

Decision No. 87383 May 24, 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
GARY DeLARA, doing business as)
DeLARA TRUCKING, under Section 3666)
of the Public Utilities Code of the)
State of California, for authority)
to charge rates less than those)
prescribed in Minimum Rate Tariff)
No. 2 for the transportation of)
beer from the Los Angeles,)
California, Metropolitan Zone Group)
to Fresno, California, and the)
return of empty containers for the)
account of DIEL BROS. BEER)
DISTRIBUTORS.)

Application No. 55876
(Filed August 21, 1975;
amended April 30, 1976)

Edward L. Fanucchi, Attorney at Law, for
applicant.
C. D. Gilbert and H. Hughes, for California
Trucking Association, interested party.
Everest A. Benton, for the Commission
staff.

O P I N I O N

Applicant, a highway permit carrier, seeks authority to assess less than the minimum rates set forth in Minimum Rate Tariff 2 (MRT 2) for the transportation of beer and returning empty containers for the account of Diel Bros. Beer Distributors (Diel Bros.), Fresno.

By Decision No. 86255 applicant was granted interim authority to assess a rate of 59 cents per 100 pounds for shipments of beer, minimum weight 50,000 pounds, and empty containers returning, minimum weight 20,000 pounds, between Joseph Schlitz Brewing Company and Anheuser Busch Brewery, Van Nuys, on the one hand, and Diel Bros., Fresno, on the other hand.

On October 28, 1976 applicant filed a petition requesting that Decision No. 86255 be modified to the extent that the rates authorized therein also be made applicable to shipments of beer and empty containers between Anheuser Busch Brewery, Fairfield, and Diel Bros., Fresno.

Public hearing on the application and requested modification of Decision No. 86255 was held before Examiner O'Leary at Fresno on December 7, 1976 at which time the matter was submitted.

Evidence was presented by a partner of Diel Bros., applicant, and applicant's certified public accountant.

Diel Bros.' partner testified that his firm is the distributor for Anheuser Busch Brewery, Schlitz, and other brands of beer in Fresno and Madera Counties. Diel Bros. also supplies beer to some accounts in Mariposa and Tulare Counties. Diel Bros. receives shipments of beer from and ships returning empty containers to Anheuser Busch Brewery and Schlitz at Van Nuys via applicant. Diel Bros. also receives beer from Anheuser Busch Brewery's plants located at St. Louis, Missouri, and Houston, Texas, by rail. He also testified that Anheuser Busch Brewery will shortly commence brewing operations at Fairfield, California. It is anticipated that when the brewery at Fairfield reaches full production, Diel Bros. will receive all of its Anheuser Busch Brewery's products from that facility. During the interim, Diel Bros. will receive shipments from both the Van Nuys and Fairfield facilities of Anheuser Busch Brewery. Diel Bros. has been using the services of applicant and his father who also operates as a highway carrier since 1969. Since the interim authority was granted, Diel Bros. has used applicant only; however, applicant's father still participates in the traffic as an underlying carrier for applicant.

The testimony of applicant discloses that he owns and operates one tractor and three trailers; he normally transports one load of beer per day, seven days per week, and two loads of empty containers per week. He does most of the driving. When he is unable to drive, he employs a driver who is paid \$65 per trip. His father is engaged as a subhauler to transport approximately 35 to 40 percent of the shipments. He operates out of his home, and his wife keeps the records and does the office and clerical work. His procedure is to have one trailer loading and another unloading while the tractor and third trailer are on the road. Shipments are power-loaded and power-unloaded by the shipper and the consignee, respectively. He further testified that occasionally shipments of returning empty containers are transported under the multiple lot provisions of MRT 2 in order to meet the 20,000-pound minimum weight requirement.

Exhibit 1 is a cost study prepared by applicant's certified public accountant. The exhibit discloses that the transportation at the proposed rate between both Fairfield and Van Nuys, on the one hand, and Fresno, on the other hand, will be compensatory. The study did not take into account multiple-lot shipments. The service proposed may be expected to generate revenue of approximately \$130,000 annually, \$60,000 less than the minimum rates.

The record herein discloses that the transportation service performed by applicant is no different than that of any other carrier transporting beer. Without such a showing, requests of this nature are normally denied; however, we have previously recognized that the minimum rate levels for the transportation of beer are too high and have stated that:

"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." (Decision No. 86739 dated December 14, 1976 in Applications Nos. 55719 and 56375.)

The Commission finds that the proposed rate is compensatory, reasonable, and justified under the circumstances. Transportation Division staff shall proceed to study the minimum rate levels for the transportation of beer and within 180 days of the effective date of this order shall report to the Commission with recommendations as to appropriate minimum rates so that all carriers and shippers in similar circumstances may avail themselves of the lower commodity rates. (Guthmiller Trucking Inc., D.86865, January 18, 1977.)

The Commission concludes that the application should be granted as set forth in the ensuing order. Since there is an immediate need for relief the effective date of this order shall be the date hereof.

O R D E R

IT IS ORDERED that:

1. Gary DeLara, doing business as DeLara Trucking, is authorized to depart from the provisions of Minimum Rate Tariff 2 to the extent set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, and regulations except as specifically set forth in Appendix A.

2. The authority granted herein shall expire one year after the effective date of this order.

3. The authority herein granted shall, on and after the effective date of this order, supersede the authority granted by Decision No. 86255.

The effective date of this order is the date hereof.

Dated at Los Angeles, California, this 24th day of MAY, 1977.

*I concur to the
decision but not to
the effective date
hereof.
William Symons.
Commissioner*

President

Vernon L. Sturgeon
Richard D. Smith

Commissioners

Commissioner Robert Batimovich, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Carrier: Gary DeLara, dba DeLara Trucking.

Commodities: Beer and empty containers returning.

Between: Joseph Schlitz Brewing Company, Anheuser Busch Brewery, Van Nuys, and Anheuser Busch Brewery, Fairfield, on the one hand, and Diel Bros. Beer Distributors, Fresno, on the other hand. (Subject to Note 1.)

Rate: 59 cents per 100 lbs.

Minimum Weight: Beer - 50,000 lbs. (per unit of equipment utilized).
Empty containers returning - 20,000 lbs. (per unit of equipment utilized).

- Conditions:
1. Shipments must be power-loaded by consignor and power-unloaded by consignee.
 2. Rate not subject to surcharge.
 3. In the event subhaulers are employed they shall be paid no less than the rates authorized herein.
 4. Rate will not apply on split delivery or split pickup shipments.

Note 1: Rate authorized herein applies to beer moving from Van Nuys and Fairfield to Fresno and empty containers from Fresno to Van Nuys and Fairfield.