

ORIGINAL

Decision No. 71192

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JAMES O. SKUBA doing business as)
PORT CHICAGO IRON & METAL CO., for)
an order authorizing departure from)
the rates, rules and regulations of)
Minimum Rate Tariff No. 15, pursuant)
to the provisions of Section 3666 of)
the Public Utilities Code.)

Application No. 48546
(Filed June 8, 1966)

OPINION AND ORDER

Minimum Rate Tariff No. 15 names yearly, monthly and weekly vehicle unit rates for the transportation of property by city carriers and highway carriers. The yearly rates set forth therein apply when the shipper enters into a written agreement with the carrier for a period of one year or more. When such agreement is executed, rates otherwise provided in the Commission's minimum rate tariffs do not apply.

By this application, James O. Skuba, a highway contract carrier doing business as Port Chicago Iron & Metal Co., seeks authority to terminate a yearly vehicle unit rate agreement executed by him with Continental Can Company, Inc. (Continental), on May 1, 1966, under the provisions of Minimum Rate Tariff No. 15.¹ In lieu thereof, he requests authority to assess the monthly vehicle unit rate provided in the tariff for services performed under the agreement from May 1, 1966, through the date said agreement is terminated.²

¹ A minimum base yearly vehicle unit rate of \$1,234.00 per month applies to the transportation in question.

² The base monthly vehicle unit rate for the type of equipment operated under the agreement is \$1,379.00.

Applicant alleges that he has continuously assigned equipment for the exclusive use of Continental since 1961 under monthly vehicle unit rate agreements primarily for the transportation of regular volume shipments of corrugated fibreboard boxes, pulpboard sheets and scrap or waste paper from the corrugated container plant of Continental at Pittsburg to various points in northern California. Applicant states that, on May 1, 1966, the monthly vehicle unit agreement was converted to a yearly vehicle unit agreement after he and the shipper mutually agreed that the minimum yearly vehicle unit rate in Minimum Rate Tariff No. 15 would be applied to the transportation in question. Applicant avers that on May 20, 1966, the Pittsburg corrugated container plant of Continental was shut down unexpectedly and, as a result, the shipper is unable to utilize the equipment sufficiently to warrant continuation of the vehicle unit operation.

Copies of the application were mailed to California Trucking Association and Continental Can Company, Inc., on or about June 6, 1966. The application was listed on the Commission's Daily Calendar of June 10, 1966. No objection to the granting of the application has been received.

In Decision No. 67659, dated August 4, 1964, in Case No. 7783, Petition No. 1, wherein the Commission considered a rule to govern the apportionment of the yearly rates for service which has been terminated in less than one year, the Commission said:

"The record is clear that there have been no circumstances under which agreements for the use of yearly vehicle unit rates have been interrupted or terminated by either shippers or carriers. The need for a rule to govern such situations is speculative. The record shows that none of the rules proposed in this proceeding would meet all of the possible circumstances under which service could be interrupted or terminated.*** In the circumstances where an inequitable situation may result from interruption or termination of a written agreement beyond the control of the parties to the agreement, relief from the tariff provisions may be sought from the Commission through the filing of formal pleadings appropriate to the circumstances."

The instant application involves a specific termination. The situation is unusual in that the manufacturing operation which generated the traffic has been terminated. Moreover, the record shows that, had the yearly agreement been entered into when the service was first provided in 1961 or at any time thereafter prior to May, 1965, Minimum Rate Tariff No. 15 would apply in the manner sought by applicant.

In the specific circumstances involved in this application, the Commission finds that the shipper should be relieved of the burden of paying for transportation services it is not in a position to use and that the sought relief is justified. The Commission further finds that the yearly vehicle unit rate agreement should be terminated, that the minimum monthly vehicle unit rate should be applied to the services performed by James O. Skuba for Continental Can Company, Inc., from May 1, 1966, through the date of termination of said agreement and that such monthly vehicle unit rate is reasonable for the transportation involved. A public hearing is not necessary. The Commission concludes that the application should be granted.

Inasmuch as the shipper should be relieved of its hardship as soon as possible, the order which follows will be made effective on the date hereof.

IT IS ORDERED that James O. Skuba is hereby authorized to terminate the yearly vehicle unit rate agreement applicable to services that he performs for Continental Can Company, Inc., and to assess a rate not less than the monthly vehicle unit rate

provided in Minimum Rate Tariff No. 15 for such services from May 1, 1966, through the date of termination of said agreement.

This order shall become effective on the date hereof.

Dated at San Francisco, California, this 23rd day of August, 1966.

Peter E. Mitchell
President
George H. Grover
Augustin
William M. Bennett

Commissioners

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.