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ORIGINAL

Decision 83 05 030 MAY 4 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of Earl Moore, doing business as S & M Trucking, for authority to deviate from the minimum rates, rules, and regulations of MRT-8A under Section 3666 to transport fresh fruits and vegetables for the account of Lucky Stores, Inc., between points in California.	Application 82-12-14 (Filed December 6, 1982)

Clapp & Custer, by James S. Clapp, Attorney at Law, for Earl Moore, applicant.
Alan Edelstein, Attorney at Law, for California Teamsters Public Affairs Council, protestant.
C. D. Gilbert and J. D. Anderson, for California Trucking Association; and Robert S. Greitz, for Western Traffic Services; interested parties.
Harry S. Cush, for the Commission staff.

O P I N I O N

By this application Earl Moore, doing business as S & M Marketing (S & M), requests authority to transport fresh fruits and vegetables for Lucky Stores, Inc. (Lucky) at less than the minimum rates and charges named in Minimum Rate Tariff (MRT) 8-A. At the time the application was filed, Moore was conducting his business as S & M Trucking. S & M proposes to apply discounts of 7½% for monthly revenue volumes of less than $300,000 and 8½% for revenue volumes of $300,000 or more. The application contains a letter of support from Lucky.

The Commission's Transportation Division staff opposed the application on the grounds that S & M had failed to show in its pleading that revenue generated after the proposed discounts would be sufficient to cover the cost of performing the transportation. Accordingly, a duly noticed public hearing was held in San Francisco on March 3, 1983 before Administrative Law Judge John Lemke and the matter was submitted.

S & M states in its application that it has performed transportation for Lucky for some time; that Lucky is happy with the service, cooperation, and individual attention received from S & M's drivers and staff. S & M states that because of recent transportation rate increases and the "soft" economy Lucky has been investigating all available means of reducing costs, and that one method would be to transport its own produce.

S & M does not intend to employ subhaulers for this transportation, but will restrict service to the use of its own drivers and equipment.

If its application is granted, S & M would assess the base rate from MRT 8-A, less 7½% or 8½%. It would apply the full amount of refrigeration charge, when applicable, without any reduction. It would then apply the 2½% surcharge shown in Supplement 13 of MRT 8-A. Shipments will be billed and discounted based on a projection of less than $300,000 revenue per month. In the event revenue from the Lucky account exceeds that figure in any given month, thereby being entitled to the greater 8½% allowance, Lucky would file a claim with S & M for a refund for those "overcharges." Upon receipt of such a claim S & M would make its own evaluation. Assuming Lucky has tendered $300,000 or more in transportation charges, S & M would rerate all shipments transported during that period and refund to Lucky any excess charges.

A further condition of the request is that if S & M should fail to supply sufficient equipment in a timely manner to transport commodities tendered under its contract with Lucky, the minimum revenue requirement of $300,000 will be reduced by $1,000 for each truckload shipment which Lucky tenders, but which S & M is unable to accept.

S & M has furnished complete cost data underlying its request. Rate reductions are based upon 43,000-pound truckload shipments. S & M's request is to depart from rates in MRT 8-A on all produce transported for Lucky, although the primary movements are northbound shipments from Los Angeles, San Diego, Coachella Valley, and Imperial Valley to Lucky's perishable warehouse in San Leandro.

S & M has furnished in its cost development fixed expenses for tractor and trailer running costs, drivers' labor costs for four different moves, refrigerator equipment and indirect costs.

The basis for S & M's reduced rate is a significantly lower driver labor cost than those underlying the rates in MRT 8-A. S & M pays a base wage subject only to increments for federal unemployment tax, FICA tax, state unemployment insurance and worker's compensation insurance. It does not pay its drivers for vacations, holidays, or any expenses for health and welfare or pension plans.

The staff asked that we address the propriety of the use of costs for a round-trip movement, the general freight (nonproduce) labor portion of which is not based upon prevailing wages. We are not authorizing in this proceeding a rate reduction where prevailing wages must be considered. We are concerned here with a deviation from a minimum rate tariff, in which actual wages are the proper level of labor expense to be considered in determining whether a rate is compensatory. We find it unnecessary to consider whether the backhaul revenue used in measuring total round trip earnings is predicated upon prevailing wages. That is a separate matter for consideration in a rate reduction proceeding. S & M presently operates under two rate reduction authorities, one of them for frozen foods from Modesto to Los Angeles area points.

S & M offered evidence primarily through the testimony of Dominic Di Vella, its operations manager. Di Vella stated that a review of projected costs and revenues pertaining to its proposal indicates that if either origin or destination points are located more than 300 miles from the carrier's terminal in Foster City, S & M would require return truckload revenue earned by the same unit of equipment for the proposed operations to be profitable. The availability of such return loads is evidenced in Exhibit 2. This exhibit contains copies of 50 freight bills covering truckload shipments of fresh produce transported to Lucky at San Leandro during December 1982 and January 1983. Also included are copies of 39 freight bills covering southbound truckload shipments of commodities other than produce--principally frozen foods and paper products--transported for accounts other than Lucky during the same two-month period.

Di Vella advised that S & M has three WATS telephone lines for direct communication with its drivers; that its dispatch office is open 24-hours each day of the year to service customer requests. He further stated that all of S & M's trailers are the "high-cube" 45-foot type able to transport leafy vegetables as well as denser produce in quantities sufficient to maintain larger average truckload weights. Di Vella testified that all of S & M's trucking equipment is fully paid for.

