

Decision No. 90937 OCT 23 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of any and all commodities statewide including, but not limited to, those rates which are provided in Minimum Rate Tariff 2 and the revisions or reissues thereof.

Case No. 5432
Petition for Modification
No. 1025
(Filed July 10, 1978)

Milton W. Flack, Attorney at Law, for California Delivery Service, petitioner.
William R. Haerle, Attorney at Law, and H. Hughes, for California Trucking Association, protestant.
Delmore A. Miller, for Huskie Freightways, Inc.;
William S. Rozay, for Rozay's Transfer;
C. M. Alexander, for G. I. Trucking Co.;
Dean S. Russell, for Russell Truck Co.;
David C. Williams, for Williams Transportation, Inc., Frank Selhorst, for Dart Transportation Service; and C. R. "Hoagy" Hoagland, for Redway Truck and Warehouse Co.; respondents.
N. I. Molaug, for J. C. Penney Co., interested party.
Vahak Petrossian, for the Commission staff.

O P I N I O N

Petitioner, California Delivery Service (CDS), seeks authority under Section 452 of the Public Utilities Act to publish rates in its tariff lower than the rates provided in Minimum Rate Tariff 2 (MRT 2) for the transportation of commodities in packages to or from retail department stores, or the distribution centers of retail department stores, to which are tendered a minimum of 500,000 pounds of freight per year to a minimum of 50 consignees, or from a minimum of 50 consignors, with origins in the Metropolitan

Los Angeles Area, Zones 201 to 262 (Los Angeles Basin Area).^{1/}
CDS's specific rate proposal, as amended at the hearing, is set forth in its Exhibit 12 (Appendix A hereto).

Public hearings were held in Los Angeles on November 14 and 15, 1978, before Administrative Law Judge Mallory. Protest was entered on behalf of California Trucking Association (CTA). The case was submitted subject to the filing of letter briefs on December 13, 1978. CTA and the Commission staff strongly oppose the granting of the relief sought.

Petitioner's Testimony

Petitioner presented two witnesses in support of its petition. John Archer, assistant to the president, supported the exhibits which included financial cost and revenue data. Mr. Tim Bowman, vice president of petitioner, testified as to the operation of CDS.

CDS is a for-hire carrier with its terminal located in the Los Angeles Area. It possesses a certificate of public convenience and necessity for operations as a highway common carrier within the Los Angeles Basin Territory (Exhibit 1) and radial highway common carrier and contract carrier permits. By amendment to the petition the territorial scope of the petition comes within the territory of its common carrier certificate. CDS, which has been providing

^{1/} The requested rates would not apply to shipments which require temperature control service, COD or order notify service or which have origins or destinations on steamship docks, oil well sites or construction sites; shipments picked up or delivered at private residence of retail customers; shipments containing personal effects, baggage, or used household goods; shipments moving on government bills of lading; commodities requiring special equipment; garments on hangers; nursery stock group; groceries and foodstuffs group; lumber; blanket-wrapped furniture; agricultural implements; aircraft and boats; feed group; fruits and vegetables; harness and saddlery group; hides; fence gates, posts, and fencing; iron and steel group; ordinance group; wallboard; waste materials; insulation; asbestos; asphalt; earthen conduit; dairy products; fish; gypsum products; liquor and wine; or commodities in bulk. (See Appendix A for complete description of amended proposal.)

common carrier services within the Los Angeles Area since 1972, specializes in the transportation of commodities dealt in by retail department stores. Sixty percent of its traffic involves this type of freight, while the balance of its business concerns general LTL and truckload freight within California.

Mr. Bowman testified that because of the increased volume that it would expect to obtain from the grant of the petition, CDS would expect to have full utilization of its equipment and a concentration of freight within a smaller area for pickup, thus resulting in decreased costs of transportation.

Mr. Archer presented Exhibits 6 through 10 containing results of operations for 1978 under the reduced rates and increased traffic expected to be generated thereunder. The costs purportedly show that the operations under the proposed rates will result in an operating ratio of 90 percent. The traffic for which the proposed rates will apply amounts to 60 percent or less of CDS's total traffic. The cost data are developed from CDS's total operating costs for 1977, adjusted to reflect recent changes in costs and to more accurately reflect the local LTL type of operations to which the proposed rates will apply. Mr. Archer made such adjustments based on his judgment. No segregation of cost data pertaining solely to the traffic in issue was presented, nor was an explanation furnished by the witness of the considerations on which he applied his judgment in adjusting system-wide costs. Conflicting evidence was presented by Mr. Archer and Mr. Bowman as to whether additional personnel and equipment would be necessary if the petition is granted. It is Mr. Bowman's contention that, at least for an initial period, the additional traffic expected can be handled with existing facilities. Mr. Archer testified that additional equipment and drivers will be required and made some provision for such added costs in his estimates.

