	T-126,559	K & S Equipment
T- 97,498	L & H Trucking	T-133,932	R. C. Gray Trucking
T-138,898	Don Francis	T- 69,688	Russ Tjarks
		T- 92,117	Richard W. Hart

4. Except as otherwise provided, the rules and regulations of Minimum Rate Tariff 17-A shall apply.

(END OF APPENDIX A)

APPENDIX B

Interim Order A.82-11-51

Detailed performance data to be recorded for the first 750 loads transported under the deviation:

1. For each unit of equipment used:
 - a. Tractor license numbers; and
 - b. Trailing equipment license numbers.
2. For each day's movement show:
 - a. Carrier's T-No.;
 - b. Driver's name;
 - c. Time when carrier reports for service.
 - d. Time and mileage reading when service commenced.
 - e. Loading time, enroute loaded time and mileage, unloading time, enroute empty returning time and mileage, and repeat for each subsequent load.
 - f. Time out for lunch and other breaks shall be noted; and
 - g. Breakdown of equipment or delays to equipment shall be noted.

(END OF APPENDIX B)

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recommends that the requested deviation be granted for an interim period of 120 days, including the request to pay subhaulers on the basis of the deviated rate, subject to the following conditions:

1. Unless appropriate cost showing for Dispatch and for subhaulers is furnished, no continuation of the authority will be authorized.
2. Dispatch agrees to pay subhaulers the full amounts provided in MRT 17-A for all transportation subject to this order in the event that results of operations during an appropriate test period should show the relief not to be justified.
3. Dispatch agrees to file, on or before the 25th day of each month following the calendar month in which transportation was performed, a statement, certified under penalty of perjury, whether all subhaulers engaged in the transportation have been paid in accordance with those provisions of Item 460, Minimum Rate Tariff 17-A, which relate to time of payment and if any of them have not been paid any amount due, their names and the reasons for such failure to pay will be shown.

SS 4. The Director of Transportation of this Commission will be authorized, on five days' notice, to suspend the authority granted if the applicant does not comply with the timely payment provisions of Item 460, Minimum Rate Tariff 17-A.

SS 4.5. The acceptance by Dispatch of the interim authority is evidence of its agreement to these conditions.

We agree with the staff recommendations. An appropriate test period would be the first 750 loads transported at the interim deviated rate. For each load transported, Dispatch shall furnish

recommends that the requested deviation be granted for an interim period of 120 days, including the request to pay subhaulers on the basis of the deviated rate, subject to the following conditions:

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This matter appears on the Commission's Public Agenda without notice as required by Section 306-B of the Public Utilities Code in order to provide a vehicle for the application of less than minimum rates for the transportation of crushed aggregate base for the public works harbor project scheduled to start this month. This is an unforeseen emergency in that there is an immediate need to provide the relief sought. ✓

Because of the urgent need for the interim authority, this order will be made effective on the date it is issued.

Findings of Fact

1. The proposed transportation involves unique circumstances.
2. Although Dispatch has not furnished actual performance times and cost data for the proposed transportation, some cost information has been provided, and based on this information, Dispatch's costs for this transportation are less than those used to set the rates in MRT 17-A.
3. Subhaulers are to provide all power equipment and some trailing equipment for the proposed transportation.
4. The application contains the signatures of 122 carriers seeking to perform subhauling services. No cost or operating data were furnished for these carriers.
5. The amendment contains cost and operating performance data for 40 carriers seeking to perform subhauling services.

Dispatch maintains it is ready and able to prove its statements and requests that interim authority be granted to justify the request. The following interim order does provide for a public hearing for the presentation of the financial and performance data referred to by the protestants.

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4. The application contains the signatures of 122 carriers seeking to perform subhauling services. No cost or operating data were furnished for these carriers.
5. The amendment contains cost and operating performance data for 40 carriers seeking to perform subhauling services.

6. Subject to further review upon consideration of evidence which may be received at a public hearing and the conditions set forth in the following order, the proposed rate is reasonable.

Conclusions of Law

1. Dispatch should be granted interim authority for a period of 120 days as provided in the following order.

2. A hearing should be scheduled in this proceeding at which Dispatch should present: (a) performance and cost data experienced by Dispatch and the subhaulers used in performing the transportation in issue, and (b) other material evidence in support of the sought authority.

3. Because there is an immediate need for the interim authority, the following order should be made effective today.

INTERIM ORDER

IT IS ORDERED that:

1. Barbara L. Bibb, doing business as Dispatch Trucking, may depart from the rates in MRT 17-A by charging not less than the rate in Appendix A, subject to the following conditions:

- a. Unless appropriate cost showing for Dispatch and for subhaulers are furnished, no continuation of the authority will be authorized.

- b. Barbara L. Bibb, dba Dispatch Trucking shall pay subhaulers the full amounts provided in MRT 17-A for all transportation subject to this order in the event that results of operations for the first 750 loads transported at the authorized rate should show the relief not justified.
- c. Barbara L. Bibb, dba Dispatch Trucking shall file, on or before the 25th day of each month following the calendar month in which transportation was performed, a statement, certified under penalty of perjury, whether all subhaulers engaged in the transportation have been paid in accordance with those provisions of Item 460, Minimum Rate Tariff 17-A which relate to time of payment, and if any of them have not been paid any amount due, their names and the reasons for such failure to pay shall be shown.
- d. Barbara L. Bibb, dba Dispatch Trucking shall furnish the Commission with the information listed in Appendix B within ten days after the last load referred to therein is delivered.
- e. The acceptance by Barbara L. Bibb, dba Dispatch Trucking of the interim authority is evidence of her agreement to these conditions.

2. This authority shall expire 120 days after the effective date, unless sooner cancelled by the Commission after hearing.

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SS ~~d. The Director of Transportation of this Commission, on five days' notice, is authorized to suspend the authority granted by this order, if the applicant does not comply with the timely payment provisions of Item 460, Minimum Rate Tariff 17-A.~~

SS d.f. Barbara Bibb, dba Dispatch Trucking shall furnish the Commission with the information listed in Appendix B within ten days after the last load referred to therein is delivered.

SS e.f. The acceptance by Barbara Bibbs, dba Dispatch Trucking of the interim authority is evidence of her agreement to these conditions.

3. A public hearing on this application will be scheduled for the receipt of evidence regarding: (1) performance and cost data experienced by Dispatch and subhaulers it engages in performing the transportation in question, and (2) other material issues, including determination of a reasonable rate for the future for the transportation in issue should the actual performance and cost data not support the rate authorized.

4. The staff is directed to monitor the transportation in question to ensure that the subhaulers are being paid within the time frame set forth in Item 460 of Minimum Rate Tariff 17-A. Upon receipt of evidence from the staff that the subhaulers are not being timely paid, the Commission will consider suspending this authority granted by this order.

This order is effective today.

Dated FEB 16 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
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