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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TRUCKING UNLIMITED,)
 Complainant,)
 v.)
 DAVIS TRUCKING,)
 Defendant.)

Case No. 10923
(Filed October 31, 1980)

Graham & James, by Thomas McBride, Jr., Attorney
 at Law, for Trucking Unlimited, complainant.
James D. Davis, for Davis Trucking, defendant.
Joseph G. Bingham, for Gold Bond Building
Products Division of National Gypsum Company,
 interested party.
Harry E. Cush, for the Commission staff.

O P I N I O N

In this complaint, Trucking Unlimited (complainant) challenges the cost and other supporting data filed by James D. Davis (defendant), doing business as Davis Trucking, with his contract carrier reduction filing RR-38.^{1/} Although complainant filed a protest to RR-38 before the effective date of that contract, the filing was permitted to become effective. Complainant iterated the substance of its protest in this complaint.

^{1/} RR-38 is a contract between defendant and Gold Bond Building Products Division of National Gypsum Company (National) providing rates on a mileage for transportation of wallboard (sheetrock) and related commodities in quantities of 50,000 pounds or more. No origin is specified on the contract, although it was understood at the hearing that the origin point is Long Beach.

Based on the allegations contained in the complaint, and before the receipt of an answer, the Commission issued Decision No. 92481 dated December 2, 1980 in this proceeding, entitled "Order to Show Cause Why Contract Containing Motor Carrier Rate Reduction Should Not Be Suspended." That decision directed defendant to appear at a public hearing scheduled for December 19, 1980 to show cause why the rates in RR-38 should not be suspended. Defendant also was directed to supply additional support data as follows:

1. The current prevailing wage rates that meet the requirements of Decision No. 91265 dated January 15, 1980 in OII 53 (prevailing wages for use in establishment of carrier-filed rates).
2. The single cost rate comparison in the support statement is for a distance of 40 miles. Additional cost-rate comparisons for other lengths of haul up to 700 miles should be supplied.
3. The support statement does not show the number of hours required to load and unload the equipment, or whether the carrier or shipper will provide that service.
4. The support statement does not explain whether return loads will be handled, nor the revenue contribution of the return loads to offset total round-trip costs of operations.

Defendant and complainant appeared at the public hearing in this matter held before Administrative Law Judge Mallory on December 19, 1980 in Los Angeles. Following the taking of evidence from these parties the matter was submitted.

Background

On August 14, 1979, the Commission issued Decision No. 90663 in Case No. 5432, Petition No. 884 (and related proceedings), canceling minimum rate regulation for the transportation of general commodities, and establishing a new program of more competitive individual carrier-filed rates. Minimum rates on this transportation

were canceled and a new competitive program was implemented through a transition period.

Rate reductions that are below both the level of competing carriers' rates and the rates in the transition tariffs must be accompanied by support statements which contain cost and other information showing that the rate reductions will be compensatory.

Decision No. 90663 indicated that the wage component used to justify rate reductions should be based on prevailing wages. OII 53 was instituted by the Commission to establish a methodology for determining prevailing wages. Decision No. 91265 dated January 15, 1980 in OII 53 found that:

- a. The wages of drivers constitute the principal component of highway carriers' direct labor costs;
- b. Prevailing wage data should be published by the Commission staff on July 1 and January 1 of each year, commencing July 1, 1980;
- c. The prevailing wage is the rate of wages paid in the area in which the work is to be performed by the majority of those employed in the geographic zone similar to the proposed undertaking; and
- d. Prior to publication of the first prevailing wage determination on July 1, 1980, the then current Teamsters Union wage and fringe benefit rates shall be used as the prevailing wage in transportation rate justification proceedings.

The Commission staff did not complete its wage surveys and publish its first wage determination on July 1, 1980 and no such publication had been issued as of the date of hearing in this matter.

Therefore, the wage component in the justification data in this proceeding should be based on the Teamsters Union wage and fringe benefits applicable to the area to be served in effect at the time of hearing.

