

ORIGINAL

Decision No. 88893 MAY 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application
of Frolly F. Crumpton, dba:
Crumpton Trucking for an order
authorizing departure from the
rates, rules and regulations of
Minimum Rate Tariff No. 2,
pursuant to the provisions of
Sections 3666 and 5195 of the
Public Utilities Code, for the
transportation of sod, in rolls
and stacked on pallets for
Warren's Turf Nursery, Box 459
R.R. (Cordelia & Chadbourne),
Suisun City, California 94585.

Application No. 57721
(Filed December 2, 1977)

Frolly F. Crumpton, for himself, applicant.
Daniel W. Baker, Attorney at Law, for U.W.S.
Material & Supply Co., Inc. and Western
Drywall Transport, Inc. (successor of U.W.S.),
protestants.
Charles D. Gilbert, for California Trucking
Association; and Emory C. Hunter, for Warren's
Turf Nursery, interested parties.
Everest A. Benton, for the Commission staff.

O P I N I O N

Frolly F. Crumpton, doing business as Crumpton Trucking, pursuant to the provisions of Sections 3666 and 5195 of the Public Utilities Code requests authority to charge a rate less than that provided for in Minimum Rate Tariff 2 for the transportation of sod, in rolls and stacked on pallets for Warren's Turf Nursery (Warren's), Suisun City.

A public hearing was held before Administrative Law Judge Daly in San Francisco on March 20, 1978 and the matter was submitted.

Applicant operates from the city of Napa pursuant to a radial highway common carrier permit. He owns four tractors and three flatbed trailers. With the exception of one tractor, the equipment is primarily used for the purpose of transporting sod for Warren's. Applicant drives one tractor, his wife another, and the third tractor, which is not presently being used, will be driven by Mr. Nickolini, who is soon to be employed.

The present minimum rate for sod moving in 45,000-pound shipments is the 35.4 class rating published in Exception Ratings Tariff 1. It applies only in connection with shipments loaded by the consignor and unloaded by the consignee with power equipment, furnished and used without expense to the carrier.

Applicant proposes a 35.4 class rating on the following shipments of sod:

1. Weights of 36,000 to 45,000 pounds to be billed as 45,000 pounds.
2. Weights of 36,000 pounds and under to be billed as 40,000 pounds.
3. Weights of 47,500 pounds and over to be billed as 50,000 pounds.

In addition thereto applicant proposes the following:

- a. To furnish a forklift when needed at the rate of \$1.65 per hour.
- b. To assess no charge for the first drop on split deliveries.
- c. To assess no charge for the handling of C.O.D. shipments.
- d. To assess no charge for the return of empty pallets.
- e. To transport fertilizer, seed, and/or soil conditioning products at the same rate as sod when shipped with sod when such commodities do not exceed 3,000 pounds.

Applicant expects to transport approximately 400 shipments a year, most of which will be to points within 200 miles of Suisun City; however, he will handle shipments to Warren's Whittier branch whenever a backhaul of fertilizer is available from Brea. ✓

As part of his application, applicant gave revenues and estimated costs for the transportation of 40,000- and 45,000-pound shipments of sod from Suisun City to such points as Albany, Chico, Fair Oaks, Fremont, Modesto, Pleasanton, Redding, Santa Rosa, Tahoe City, Vacaville, Vallejo, Woodland, and Whittier. Each example indicated that revenues exceeded costs by amounts ranging from \$87.31 to \$141.74 on the 40,000-pound shipments and from \$112.51 to \$157.01 on the 45,000-pound shipments. A 45,000-pound shipment of sod to Whittier with a 50,000-pound backhaul shipment of fertilizer indicated a net of \$410.58. All of the estimates provided for driver wages at the rate of \$10.00 an hour.

With his income primarily derived from the transportation of sod for Warren's, applicant and his wife indicated a net profit in the amount of \$32,582 for the year 1977.

Applicant first commenced hauling sod for Warren's as a subhauler for U.W.S. Materials & Supply Co. (U.W.S.) in 1974. He continued hauling in that capacity for about a year. On February 10, 1976, U.W.S. was authorized to depart from the minimum rates to transport sod for Warren's. Such authority was extended by subsequent orders and is still in effect. U.W.S. served Warren's under the deviation rate until some time in 1976, when applicant commenced hauling for Warren's on a regular basis charging the 35.4 class rating.

According to Warren's regional manager, sod has to be delivered soon after being ordered and requires a close working relationship between the shipper, carrier, and customer. To facilitate the relationship applicant's equipment is kept on Warren's property

when not in use. Warren's employees power load the pallets of sod. On approximately 90 percent of the shipments applicant carries a forklift behind the tractor and when the customer does not have power equipment applicant uses his own forklift to progressively spot pallets at the job site. In such cases he assessed an hourly charge for the forklift.

