

Decision No. 90070 MAR 13 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 Louis V. Marval dba MARVAL TRUCKING;
 Kazumi Eguchi dba KAZUMI EGUCHI
 TRUCKING; Jolly R. Stapleton & Ruby
 Mae Stapleton dba STAPLETON TRUCKING;
 June Kathaleen Williams and Robert
 Wendell Williams dba WILLIAMS
 TRUCKING; RICHARD GREEN; Robert F.
 Kakuska, Robert F. Kakuska, Jr.,
 Stephen M. Kakuska and David S.
 Kakuska dba B K TRUCKING; Milton J.
 Jacklin dba JACKLIN TRUCKING; Leland
 Delcour dba DELCOUR TRUCKING; Thomas R.
 Canady dba CANADY TRUCKING; RALPH E.
 SMITH; Charles W. Webb dba C. W. WEBB
 TRUCKING; David R. Dillingham dba D & D
 TRUCKING; LOUIS F. CONNOT; and J. Wahl
 and Clyde Webb dba WAHL WEBB TRUCKING,
 for authority to deviate from minimum
 rates pursuant to Section 3666 of the
 Public Utilities Code for specified
 shippers.

Application No. 57356
(Filed May 27, 1977)

Application of BOBBY R. CALLIHAM for
 authority to deviate from minimum rates
 for the transportation of asphalt
 products pursuant to Section 3666 of
 the Public Utilities Code for All
 American Asphalt.

Application No. 58103
(Filed May 30, 1978)

Russell, Schureman & Hancock, by R. Y. Schureman,
 Attorney at Law, for Louis V. Marval, dba
 Marval Trucking; Robert F. Kakuska, Robert F.
 Kakuska, Jr., Stephen M. Kakuska, and David S.
 Kakuska, dba B K Trucking; Milton J. Jacklin,
 dba Jacklin Trucking; Thomas R. Canady, dba
 Canady Trucking; Ralph E. Smith; Charles W.
 Webb, dba C. W. Webb Trucking; Louis F.
 Connot; J. Wahl and Clyde Webb, dba Wahl Webb
 Trucking; and Bobby R. Calliham; applicants.
 E. O. Blackman, for California Dump Truck Owners
 Association, and James R. Foote, for Associated
 Independent Owner-Operators, Inc., protestants.

C. D. Gilbert and H. Hughes, for California Trucking Association, and Harry C. Phelan, Jr., for California Asphalt Pavement Association, interested parties.
George L. Hunt and Vahak Petrossian, for the Commission staff.

O P I N I O N

These matters were consolidated for hearing which was held before Administrative Law Judge O'Leary at Los Angeles on June 6, 7, and August 1, 1978. The matters were submitted on the latter date. At the outset of the hearings, counsel for applicants made a motion to dismiss the following applicants from Application No. 57356: Kazumi Eguchi, dba Kazumi Eguchi Trucking; Jolly R. Stapleton and Ruby Mae Stapleton, dba Stapleton Trucking; Richard Green; Leland Delcour, dba Delcour Trucking; and David R. Dillingham, dba D & D Trucking. The motion was taken under submission. No evidence was presented on behalf of said applicants.

The remaining applicants who perform operations pursuant to a dump truck permit seek authority to assess less than the minimum rates set forth in Minimum Rate Tariff 7-A (MRT 7-A) Items 280 and 300 for the transportation of the commodities covered by said items. Item 300 of MRT 7-A sets forth the minimum distance rates to be assessed for the transportation of asphaltic concrete, cold road oil mixture, and cold liquid asphalt when transported with a tractor and bottom dump doubles in train. Said rates are subject to a minimum weight of 24 tons. Item 280 of MRT 7-A provides that the distance rates in Item 300, together with certain additives, can be utilized for transportation in equipment other than tractors with bottom dump doubles in train. Applicants specifically request authorization to assess the rates in Item 300, plus the 49-cent additive set forth in paragraph (a) of Item 280 subject to a minimum weight of 12 tons rather than 23 tons (Exhibit 2) for the account of All American Asphalt (All American).

