

Decision No. 88954 JUN 13 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES DIVISION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 OSTERKAMP TRUCKING, INC., a corpo-
 ration for authority to deviate from
 the provisions of Minimum Rate
 Tariff Number 2 in connection with
 the transportation of lumber, forest
 products, and wood products, for the
 American Forest Products Corporation,
 pursuant to the provisions of
 Section 3666 of the California Public
 Utilities Code.

Application No. 56798
 (Petition for Modification
 of Decision No. 87647
 Filed October 11, 1977)

Michael Eggleton, for Osterkamp Trucking, Inc.,
 applicant.
Charles D. Gilbert, for California Trucking
 Association, interested party.
Everest A. Benton and Vahak Petrossian, for the
 Commission staff.

SUPPLEMENTAL OPINION

Decision No. 87647 dated July 26, 1977 in this proceeding authorized Osterkamp Trucking, Inc. (Osterkamp) to assess less-than-minimum rates for the transportation of lumber and forest products as described in Item 685 of Minimum Rate Tariff 2 (MRT 2) for American Forest Products, Inc., from various points to points located within the Los Angeles Basin Territory and points located within San Diego County. Decision No. 87647 stated:

"No evidence has been presented that any one owner-operator will experience the costs set forth in Exhibit 4. Furthermore, we are not convinced that

payments to the owner-operators would be compensatory especially in view of the evidence that owner-operators are compensated at the rate of 20.5 cents per mile for wages and return on investment when drivers employed by applicant are compensated 28.09 and 25.32 cents per mile for wages and fringe benefits (Exhibits 5 and 6)."

As a result Decision No. 87647 contained the following condition:

- "3. In the event subhaulers are employed, they shall be paid no less than the rates authorized herein without any deduction for use of applicant's trailing equipment."

On October 11, 1977 Osterkamp filed a Petition for Modification of Decision No. 87647 seeking removal of the aforementioned condition.

Public hearing with respect to the petition for modification was held before Administrative Law Judge O'Leary at San Francisco on February 27, 1978. The matter was submitted on March 6, 1978 with the filing of late-filed Exhibit 15.

Exhibits 13 and 15 set forth detailed costs covering the operations of 29 owner-operators. The exhibits are based upon the premise that after transporting a shipment to points in the Los Angeles Basin Territory, the owner-operator will transport a shipment of glass bottles from Santa Ana to Tracy and that after transporting a shipment to points in San Diego County, the owner-operator will transport a shipment of gypsum wallboard from Plaster City to Sacramento. The exhibits do not contain any provision for wages of the owner-operators. We have previously held that even though owner-operators do not pay themselves wages it is an element of cost that must be considered.

Although the exhibits do not contain a provision for drivers' wages, the exhibits indicate that under Osterkamp's proposal to pay the

owner-operators 65 percent of the revenue of the south-bound shipments and 65 percent of the revenue of the aforementioned return loads, the payments to the owner-operators will be sufficient to cover wages and provide a favorable operating ratio.

The relief sought herein will be granted to the extent set forth in the ensuing order. Osterkamp is placed on notice that should it seek renewal of this authority it will be required to submit detailed cost data covering owner-operators which will include a provision of reasonable wages of owner-operators. In this regard wages of Osterkamp's own driver employees imputed for the owner-operators should be utilized in the absence of other valid data.

Findings

1. Decision No. 87647 dated July 26, 1977 in this proceeding authorized Osterkamp to assess less than the minimum rates for certain transportation performed for American Forest Products, Inc.

2. Decision No. 87647 contained the following condition:

"3. In the event subhaulers are employed, they shall be paid no less than the rates authorized herein without any deduction for use of applicant's trailing equipment."

3. On October 11, 1977 Osterkamp filed a Petition for Modification of Decision No. 87647 seeking removal of the condition set forth in Finding 2.

4. Cost evidence with respect to 29 owner-operators presented by Osterkamp is based upon the premise that after transporting a shipment to points in the Los Angeles Basin Territory the owner-operator will transport a shipment of glass bottles from Santa Ana to Tracy and that after transporting a shipment to points in San Diego County, the owner-operator will transport a shipment of gypsum wallboard from Plaster City to Sacramento.

5. The cost evidence does not contain any provision for wages of the owner-operators.

6. The exhibits indicate that under Osterkamp's proposal to pay the owner-operators 65 percent of the revenue of both the southbound and northbound shipments the payments to owner-operators will be sufficient to cover wages and provide a favorable operating ratio to each of the 29 owner-operators.

The Commission concludes that the petition for modification should be granted to the extent set forth in the ensuing order. To the extent not granted in the ensuing order, the petition for modification should be denied. Since there is an immediate need for the sought relief, the effective date of the ensuing order should be the date hereof.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. Decision No. 87647 is hereby amended by substituting for Appendix A thereof Amended Appendix A which is attached hereto and by this reference made a part hereof.

2. In all other respects Decision No. 87647 shall remain in full force and effect.

3. To the extent not granted herein, the Petition for Modification of Decision No. 87647 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th day of JUNE, 1978.

I dissent.

William Sproull Jr.

I dissent

Vernon L. Sturgeon

Robert Bateman

President

~~*Vernon L. Sturgeon*~~
~~*Richard D. Lowell*~~
~~*Clare J. DeWick*~~

Commissioners

AMENDED APPENDIX A
Page 1 of 2

Carrier: Osterkamp Trucking, Inc.

Commodities: Lumber and forest products as described in Item 685
of Minimum Rate Tariff 2.

Shipper: American Forest Products, Inc.

Rates: In cents per 100 pounds.

<u>Origin</u>	<u>Destination</u>	
	<u>Los Angeles Basin Territory</u>	<u>San Diego County</u>
Foresthill	74	87
Fresno	55	68
Martell	70	80
North Fork	62	72
Stockton	66	76

Minimum Weight: 50,000 pounds.

Conditions:

1. Shipments must be power loaded by consignor and power unloaded by consignee.
2. Rates not subject to surcharge.
3. In the event authorized subhaulers are employed, they shall be paid no less than 65 percent of the authorized rates herein provided they also receive a return northbound shipment of glass bottles from Santa Ana to Tracy after delivery of southbound shipments to points in the Los Angeles Basin Territory and are paid no less than 65 percent of the revenue of the return northbound shipment and provided they also receive a return northbound

AMENDED APPENDIX A
Page 2 of 2

Conditions--Contd.

shipment of gypsum wallboard from Plaster City to Sacramento after delivery of southbound shipments to points in San Diego County and are paid no less than 65 percent of the revenue of the return northbound shipment, without any deduction for applicant's trailing equipment.

4. In the event unauthorized subhaulers are employed or authorized subhaulers do not receive return northbound shipments as provided in Condition 3, they shall be paid no less than the rates authorized herein without any deduction for use of applicant's trailing equipment.

Authorized Subhaulers:

Jim Alexander	Forest D. Gossett
Carl T. Anderson	Ray Graham
Rudy Avila	Roger Johnson
Jim Barton	Marty Kirsch
William Broming	Jim Kosareff
Dave Brazil	Ken Lawrence
Joe Chambers	Dave Luse
Nicholas Cloo	Jim McDowell
Bill Davison	Dana Nafus
Bill Dozier	Bob Norton
John Estes, Sr.	Manual Ponce deLeon
Don Farnsworth	Lloyd Pierce
Jerry Fitch	George Strange
Lowell Fitch	Fred Williamson
Manny Garrison	