In addition he assessed no C.O.D. charges and assessed no charge for the first drop on split deliveries nor for the return of empty pallets. Applicant believed he was justified in not assessing these latter charges for the following reasons:

1. Approximately 50 percent of the shipments are C.O.D. and all of such shipments are paid by checks made out to Warren's and applicant returns to the shipper's parking lot after every load has been delivered.
2. On split deliveries the rate to the furthest point of destination is assessed and there is one delivery regardless of whether the shipment is a split or not.
3. There is no inconvenience to applicant in returning empty pallets because the consignee stacks them and applicant always returns to the shipper's yard. In addition thereto the weight of the pallets is not deducted on outbound shipments.

When informed by a Commission field representative that his failure to assess prescribed charges for these services was improper, applicant assertedly discontinued the practice and filed the instant application requesting the proposed deviation.

Protestants contend that applicant failed to submit full operating costs of the proposed service and failed to establish that there is anything unique or unusual about the service.

Although applicant's revenue and costs study may not contain the detail to be found in a professional study it is adequate when considered with his 1977 income statement, which indicates a

net profit of \$32,582. The actual transportation of sod may not entail anything of an unusual nature, but the fact that applicant parks his equipment on Warren's property and the fact that applicant's service is immediately available to meet Warren's delivery requirements make his service unique and he does not have the expense of positioning equipment.

After consideration the Commission finds that:

1. Applicant is presently operating from the city of Napa as a radial highway common carrier. He owns four tractors and three flatbed trailers.

2. For approximately the past year applicant has been hauling truckload shipments of grass sod, in rolls, on pallets for Warren's from Suisun City at a class rating of 35.4. As a deviation from the present exception rating, applicant proposes to assess no charge for the first drop on split deliveries; no charge for the handling of C.O.D. shipments; no charge for the return of empty pallets; and an hourly rate of \$1.65 for the use of a forklift.

3. Sod has to be delivered soon after an order has been placed and its transportation requires a close working relationship between the shipper, carrier, and customer. Because applicant's equipment is used primarily in serving Warren's, his equipment is parked on Warren's property and is immediately available.

4. Applicant's economic studies indicate that the proposed deviation is economically feasible and is supported by the fact that applicant indicated a net profit of \$32,582 in 1977.

5. There is a cost saving directly attributable to applicant's transportation of the commodity involved.

6. The proposed rate is compensatory, reasonable, and justified.

7. It is reasonable to make the following order effective ten days from the date of signature so that the proposed rates can begin to be assessed at the earliest date.

Since conditions under which the service is performed may change at any time, the authority granted in the ensuing order will expire at the end of one year unless sooner canceled, modified, or extended by order of the Commission.

ORDER

IT IS ORDERED that:

1. Frolly F. Crumpton, doing business as Crumpton Trucking, is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging not less than those rates set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, or regulations except as specifically set forth in Appendix A.

2. The authority granted shall expire one year after the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

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

Dated at San Francisco, California, this 31st day of 1 MAY, 1978.

Roluf Bottrigch

President

William J. Jensen

Verona L. Sturgeon

Richard D. Gordon

Commissioners

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

APPENDIX A

Carrier: Frolly F. Crumpton, dba Crumpton Trucking.

Shipper: Warren's Turf Nursery.

Commodity: Sod in rolls stacked on pallets.

Governing Distance Table: Distance Table 8.

Service and Rates:

From Warren's Turf Nursery in Suisun City,
California to all points in California.

1. Applicable rating: Class 35.4.
2. Applicable weights:
 - a. 36,000 pounds and under to be billed at 40,000 pounds.
 - b. Over 36,000 to 45,000 pounds to be billed at 45,000 pounds.
 - c. Over 45,000 to 50,000 pounds to be billed at 50,000 pounds.
 - d. All other weights to be billed at actual weight of shipment.
3. Additional conditions:
 - a. Furnishing of forklift at \$1.65 per hour.
 - b. No charge to be assessed for first drop on split deliveries.
 - c. No charge for handling C.O.D. shipments.
 - d. No charge for return of empty pallets.
 - e. Fertilizer, seed, and/or soil conditioning products, not exceeding 3,000 pounds, when shipped with sod shall be at the same rate as sod.
 - f. In the event subhaulers are employed, they shall be paid no less than the rates authorized herein without any deduction for use of applicants trailing equipment.
 - g. To the extent not otherwise specifically provided, the provisions of Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)