

**ORIGINAL**Decision No. 73834

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 EVANS TANK LINE, INC., a corporation,  
 for an exception to Paragraph (c),  
 Item 50, Minimum Rate Tariff No. 15,  
 applicable in connection with certain  
 transportation to be performed for  
 GARDEN STATE PAPER COMPANY, INC.

Application No. 49931  
 (Filed January 8, 1968)

O P I N I O N

Minimum Rate Tariff No. 15 sets forth minimum yearly, monthly and weekly vehicle unit rates, rules and regulations for the transportation of property by city carriers and highway permit carriers. The yearly and monthly rates are limited to service performed within a radius of 250 air miles from base of operations. They carry a further limitation that they may not be combined so as to permit one-way operations in excess of 250 air miles.

Applicant, a radial highway common carrier, seeks authority to deviate from the prohibition against combining the rates to permit one-way operations in excess of 250 miles. The authority is sought in connection with the transportation of newsprint from the Garden State Paper Company, Inc., Pomona, to the San Francisco Bay area and to the Sacramento area and the return transportation of waste newsprint. In other respects applicant proposes to perform said transportation and to assess charges therefor in conformity with the rates and rules in Minimum Rate Tariff No. 15.

1 "Base of operations" means the single point described in the . . . agreement (covering the transportation) which shall be a point at which the shipper will regularly tender freight to the carrier or will regularly receive freight from the carrier. Minimum Rate Tariff No. 15, Item No. 10 (b).

The involved transportation is to be performed in the following manner:

Trailers loaded with newsprint would be hauled from Pomona to Fresno by drivers and tractors based at Pomona. From Fresno they would be hauled to the San Francisco Bay and Sacramento areas by drivers and tractors based at Fresno. On the return trips the trailers, loaded with waste newsprint, would be hauled from the San Francisco Bay and Sacramento areas to Fresno by the Fresno-based drivers and tractors. At Fresno they would be transferred to Pomona-based drivers and tractors and hauled to Garden State at Pomona.

The distances from Pomona to Fresno and from Fresno to the San Francisco Bay area and to the Sacramento area are less than 250 miles by air.

Applicant states that the rates in Minimum Rate Tariff No. 15 are compensatory for the transportation involved. Applicant further states that unless the sought deviation is authorized, Garden State Paper Company, Inc., will undertake to acquire and operate facilities of its own for the transportation of its paper.

The California Trucking Association has notified the Commission that it is not opposed to the granting of the application.

The sought authority should be granted. Except for the fact that the shipments of paper would move as through shipments and would neither be unloaded nor loaded at Fresno (the point of interchange), applicant would be performing essentially the same services that it would perform were it to transport like shipments of paper (a) from Pomona to Fresno destinations and (b) from Fresno points of origin to destinations in the San Francisco Bay and Sacramento areas (or, conversely, from the San Francisco Bay and

Sacramento areas to Fresno, and from Fresno to Pomona). The latter services are services which applicant may now perform under present provisions of Minimum Rate Tariff No. 15. Inasmuch as applicant is proposing to assess the rates in Minimum Rate Tariff No. 15 for the services it would provide under the deviation it seeks, and inasmuch as it appears that said services are essentially the same as those which may now be performed under the provisions of Minimum Rate Tariff No. 15, we find that the sought deviation is reasonable.

In authorizing the sought deviation, however, we must take cognizance of the nature of applicant's operations. As stated at the outset of this opinion, applicant's operations are conducted as a radial highway common carrier. The operations of a radial highway common carrier, by definition, do not include services between fixed termini or over a regular route. The application in this matter indicates that the services in issue herein are such services. Thus, it appears that the nature of applicant's present operations would preclude applicant from utilizing the deviation authority.

A further matter to be considered is the fact that the rates which applicant would assess under the authority herein sought would constitute a special basis of charges for a designated shipper. The assessing of special rates and charges by a common carrier for the transportation of shipments of a designated shipper is a form of discrimination which is prohibited by Article XII, Section 21, of the State Constitution.

If applicant is to avail itself of the deviation authority which may be granted herein, it should perform the services involved as a highway contract carrier. The exercise of said deviation

authority will be conditioned upon applicant's obtaining a permit to operate as a highway contract carrier and performing said services pursuant to that permit.<sup>2</sup>

Public hearing on this application does not appear necessary. The application was listed on the Commission's calendar of January 10, 1968. No objections thereto have been made known to the Commission.

In accordance with the Commission's practice in matters of this kind the authority which is hereinafter granted will be scheduled to expire in one year, subject to sooner cancellation or modification or to extension by further order of the Commission. Responsive to applicant's desire to avail itself of the sought authority as soon as possible, the order herein will be made effective ten days after the date hereof.

O R D E R

IT IS ORDERED that:

1. Evans Tank Line, Inc. is authorized to deviate from the provisions of Minimum Rate Tariff No. 15 to the extent specified in Appendix A attached hereto (and by this reference made a part hereof) in connection with services performed by said Evans Tank Line, Inc., pursuant to permit of a highway contract carrier, in transporting newsprint paper and waste newsprint paper for the Garden State Paper Company, Inc., between Pomona, on the one hand, and points in the San Francisco Bay area and in the Sacramento area, on the other hand, via Fresno.

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<sup>2</sup> Compare Decision No. 69965, dated November 16, 1965, In re Cabs Unlimited, Inc.; Decision No. 73676, January 30, 1968, Rocko Transportation, Inc.

2. Except as provided in Paragraph 1, above, the transportation which is performed pursuant to the authority herein granted shall be subject to the provisions of Minimum Rate Tariff No. 15.

3. The authority herein granted shall expire one year after the effective date of this order unless otherwise canceled, modified or extended by further order of the Commission.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of MARCH 1968.

[Signature]  
President

[Signature]

[Signature]

William J. Aguirre

Fred P. Monissey  
Commissioners

Authorized Deviation from the Provisions of Paragraph (c) of Item 50, Minimum Rate Tariff No. 15:

Trailers and/or semi-trailers may be operated over one-way distances in excess of 250 air miles when no tractor and driver utilized in the hauling of said trailers and/or semi-trailers operate in excess of 250 air miles from the base point of the tractor and driver used. When trailers and/or semi-trailers are so operated, the applicable charges shall be computed on the basis of the rates in Minimum Rate Tariff No. 15 according to the type of carrier's motor power equipment and trailing equipment used.

(End)