

ORIGINAL

Decision No. 86739

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
PRESTON TRUCKING CO., a corporation,  
for an order authorizing departure  
from the rates, rules and regulations  
of Minimum Rate Tariff No. 2 pursuant  
to the provisions of Section 3666 of  
the Public Utilities Code, for the  
transportation of beer in cartons and  
kegs from San Francisco to various  
points in southern California for  
General Brewing Company.

Application No. 55719  
(Filed June 4, 1975;  
amended July 10, 1975)

In the Matter of the Application of  
PELLCO TRUCKING, INC., a corporation,  
for an order authorizing departure  
from the rates, rules and regulations  
of Minimum Rate Tariff No. 2 pursuant  
to the provisions of Section 3666 of  
the Public Utilities Code for the  
transportation of beer in cartons and  
kegs from Azusa, California to Foster  
City, California and from Van Nuys to  
San Francisco, Richmond, Pittsburg,  
Oakland, Hayward, Vallejo, Stockton  
and Novato, California.

Application No. 56375  
(Filed April 1, 1976)

Handler, Baker & Greene, by Marvin Handler, Attorney  
at Law, for applicants.  
Anderson, McDonald, Belden & Kelly, by Richard W.  
Abbey, for Parker & Sons, Trucking, protestant.  
James Orear, for C & H Sugar Company; and Charles D.  
Gilbert and H. Hughes, for California Trucking  
Association; interested parties.  
Harry E. Cush and Russell D. Corning, for the  
Commission staff.

O P I N I O N

Application No. 55719 filed by Preston Trucking Co. (Preston) seeks authority to deviate from the minimum rates for the transportation of beer for General Brewing Company (General) from San Francisco to various points in southern California. By Decision No. 84720 dated July 29, 1975, Preston was granted interim authority, pending public hearing and final determination.

Application No. 56375 filed by Pellico Trucking, Inc. (Pellico) seeks authority to deviate from the minimum rates for the transportation of beer for seven distributors located in the San Francisco Bay area from Jos. Schlitz Brewing Company (Schlitz), Van Nuys. By Decision No. 85875 dated May 25, 1976, Pellico was granted interim authority for transportation performed for five of the seven distributors, pending public hearing and final determination.

Public hearing on Application No. 55719 was held in San Francisco before Examiner Tanner on March 23 and 24, 1976. At the request of applicants hearing was concluded on Application No. 55719 on a common record with Application No. 56375 on June 17, 1976 at which time both matters were submitted for decision.

Preston transports beer from breweries in southern California to distributors in northern California and is now handling about 85 percent of General's traffic to southern California points. The volume of the southbound movement is too large to be handled in Preston's equipment. Preston therefore uses Pellico as an underlying carrier southbound. Pellico then returns north loaded out of Schlitz for distributors in northern California.

The proposed rates are generally equivalent to the rail carload rates between the same points. These transportation services have been provided by both carriers generally at the proposed rate levels for some time. This has been accomplished through the application of the multiple lot rule (Item 85, Minimum Rate Tariff 2 (MRT 2)). That rule permits a highway carrier to assess a rail rate, subject to minimum weights too high to be accommodated in a single unit of highway carrier equipment. The rule requires that the entire shipment be available for immediate transportation at the time the first pickup is made. Such shipments may, however, be picked up over a period of two days, computed from 12:01 a.m. of the day the initial pickup is made.

After the temporary authority was issued, use of rail rates (subject to rail minimum weights) has been limited to shipments transported by underlying carriers and by Pellco to the two distributors excluded from the temporary authority.<sup>1/</sup>

Both applicants seek authority to use underlying carriers. Preston depends on Pellco to assist in handling southbound traffic. Preston pays Pellco \$205 to the Los Angeles area and \$260 to San Diego County. (Underlying carriers are not used by Preston to other southern California points.) Preston agreed to the condition that, if underlying carriers other than Pellco are used, they shall be paid no less than that paid to Pellco for the same service.

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<sup>1/</sup> The temporary authority granted Preston does not apply to shipments transported by underlying carriers. The authority granted to Pellco applies on shipments transported by underlying carriers which furnish a tractor only, but not when all necessary equipment is supplied.

Pellco presently uses underlying carriers which supply power units only. These carriers operate as an integral part of Pellco's fleet. Each is paid \$200, one way, for service performed between Los Angeles and San Francisco areas.

