

5/31/79

Decision No. 90385 JUN 5 1979

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Christopher Duarte, dba Oxnard Van )  
Lines, Allstates Discount Movers, )  
Camarillo Van Lines, and California )  
Discount Movers, for authority to )  
deviate from minimum rates pursuant )  
to Section 5195 of the California )  
Public Utilities Code for the Trans- )  
portation of used household goods )  
for shipper within 50 constructive )  
miles. )

Application No. 57303  
(Filed May 12, 1977;  
amended October 24, 1977)

Thomas B. Guthrie and Philip K. Davies,  
for applicant.  
Thomas J. Hays, for California Moving &  
Storage Association; and H. W. Hughes,  
for California Trucking Association,  
interested parties.  
Mark S. Wetzell and Vahak Petrossian, for  
the Commission staff.

O P I N I O N

Christopher Duarte (Duarte) is an individual doing business as a household goods carrier under several fictitious business names. He seeks to charge less than minimum rates in Minimum Rate Tariff 4-B (MRT 4-B) for local moving of second-hand uncrated household goods and effects with a van and two men for the public generally within 50 constructive miles of his principal place of business at 1560 Pine Street, Oxnard.

Specifically, Duarte seeks to charge \$32.25<sup>1/</sup> per hour for a van and two men in lieu of \$35.20<sup>2/</sup> which is the minimum rate for transportation not exceeding 50 constructive miles within Territory C, as described in MRT 4-B. Duarte asserts that the sought rate of \$32.25 is justified by lower than ordinary costs, particularly costs for labor, depreciation of equipment, tires, and office rent, identified below. Equipment use hours assertedly are higher than normal, resulting in efficiencies.

Public hearing was held before Administrative Law Judge Norman Haley at Los Angeles on November 27<sup>3/</sup> and December 21, 1978, and the matter was submitted.

Evidence was presented by Duarte and his accountant, Rolland R. Rork. According to Duarte, 90 percent of his accounts receivable is from car and truck rentals, truck sales, and storage. Duarte has 8 to 10 trucks, which were stated to be manufactured in the 1960's. Some of them are not licensed. Six of those trucks assertedly are used in the moving business. Of these, two Fords and one Chevrolet were stated to be used in local moving. Exhibit 5 was stated to be the list of all vehicles used in the household goods moving business. However, that list shows seven tractors and only one trailer. One

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- 1/ The original proposal was for a rate of \$29.30 per hour which was the minimum rate used by Duarte in 1976. This was amended on the record by addition of 10 percent, for a total of \$32.25 per hour.
  - 2/ Petition 105, Case No. 5330, filed January 29, 1979, seeks increases in rates in MRT 4-B, including the current rate of \$35.20 here involved.
  - 3/ Application No. 57303 was originally set for hearing on January 25, 1978, but was temporarily removed from calendar at applicant's request. It was next set on October 17, 1978. It was again reset at applicant's request on November 27, 1978 at which time hearing commenced.

tractor is listed as a 1956 Chevrolet. The remaining tractors are listed as Internationals. No Ford vehicles are shown on Exhibit 5. Duarte said some vehicles are registered as tractors but are actually trucks (vans). He said they originally were tractors purchased in Texas at a very low cost and then converted to vans by cutting the frames and welding tractor and van parts together. Duarte has had considerable experience building trucks and trailers. Some of the tires he obtains are on trucks purchased at auction. Assertedly, these tires can be accounted for at a very low cost.

Duarte has six available employees who work when they are needed. Three employees are classed as "full-time". In addition to driving, they work on car and truck rentals, vehicle repairs, house painting, and cleanup. Duarte says he owns several houses in the Oxnard area that require work. When employees are engaged in moving, they are paid for their time on the truck on a portal-to-portal basis. Overtime is paid after 40 hours. Duarte has one regular driver who averages 40 hours a week. The witness could not estimate how much of that employee's time was spent in local moving. In 1976 Duarte paid regular employees \$4 an hour and casual labor (helpers) \$2.50 an hour. Duarte said he now pays helpers \$3 an hour. He feels he could pay regular labor \$6 an hour and helpers \$4 to \$5 an hour and still make money at the proposed rate.

Duarte's local moving costs per hour for 1976, as presented by the accountant in Exhibit 3, are reproduced below in Table 1.

Table 1

Advertising	\$ .68
Equipment Depreciation	.23
Gasoline & Oil	2.00
Insurance	.44
Tires	.14
Truck Repairs	2.44
Licenses	1.00
P.U.C.	.16
Telephone	.49
Other Utilities	.06
Office Rent	.03
Office Supplies	<u>.68</u>
Total Operating Costs, excluding labor	8.35

The above based on figures  
from company books and records.

Wages - Regular	4.00
Workmen's Comp. Insurance	.74
F.I.C.A.	.23
State Unemployment	.20
Casual Labor	<u>2.50</u>
Total Labor Costs	<u>7.67</u>
Total Hourly Costs	16.02
Hourly Rate Charged	<u>29.30</u>
Hourly Profit for one month's operations in 1976 (45.3%)	<u>\$13.28</u>

Regular Payroll: \$4.00 per hour  
 Casual Labor: 2.50 per hour  
 Workmen's Comp.: 11.39% of wages  
 F.I.C.A.: 5.85% of \$4.00  
 State Unemployment: 4.9% of \$4.00

Duarte's profit and loss statement for one month in 1976 for local moving only (Exhibit 4) is reproduced below in Table 2. It was the understanding of the accountant that these figures represented experience in July of 1976.

