

ORIGINAL

Decision No. 88666 APR 14 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Albino Ambriz (dba AL AMBRIZ TRUCKING for authority to transport flattened auto bodies from Rancho Cordova, California, to Oakland, California, for Schnitzer Steel Products Co. of Oakland, California.

Application No. 57348
(Filed May 27, 1977)

Silver, Rosen, Fischer & Stecher, by James S. Clapp, Attorney at Law, for Al Ambriz, applicant.

Carr, Smulyan & Hartman, by George M. Carr, Attorney at Law, for Statewide Transport Service, Inc., protestant.

Charles D. Gilbert and H. Hughes, for California Trucking Association, interested party.

Mark S. Wetzell and Jerome Parke, for the Commission staff.

O P I N I O N

Albino Ambriz, dba Al Ambriz Trucking, requests authority to deviate from the otherwise governing provisions of Minimum Rate Tariff 2 (MRT 2) when transporting flattened or crushed automobile bodies for Schnitzer Steel Products of California, Inc. (Schnitzer Steel) from Rancho Cordova to Oakland. Statewide Transportation Service, Inc. (Statewide) and the California Trucking Association (CTA) oppose the sought relief.

11/19/80

Public hearings were held before Administrative Law Judge Gagnon on October 31, 1977 and January 5 and 6, 1978 at San Francisco. The matter was submitted subject to the filing of closing statements, due on or before January 16, 1978.

The transportation from Rancho Cordova to Oakland is subject to the MRT 2 Class 35 rate of 67 cents per 100 pounds, minimum weight 50,000 pounds, applicable to iron and steel scrap. The resulting freight charges are subject to an 18 percent surcharge, effective September 2, 1977, plus a Central Coastal Territory surcharge of \$2.85. However, applicant is currently moving the traffic under the lower alternative monthly vehicle unit rates named in MRT 15.

Applicant proposes to transport flattened or crushed automobile bodies from Rancho Cordova to Oakland at a rate of 28 cents per 100 pounds, minimum weight 46,000 pounds. Applicant does not intend to utilize the services of a subhauler. By Special Deviation Docket Orders Nos. SDD 565 and 563, issued April 19, 1977, Statewide and Humboldt Pacific Transport, Inc. were authorized to transport flattened or crushed automobile bodies for Schnitzer Steel from Rancho Cordova to Oakland at a rate of 30 cents per 100 pounds, minimum weight 40,000 pounds. The deviation authorities are scheduled to expire April 23, 1978 unless further extended by the Commission. At the present time, no traffic is moving under the aforementioned authorities. Humboldt Pacific Transport, being duly notified, chose not to enter an appearance in this proceeding.

Deputy Attorney General (11/15)

Background

On September 12, 1975 the Commission's Transportation Division staff issued a report proposing that the transportation of flattened or crushed automobile bodies be exempted from minimum rate regulation. Decisions Nos. 85585, 85586, and 85587 dated March 16, 1976 in Cases Nos. 5432, 5439, and 5441 ordered that the exempt commodities listings in MRTs 1-B, 2, 9-B, and 19 be revised as proposed by the staff. By Decision No. 85789 CTA's petition for reconsideration and rehearing of this matter was denied and the flattened or crushed automobile body exemption became effective in the several minimum rate tariffs on May 15, 1976. Upon petition by the CTA, the State Supreme Court on March 24, 1977 issued its Writ of Review in S.F. 23473 annulling the Commission's aforementioned exemption orders.

In response to the Court's annulment the Commission issued Decision No. 87236 in Case No. 5432 (OSH 965) et al. which restored the application of minimum rates on flattened or crushed automobile bodies, effective April 23, 1977, pending hearing for the receipt of evidence relative to the desirability and/or feasibility of minimum rate regulation for this traffic. Public hearings have been held, Case No. 5432 (OSH 965) et al. now stand submitted and a decision therein is expected in the near future.

Statewide commenced hauling flattened or crushed automobile bodies for Schnitzer Steel from Rancho Cordova to Oakland during the latter part of 1973. Transportation was initially performed under the then effective monthly vehicle unit rate provisions of MRT 15.

