

Decision No. 79132

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of Gemini Systems, Inc., a California corporation, for an order authorizing departure from the minimum rates and rules pursuant to the provisions of Section 3666 of the Public Utilities Code for the transportation of cargo under vehicle unit rates as established under Minimum Rate Tariff 15 of the California Public Utilities Commission.

Application No. 52615  
(Filed May 12, 1971)

Allan F. Africk, Attorney at Law, for Gemini Systems, Inc., applicant.  
J. C. Kaspar, H. K. Kollmyer and A. D. Poe (Attorney at Law), for California Trucking Association, protestant.  
Robert E. Walker and John deBrauwere, for the Commission staff.

O P I N I O N

Gemini Systems, Inc., a corporation, operates as a radial highway common carrier. It seeks authority under Section 3666 of the Public Utilities Code to deviate from the minimum monthly and yearly vehicle unit rates in Minimum Rate Tariff 15 (MRT 15) by assessing charges per vehicle uniformly \$150 per billing period less than the corresponding rates in MRT 15.

Public hearing was held and the application submitted before Examiner Mallory at Los Angeles on August 6, 1971. Evidence in support of the application was presented by applicant's accountant. The relief sought was opposed by California Trucking Association (CTA) and the Commission staff.

Applicant's witness testified as follows: Applicant began operations about May 3, 1971, performing service for Bridgestone Tire Company, Gardena, under a month-to-month contract for use of monthly

vehicle unit rates in MRT 15. Initially, the vehicle used in said service was a Ford van-type truck operated by Gemini under a lease. On or about 5 days after the service started, Gemini purchased and placed in operation a 1970 International 20-foot van-type two-axle truck.

Applicant's witness presented in evidence in Exhibits 1 and 2 actual revenues and expenses for the operation of its vehicle (Exhibit 1), and revenues under sought rates and estimated operating expenses for a future period (Exhibit 2). The witness explained that Gemini's sole employee, the driver of the vehicle, is not a union employee and is paid at a rate of \$4.00 per hour with no fringe benefits, as compared with wage rates of \$5.11 per hour, plus health, welfare, vacation and sick-pay benefits, required to be paid under the current Teamster Union wage contracts. The witness stated that the use of a non-union driver will result in savings in operating expenses of \$370 per month, as contrasted with the employment of Teamster Union drivers, for each type and size of equipment for which rates are set forth in MRT 15. Applicant requests that it be authorized to charge rates that are uniformly \$150 per month less than the minimum rates, primarily because of the savings in labor costs resulting from the employment of non-union drivers.

The record shows that the application herein was filed May 12, 1971, approximately the same date applicant began operations as a for-hire carrier. Applicant has conducted no operations prior to commencing service for Bridgestone. Applicant's place of business is located in the office of its accountant, where a telephone is listed in its name. Accounting is performed at a fixed cost per month. Other than drivers' wages, truck operating and ownership costs, and accounting, applicant has incurred no expenses. Because it has experienced no major maintenance or repair expenses, these costs were estimated, as were overhead expenses. Under actual and estimated expenses, the operations show a profit.

CTA and the Commission staff urge that three-month operating results are not sufficiently long a period to provide a representative test of the reasonable operating expenses for a future period. They also point out that applicant has not incurred any situation requiring a replacement unit of equipment or a replacement driver, nor has any provision been made for such services. CTA urges that applicant's driver is not hired under an employment contract, thus there is reasonable basis for assuming that if operations are expanded, driver labor costs may vary from the amount used in applicant's estimates.

CTA also argued that it has consistently been the policy to name the shippers for whom the service is to be performed in rate deviation authorizations under Section 3666 of the Public Utilities Code. The record shows that Gemini plans to use the authority herein, if granted, to solicit business; and that it has no firm requests for service other than from the shipper it now serves. CTA urges that it would be contrary to the policy heretofore adopted by the Commission to grant the application herein without specifying in the order the shippers for whom the service is to be performed.

CTA and the Commission staff request the authority sought herein be denied.

The Commission finds:

1. Applicant's experience as a for-hire carrier is limited to operations commenced on or about May 4, 1971, for Bridgestone Tire Company, involving the operation of one 2-axle van-type truck with driver under monthly vehicle unit rates.

2. The three-month's operating results presented herein in Exhibit 1 are not of sufficiently long duration to be indicative of future operating results over a substantially longer time period, inasmuch as such expenses make no provision for back-up equipment or driver, the expenses for repairs and maintenance are not based on actual experience, and overhead expenses provide no compensation for management.

3. The estimate of expenses indicates that for the operation of a single truck under vehicle unit rates, there is sufficient margin of revenue over expenses to indicate that the proposed rate for the operations now conducted by applicant for Bridgestone will be compensatory.

4. The operations for Bridgestone are unique in that no garage expense is incurred, nor is there necessity to provide management services. The operations now conducted for Bridgestone are not indicative of the costs of operation for any other size of equipment, nor for any other shipper.

5. Applicant has not furnished estimates of operating results for equipment other than the 2-axle van-type truck now operated by it.

6. The record does not show that applicant can employ labor at the cost shown herein for additional equipment units.

7. Applicant has not shown that the operation of equipment of a type other than a 2-axle van would be compensatory.

The Commission concludes that the application should be granted with respect to the equipment now operated by it and should be denied in other respects.

The Commission customarily specifies the name of the shipper for whom service is to be performed under the less-than-minimum rate authority because service for each shipper is unique, and the operations for that shipper generally bear some cost saving to the carrier that may not be incurred in connection with transportation for other shippers. For this reason, the authority granted in the order which follows will be limited to service performed for Bridgestone Tire Company.

O R D E R

IT IS ORDERED that:

1. Gemini Systems, Inc., a corporation operating as a highway permit carrier, is authorized to assess a base monthly vehicle unit

A. 52615 jmd

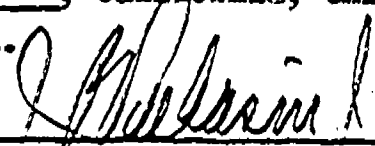

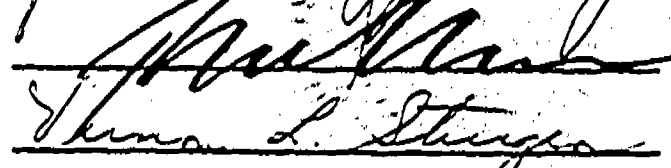
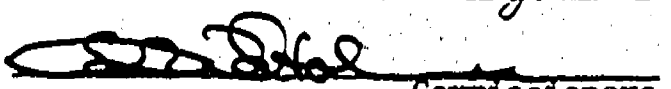
rate of \$1,439 per month for the operation of a truck without trailer, having lineal loading space of 12 feet and over, 2-axle flat or van, for Bridgestone Tire Company. In all other respects, the provisions of Minimum Rate Tariff 15 will apply.

2. The authority granted in paragraph 1 shall expire one year after the effective date of this order.

3. In all other respects, Application No. 52615 is denied.

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

Dated at San Francisco, California, this 5th  
day of SEPTEMBER, 1971.

  
\_\_\_\_\_  
Chairman  
  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
Commissioners