Victor Suglio, S & M's General Manager, testified that total round-trip expenses shown in the application do not include payment of $50 per load to drivers for unloading at San Leandro. The cost data shown in the application was developed without including either the driver produce unloading expense of $50 or any insurance costs. The trip cost for insurance would amount to $25 to $40 for each of the round-trip movements identified in the application, being approximately 3% of the revenue earned.

The total round-trip expenses and revenues (rounded) shown in the application at various cost points are shown in Table 1:

Table 1

Round-Trip Miles	100	300	450	600	800	1,050	1,200
Expenses	$178	$487	$ 671	$ 805	$ 957	$1,142	$1,293
Revenues	$205	$968	$1,065	$1,153	$1,268	$1,404	$1,545
Operating Ratio	87%	50%	63%	69%	76%	81%	84%

In its round-trip revenue development S & M has in most cases included charges produced by backhauls shown in freight bills covering higher rated frozen food shipments. In fact, of the 39 backhaul freight bills contained in Exhibit 2, 21 apply to individual loads of frozen foods, each indicating line haul revenue of $600. Six freight bills cover individual loads of shrubs, boxes and plastic trays. Three of these indicate revenues of $400, one shows $428, one $520 and one $650. The remaining 12 freight bills cover 50 separate loads of paper. Truckload revenue on these shipments averages $400. A weighted average truckload revenue figure for the 76 truckloads is $455.

Adjusting S & M's figures shown in Table 1 by adding $50 for driver produce unloading and 3% for insurance, and using $455 instead of $600 for return load revenue, results in round-trip expenses and revenues and operating ratios shown in Table 2:

Table 2

Round-Trip Miles	100	300	450	600	800	1,050	1,200
Expenses	$234	$562	$749	$ 885	$1,041	$1,230	$1,391
Revenues	$205	$823	$920	$1,008	$1,123	$1,259	$1,400
Operating Ratio	114%	68%	81%	88%	93%	98%	99%

The adjusted figures portrayed in Table 2 show that S & M's proposed rates will be compensatory except for the movement of 100 miles. (This movement earns only one-way revenue.) However, the freight bills covering produce in Exhibit 2 all reflect shipments from growing areas well over 300 miles from the destination point of San Leandro; thus, the round-trip movements are all for distances of 800 miles or greater.

The revenue figures shown above are based upon truckload minimum weights of 43,000 pounds. But Di Vella's testimony is that considerably in excess of that amount can and will be transported. Thus, while the projected operating ratios at 1,050 and 1,200 miles appear high, this is because they reflect minimum rather than actual payloads. On balance, the projected profit will be reasonable.

Restricting the authority granted here to those shipments having immediately prior or subsequent truckload revenue in the same unit of equipment will ensure that each round-trip movement is compensatory. However, since S & M's proposed rates are compensatory based upon a reduction of 8½% from the truckload produce earnings, we see no need to authorize deductions of only 7½% from monthly produce revenues under $300,000. Nor is it necessary for this Commission to authorize a reduction of $1,000 or any amount from the threshold figure of $300,000 for each shipment Lucky might tender and for which S & M is unable to furnish a unit of equipment. These two features of

S & M's request are matters between the carrier and Lucky. They are too complex to construct and difficult to enforce, and are unnecessary in light of the fact that the 8½% reduction produces compensatory charges when combined with truckload backhauls.

We will grant the request conditioned upon such round-trip earnings. Because an immediate benefit is available to Lucky, this decision should be effective today.

Findings of Fact

1. S & M requests authority to assess less than minimum rates contained in MRT 8-A on transportation performed for Lucky.

2. Cost data indicate that transportation at the proposed rates will be compensatory when immediately preceded or followed by another truckload shipment in the same unit of equipment.

3. S & M does not intend to engage subhaulers in connection with the proposed transportation.

Conclusions of Law

1. The proposed rates are reasonable. The application should be granted.

2. There is an immediate need for the sought relief. Therefore, the effective date of this order should be today.

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

4. The authorities granted should bear the condition that in the event subhaulers are engaged, they must be compensated at not less than the rates authorized without any deductions.

5. The authorities granted should only apply when a shipment at the proposed rates is immediately preceded or followed by a truckload shipment in the same unit of equipment.

<u>O R D E R</u>

IT IS ORDERED that:

1. Earl Moore may depart from the provisions of MRT 8-A by charging not less than the rates in Appendix A.

2. This authority shall expire one year after the effective date of this order.

This order is effective today.

Dated MAY 4 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

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APPENDIX A

Carrier: Earl Moore, doing business as S & M Marketing.

Commodities: Fresh fruits and vegetables as described in Minimum Rate Tariff 8-A.

Origins and Destinations: Between all points and places in California.

Minimum Weights: 43,000 pounds.

Debtor: Lucky Stores, Inc.

Rates: The applicable rates named in Minimum Rate Tariff 8-A, less 8½%. The reduction of 8½% does not apply to refrigeration charges, assessorial charges or surcharges named in tariff supplements.

Conditions:

1. If independent contractor subhaulers are engaged by carrier to perform this transportation, they shall be paid not less than the rates authorized without any deductions.
2. Rates authorized will only apply in connection with produce shipments immediately preceded or followed by a truckload shipment in the same unit of equipment.
3. In all other respects the rates and rules set forth in Minimum Rate Tariff 8-A shall apply.

(END OF APPENDIX A)