Estimates of costs and revenue, which indicate the proposed operation would be profitable, were received in evidence. Preston estimates operating ratios of 88.9, 93.6, and 82 percent on the movement between San Francisco area on the one hand and Los Angeles, San Diego, and the desert areas, respectively. These estimates are intended to reflect the expected results when no underlying carriers are employed. Preston estimates ratios of 75.5 and 85.3 percent between San Francisco and the Los Angeles and San Diego areas, respectively, when underlying carriers perform the line-haul operation.

Pellco estimates operating ratios ranging from 81.7 to 88.7 percent on the southern California-San Francisco area operations. These estimates include Pellco's participation as an underlying carrier for Preston. Pellco estimates that the underlying carriers employed can expect an operating ratio of 84.7 percent for the round-trip operation.

The estimates of costs and revenue were based on actual experience. There is little doubt that the operations will be profitable, provided applicants can maintain the use factor experienced in the past. There is nothing in the record to indicate that the future will be less productive than the past.

The California Trucking Association (CTA) contends that no unusual circumstances have been shown, that no threat of proprietary carriage is evident if the relief requested is not granted, and that the cost data pertaining to the traffic not subject to these applications should not be considered as such traffic is not related to that in issue.

These applications amount to nothing more than a request to permit the use of a rail rate subject to a minimum weight that can be accommodated by a single unit of motor carrier equipment, thus eliminating the application of the multiple lot rule, and the documentation requirements attendant thereto. The record is clear that granting of these applications will have little effect on the revenue generated from these services, except for those shipments moving from or to points located off rail. The record does not include an estimate of the revenue generated from off rail operations. The indications are, however, that most of the service is between points located on rail.

The proposal by applicants is reasonable in that underlying carriers shall be paid no less than \$205 for a complete unit and \$200 for a tractor only, between the San Francisco and Los Angeles areas, one way, and \$260 for a complete unit between San Francisco and San Diego County, one way. However, in view of the relationships, as shown in applicant Preston's Exhibit 8, between Preston and Topa Topa Ranch, Ace Beverage Co., and Metro Distributing Co., we agree with the request of CTA that there should be a special restriction on the amounts that can be paid by Preston to underlying carriers for transportation of property in which any of these organizations has a financial interest.

The record shows that the transportation service performed by Preston and Pellico is no different than that of any other carrier transporting beer between the same points. The record indicates also that it is not unusual for carriers engaged in beer hauling to enjoy a high load factor, again like Preston and Pellico. It is also clear that the rail rates are the predominant rates applied to this traffic. Furthermore, there does not appear to be an unusually large number of carriers competing for this traffic. The apparent favorable load factors brought about by the high volume movements, both north and south, have no doubt made rates at rail levels adequate to handle the traffic on a compensatory basis. Therefore, notwithstanding the fact that these transportation services have little or no unusual characteristics, it is clear that the minimum rate levels are too high to accommodate this traffic.

Until such time as we have adequate information before us to establish commodity rates on beer, we cannot expect carriers and shippers to patiently wait while such a determination is made. In the absence of commodity minimum rates carriers are encouraged to come forward with proposals in those instances where the transportation conditions (such as traffic volume) are such that lower rates may be appropriate.

The traffic not subject to these applications, which balance the north and south movements, must be considered "related" and the cost experience is relevant to the issues at hand. We cannot ignore past experience on the grounds that the future might be different. The record will permit a reasonable expectation that the business performance used as the basis for the cost evidence will continue.

#### Findings

1. Preston seeks authority to charge less than the minimum rates for the transportation of beer from General Brewing Company to points in Los Angeles, Orange, Riverside, and San Bernardino Counties.
2. The rates to be assessed by Preston are equivalent to the rates applicable to common carrier rail service.
3. Preston employs Pellico as an underlying carrier between the San Francisco area, on the one hand, and Los Angeles and San Diego Counties, on the other hand.
4. Preston pays Pellico \$205, one way, for the San Francisco area-Los Angeles County underlying carrier service and \$260, one way, for such service between the San Francisco area and San Diego County.
5. Preston uses underlying carriers, other than Pellico, on occasion.
6. Pellico seeks authority to charge less than the minimum rates for the transportation of beer from Jos. Schlitz Brewing Company to seven distributors located in the San Francisco Bay area.
7. The rates to be assessed by Pellico are generally equivalent to the rates applicable to common carrier rail service.