In developing his estimates of increased traffic in Exhibit 5, Mr. Archer relied upon information furnished to him by seven retail stores.^{2/} Those stores were asked to estimate their total yearly traffic of the kind in issue. Those estimates are as follows:

TABLE I
Estimated Total Traffic Available
To CDS from Seven Retail Stores

<u>Retail Store</u>	<u>Total Shipments Per Year</u>	<u>Total Pounds Per Year</u>
Sears	9,720	2,055,452
Robinson	2,004	1,627,050
Penney	19,080	4,413,120
K-Mart	2,944	780,160
Fedco	3,945	1,430,809
Fed Mart	3,840	8,397,680
Ohrbach's	<u>489</u>	<u>275,645</u>
Total	42,022	18,979,916

The witness estimated that CDS would receive 60 percent of the total available traffic, or 25,213 shipments weighing 11,387,950 pounds. For that estimated traffic, the charges under present rates are \$692,225.88, and under CDS's proposed rates the charges would be \$588,391.11. CDS rounded that estimate to \$600,000 in its cost/revenue estimates under proposed rates.

^{2/} The retail stores included in Exhibit 5 are Sears, Roebuck and Co. (Sears); J. W. Robinson Company (Robinson); J. C. Penney Company, Inc. (Penney); K-Mart Corporation (K-Mart); Fedco Incorporated (Fedco); International Distributing Co. (Fed Mart); and Ohrbach's, Inc. (Ohrbach's).

Testimony of Supporting Shippers

Sears, Roebuck and Co.

Jesse W. Syme, Sears' manager for Physical Distribution for the Pacific Coast, testified that his company operates a catalog house and a chain of retail department stores in California. He stated that Sears distributes retail store merchandise, and equipment, material, and supplies used in the conduct of such business.

The witness testified that Sears required shipments totaling approximately 2 million pounds per year within the Los Angeles Area, and that it utilizes a contract carrier and common carriers for its traffic requirements. The witness testified that petitioner was currently receiving approximately 200,000 pounds annually from Sears, and that it would receive approximately 1,000,000 pounds annually from his company. As a result, petitioner could anticipate 800,000 additional pounds annually from Sears. Petitioner's revenue figures are based upon CDS's receiving an additional 1,200,000 pounds annually from Sears. The Sears testimony indicates that petitioner's revenue figures are overstated by at least 400,000 pounds.

J. C. Penney Company, Inc.

Norman I. Molaug, Western Regional Traffic Manager for Penney, testified that his company supported the petition for reduction of rates, and testified that the small shipment provisions that are in effect in the San Francisco Area should also be available in the Los Angeles Area. Mr. Molaug testified that by tendering volume shipments to a carrier, Penney would minimize the number of carriers delivering to its stores, reduce dock congestion, and allow carriers to pick up freight at a minimum number of pickup points.

The witness also testified that although his company controls 4,413,122 pounds per year within the Basin Area, only 1,200,000 pounds is available at the present time to common carriers such as petitioner. Petitioner currently enjoys approximately 5 percent or 60,000 pounds of this total tonnage. The witness estimated that if the petition is granted a maximum of 20 percent (882,824 pounds) to 30 percent (1,323,936 pounds) of the 4.4 million pounds would be available to CDS. The new tonnage thus available to CDS averages 1,043,280 pounds annually. This compares with CDS's estimate of 2,647,872 pounds additional traffic from Penney in CDS's Exhibit 5. Thus, CDS's revenue figures for Penney are overstated by 1,604,000 pounds. The Penney witness testified that approximately 33 other highway carriers now engage in the transportation services that CDS proposes to perform for Penney.

Ohrbach's, Inc.

Jack L. Means, Traffic Manager for Ohrbach's, testified that his company supports the petition. Although Ohrbach's would not initially come within the 500,000 pounds per year limitation, Mr. Means testified that Ohrbach's would, in the future, be able to take advantage of the lower rates if its tonnage increases. He stated that he was in support of the petition because it would reduce congestion at the docks and would enable his company to hold its costs in line. The tonnage figure in CDS's Exhibit 5 on which its revenue estimates for Ohrbach's are based is overstated by 275,000 pounds.

Testimony of Protestant

Mr. William Rozay of Rozay's Transfer (Rozay's) testified on behalf of protestant CIA. Rozay's operates as a highway common carrier within the Los Angeles Basin Area. Rozay's engages in the LTL transportation of general commodities within that area. Rozay's has one department store customer. If the petition is granted, Rozay's will have to publish lower rates on the level authorized petitioner in order to remain competitive.

The services performed for Rozay's retail store customer are performed in a similar manner to CDS. Mr. Rozay indicated that those services are not materially different from the LTL service performed for other shippers within the area, in that similar commodities are involved, the same origins are involved, and the same facilities and employees are used.

Discussion

CDS' operations as a highway common carrier in connection with the proposed transportation of the wide variety of goods from vendors to retail department stores within the Los Angeles Basin Area described in Appendix A are no different from those conducted by any other highway common carrier of general commodities within that area. The testimony of Mr. Bowman is not credible with respect to his assertion that the type of commodities being transported are, by their very nature, light in weight and density, and are easily handled; and, thus, these commodities lend themselves to economics of transportation not otherwise found in the transportation of other types of commodities. Small shipment traffic and low-density traffic historically have been shown to be the most costly traffic to handle. Classification ratings for low-density commodities are higher than those for high-density commodities, thus providing higher class rates. The unit costs for small shipments, because of their need for extra handling, exceed those for larger-size shipments.

