

ORIGINAL

Decision No. 88725 APR 18 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
DONALD E. GEORGE, doing business as)
DON GEORGE TRUCKING, for an Order)
authorizing applicant to deviate)
from certain minimum rates on ship-)
ments transported for Triangle Steel)
& Supply Co., pursuant to Section)
3666 of the Public Utilities Code)
of the State of California

Application No. 57327
(Filed May 20, 1977;
amended August 2, 1977)

Murchison & Davis, by Fred H. Mackinsen,
for applicant.

Gerald K. Trant, for California Trucking
Association, interested party.

Geoffrey W. Meloche, for the Commission
staff.

O P I N I O N

Applicant holds authority as a radial highway common carrier.

He here seeks authority to assess less than the minimum rates set forth in Minimum Rate Tariff 2 (MRT 2) for the transportation of iron and steel articles as described in Item 760 of MRT 2 for the account of Triangle Steel and Supply Co. (Triangle).

Public hearing was held before Administrative Law Judge O'Leary at Los Angeles on January 18, 1978 at which time the matter was submitted.

At the hearing applicant amended his request to apply to all commodity descriptions set forth in Item 760 of MRT 2, to shipments subject to a minimum weight of 40,000 pounds or more, and only to shipments with destinations located north of an imaginary line drawn across the state through Soledad and Fresno.

Specifically, applicant seeks authority to assess Class 35.3 rates in lieu of Class 35 rates on shipments subject to a minimum weight of 40,000 pounds and Class 35.4 rates in lieu of Class 35.1 rates on shipments qualifying for volume incentive service.

Applicant operates three diesel tractors and four 40-foot trailers. He has been performing a transportation service for Triangle for approximately two years. He does not plan to utilize subhaulers for the subject transportation.

Exhibit 1 is a cost study covering 19 northbound shipments for Triangle and 13 southbound return shipments transported by one unit of equipment during the period October 1, 1977 to December 31, 1977. The returning southbound moves are not controlled by Triangle. The exhibit discloses the following:

	<u>Minimum Rate</u>	<u>Proposed Rate</u>
Revenue from Triangle	\$15,531.12	\$12,284.58
Revenue from Return Loads	<u>6,246.75</u>	<u>6,246.75</u>
Round-Trip Revenue	21,777.87	18,531.33
Expenses	<u>13,721.85</u>	<u>13,721.85</u>
Profit	8,056.02	4,809.48

The expense figures were taken from applicant's books of account showing expenses actually incurred during the three-month period. There is no breakdown as to what portion of the expenses is attributable to the Triangle shipments and what portion is attributable to the return loads. Further, the cost study is not prepared in sufficient detail to enable us to make such a determination. On six occasions applicant returned empty.

A vice president of Triangle testified that a grant of the application would enhance Triangle's competitive position. He also testified that some of his competitors obtain transportation at a lower cost; however, he does not know of any that has a Section 3666 rate available to it.

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.) The evidence in this proceeding is not convincing that the southbound shipments are consistently available to applicant. It may be that the rates proposed by applicant for the northbound traffic may be compensatory without considering the southbound traffic; however, such a determination cannot be made from the evidence contained in the record herein.

The Commission finds that applicant has not shown that the proposed rates without the non-assured, unrelated return movements will exceed the cost of providing the service and therefore has not sustained the burden of proof that the proposed rates are reasonable. We conclude that the application should be denied.

ORDER

IT IS ORDERED that Application No. 57327 is denied.

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

Dated at San Francisco, California, this 18th day of APRIL, 1978.

Robert Botwinich
President
William Symons Jr.
Vernon L. Steyer
Clair J. Sedwick
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.