

ORIGINAL

Decision No. 87812 SEP 7 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 PAUL SIMON, doing business as SIMON
 TRUCKING, for authority to deviate
 from certain minimum rates pursuant
 to Section 3666 of the California
 Public Utilities Code for trans-
 portation performed for VONS
 GROCERY COMPANY, LUCKY MARKETS,
 INC., FAZIO'S, and RALPH'S GROCERY
 CO.

Application No. 56191
 (Filed January 9, 1976;
 amended January 27, 1977)

Milton W. Flack, Attorney at Law, for Paul Simon,
 doing business as Simon Trucking, applicant.
C. D. Gilbert and H. Hughes, for California
 Trucking Association; and Asa Button, for
 Spreckels Sugar Division - Amstar Corp.;
 interested parties,
Frank M. Nyulassy and John M. Johnson, for the
 Commission staff.

FINAL OPINION

Paul Simon (Simon), ^{1/} doing business as Simon Trucking,
 requests authority to charge less-than-minimum rates for the
 transportation of sugar in packages, on pallets, from Spreckels,
 California (near Salinas), to various warehouses in the Los Angeles
 area for six grocery companies, Vons, Lucky Markets, Fazio's, Ralph's,
 Thriftmart, and Market Basket. The proposed rate would be 72 percent
 of the applicable minimum rate in Minimum Rate Tariff 2, but not less

^{1/} Simon holds radial highway common carrier and highway contract
 carrier permits from the Commission.

than 75 cents per hundred pounds, and subject to a minimum weight of 44,000 pounds per shipment. Previous decisions in the matter authorized the request on an interim basis pending hearing; present authority expires October 12, 1977.

Hearing was held before Administrative Law Judge Albert C. Porter on July 11, 1977 in Los Angeles and the matter was submitted subject to a late-filed exhibit by Simon received on July 15. No one appeared in opposition to the request although the California Trucking Association (CTA) objected by letter to ex parte consideration, requested a hearing, but appeared only as an interested party.

Applicant's Presentation

Simon's operations manager and a certified public accountant testified in support of the request. The operations manager outlined the following features of the operation involving the deviation which are different from those normally encountered in such transportation: the sugar is in packages on pallets, 16 pallets per load; it is always power loaded and unloaded by consignor and consignee; shipping hours are 7:00 a.m. to midnight; receiving is 24 hours per day; the minimum weight is 44,000 pounds, 2,000 pounds over the truckload minimum; under the operation authorized by the interim deviation the average loads have been 46,000 pounds; all shipping and receiving points are one to five miles from freeways; shipment weighing is done by the consignor at no charge; flatbed or van equipment can be used allowing flexibility of operations; all sales work and routings are done in the Los Angeles area thereby eliminating long distance phone calls and promotional trips to northern California; and shippers are flexible as to pick up and delivery times which promotes efficient scheduling of northbound and southbound movements.

Simon has had a consistent northbound movement of freight averaging about 20 loads per week which it couples with the southbound movement of 8 to 10 loads of sugar for economical operation.

Three representative round trips involving shipments from the Los Angeles area to the San Francisco area and return from Spreckels to Los Angeles showed operating ratios before taxes of 75.9, 84.9, and 91.7 percent with the southbound sugar movement at the interim deviation rate. The accountant presented exhibits to support the unit costs used in the foregoing analyses and also testified that Simon had very good overall operating results for the calendar year 1976 and the first quarter of 1977; earnings reflected operating ratios of about 93 percent before taxes.

No presentations were made by interested parties or the Commission staff. However, all participated through cross-examination of Simon's two witnesses which developed the following pertinent matters.

The interim deviation does not require that shipments be power loaded and unloaded, only that it be at no expense to the carrier. The difference between hand and power load/unload is about 2 to 3 hours. If the carrier driver had to wait for hand load/unload, it could add appreciably to the cost. Simon amended the request so that power load/unload would be mandatory.

Under the interim deviation the return of empty pallets is at the expense and obligation of the grocery houses. At the request of the Spreckels representative Simon amended the application to provide for free return of pallets on an even exchange basis. Although Simon receives some revenue from the return of pallets it was not included in the three cost studies of record and its loss would not change the results of those studies.

Simon does not have a union contract covering its employees.