8. Pellico employs underlying carriers which supply power units only. Such underlying carriers operate as an integral part of the Pellico fleet.

9. Pellico pays underlying carriers \$200, one way, for a tractor and driver between the San Francisco and Los Angeles areas.

10. Preston and Pellico have applied common carrier rail rates to the transportation of beer between northern and southern California points for some time in the past. Such rates were used through the application of the multiple lot rule in MRT 2.

11. No significant change will occur in the revenue per shipment if the relief requested by Pellico and Preston is granted.

12. The Preston and Pellico operations between the San Francisco Bay area and southern California points are such that their equipment is loaded in both directions.

13. The relief sought here will aid in maintaining the high level of productivity referred to in Finding 12.

14. The rates proposed by Preston for the transportation of beer from General Brewing Company, San Francisco, to southern California points are justified and are reasonable.

15. The evidence of record justifies the rates proposed by Pellico for the transportation of beer from Jos. Schlitz Brewing Company, Van Nuys, to the San Francisco Bay area.

16. The evidence of record justifies the following compensation to be paid to underlying carriers.

Between the San Francisco Bay Area And	One-Way Compensation	
	Full Equipment	Tractor Only
Los Angeles County	\$205	\$200
San Diego County	260	-

17. A special restriction should be placed on the amounts that Preston can pay to underlying carriers when they transport property in which Topa Topa Ranch, Ace Beverage Co., or Metro Distributing Co. has a financial interest.

We conclude that the applications should be granted as provided in the following order.

Since conditions under which the service is performed may change at any time, the authority granted in the ensuing order will expire at the end of one year unless sooner canceled, modified, or extended by order of the Commission.

O R D E R

IT IS ORDERED that:

1. Preston Trucking Co. is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging those rates set forth in Appendix A of this decision, and Pellico Trucking, Inc. is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging those rates set forth in Appendix B of this decision.

2. The authority granted shall expire one year after the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14<sup>th</sup> day of DECEMBER, 1976.

*I will file dissent  
William S. Jones Jr.*

*dissent*

*Vernon L. Sturgeon*

*[Signature]*  
President

*[Signature]*

*[Signature]*

*[Signature]*  
Commissioners



APPENDIX A

Shipper: General Brewing Company.

Commodity: Beer.

Minimum Weight: 45,000 pounds. (See Note.)

From: General Brewing Company, San Francisco.

To: (1) Los Angeles, Orange, Riverside, and San Bernardino Counties.  
(2) San Diego County.  
(3) Barstow, Bishop, Blythe, El Centro, Indio, Needles, and  
Twenty-nine Palms.

Rates: (1) 66 cents per cwt to all points in the counties named in  
(1) above, except as provided in (3) below.  
(2) 83 cents per cwt to all points in San Diego County.  
(3) 115 cents per cwt to all points named in (3) above.

Conditions: (a) If underlying carriers are employed, they  
shall be paid no less than \$205 per trip,  
one way, between San Francisco and points  
described in (1) above and \$260 per trip,  
one way, between San Francisco and San  
Diego County. The authority described  
above shall not apply to shipments trans-  
ported by underlying carriers to points  
other than described in (1) and (2) above.

EXCEPTION: Whenever Preston Trucking  
Co. engages underlying carriers for  
the transportation of property in  
which a financial interest is held by  
Ace Beverage Co., Metro Distributing  
Co., or Topa Topa Ranch, Condition (a)  
shall be inapplicable, and Preston  
Trucking Co. shall not pay such underlying  
carriers less than 100 percent of the  
rates and charges assessed General  
Brewing Company for the transportation  
actually performed by such underlying  
carriers.

(b) Other than the authority described above, all  
other provisions of Minimum Rate Tariff 2  
shall apply.

Note: The minimum weight shall be 42,000 pounds for shipments  
destined to:

Safeway Stores - Santa Fe Springs  
National City

Lucky Stores - Buena Park

APPENDIX B

Commodity: Beer.

From: Jos. Schlitz Brewing Company, Van Nuys.

Minimum Weight: 48,000 pounds.