The cost data furnished in support of CDS' proposals were deficient in that system-wide averages were used with no segregation of costs for the traffic at issue in this proceeding.

Also, the revenue projections were clearly overstated in that each of the supporting shipper witnesses testified that the amount of traffic to be made available to CDS is substantially less than the estimate upon which petitioner's projections are based.

The deficiencies in both the cost and revenue data make it impossible to make a finding that the proposed rates are reasonable.

Findings of Fact

1. CDS, a highway common carrier, seeks authority under Section 452 of the Code to publish a reduction of 15 percent from the minimum rates applicable to the transportation of a wide variety of goods transported from vendors to retail department stores within the Los Angeles Basin Area.

2. CDS transports some of this traffic at the present time. Because CDS had lost a portion of such traffic to other carriers, it devised the rate proposal herein to regain that traffic.

3. There are no inherent efficiencies in the manner in which CDS proposes to conduct operations under the proposed rates. Its proposed operations will use the same types of facilities now used to perform the vendor-to-retail service traffic it now enjoys, and will be substantially similar to the local pickup and delivery of other highway common carriers within the Los Angeles Basin Area.

4. CDS has not shown that the rates proposed by it will cover its variable (out-of-pocket) costs and make a contribution to fixed (overhead) costs, and thus would provide a reasonable profit for the services to be rendered.

5. CDS has not shown that the needs of commerce or the public interest require the establishment of the lower than maximum reasonable rates proposed in Appendix A.

Conclusion of Law

Petition 1025 in Case No. 5432 should be denied.

O R D E R

IT IS ORDERED that Petition 1025 in Case No. 5432 filed on July 10, 1978 by California Delivery Service is hereby denied.

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

Dated OCT 23 1979, at San Francisco, California.

Commissioner JOHN E. BRYSON

Present but not participating.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

President

Commissioners

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PROPOSED RATES

Carrier: California Delivery Service.

Commodity: All general commodities, all weights, all classifications.

Rate: Current rates less 15 percent.

Applicability of Rates:

1. Rates shall apply only under the following conditions:
 - a. The transportation of commodities in packages, to or from retail department stores or the distribution centers of retail department stores.
 - b. For retail department stores who comply with the necessary conditions of tendering a minimum of 500,000 pounds of freight per year from a minimum of 50 consignors with origins in the Metropolitan Los Angeles Area, Zones 201-262, or any retail department store which tenders the minimum of 500,000 pounds and ships to a minimum of 50 consignees or places in the Metropolitan Los Angeles Area, Zones 201-262. If, at the end of the year, conditions herein are not met, charges for each shipment will be assessed at the regular tariff rate in effect at the time of shipment.
 - c. Commodities rated above Class 100 would rate out at the same percentage level of savings, to wit, 15 percent.
 - d. To shipments from vendor to consignee, interstore shipments, and vendor returns.
 - e. When bill of lading contains the following statement: "Shipper requested carrier's service for transportation of the shipment at rates provided in _____ (Tariff and item number to be inserted)." Provisions apply on written request of shipper on date of commencement.

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- f. To collect shipments, specified freight, and released value as stated on Bill of Lading, and moving for distances within the Metropolitan Los Angeles Area, Zones 201-262.
2. Future surcharge provisions of Minimum Rate Tariff 2/WMTB-111 shall apply, but percentage of savings will always remain constant.
 3. Rates in this item shall not apply to:
 - a. Shipments which require temperature control service, COD, or order notify service, or which have origin or destination on steamship docks, oil well sites, or construction sites.
 - b. Shipments picked up or delivered at private residence of retail customers.
 - c. Shipments containing personal effects, baggage, or used household goods.
 - d. Shipments moving on Government Bills of Lading.
 - e. Commodities requiring special equipment.
 - f. Garments on hangers.
 - g. Nursery stock group.
 - h. Groceries and foodstuffs group.
 - i. Lumber.
 - j. Blanket-wrapped furniture.
 - k. Agricultural implements.
 - l. Aircraft and boats.
 - m. Feed group.
 - n. Fruits and vegetables.

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- o. Harness and saddlery group.
 - p. Hides.
 - q. Fence gates, posts, and fencing.
 - r. Iron and steel group.
 - s. Ordnance group.
 - t. Wallboard.
 - u. Waste materials.
 - v. Insulation.
 - w. Asbestos.
 - x. Asphalt.
 - y. Earthen conduit.
 - z. Dairy products.
 - aa. Fish.
 - bb. Gypsum products.
 - cc. Liquor and wine.
 - dd. Commodities in bulk.
4. Except as provided herein, the provisions of MRT 2/WMTB-111 shall govern.