Defendant's Evidence

Defendant, in his Exhibit 1, presented evidence as directed in Decision No. 92481. That exhibit, and the testimony presented in connection therewith established the following:

1. Defendant owns two equipment units, one of which he drives.
2. His wife does the billing and maintains the books.
3. Routine repairs and maintenance of the equipment are done by defendant.
4. Defendant has been primarily engaged in hauling plasterboard in the greater Los Angeles area for National.

Hauls in this area are generally for one-way distances of 80 miles or less. For these distances it is not practical to obtain backhauls and none are sought. Two or more loads per day are handled for National when haul lengths are 80 miles or less. Defendant has made only a few trips for greater lengths for National. Only two trips have been made to the San Francisco Bay area (Richmond) for National. Defendant used both units of equipment for those trips which moved on the same day.

The base wage cost component used in Exhibit 1 was \$9.06 per hour, which defendant indicated was given to him by a staff member of the Commission's Transportation Division. According to defendant, the staff member informed him that the wage is incorporated in the Teamsters Union California Intrastate Truckload Supplement, applicable from May 16, 1981 through May 15, 1982, and that the wage applies to line drivers. The level of wage costs used by defendant was not challenged at the hearing.

Loading and unloading of wallboard are performed with mechanical equipment furnished by the shipper or receiver. The costs to the carrier involve the standby time of the driver and equipment while the loading or unloading service is performed. Defendant allowed one hour for loading and one-half hour for unloading in the cost development in Exhibit 1. The record shows the actual loading and unloading times often exceed the times for those services used in the Exhibit 1 cost development. No provision is made in RR-38 for an accessorial charge to cover time spent in loading in excess of one hour or time spent in unloading in excess of one-half hour. Defendant is willing to amend RR-38 to provide for such an accessorial charge.

Defendant based equipment fixed costs and performance factors in Exhibit 1 on his own experience. The annual hours of equipment use were increased above those actually experienced to make allowance for longer driving times associated with hauls over 80 miles, particularly to the San Francisco Bay area.

Exhibit 1 contains cost/rate comparisons for hauls 200 miles or less which indicate the following:

TABLE 1

<u>One Way Length of Haul (Miles)</u>	<u>Per Shipment</u>		<u>Revenue Ex- ceeds Costs</u>
	<u>Anticipated Revenues</u>	<u>Estimated Costs</u>	
50	\$190.00	\$106.76	\$83.24
80	230.00	158.46	71.54
120	285.00	226.38	58.62
150	320.00	279.08	40.92
175	355.00	322.16	32.84
200	380.00	365.24	14.76

The following tabulation appearing in Exhibit 1 is intended to show the profitability of hauls for over 200 miles.

TABLE 2

<u>Point of Destination</u>	<u>One Way Miles</u>	<u>RR-38 Revenue From Sheetrock</u>	<u>Return Shipment Revenue</u>	<u>Total Revenue Per Trip</u>	<u>Round-Trip Cost</u>
Tulare	210	\$395.00	\$677.25	\$1,072.25	\$770.48
Fresno	255	440.00	677.25	1,117.25	777.11
Modesto	349	510.00	677.25	1,187.25	768.39
Fremont	398	555.00	677.25	1,232.25	771.84
Sacramento	422	570.00	677.25	1,247.25	775.28
Vallejo	431	595.00	677.25	1,272.75	841.63

As may be seen from the above compilation, the profitability of hauls in excess of 200 miles depends upon obtaining a backhaul. Defendant assertedly was informed by National that it would arrange a backhaul from the San Francisco Bay area for him when he is tendered shipments over 200 miles.

The above compilation does not make provision for subsistence or layover payments to drivers on round trips requiring more than one day.

Exhibit 1 contains a copy of a letter dated September 22, 1980 from Joseph Bingham, distribution service manager of National, stating that it was not the writer's intention in drawing the contract in RR-38 to use defendant for hauls exceeding 200 miles from the plant at Long Beach; only in extreme emergencies would it be necessary to use defendant at those distances, and if such shipments were made National would arrange a backhaul.

