

Decision No. 87647 JUL 26 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of OSTERKAMP TRUCKING, INC., a Corporation, for authority to deviate from the provisions of Minimum Rate Tariff Number 2 in connection with the transportation of lumber, forest products, and wood products, for the American Forest Products Corporation, pursuant to the provisions of Section 3666 of the California Public Utilities Code.

Application No. 56798
(Filed October 7, 1976;
amended March 10, 1977)

Russell, Schureman, Fritze & Hancock by
R. Y. Schureman, Attorney at Law, for
applicant.
Helen J. Dalby, for Delmar Fernandez;
and Ralph Herring, for Stidham
Trucking; protestants.
Charles D. Gilbert and H. Hughes, for
California Trucking Association,
interested party.
George L. Hunt and William T. Almany,
for the Commission staff.

O P I N I O N

Applicant, a radial highway common carrier and a highway contract carrier, seeks authority to assess less than the minimum rates set forth in Minimum Rate Tariff 2 (MRT 2) for the transportation of lumber and forest products as described in Item 685 of MRT 2 from Foresthill, Fresno, Martell, North Fork, and Stockton to points in the Los Angeles Basin Territory and points in San Diego County for the account of American Forest Products Corporation (American).

Public hearing was held before Administrative Law Judge O'Leary at San Francisco on March 31, 1977 and April 1, 1977. The matter was submitted with the filing of Exhibits 11 and 12 on April 14, 1977.

Applicant's proposed rates are as follows:

Minimum Weight: 50,000 pounds Rate: In cents per 100 pounds

<u>Origin</u>	<u>Destination</u>	
	<u>Los Angeles Basin Territory</u>	<u>San Diego County</u>
Foresthill	74	87
Fresno	55	68
Martell	70	80
North Fork	62	72
Stockton	66	76

All other provisions of MRT 2 will apply except existing and future surcharges.

The involved transportation is presently being performed partly by American in proprietary equipment and partly by for-hire carriers. Ninety percent of the shipments transported by for-hire carriers are multiple-lot shipments moving under alternative rail rates based on a minimum weight of 85,000 pounds. Exhibit 12 sets forth a comparison of revenue that will be generated under applicant's proposed rates and revenue generated under the minimum rates utilizing the destination points of Cerritos in the Los Angeles Basin Territory and National City in San Diego County. The exhibit discloses that in most instances, applicant's proposed rates generate less revenue than the alternative rail rates. The alternative rail rates generate less revenue than the proposed rates on multiple-lot shipments made up of at least two loads weighing 50,000 pounds each originating at Fresno, Martell, and North Fork destined to on-rail points in Cerritos or National City.

Applicant's equipment consists of vehicles leased by it without drivers. Applicant also utilizes owner-operators who own and drive two-axle tractors to pull applicant's trailers. The owner-operators are compensated at the rate of 68 percent of revenue but in no event less than 44.5 cents per mile traveled (loaded and empty).

Exhibits 5 and 6 are revenue and expense studies of typical shipments from all origins to the Los Angeles Basin Territory and San Diego County. The exhibits disclose that the transportation at the proposed rates will be compensatory to applicant provided a return load is procured.

Exhibit 4 is a revenue and expense statement for an average owner-operator on an annual basis. The exhibit discloses that the owner-operators receive an annual gross revenue of \$60,000 less expenses of \$35,358, which do not include a provision for drivers wages leaving a net income of \$24,642 before taxes, which includes wages and return on investment. The revenue figure is based upon an average annual mileage of 120,000 miles at 50 cents per mile. The owner-operators' compensation for wages and return on investment is 20.5 cents per mile. Applicant did not present any owner-operator witnesses.

Applicant's vice president of traffic and sales testified applicant is presently deadheading equipment to southern California to service northbound hauls for accounts located at Santa Ana and Plaster City. A grant of the authority sought herein would alleviate the deadheading and provide applicant with a more balanced operation.

The traffic manager of American testified that regardless of the outcome of the instant application, American will terminate its proprietary trucking as soon as possible. He also testified in response to questions by the representative of protestant Delmar Fernandez that although Delmar Fernandez would not be employed for shipments to which the sought rates would apply, he would be employed to transport multiple-lot shipments moving at the alternative rail rates.

No direct evidence was presented by the other appearances.

No evidence has been presented that any one owner-operator will experience the costs set forth in Exhibit 4. Furthermore, we are not convinced that payments to the owner-operators would be compensatory especially in view of the evidence that owner-operators are compensated at the rate of 20.5 cents per mile for wages and return on investment when drivers employed by applicant are compensated 28.09 and 25.32 cents per mile for wages and fringe benefits (Exhibits 5 and 6).

The authority granted herein will require that if subhaulers or owner-operators are utilized, they shall be paid 100 percent of the authorized rate without any deduction for use of applicant's trailing equipment.

Findings

1. The circumstances that exist for applicant's transportation involved in this proceeding which are not present in the ordinary transportation of these commodities are a balanced operation and minimal deadhead mileage.
2. The proposed rate is compensatory, reasonable, and justified.
3. The proposed payments to owner-operators have not been shown to be compensatory.

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The Commission concludes that the application should be granted to the extent set forth in the ensuing order. To the extent not granted, the application should be denied. 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. Osterkamp Trucking, Inc. 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. To the extent not granted herein Application No. 56798 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 26th day of JULY, 1977.

Robert B. Baker
President

Richard D. Howell
Commissioners

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

*I dissent
William J. Lyons, Jr.*

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APPENDIX A

Carrier: Osterkamp Trucking, Inc.

Commodities: Lumber and forest products as described in Item 685 of Minimum Rate Tariff 2.

Shipper: American Forest Products, Inc.

Rates: In cents per 100 pounds.

<u>Origin</u>	<u>Destination</u>	
	<u>Los Angeles Basin Territory</u>	<u>San Diego County</u>
Foresthill	74	87
Fresno	55	68
Martell	70	80
North Fork	62	72
Stockton	66	76

Minimum Weight: 50,000 pounds.

Conditions:

1. Shipments must be power loaded by consignor and power unloaded by consignee.
2. Rates not subject to surcharge.
3. In the event subhaulers are employed, they shall be paid no less than the rates authorized herein without any deduction for use of applicant's trailing equipment.