Table 2

<u>Items</u>		<u>Expenses</u>	<u>Income</u>
Total receipts for month			\$1,963.00
Advertising	\$ 45.40		
Equipment Depreciation	15.50		
Gasoline & Oil	133.70		
Insurance	29.30		
Tires	9.50		
Truck Repairs	163.50		
Licenses	64.00		
P.U.C.	10.55		
Telephone	33.00		
Other Utilities	3.90		
Office Rent	1.75		
Office Expense	<u>45.30</u>		
Total Operating Costs, excluding labor		\$555.40	
Wages - Regular	268.00		
Workmen's Comp. Ins.	49.40		
F.I.C.A.	15.70		
State Unemployment	13.10		
Casual Labor	<u>167.50</u>		
Total Labor Costs		<u>513.70</u>	<u>1,069.00</u>
Net Profit for month			<u>\$ 894.00</u>

The accountant explained that in arriving at the expense figures in Tables 1 and 2 he utilized percentage allocations for local moving furnished him by Mrs. Duarte who keeps the books and records. Mrs. Duarte was not called and did not attend either the November or December hearings.

Assertedly, the largest part of the expenses were attributable to warehousing. Expenses (other than utilities, office rent, and advertising) were allocated to local moving in the same ratio as local moving revenue of about \$23,500 is to total moving revenue of \$111,806, or 21 percent. Utilities, office rent, and advertising were allocated to local moving at one-half of 21 percent.

Exhibits 6 and 7, prepared by applicant's counsel, are designed to show that the rate of \$29.30 used in 1976 was profitable based on estimated hourly expenses for that year as shown in Table 1.

Paragraph XI of the application shows gross income for 1976 of \$66,500, expenses of \$57,000, and profit of \$9,500. Neither Duarte nor the accountant knew the source of those figures. Duarte was of the opinion that they included Mrs. Duarte's household goods business as well as the car rentals, truck sales, car sales, storage, and possibly rental houses. The accountant testified that the 1976 income tax return showed gross revenue from all moving (both over and under 50 miles, etc.) as \$111,806. Expenses were \$120,000, but they included expenses from storage as well. The accountant said it was impossible to know the amount of storage revenue from the way the books were set up. Storage of second-hand household goods and effects is not subject to the Commission's jurisdiction. A somewhat generous approximation of 1976 local moving revenue only (within 50 miles) may be obtained by annualizing the revenue of \$1,963 for a typical month (probably July 1976) as shown in Table 2, above. This would be about \$23,500. Duarte was of the opinion that the revenue figure in Table 2 was not an average because

revenue in the summer is higher than the rest of the year. He was of the opinion that the \$1,963 figure in Table 2 would be only slightly higher for the same month in 1978. The revenue of \$1,963 would represent about 67 vehicle use hours per month if \$1,963 were divided by the rate of \$29.30 used by Duarte in 1976. No record of actual vehicle use hours was presented.

Discussion

We are not satisfied that the expense allocations reflected in Tables 1 and 2 above reflect all of the expenses attributable to local household goods moving in 1976. Expense allocations for local moving utilized by the accountant were those handed him by the bookkeeper who made the allocations. The bookkeeper was not present at either session of hearing in November or December 1978. The labor cost of \$7.67 per hour in Table 1 is for two men. The base rate for regular labor was \$4 per hour and for casual labor (helpers) it was \$2.50. No payments for social security (FICA) were made for casual labor, which was improper.

Allocations for certain of the other expenses appear to be unrealistic, even for 1976. In particular were allocations for equipment depreciation, insurance, tires, utilities (other than telephone), and office rent. It is possible that excessive amounts of truck rebuilding costs and certain other expenses were allocated to noncarrier functions which represent about 90 percent of Duarte's activities. In any event, cost data based on 1976 experience alone, even if fully supported for that year, would be insufficient unless shown to be reasonably related to projected results of operation for 1979. No projection of operating results under proposed rates and anticipated expenses were made for 1979 or any other future period.

Under the circumstances, the degree of proof of reasonableness in the instant application should be fully convincing, which it is not.

Findings

1. Duarte seeks to charge \$32.25 per hour for a van and two men for transportation of second-hand uncrated household goods and effects for the public generally within 50 miles of his principal place of business in Oxnard, in lieu of the minimum rate of \$35.20 published in MRT 4-B.

2. Duarte's cost showing was insufficient. Principal elements, including labor cost per hour, depreciation of equipment, equipment use hours, tires, and office rent, were not fully supported as reasonable local moving cost elements for rate purposes in 1976.

3. The 1976 local moving revenue of \$23,500 appears to be overstated since it is the result of annualizing the income of \$1,963 from Table 2 which probably was for the month of July. Duarte testified that summer months have higher revenue than the rest of the year.

4. No labor costs or other expenses were shown for a period more recent than 1976.

5. No pro forma operating statement was produced projecting operating results under proposed rates and anticipated expenses for a future period beyond 1976.

6. Cost data based on 1976 experience alone, even if fully supported for that year, would be insufficient unless shown to be reasonably related to projected results of operation for 1979.

7. The record does not show that the proposed rate would be compensatory to applicant for the future.

8. The less than minimum rate proposed by Duarte has not been shown to be reasonable.



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O R D E R

IT IS ORDERED that the relief sought in Application No. 57303 is denied.

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

Dated at San Francisco, California, this 5<sup>th</sup> day of UNE, 1979.

John E. Byrne  
President  
Thomas L. Sturgeon  
Richard D. Howell  
Robert J. Smith  
Edward W. Jones  
Commissioners