By Decision No. 84493 Statewide was granted temporary authority,

effective June 23, 1975, to assess a rate of 30 cents per 100 pounds, minimum weight 40,000 pounds, for the transportation of this traffic.^{1/} The authority was extended to April 23, 1978 by SDD Order No. 565. When performing service for Schnitzer Steel, Statewide employed applicant as a subhauler who was initially paid \$100 per load. Thereafter, the basis for compensation was revised to 25 cents per 100 pounds (\$5.00 per ton), minimum weight 40,000 pounds.

During the period of May 15, 1976 to April 23, 1977, when the movement of flattened or crushed automobile bodies was exempt from minimum rate regulation, Schnitzer Steel diverted its traffic from Statewide to applicant. As a prime carrier, it received \$5.00 per ton which is the same compensation previously paid to applicant as a subhauler by Statewide. It is also \$1.00 per ton less than the amount Schnitzer Steel was assessed by Statewide for like services performed under its outstanding deviation authority.

When minimum rate regulation of flattened or crushed automobile bodies was restored by Decision No. 87236, Statewide, under its outstanding deviation authority, commenced hauling during May 1977 for Schnitzer Steel and applicant was again employed as a subhauler. However, upon the filing of Application No. 57348 on May 27, 1977 Statewide's relationship with the shipper terminated. Applicant, now operating as a prime carrier, continues to transport flattened or crushed automobile bodies from Rancho Cordova to Oakland for Schnitzer Steel under the monthly vehicle unit rate provisions of MRT 15. The resulting freight charges are higher than the like charges currently applicable under Statewide's effective deviation authority.

^{1/} Statewide's deviation authority represents an effort to remain competitive with Humboldt Pacific Transport, Inc. who had previously received a like deviation authority.

Applicant's Evidence

Applicant and a vice-president for Schnitzer Steel presented testimony as to the special circumstances and conditions surrounding the transportation of flattened or crushed automobile bodies from Rancho Cordova to Oakland which allegedly justify the sought authority. The movement is continuous throughout the year on a five-day per week schedule. All loading and unloading services are performed by the shipper with power equipment. Shipments are weighed at origin and destination by the shipper. The flattened automobile bodies are crushed together in units which can be transported in truckload loads in some instances exceeding 50,000 pounds. The commodity is immune to damage and except for short entrances at origin and destination the transportation is performed entirely over freeways. Schnitzer Steel assists in the required documentation of shipments. The only accessorial service performed by the carrier's driver is the necessary tying down of the shipment with cables. Applicant contends that the Commission previously found favorable special circumstances surrounding the transportation involved when it granted Humboldt Pacific Transport, Inc. and Statewide special deviation authority.

A pro forma statement of the estimated income and related expenses anticipated under the sought authority for the year ending December 31, 1978, was introduced (Exhibit 8) by a certified public accountant. A summary of the accountant's estimated results of operations follows:

	Year Ending December 31, 1978	Projected Per Trip
Revenue	\$96,000	\$128.80
Operating Costs		
Direct Labor Costs	34,776	46.37
Vehicle Running Costs	38,474	51.30
Vehicle Fixed Costs	7,533	10.05
Taxes and Insurance	5,681	7.58
Subtotal	86,464	115.30
G + A Fixed Costs	5,400	7.21
Total Operating Costs	91,864	122.51
Operating Income - Projected	4,733	6.29
Operating Ratio	95.1%	95.1%

The accountant's income and expense projections are based upon the availability of applicant's three units of equipment transporting a total of three shipments of flattened or crushed automobile bodies, weighing a minimum of 46,000 pounds, each day for 250 working days per year. Wage costs for three drivers are based upon 30 percent of gross revenues. It is estimated that applicant will earn an annual gross income of about \$17,000 under the proposed operations (driver wages, \$10,500; profit, \$4,733; and rental value of maintenance yard, \$1,800).

While certain cost factors employed by applicant's accountants appear overstated, certain other cost factors such as health and welfare benefits, vacation allowances, and maintenance wages are not reflected in the estimated cost of operations. It is also noted that the accountant's projections are predicated upon nearly maximized operations. The total capacity projected by applicant for his three units of equipment is 4.5 loads per day, or $1\frac{1}{2}$ loads per unit. On this basis 3 loads per day could be achieved with only two units of equipment in the event the third unit was out of service.

