

Decision No. 77799

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 WILLIAM L. ADAMS, doing business as)
 ADAMS TRUCKING CO.; BILLY R. ANDREWS)
 and SPENCER MORRISON, doing business)
 as A & M TRUCKING; CERTIFIED)
 BUILDING MATERIALS CO.; L.A.)
 BUILDING MATERIAL CO., INC.; MORGAN)
 TRUCKING, INC.; NEELY TRUCKING CO.;)
 and THOMPSON BUILDING MATERIALS, INC.)
 for authority to deviate from)
 minimum rates pursuant to Section)
 3666 of the Public Utilities Code.)

Application No. 50772
 (Filed December 23, 1968)

ORDER DENYING REHEARING

A petition for rehearing of Decision No. 77348 having been filed by California Trucking Association, and the Commission having considered each and every allegation thereof and being of the opinion that good cause for rehearing has not been made to appear,

IT IS ORDERED that rehearing of Decision No. 77348 is hereby denied, and

IT IS FURTHER ORDERED that the effective date of Decision No. 77348 is the date hereof.

Dated at San Francisco, California, this 6th day of OCTOBER, 1970.

J. P. ...

 Chairman

William ...

Thomas L. Sturgeon

 Commissioners

*I will file a dissent.
 August*

COMMISSIONER A. W. GATOV, Dissenting:

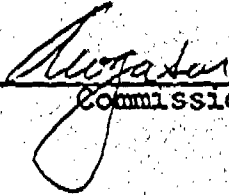
I dissent.

My disagreement with Decision No. 77348 in the first instance is set forth in the dissent which is appended hereto and incorporated as part of my remarks.

The majority's decision and now its denial of a rehearing is so glaringly erroneous that further comments thereon would serve no purpose. These blunders ignore the viewpoints of the Commission's Transportation Division, its Legal Division, and the California Trucking Association, which represents almost all of California's highway common carriers.

The California Trucking Association's petition for reconsideration is a concise and irrefutable argument clearly showing Decision No. 77348 to be erroneous and unlawful, and one in which the Commission majority did not legally pursue its authority.

A rehearing should have been granted.



Commissioner

Attachment

Dated at San Francisco, California,
October 6, 1970.

A T T A C H M E N T

A. W. GATOV, COMMISSIONER, Dissenting:

I dissent because the decision is unfair, unreasonable and improper and not supported by the record.

The majority's position is not only contrary to a legislative intent (if not mandate) as stated in Public Utilities Code Sections 3662 and 3666, but is totally inconsistent with the long-standing, sound regulatory principle which, with broad carrier and shipper support, this and other Commissions have uniformly followed.

Given a broad interpretation, the majority is virtually saying that the regulated function of a carrier is the movement of goods from one place to another, but only while the goods are on or in carrier's truck, rail car, vessel, airplane, etc. This primitive and simplistic concept has long been abandoned, and I am certain carriers and shippers alike will be appalled at the majority's conclusion that the subject movement of wallboard from truckbed to place of rest in various locations throughout a building under construction is not an accessorial service performed in connection with transportation.

If this were a simple little aberration it might be excused, but the implications are far-reaching because we regulate as service accessorial to transportation literally hundreds of operations much more sophisticated and complex than the relatively simple one of wallboard distribution.

The Commission should have asserted jurisdiction, set aside submission and entertained a petition for authority to assess charges for the operation on a board-foot basis.

If, however, it is the majority's desire to deregulate accessorial services generally, it should initiate an Order Instituting Investigation into the whole field. If the findings and conclusions of such investigation warrant it, the Commission could then consider sponsoring legislation seeking to amend Sections 3662 and 3666.

/s/ A. W. GATOV

Commissioner

Dated at San Francisco, California,
June 9, 1970.