Equipment costs used in the cost studies were understated.

There are no split pickup or deliveries involved in the transportation.

If Simon had to deadhead a truck to Spreckels for the southbound move, it would not be a profitable operation at the deviated rate.

There is almost no direct connection between the northbound moves and the southbound moves which are under the deviation.

The present rate for the deviation is 85 cents per hundred pounds; the current minimum rate is \$1.18; there is a rail rate available at 94 cents but subject to a 100,000-pound minimum.

Discussion

A concern of the Commission relative to the granting of rate deviations under Section 3666 is that they not be used to undermine the minimum rate program through the possibility of carriers using them to essentially become transportation brokers or for anti-competitive predatory pricing. Neither of these possibilities appears to be involved in this request. No one appeared, shippers, carriers, or the public, in opposition to the proposal. There are only two points which cause us to pause before granting the application, unrelated backhaul and equipment costs used in the cost studies.

Although we have held that unrelated traffic expected to be received from other shippers, but not assured, should not be considered in the determination of whether a deviation will result in a compensatory operation (re The Paper Transport Co. (1964) 63 CPUC 690) we have also held that where such traffic is assured the round trip can be considered for the purpose of establishing a reasonable rate for the portion subject to the deviation. (re W. F. Peters (Peters Truck Line) (1966) 65 CPUC 292.) In this proceeding the evidence is convincing that the northbound traffic which couples with the southbound hauls from Spreckels is consistently available to Simon and the round trip constitutes a highly profitable venture. The operations manager testified that taken alone the southbound haul would not be profitable at the deviated rate if the northbound trip

was an empty deadhead movement. However, we cannot conceive that Simon would operate in that manner if the northbound revenue trips were not available since to do so would mean operating at a loss and thereby risk insolvency. Simon showed that once its equipment was positioned in the Bay Area the southbound trip was profitable having an operating ratio of 91.4 percent.

Simon owns all of its equipment. It is Simon's practice to buy used equipment of good quality and rebuild and refurbish it in its own shop at a considerable saving in cost over new equipment. Because the parts used are expensed at the time used instead of being capitalized and added to the book cost of the equipment, there is an understatement of expense in the cost studies presented. This is not of major consequence, and we will ignore it for the purpose of this decision.

Findings

1. There are special characteristics and conditions not present in the usual and ordinary transportation for which the deviation requested is sought.
2. The proposed less-than-minimum rate is a reasonable rate.
3. Since no showing of the costs of operation for potential subhaulers has been made, if subhaulers are used, they should be paid 100 percent of the authorized rate.
4. Since conditions involving the transportation subject to the deviation may change, the authority should expire October 12, 1978.

We Conclude that the application should be granted.

FINAL ORDER

IT IS ORDERED that:

1. Paul Simon, doing business as Simon Trucking, 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.
2. The authority granted shall expire October 12, 1978 unless sooner canceled, modified, or extended by order of the Commission.

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The authority granted by Decision No. 87314 dated May 10, 1977 is rescinded.

In all other respects Application No. 56191 is denied.

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

Dated at San Francisco, California, this 7th day of SEPTEMBER, 1977.

Robert Batminal
President
William J. Lyons
Gifford P. Maxwell
Vernon L. Sturgeon
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Carrier: Paul Simon, doing business as Simon Trucking.

Commodity: Sugar, in packages, on pallets.

Minimum Weight: 44,000 pounds.

Rate: 72 percent of the rates named in Item 740, Minimum Rate Tariff 2, but not less than 75 cents per cwt, subject to all applicable surcharges.

From: Spreckels Sugar Company, Spreckels.

To: Points within the Los Angeles Basin Territory as described in Item 270, Minimum Rate Tariff 2.

For: Vons Grocery Company
Lucky Markets, Inc.
Fazio's
Ralph's Grocery Co.
Thriftmart, Inc.
Market Basket

Conditions:

1. If subhaulers are employed, they shall be paid not less than the rates authorized herein with no deduction for the use of applicant's trailing equipment.
2. Shipments shall be power loaded by consignor at origin and power unloaded by consignee at destination without cost to the carrier.
3. There shall be no charge for the return of pallets from point of destination to point of origin when on an even exchange basis.
4. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.