Exhibit 1 is a cost study prepared by a certified public accountant from source data which he obtained from the applicants in Application No. 57356. No costs were submitted by the applicant in Application No. 58103 since he has not conducted any operations in the past. He is buying a truck and desires to perform transportation for All American at the same rates as the other applicants. Exhibit 1 contains data for ten of the applicants in Application No. 57356. Two of the ten applicants, for which data is set forth in Exhibit 1, are among those included in the motion to dismiss (Richard Green and David R. Dillingham shown in the cost study as Dillingham Wells). One of the applicants, Stephen M. Kakuska and David S. Kakuska, dba B K Trucking, did not present its source data. The data set forth in Exhibit 1 for the latter three applicants will not be considered herein. The remaining seven applicants testified that they utilize either two- or three-axle trucks to perform the transportation for which they here seek authority to assess less than the minimum rates. The C.P.A. was furnished pursuant to his request revenue and expense data for transportation performed for All American for the nine-month period ending September 30, 1977. One of the applicants furnished the information for a five-month period. From the data furnished, the C.P.A. compiled a revenue and cost analysis setting forth average miles, hours, revenue, and expenses per trip. For all but one of the applicants, an imputed wage of \$5.78 per hour was utilized. One of the applicants paid his drivers 33-1/3 percent of the gross revenue per trip which the C.P.A. averaged to an hourly rate of \$5.45. The imputed wage of \$5.78 was the average hourly pay of factory workers in the United States in October 1977 as reported in the December 23, 1977 edition of the Wall Street Journal per the Department of Labor.

Exhibit 1 does not include any provision for time spent by applicants in maintaining their equipment, nor does it include any provision for indirect expenses.

The president of All American testified that All American produces asphaltic concrete at two plants located at Westminster and Corona and that he has been paying the applicants the 24-ton rate for transportation performed with two-axle and three-axle equipment.

The service proposed to be provided to All American has not been shown to involve any special transportation circumstances, other than labor costs which appear below those upon which the minimum rates are predicated. Although these lower labor costs may reduce applicants' costs of operation below those upon which the minimum rates are based, the Commission has not previously granted deviations predicated solely upon lower wage costs. This basic issue of whether carriers should be able to assess less than minimum rates to reflect labor costs lower than those used for the establishment of minimum rates is currently under consideration in the broader context of Case No. 5436, OSH 244. Pending resolution of the issue upon the evidence introduced in that broader context, we will adhere to prior Commission policy.

Findings

1. Applicants are dump truck carriers.
2. Exhibit 1 does not contain any provision for time spent by applicants in maintaining their equipment, nor does it include any provision for indirect expenses.
3. The service proposed to be provided to All American has not been shown to involve any special transportation circumstances other than labor costs below those upon which MRT 7-A is based.
4. The Commission has not previously granted deviations predicated solely upon wage costs below those employed in establishing minimum rates.

The Commission concludes that the motion to dismiss certain applicants from Application No. 57356 should be granted and that Applications Nos. 57356 and 58103 should be denied without prejudice pending consideration of the labor cost issue in Case No. 5436, OSH 244.

A.57356, 58103 dz

O R D E R

IT IS ORDERED that:

1. Applicants Kazumi Eguchi, dba Kazumi Eguchi Trucking; Jolly R. Stapleton and Ruby Mae Stapleton, dba Stapleton Trucking; Richard Green; Leland Delcour, dba Delcour Trucking; and David R. Dillingham, dba D & D Trucking are dismissed as applicants in Application No. 57356.

2. Application No. 57356 is denied.

3. Application No. 58103 is denied.

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

Dated at San Francisco, California, this 13th day of MARCH, 1979.

John E. Guyan
President
Deborah L. Thompson
Charles D. Clark
Clare J. Smith
Edward W. Quinn
Commissioners