

ORIGINAL

Decision 93336 JUL 22 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Dave Castro, dba)
Dave Castro Truckin', for authority)
to deviate from the minimum rates,)
rules and regulations of Minimum)
Rate Tariff 8-A, pursuant to)
provisions of Section 3666 of the)
Public Utilities Code, for Castle)
& Cooke, Inc.)

Application 60526
(Filed May 6, 1981;
amended May 13 and
June 2, 1981)

O P I N I O N

By this application, as amended, Dave Castro, doing business as Dave Castro Truckin', a highway contract carrier seeks authority to deviate from the minimum rates, rules, and regulations of Minimum Rate Tariff (MRT) 8-A. The transportation to be performed will be produce from Marina or Huron to destinations in southern California and bananas from Long Beach to destinations in northern California. The transportation is to be performed for Castle & Cooke, Inc.

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Applicant proposes to assess a mileage charge for all mileages from and returning to his terminal at San Jose while engaged in this traffic for Castle & Cooke, Inc. Financial data detailing revenues and expenses submitted by applicant indicate

that operations at the proposed rates would be compensatory. In the event that subhaulers are employed to perform the transportation, applicant would pay them ^{100%}~~90%~~ of the rates authorized. ^{1/}

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By amendments applicant has included all of the possible produce traffic that Castle & Cooke, Inc. would tender. Also, the amendments enlarged the intended delivery areas. The amendments should not alter the expected profitability accruing to the applicant.

By letter the California Trucking Association opposed the ex parte consideration of the application without stating any specific grounds for the protest. It did not file a formal protest in compliance with our Rules of Practice and Procedure.

B & M Trucking (T-92,334) has filed a formal protest to the granting of this deviation from MRT 8-A. B & M Trucking cites the following protests, with staff analysis accompanying:

1. Labor cost data as not being in conformance with the Commission's prevailing wage guidelines.

<u>1/</u>	Gross Revenue Computed From MRT 8-A	Revenue Based Upon Total Mileage Traveled
	\$1,200.35	\$1,137.35

The labor element for cost purposes in deviations under Public Utilities (PU) Code Section 3666 has been the actual labor costs paid by the carrier with no reference to a prevailing wage.^{2/}

2. "Similarly, applicant has only provided lump sum costs for indirect costs, maintenance costs and repair costs."

Costs have been presented on a per mile basis computed under actual operations for a unit of applicant's equipment.

Diesel fuel			
\$1.10 per gallon @ 4.5 miles per gallon	=	\$.244	per mile
Oil for lubrication			
Projected for 1981	=	.007	" "
Tires			
Projected for 1981	=	.046	" "
Maintenance			
Projected for 1981	=	.097	" "

3. Omission of terminal and administrative costs.

Terminal and administrative costs are described as indirect costs and applicant has determined that the costs attributed to these accounts approximates 9 cents per mile.

4. "...no provisions for banana loading cost... when lumpers are used..."

^{2/} Decision 91265, dated January 15, 1980 in OII 53 established a prevailing wage component to be reflected in carrier-filed rates under the Commission's reregulation program. The regulation program was adopted only in connection with the transportation of commodities in bulk by tank and vacuum tank vehicles and subsequently was extended to the transportation of general freight.

The order recognizes this cost and provides for its full assumption by Castle & Cooke, Inc.

5. Protestant questions the determination of mileages and the lacking of an established formula or route for the application of the per mile rate.

Payment under the deviation starts from the San Jose terminal of applicant and is continuous (per mile) through all loaded and empty mileages until the unit of equipment returns to applicant's San Jose terminal. Further, the distance traveled between points is determined from the mileages published in the Commission's Distance Table 8.

6. Profitability accruing to subhaulers

The deviation provides that subhaulers shall receive ^{100%} ~~90%~~ of the authorized rate, ~~or \$1.035 per mile which the staff has found to be a reasonable amount.~~

Staff analysis of protestant's filing disclosed no substantive issue for which a public hearing would be necessary. The application details adequate financial data to determine the reasonableness of the deviation. Further, the application complies with the guidelines for filing a deviation from minimum rates under PU Code Section 3666 (Resolution TS-284, dated January 24, 1978).

The application meets the guidelines of the Commission's Energy Efficiency plan and will not significantly affect energy efficiency within the meaning of PU Code Sections 3502.1 and 3502.2.

In order to assure continuity of performance of the transportation for the shipper, applicant requests that relief be authorized as soon as possible because there is an immediate need for the deviation.