Complainant's Evidence

Complainant's evidence was presented by its secretary. He testified that complainant does not object to the rates in RR-38 for distances of 80 miles or less. Complainant's concern is the rates in RR-38 for longer distances. It is the witness's belief that under the Commission's program announced in Decision No. 90663, supra, any carrier can meet those rates for the transportation of the same commodities between the same points. Thus, other carriers handling wallboard in truckload shipments may be required by their shippers to establish rates on the same levels as the rates in RR-38. It is complainant's view that backhauls are not available from all points in the State on a regular basis. While there may be regular backhauls available from points described in Table 2, backhauls are not available for all hauls of equal distance to points that are not within, or intermediate to, the San Francisco Bay area.

Exhibit 2 is a copy of an application filed by complainant seeking authority to charge less than minimum rates for hauling wallboard and related commodities from Santa Fe Springs for U. S. Gypsum Company. That application was filed before the commencement of the reregulation plan announced in Decision No. 90663. That application names specific destination points, and the support data describe the specific backhauls available from such points. The rates proposed by defendant are higher than the current reduced rates maintained by complainant for U. S. Gypsum Company.

Complainant's witness testified that it regularly engages in the long-haul transportation of wallboard, and that based on its experience it cannot provide service for distances in excess of 200 miles at rates as low as those set forth in RR-38 without a backhaul being available. The witness believes that if regular service for distances over 200 miles were to be performed by defendant at RR-38 rates, defendant would also find some rates to be noncompensatory, since profitability for such lengths of haul depends upon a backhaul

being available for each trip, from a point reasonably near the point of destination of the outbound shipment of wallboard. The witness also believes that defendant's costs are understated to the extent that no provisions are made for driver layover costs and out-of-line mileages costs to obtain backhauls. The witness also believes that RR-38 rates should provide assessment of accessorial charges when time in excess of one hour is used for loading or one-half hour for unloading.

Discussion

The showing initially made in support of RR-38 was sketchy and incomplete. While we understand the difficulties faced by highway carriers in developing comprehensive data in support of a rate reduction filing, such filings should be sufficiently well presented to clearly demonstrate the reasonableness and compensatory nature of the proposed reduced rates.

A protest to RR-38 stated that the only cost/rate comparison in the support statement was for a distance of 40 miles, and there was no information in that statement showing that rates for longer distances would be compensatory. In retrospect, that protest should have resulted in temporary suspension of RR-38 until that deficiency had been cured. Instead, the filing was permitted to become effective, causing the filing of this complaint. After review of the allegations contained in the complaint, the Commission issued Decision No. 92481, which shifted the burden of proof from complainant to defendant, who was required to show the compensatory nature of the proposed rates.

Defendant met that burden of proof with respect to shipments handled without a backhaul, except that no provision was made in RR-38 for the assessment of an accessorial charge for delays in loading or unloading.^{2/}

Defendant has not fully met the burden of showing the compensatory nature of the charges for shipments of wallboard when a backhaul is required to make the round-trip service profitable. Exhibit 1 contains cost/rate comparisons for a few specific destinations where backhaul traffic ordinarily would be available and could be arranged by National; however, the rates in RR-38 are stated on a mileage basis and apply to any point in the State within the mileage range of the rates. No evidence was presented to show that backhauls are available from National outside of the geographic area covered in Table 2, nor that the longer distance mileage rates to points other than those shown in that compilation would be compensatory without backhaul being available.

It is clear from the record that (1) defendant's primary service for National is for the transportation of shipments locally in the greater Los Angeles Metropolitan area, (2) defendant has had very limited experience in handling shipments of wallboard beyond that geographical area, (3) National intends to use defendant's service under RR-38 to points beyond the greater Los Angeles Metropolitan area only on an irregular basis to meet unexpected demands for its product, and (4) only very infrequent service would be performed by defendant under RR-38 to points beyond the Los Angeles Metropolitan area.

^{2/} No provision is made in RR-38 for the assessment of split pickup or split delivery charges, but apparently defendant will not be asked to handle split shipments. However, RR-38 should be amended to clearly indicate that split pickup and split delivery service will not be rendered, or to provide charges for those services.

