

ORIGINAL

Decision No. S1054 NOV 20 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of N J B, Inc. for)
 Authority Under the Provisions of)
 Section 3666 of the Public Utili-)
 ties Code, to Deviate from the)
 Minimum Rates in Minimum Rate)
 Tariff 2 Applicable to the Trans-)
 portation of Malt Beverages and)
 Empty Carriers Between San Fran-)
 cisco and Fairfield.)

Application No. 59178
 (Filed October 3, 1979)

OPINION AND ORDER

By this application, N J B, Inc., a corporation, requests authority to deviate from the provisions of Minimum Rate Tariff 2 (MRT 2) for the transportation of malt liquors from the brewery of Anheuser-Busch, Inc. (Busch) at Fairfield to the warehouse of Bracco Distributing Co., Inc. (Bracco) at San Francisco and empty malt liquor carriers in the return direction.^{1/}

Applicant states that the beer is transported from the brewery to Bracco's distribution warehouse at San Francisco and it then transports empty beer bottles, kegs and other containers from Bracco's warehouse back to Fairfield where they are refilled. One return load of carriers is available for every two beer loads moved to San Francisco.

¹ The present and proposed rates in cents per 100 pounds, including applicable surcharges, are:

<u>From</u>	<u>To</u>	<u>Commodity</u>	<u>Present Rate</u>	<u>Proposed Rate</u>
Fairfield	San Francisco	Malt Liquors Minimum Weight	48¢ 50,000	37 50,000
San Francisco	Fairfield	Malt Liquor Carriers Minimum Weight	70¢ 20,000	72 Any Quantity

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Applicant states that it employs five 40-foot van-type trailers and one tractor in this operation. Several of applicant's trailers are left at all times in the yard at the Busch brewery. When a beer order destined for Bracco is ready for loading at the Busch plant, one of the applicant's available trailers is backed up to the dock by employees of a company known as Distributors Co., a partnership in which Bracco is a partner. Employees of Distributors Co. load the trailer, and when it is loaded, move it from the loading dock to a spot in the yard where it awaits pickup by applicant's driver and power equipment.

Applicant declares that upon arriving at the Busch brewery, applicant's driver drops a trailer he has brought from San Francisco, which may be either empty or may contain carriers, and proceeds to pick up the loaded trailer which has been spotted for him. This process normally requires no more than 15 minutes' time. Applicant's driver then transports the beer load he has picked up to the Bracco warehouse where it is unloaded by Bracco personnel. If empty carriers are available for return to Fairfield, they are loaded onto the trailer immediately after the beer is unloaded. This loading and unloading process requires 45 minutes' time. Depending upon the availability of a load of empties, the driver returns immediately to Fairfield with either an empty trailer or with a trailer load of carriers. Trailer loads of carriers delivered to the Busch brewery are backed up to the dock by applicant's driver and are unloaded by Busch personnel, at their convenience, after applicant's driver departs.

Applicant avers that because of the availability at the Busch brewery of trailers which are ready for immediate movement, applicant's driver and power equipment are not required to stand by during the loading and unloading processes. All loading and unloading services are performed with power equipment operated either

by Bracco's warehousemen or by Distributors Co. personnel and such equipment is provided at no expense to applicant. Bracco pays Distributors Co. directly for all trailer shuttling within the Busch yard and for all loading and unloading services at Fairfield performed in connection with Bracco shipments.

Revenue and expense data submitted by applicant indicate that the transportation involved may reasonably be expected to be profitable under the proposed rates.

The application was listed on the Commission's Daily Calendar of October 5, 1979. California Trucking Association (CTA) by letter, dated October 19, 1979, objected to the ex parte handling of the application and stated that applicant and his shipper, Bracco Distributing Co., Inc., may be under common control and management. CTA also referred to Decision 85833 dated May 18, 1976, Case 9925, in which the Commission reiterated the policy in connection with alter-ego relationship between carrier and shipper.

The Commission staff's investigation has disclosed that N J B, Inc. and Bracco Distributing Co., Inc. have common control and management. The Highway Contract Carrier Permit of N J B, Inc. has been amended to include the alter-ego restriction as follows:

"Whenever permittee engages other carriers for the transportation of property of Bracco Distributing Co., Inc. or customers or suppliers of said corporations or companies, permittee shall not pay such carriers less than 100 percent of the applicable minimum rates and charges established by the Commission for the transportation actually performed by such other carriers."

In the circumstances, the Commission finds that applicant's proposal is reasonable. A public hearing is not necessary. The Commission concludes that the application should be granted as set forth in the ensuing order and the effective date of the order should be the date hereof because there is an immediate need for this rate relief.

IT IS ORDERED that:

1. N J B, Inc. is authorized to perform the transportation shown in Appendix A attached hereto and by this reference made a part hereof at not less than the rates set forth therein.
2. The authority granted herein shall expire one year after the effective date of this order unless sooner cancelled, modified or extended by further order of the Commission.

The effective date of this order is the date hereof.

Dated NOV 20 1979, at San Francisco, California.

John E. Bryson
President
James L. Sturgeon

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Alan T. DeBrie
Samuel J. Bennett
Commissioners

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APPENDIX A

Carrier: N J B, Inc.

Shipper: Bracco Distributing Co., Inc.

Rates:

- a. Commodity: Malt Liquors, viz.: Ale, Beer, Porter, Stout or non-intoxicating Cereal Beverage, in glass, in cans, in barrels or kegs.

Origin: Anheuser-Busch, Inc. brewery at Fairfield

Destination: Warehouse of Bracco Distributing Co., Inc. at San Francisco

Rates: 37 cents per 100 pounds

Minimum Weight: 50,000 pounds per unit of carrier's equipment

- b. Commodity: Malt Liquor Carriers, viz.: bottles, barrels or kegs

Origin: Warehouse of Bracco Distributing Co., Inc. at San Francisco

Destination: Anheuser-Busch, Inc. brewery at Fairfield

Rates: 72 cents per 100 pounds

CONDITIONS:

1. The carrier's maximum liability in connection with shipments transported under the provisions hereof shall be 15 cents per pound, per article.
2. An allowance of one-half hour free time for pickup and delivery at Fairfield and one hour free time for pickup and delivery at San Francisco shall be made for each unit of carrier's equipment.
3. Pickup and delivery time shall be computed from the time of arrival of carrier's power equipment at the place of pickup or delivery until such pickup or delivery is completed and carrier's power equipment is released.

4. Does not apply in connection with mixed shipments, except that shipments of beer may include advertising or promotional material at the rates set forth herein, provided these materials do not exceed two percent of the actual weight of the shipment.
5. Applicable only when restricted to the services of a single carrier employee (driver) for each shipment. Physical assistance of this carrier's employee shall be restricted to work within or on carrier's equipment and shall not include stacking, unstacking, removal or placement of merchandise on pallets. The carrier or his employee shall not engage or pay for the services under any circumstances.
6. Applies only in connection with shipments loaded by consignor and unloaded by consignee, with power equipment furnished and used without expense to the carrier and when no loading or unloading services are performed at carrier's expense or by carrier's personnel.
7. Whenever subhaulers are engaged, they shall be paid not less than 100 percent of the applicable rates named in Minimum Rate Tariff 2.
8. Except as otherwise provided herein, the rules, rates and regulations of Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)