Findings of Fact

1. Applicant is the holder of a highway contract carrier permit and seasonal agriculture carrier permit issued by this Commission.
2. The rates, rules, and regulations governing the transportation of bananas and produce are published in MRT 8-A.
3. Applicant is seeking a rate reduction under PU Code Section 3666.
4. Revenue and expense data submitted by the applicant are sufficient to determine the profitability to applicant if the application is granted.
5. The reduction in rates as sought is reasonable.
6. The application and amendments were listed on the Commission's Daily Calendars of May 13, 18 and June 5, 1981, respectively.
7. California Trucking Association by letter, voiced opposition to the filing without stating any specific grounds.

8. B & M Trucking, Inc. filed a formal protest alleging various deficiencies in the financial data. Staff examination of the data found it to be adequate and complete. B & M Trucking, Inc. felt that the rate could be "easily abused". Staff proposed conditions to the deviation authority remove any possible "abuses" that may arise.

9. A public hearing is not necessary.

10. The following order has no reasonably foreseeable impact on the energy efficiency of highway carriers.

11. Since there is an immediate need for this rate relief, the effective date of this order authorizing the rate reductions should be the date of signature.

Conclusion of Law

The proposed rate reductions are just and reasonable, and the application should be granted to the extent set forth in the ensuing order. The effective date of the order should be the date signed because there is an immediate need for the deviation. Since transportation conditions may change, this authority shall expire in one year.

O R D E R

IT IS ORDERED that:

1. Dave Castro, doing business as Dave Castro Truckin' may depart from the rates in MRT 8-A by charging not less ^{than} the rates in Appendix A. L
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Unless renewed, this authority shall expire one year after the effective date.

This order is effective today.

Dated JUL 22 1991, at San Francisco, California.

John E. Bayne
President
Michael D. Walker
James W. Smith
Natos Castro
Priscilla C. Green
Commissioners

APPENDIX A
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Carrier: Dave Castro, dba Dave Castro Truckin'

Shipper: Castle & Cooke, Inc. (C&C)

Rates: \$1.15 per mile for all loaded and empty miles starting from carrier's terminal (444 Marburg Street, San Jose) and back to carrier's terminal. Rates include usage of mechanical refrigeration.

Commodities - Origins - Destinations

- A. Produce from Marina and Huron to destinations in southern California.
- B. Bananas from Long Beach to destinations in northern California.

Conditions:

1. Loading - Trailers shall be loaded at distribution points by C&C or its swamper or lumper representatives. The Castro truck driver employee shall assist the swampers or lumpers in loading at the Long Beach terminal.

1a. Castle & Cooke shall assume the charges for swampers or lumpers used in the loading of bananas at Long Beach.

2. Unloading - The Castro truck driver employee or its swamper or lumper representatives shall be responsible for unloading trailers at the points of destination. If the services of swampers or lumpers are employed by Castro to perform or assist in the unloading, the following charges will be assessed to C&C:

	<u>Palletized Cargo</u>	<u>Loose Cargo</u>
Los Angeles Area:	3-1/2 cents per case	7 cents per case
San Francisco Area:	3-1/2 cents per case	7 cents per case

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3. Free Time and Penalties - If the trailer has arrived at the point of loading at the time and date stipulated by C&C, C&C shall be allowed up to 5 hours free time for the purposes of loading after which a delay penalty of \$20 per hour or pro rata will be charged up to a maximum of \$85. The maximum charge of \$85 shall also be imposed if at any time during the free time or penalty time periods C&C cancels the loading for that day and schedules the loading for a following day but no more than \$85 shall be chargeable to C&C upon any such cancellation notwithstanding that the penalty time period may have commenced when the cancellation occurred. If Castro fails to furnish a trailer within 2 hours of the scheduled loading time, C&C shall charge for any further delay at the rate of \$20 per hour or pro rata up to a maximum of \$85.

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100% 4. If subhaulers are used, they shall receive no less than 90% of the authorized rate without any deduction for use of applicant's trailing equipment.

4a. If subhaulers are used, they shall be dispatched from the San Jose terminal of Dave Castro and paid for all mileages loaded and empty traveled until their return to Dave Castro's San Jose terminal.

5. The distances traveled between points shall be computed based upon the Commission's Distance Table 8 rules and tables.

6. Fuel increases - The price of diesel fuel shall be subject to review every 90 days and to the extent that Castro can document an increase in fuel charges in an amount which is at least 10% in excess of that existing on the date set forth, Castro shall be entitled to request C&C to renegotiate the freight charges to the extent of such increases.

FUEL - April 28, 1981 - \$1.06 per gallon
(Fuel priced at Castro's bulk storage with all taxes.)

7. In all other respects, the rates and rules in Minimum Rate Tariff 8-A shall apply.

(END OF APPENDIX A)