Rates which do not contribute to carrier profitability upon imputation of prevailing wage levels do not satisfy the justification standard of Decision No. 90663. Where in order to be profitable a rate depends upon a backhaul being available, and where, as here, the carrier has not demonstrated that a backhaul is available, the rate reduction must be disallowed to the extent that no backhaul is available.

Defendant will be ordered to reissue RR-38 to cancel mileage rates over 200 miles which are dependent upon a backhaul to be compensatory, without prejudice to the republication of rates on the same level which apply from Long Beach to specified destinations where it has been shown on this record that backhauls are available. Defendant also will be directed to amend RR-38 to include a provision for the assessment of an hourly accessorial charge for time in excess of one hour for loading and one-half hour for unloading, and to clearly show that either split pickup and split delivery service will not be accorded or to provide accessorial charges for the performance of split pickup and/or split delivery service.

Findings of Fact

1. RR-38 is a contract between defendant and National setting forth rates and governing rules for the transportation of wallboard and related commodities from National's plant in Long Beach. The contract rates are set forth on a mileage basis for distances up to 700 miles. The rates are subject to a minimum weight per shipment of 50,000 pounds.

2. RR-38 is a rate reduction filing below the level of the rates in Transition Tariff No. 2 and below the level of the rates

maintained by other carriers for the transportation of the same commodities between the same points.

3. RR-38 is a rate reduction filing under the reregulation plan adopted by the Commission in Decision No. 90663, supra. As such, the reduced rates must be supported by cost and other data that show that the rates are compensatory.

4. The complaint in this proceeding asserts, inter alia, that the Commission accepted RR-38 after the filing of complainant's timely protest without adequate justification in support of the reduced rate.

5. Decision No. 92481, supra, directed defendant to supply additional data in support of his RR-38, which information is contained in his Exhibit 1.

6. Exhibit 1 shows that the reduced rates in RR-38 for distances of 200 miles or less will be compensatory. For distances over 200 miles the reduced rates will be compensatory only if defendant has a backhaul.

7. The only backhaul which defendant has shown to be available is National's offer to provide defendant with a backhaul from Richmond to the Los Angeles area.

8. The record does not establish that for shipments in excess of 200 miles backhauls are available to destinations other than those described in the preceding finding.

9. The cost data in support of the reduced rates are developed on the basis of one hour for loading and one-half hour for unloading. Actual loading and unloading times often exceed those upon which the estimated costs are based. No charges for excess loading and unloading times are provided in RR-38.

10. RR-38 makes no provision for accessorial charges for split pickup and split delivery, nor does it state that such accessorial services will not be performed.

Conclusions of Law

1. Insofar as defendant has failed to show that a backhaul is available, and correspondingly, that his rates filed in RR-38 contribute to profitability at prevailing wage levels, the rates fail to satisfy justification criteria in Decision No. 90663 and must be canceled.

2. Defendant should be ordered to reissue RR-38:

- a. To cancel mileage rates for distances in excess of 200 miles. Rates on the same level as the canceled mileage rates may be republished as specific point-to-point rates to destinations within the San Francisco Bay area or to destinations directly intermediate thereto.
- b. Establish accessorial charges for time involved in loading in excess of one hour and time involved in unloading in excess of one-half hour.
- c. Clearly indicate whether split pickup and split delivery service will be accorded; and if those accessorial services are to be accorded, provide accessorial charges for such services.

3. Inasmuch as the reduced rates are now in effect, the order herein should become effective on the date of signing.

O R D E R

IT IS ORDERED that:

1. James D. Davis, doing business as Davis Trucking, shall, within fifteen days after the effective date of this order, amend and reissue RR-38, a contract between Davis Trucking and the Gold Bond Building Products Division of National Gypsum Company as specifically set forth in Conclusion 2 of the preceding opinion.

2. In the event that James D. Davis, doing business as Davis Trucking, does not comply with the preceding ordering paragraph, RR-38 shall be suspended until further order of the Commission.

The effective date of this order is the date hereof.

Dated FEB 18 1961, at San Francisco, California.

John E. Bryan
President
William H. ...
...
...
Commissioners