<u>Destination</u>	<u>Distributor</u>	<u>Rate Per 100 Pounds</u>
San Francisco	Rossi Distributing Co.	.66
Richmond	Richmond Beverage	.66
Pittsburg	Union Beverage Inc.	.66
Vallejo	Tri-City Distributing Co.	.77
Stockton	Dawson Distributing Co.	.70
Novato	Ciampi Distributing Co.	.82
Oakland	United Beverage, Inc.	.66
Hayward	United Beverage, Inc.	.66

- Conditions: (a) If underlying carriers are employed, they shall be paid no less than \$200 per trip, one way, where the underlying carrier's equipment consists of a tractor only or not less than \$205 per trip, one way, when all equipment used is furnished by the underlying carrier.
- (b) Other than the authority described above, all other provisions of Minimum Rate Tariff 2 shall apply.

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

COMMISSIONER VERNON L. STURGEON, Dissenting

I. The Alter Ego Question Should Be Answered Before Applicant's Authority Is Made Permanent.

Exhibit 8 in this case evidences a remarkable capacity for conducting intertwined operations on the part of the carrier, the carrier equipment lease company, and several of the distributing companies. There is an unanswered question about the connection between the President of Preston, the carrier, and the shipper, General Brewing Company. There is one easy, unused way to settle this question: The Commission should request the president of applicant Preston to make a verified statement of disclosure of any connections between his interests and those of General Brewing Company and affiliates, its officers and principal stockholders. Given the ramifications of an alter ego connection at the top, until this question is resolved by adequate investigation, this interim authority should not be made permanent.

II. Policy Questions To Be Faced.

A. Subhaulers

As detailed in previous dissenting opinions (see Decision No. 86363, BBD Transportation Co., Inc., September 14, 1976), the majority again would avoid the tough question of whether a person or corporation using subhaulers is a carrier or a broker. The record before us indicates that up to 70% of the hauls in question are by means of subhaulers (approximately 10 hauls a week). We are treated to the spectacle of a single named carrier being assured of the traffic by being allowed to charge the shipper deviated rates of about \$297 for

the San Francisco to Los Angeles move; in the same breath that the carrier is authorized to use subhaulers in the move and pay them \$205. We catch a quick glimpse in the record of further sub-subhaulers being paid \$190 (Transcript Vol. 2, p. 244). Again, the result is private advantage to the deviated carrier served up as the "public interest". We see a real danger of predatory practices arising by means of the exploitation of subhaulers and sub-subhaulers. Further, it should be noted that this practice does not lower the price to the shipping public.

B. Deviation or Adjustment of Minimum Rates?

The majority would also ignore a long-standing and well conceived policy precedent enunciated in Decision No. 77767 (Major Truck Lines, Inc. (1970) 71 CPUC 447). That policy provided:

"... where it has been shown that the traffic is available to other for-hire carriers under the same circumstances and conditions it has been the policy of the Commission to establish commodity minimum rates for such transportation so that all interested carriers will have equal opportunity to compete for the traffic." (Emphasis added.)

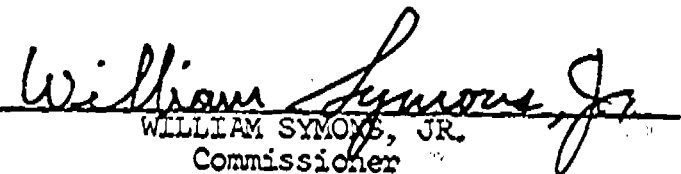
Despite the statement "... that the minimum rates are too high to accommodate this traffic" (Majority Opinion, p. 5) and the observance "... that the transportation service performed by Preston and Pellico is no different than that of any other carrier transporting beer between the same points" (Majority Opinion, p. 5) the majority still would not comply with the policy enunciated in Major Truck Lines, Inc. and move to establish minimum rates reflecting such general circumstances.

Rather the majority would again create a private advantage for this applicant (be he carrier or broker) and establish a private advantage for the several named shippers.

Our statutory mandate is clear. The Commission should establish minimum rates in the public interest which provide to all carriers the opportunity to compete equally; and which make available to all shippers the lowest lawful minimum rates applicable to general transportation conditions. This Commission's responsibility for the public interest cannot be subordinated to private advantage through the deviation process.

We would have the Commission issue its Order Setting Hearing to review and revise the minimum rates for the transportation of beer, and set these matters for common hearing.

San Francisco, California  
December 14, 1976

  
WILLIAM SYMONS, JR.  
Commissioner

  
VERNON L. STURGEON  
Commissioner