To the extent the average weight per shipment of flattened or crushed automobile bodies exceeded 46,000 pounds, and the evidence indicates applicant has transported loads weighing an average of 48,000 pounds, the accountant testified the profitability of the proposed operations would increase. In further support of applicant's position the vice president of Schnitzer Steel stated that at present his company averaged approximately three shipments of flattened or crushed automobile bodies per day from Rancho Cordova to Oakland. He predicts, however, with anticipated improvements in the scrap steel industry, the average number of shipments per day during 1978 will increase to 6 or 8 loads. The shipper representative also stated that there is not only backhaul traffic of recycled

materials for McGuire Trucking available to applicant but also Schnitzer Steel has new steel shipments which applicant may transport as a backhaul from Oakland. This additional potential backhaul traffic is not reflected in applicant's revenue and expense projections.

In connection with its request for immediate temporary relief pending the Commission's action in Case No. 5432 (OSH 965) et al., applicant urges authority be granted to assess a rate of not less than 30 cents per 100 pounds (\$6.00 per ton), minimum weight 46,000 pounds, should the Commission consider applicant's rate proposal to be somewhat marginal or otherwise noncompensatory. This alternative rate proposal would tend to establish a desirable degree of competitive equality as between applicant and Statewide for Schnitzer Steel's traffic. To promote this objective, Schnitzer Steel, which has expressed the need for two carriers to handle its expanding volume of traffic, has agreed to utilize the services of both applicant and Statewide for the transportation of flattened or crushed automobile bodies from Rancho Cordova to Oakland. Statewide, in turn, has agreed to accept all loads tendered by Schnitzer Steel.

Position of Protestant and CTA

Statewide and the CTA contend that applicant has failed to demonstrate that its rate proposal will be compensatory. Statewide further maintains that applicant's sought authority is predatory. The CTA also requests that no decision be reached in this proceeding until a final determination is made in Case No. 5432 (OSH 965) et al.

Applicant explained that its cost projections do not include any factors for health and welfare benefits, vacation allowances, and maintenance wage costs because no such costs are actually experienced. In addition, applicant notes that several of the costs factors reflected in the accountant's pro forma income and expense statement are overstated. The CTA correctly observes a Commission's prior holding in this regard stating that "In determining cost, it is appropriate to consider the work as being done at wages and under working conditions not less than those prevailing in the area involved" (Decision No. 64248 dated September 11, 1962 in Application No. 44382.)

To meet the alleged infirmity in its rate proposal applicant is agreeable to increasing its proposed rate of 28 cents to 30 cents per 100 pounds, subject to a minimum weight of 46,000 pounds. Except for the higher minimum weight requirement, applicant's alternative rate proposal is the same as previously found reasonable for Statewide which, in turn, has now expressed a desire to once again commence hauling for Schnitzer Steel. Under the alternative rate proposal applicant would be guaranteed \$18 per truckload more than would be realized by Statewide on any given shipment of flattened or crushed automobile bodies weighing a minimum of only 40,000 pounds.

Statewide's allegation that Application No. 57348 constitutes a predatory action is premised primarily upon the Commission's holding in Northern Refrigeration Transportation, Inc., Decision No. 87526 dated June 28, 1977 in Application No. 56420.

However, the circumstances involved in Decision No. 87526 differ materially from those involved in this proceeding. For example, in Decision No. 87526 the Commission states:

"This application is unusual in that NRT has applied for authority to assess less than the minimum rates before it has gained experience in the very transportation for which they seek the authority."

Applicant has rather extensive experience hauling flattened or crushed automobile bodies for Schnitzer Steel from Rancho Cordova to Oakland both as a subhauler for Statewide and as an independent carrier. The volume of Schnitzer Steel's traffic exceeds substantially the capacity of applicant's available equipment, consequently, there is a need for the services of at least two carriers. Granting the sought deviation authority to reflect applicant's alternative rate proposal will enhance the level of competitive equality between applicant and Statewide.

The CTA's request that no decision be issued in this matter pending final determination of Case No. 5432 (OSH 965) et al. is primarily self-serving and generally without merit. Applicant is not only entitled to be heard, but may also expect to be advised by the Commission of its decision within a reasonable period of time.

Findings

1. Applicant seeks authority to deviate from the otherwise governing provisions of MRT-2 when transporting flattened or crushed automobile bodies for Schnitzer Steel from Rancho Cordova to Oakland at a rate of 28 cents per 100 pounds, subject to a minimum weight of 46,000 pounds.

