

Decision No. 83034

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
TITAN TRANSPORTATION COMPANY, INC.,  
a California corporation, for  
authority to depart from minimum  
rates, rules and regulations  
applicable in connection with  
certain transportation, under  
Public Utilities Code §3666.

Application No. 54585  
(Filed January 18, 1974)

Blanckenburg, May & Colvin, by Reynold H. Colvin,  
Attorney at Law, for applicant.  
Ed Bill and Herb Hughes, for California Trucking  
Association, interested party.  
Joseph H. Alvarez, for the Commission staff.

O P I N I O N

Applicant operates as a radial highway common carrier pursuant to a permit issued by this Commission. Applicant seeks authority to deviate from the minimum rates set forth in Minimum Rate Tariff 8 for the transportation of potatoes from points within a 15-mile radius of Macdoel.

Public hearing was held before Examiner O'Leary at San Francisco on March 25, 1974 at which time the matter was submitted.

The application seeks deviation authority on both a retro-active and prospective basis. At the hearing applicant amended the application so as to eliminate the request for prospective authority.

The president of applicant testified that the application was filed as a result of an undercharge citation issued by the Commission staff on November 19, 1973. The citation covered 23 shipments and the undercharges total \$3,615.85. The witness further testified that the rates assessed by applicant were the same rates which a competitor, Peters Truck Lines, was authorized to charge pursuant to deviation authority granted by the Commission.

The Commission's jurisdiction to grant minimum rate relief to highway permit carriers is stated in Section 3666 of the Public Utilities Code. The section provides:

"If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate." (Emphasis added.)

It is apparent that the words "desires to perform" in Section 3666 contemplates only prospective transportation. Had the legislature intended that the Commission be empowered to approve deviations from the minimum rates retroactively, it would have so provided in express terms. The Commission has declined for lack of statutory authority to establish retroactive rates under the Highway Carriers' Act.<sup>1/</sup>

The Commission is empowered by Section 3667 of the Public Utilities Code to grant such relief when special circumstances are found to exist. ("...[N]or shall any...carrier...refund, or remit... any portion of the rates or charges...except upon authority of the commission.") ✓

It is to be noted that the Commission in the exercise of its authority under Section 3667 has the obligation and duty to maintain the integrity of the established minimum rates and must give that the utmost consideration.

Although the applicant and shippers in the instant proceeding may have acted in good faith the allegation that the transportation was performed at deviation rates authorized a competing carrier is not sufficient reason to waive the collection of undercharges. To

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1/ Brenises Well No. 2 Ltd. (1943) 44 CRC 846, see also C&R Transfer Co. (1937) 40 CRC 623, J. H. Clark Draying Co. (1936) 40 CRC 97, Brown Trucking Co. (1938) 41 CRC 176, and Seaboard Transportation Co., Inc., Decision No. 31653 dated January 1, 1939 in Application No. 22226 (unreported).

do so would encourage all carriers involved in a similar situation to request waiver of collection of undercharges.

Findings

1. On November 19, 1973 the Commission staff issued an undercharge citation to applicant totaling \$3,615.85 on 23 shipments.
2. The rates assessed by applicant were the rates authorized to be charged by a competitor pursuant to a deviation authority granted by the Commission.
3. The request by applicant is in effect a request that the Commission waive the staff directive to collect undercharges.
4. The fact that the transportation was performed at deviation rates authorized for a competing carrier is not sufficient reason to waive collection of undercharges.

The Commission concludes that Application No. 54585 should be denied.

O R D E R

IT IS ORDERED that Application No. 54585 is denied.

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

Dated at San Francisco, California, this 25<sup>th</sup> day of JUNE, 1974.

Vernon L. Stinson  
President  
William J. Lyons  
William J. Lyons  
William J. Lyons  
William J. Lyons  
Commissioners