

ORIGINAL

Decision No. 87937 OCT 4 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of RUSSELL T. PHILLIPS, an indi- )  
vidual, for authority to depart )  
from the minimum rates, rules and )  
regulations of Minimum Rate Tar- )  
riff No. 2 for transportation for )  
ARMOUR AND COMPANY pursuant to )  
Section 3666 of the Public Utili- )  
ties Code. )

Application No. 56451  
(Filed May 3, 1976)

C. E. Williams, Attorney at Law, and Ronald M. Liles, for applicant.  
Handler, Baker and Greene, by Daniel W. Baker, Attorney at Law, for Mammoth of California, Inc., protestant.  
Charles D. Gilbert and H. Hughes, for California Trucking Association, interested party.

## O P I N I O N

Applicant operates under the authority of radial highway common carrier and highway contract carrier permits, which authorize the transportation of general commodities, with limited exceptions, between all points in the State of California. He has applied to charge less than the minimum rates (Item 270-3, Minimum Rate Tariff 2) for the transportation of chilled and frozen meat from Dixon, California, to Fresno, Bakersfield, and the Metropolitan Los Angeles Area for Armour and Company (Armour).

Mammoth of California, Inc. (Mammoth), a Fresno carrier, filed a protest on May 24, 1976. This protest was supplemented by a letter dated June 10, 1976, which revealed that Mammoth was granted

the identical authority Phillips seeks in this application on April 13, 1976 (Decision No. 85686 in Application No. 56201). Protestant alleges that the Phillips' application is a copy of Application No. 56201 filed by Mammoth on January 21, 1976 to include the cost studies, which are based on eight shipments per week in both Phillips' and Mammoth's applications. A public hearing was held on November 9, 1976 and May 10, 1977 in Fresno before Administrative Law Judge Fraser. The delay between hearings was occasioned by efforts to obtain documents requested by protestant under a subpoena duces tecum. Evidence was presented by the applicant and protestant. The California Trucking Association representative assisted in developing the record.

It was developed that applicant will park two standby trailers and a shuttle tractor at the Armour plant in Dixon. Plant employees will use the tractor to position the trailers for loading and to park the loaded trailers in a convenient location to be picked up by applicant's line-haul equipment. Applicant's driver will leave an empty unit every time he picks up a loaded trailer. All loading at the Armour plant will be performed by Armour employees and no employee of applicant will be present when the work is being done. Minimum rates for the transportation to be performed range between \$1.85 and \$1.96 per hundred pounds, plus split delivery charges, on 30,000 pounds minimum weight. Applicant's equipment list includes one two-axle and eight three-axle tractors, plus 14 refrigerated vans, designed to transport frozen meat. Applicant provided this service for Armour during 1972, 1973, and 1974 under a deviation authorization which permitted him to charge a special rate for the transportation. Applicant ceased serving Armour when his trucking business became insolvent in 1975.

At the November hearing, a transportation consultant testified that he prepared the application and the supporting exhibits. He

based his computations on a list of loads applicant hauled for Armour (from Dixon to Fresno, Bakersfield, and Los Angeles) during November of 1975. Costs were not projected for 1976 or 1977 and the witness admitted that his exhibits are all based on statistics furnished by the applicant. The witness agreed that costs have increased since May 1976 (when the application was filed), but he is convinced that the \$1.45 rate applied for is still sufficient to insure a profit on the transportation. No allowance was made for possible subhauls, or for occasions when the trailers would return empty to the Bay Area. The witness assumed that drivers were not paid overtime and did not consider possible increases in the cost of diesel fuel, tires, tubes, or repairs. Protestant was concerned about the operating revenue, which is listed as \$569 outbound and \$473 on the return (page 1, Exhibit 3). He said that the latter total was obtained by dividing the total revenue from returns by the number of round trips in November 1975 (35).

Armour provided testimony that it prefers to have at least two carriers authorized to transport its meat at less than minimum rates, and it will support the applications of additional carriers, if any are filed. High freight rates prompted the company to purchase an additional truck in January of 1976. Since January most of the hauling has been done by Armour's own trucks and more trucks may be purchased in the future. It was estimated that protestant receives from four to eight loads a week and that applicant's service was used from 1972 until 1975, when Phillips became insolvent. Protestant is the only for-hire carrier Armour is now using to haul meat out of its Dixon installation. It was noted that applicant has provided better service than protestant, since the latter's service has prompted customer complaints. Armour used Phillips' service for twenty years prior to 1975 and still prefers it, if it becomes available. A witness stated that Armour may cease using for-hire carriers if rates continue to increase.

Applicant's accountant testified at the May hearing and placed a supplementary financial statement in evidence (Exhibit 6). He emphasized that the exhibit is based on information received from the applicant. The witness was not able to authenticate the estimate of operating expense and revenue in Exhibit 3, which applicant placed in evidence as justification for the proposed deviation. Protestant made a motion to dismiss at the conclusion of applicant's presentation. It was taken under submission.

Protestant's vice president testified that it is now providing the service for Armour that applicant seeks authority to perform. Armour supported Mammoth's application and promised a minimum of eight loads a week, although protestant has received and transported a maximum of five loads, with some loads not ready on time and others requiring as many as five separate deliveries. He further testified that the operation is marginally profitable for one carrier; if another is hired, both will lose money. A transportation accountant, called as a witness by protestant, testified that his experience indicates that applicant cannot operate profitably under the cost figures he has presented. The estimate of operating expense is almost two years old (1975), and recent increases in fuel, wages, insurance, tires, and other items were not considered. Cost estimates and profits have been based on a guarantee of eight loads per week where only five or less have been tendered; finally, there is no indication that any revenue will be earned by backhauls as the trailers are returned to the Bay Area. A prior decision granting the deviation authority to Phillips provided that "If return loads are assured, the proposed rates would be compensatory". (Page 3, Decision No. 80609 dated October 17, 1972 in Application No. 53242.) He is in accord with the statement that backhauls are required to make the proposed operation profitable.

Findings

1. Applicant seeks authority to transport frozen meat from Armour's Dixon plant to points in Southern California for \$1.45 per one hundred pounds on a minimum of 30,000 pounds.

2. The applicable tariff rates range from \$1.85 to \$1.96 per one hundred pounds on a 30,000 pound minimum.

3. Applicant alleges that the \$1.45 rate is sufficient to guarantee that the transportation will be profitable.

4. Protestant has provided an identical service to that proposed by the applicant for more than a year.

5. Applicant's cost exhibits, introduced to show the proposed operation will be profitable, are based on a guarantee of eight loads a week.

6. Protestant has been hauling a maximum of five loads a week for Armour.

7. Applicant's cost justification is based on transportation performed eighteen months ago and has not been corrected to include recent escalations in operating costs.

8. All trailers will return to the Bay Area empty. There has been no showing that the backhauls required to insure a profit will be tendered.

Conclusions

1. It has not been established that applicant's proposed operation will be profitable.

2. Application No. 56451 should be denied.

O R D E R

IT IS ORDERED that Application No. 56451 is denied.

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

Dated at San Francisco, California, this 4th  
day of OCTOBER, 1977.

Robert Bateman  
President

Verizon L. Sturgeon  
Richard W. Chavale

Commissioners

Commissioner William Simons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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