2. Statewide and Humboldt Pacific Transport, Inc. currently hold special deviation authority to transport flattened or crushed automobile bodies from Rancho Cordova to Oakland for Schnitzer Steel at a rate of 30 cents per 100 pounds, subject to a minimum weight of 40,000 pounds.

3. At the present time no traffic is moving under the outstanding authorities of Statewide and Humboldt Pacific Transport, Inc. The present authorities are scheduled to expire on April 23, 1978 unless further extended by the Commission.

4. Applicant is currently transporting flattened or crushed automobile bodies from Rancho Cordova to Oakland for Schnitzer Steel under the alternative monthly vehicle unit rates named in MRT 15.

5. Applicant has considerable experience transporting flattened or crushed automobile bodies for Schnitzer Steel operating as a subhauler and currently as an independent for-hire carrier.

6. Applicant has established the existence of special favorable circumstances, such as a continuous movement, five days a week, throughout the year and all loading and unloading done by the shipper, surrounding the transportation involved in justification for authority to deviate from the otherwise governing provisions of MRT 2.

7. Applicant's revenue and expense projections under its proposed rate of 28 cents per 100 pounds, minimum weight 46,000 pounds, have not been shown to be fully compensatory.

8. In order that its sought authority may be found to be fully compensatory, applicant presented an alternative rate proposal of 30 cents per 100 pounds, minimum weight 46,000 pounds.

9. With the anticipated expanding volume of outbound movements of flattened or crushed automobile bodies, the supplemental backhauls of steel products to be made available to applicant by Schnitzer Steel (not heretofore considered in the former's revenue and expense showing), and the increase in minimum per shipment weights from 40,000 to 46,000 pounds, the alternative rate proposal set forth in Finding 8 has been shown to be compensatory and reasonable.

10. The volume of flattened or crushed automobile bodies moving outbound from Rancho Cordova to Oakland exceeds the present equipment capacity of applicant.

11. The testimony of Schnitzer Steel establishes a need for the services of at least two carriers to transport the outbound movements of flattened or crushed automobile bodies from Rancho Cordova to Oakland.

12. Schnitzer Steel agrees to tender and Statewide will accept shipments of flattened or crushed automobile bodies for transportation from Rancho Cordova to Oakland under its currently effective deviation authority.

13. Humboldt Pacific Transport, Inc., being duly notified of this proceeding, did not participate in this matter.

14. With the granting of the sought authority, as amended by the suggested alternative rate proposal, a basis for competitive equality between applicant and Statewide will be established.

Conclusions

1. Application No. 57348 should be granted to the extent provided in the order herein.

2. As transportation conditions may change, the authority will be made subject to expire in approximately one year unless sooner canceled, modified, or extended by the Commission.

O R D E R

IT IS ORDERED that:

1. Albino Ambriz, doing business as Al Ambriz Trucking, is authorized to deviate from the otherwise governing provisions of Minimum Rate Tariff 2 by assessing rates no lower than those set forth in Appendix A of this decision.

2. The authority granted herein shall expire on December 31, 1978 unless sooner canceled, modified, or extended by the Commission.

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

Dated at San Francisco, California, this 4th day of APRIL, 1978.

Robert B. Quinn
President

William J. ...

Edward D. ...

Richard D. ...

Clare J. ...
Commissioners

APPENDIX A

Carrier: Albino Ambriz, dba Al Ambriz Trucking.

Shipper: Schnitzer Steel Products of California, Inc.

Commodity: Flattened or crushed automobile bodies.

From: Rancho Cordova.

To: Oakland.

Rate: 30 cents per 100 pounds, minimum weight
per truckload 46,000 pounds.

Conditions:

- (1) Shipment shall be power loaded and power unloaded at no expense to carrier.
- (2) Application of rate is subject to:
 - a. Minimum of 750 shipments per year.
 - b. Shipper's tender of available backhaul traffic.
- (3) Carrier shall establish and maintain adequate shipping documents sufficient to verify compliance with conditions of paragraph (2) above.
- (4) Rate does not apply in the event carrier utilizes the services of a subhauler.
- (5) In all other respects the otherwise governing provisions of MRT 2 shall apply.