

Decision No. 84636

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of FRED JOHN CRIKOS for authority under Section 3666 of the Public Utilities Code of the State of California to deviate from the minimum rates for the transportation of various aluminum products for KAISER ALUMINUM, between certain interplant points.

Application No. 55480
(Filed February 5, 1975;
amended February 14, 1975)

F. J. Spellman, for F. J. Crikos Trucking, and
Fred Crikos, for himself, applicant.
Charles D. Gilbert and H. Hughes, for California
Trucking Association; and Eddie Ernest Daniels,
for Kaiser Aluminum; interested parties.
Harry E. Cush, for the Commission staff.

INTERIM OPINION

Applicant Fred John Crikos, a highway contract carrier, requests authority to deviate from the minimum rates for the transportation of various aluminum articles, fibreboard or paperboard boxes, and dispersant gases for Kaiser Aluminum (Kaiser) between their plants, warehouses, and storage sites in San Leandro, Newark, South San Francisco, Permanente, and those located in Los Angeles, La Mirada, and customers of Kaiser enroute between such points. Applicant proposes a rate of 95 cents per cwt, subject to a minimum weight of 40,000 pounds.

A public hearing was held on April 25, 1975 before Examiner Tanner at which time the matter was submitted for decision.

The operations for which the rate deviation is sought are new. Only six loads had been handled during the four weeks preceding the hearing. The estimated cost of performing this service are, therefore, based on applicant's experience in the conduct of his normal operations. The costs so developed indicate that the proposed rates will be compensatory.

The commodities involved here are sold on a competitive bid basis. Kaiser's western area cost analyst testified that in

order to maintain their competitive position the traffic involved here must not incur transportation costs exceeding those proposed by applicant. If this cannot be done, Kaiser will use its own equipment. He explained that while a large fleet of equipment is now operated by Kaiser, they prefer to ship the articles subject to this application by for-hire carriers.

The current minimum rate for the commodities subject to this application are the class rates named in Minimum Rate Tariff 2. The applicable class ranges from 35 to 70 and the minimum weight from 24,000 to 36,000 pounds. According to Table 7, Exhibit 1, the proposed rates will result in a difference in freight charges ranging from \$2.00 above to \$88.00 below the current minimum rate level, per shipment, computed at the applicable class rate and minimum weight.

The California Trucking Association (CTA) and the Commission's Transportation Division staff participated by cross-examination of applicant's witness. Both made closing statements wherein attention was called to our policy in matters of this nature as indicated by past decisions involving similar circumstances.^{1/} In particular our opinion in the El Camino application was cited, wherein we stated that:

"Where an applicant does not demonstrate that the conditions surrounding the transportation he performs are any different from those experienced by any other carriers transporting the same commodities, applications to deviate will be denied."

The CTA took the position that applicant had not shown any special circumstances and that a showing that the service might be compensatory was not adequate. The CTA expressed the opinion that if this application is granted, it would constitute a change in current Commission policy and the basis for such a new policy should be clearly stated.

1/ Karl A. Weber (1962) 60 CPUC 59; Special Delivery Service (1963) 61 CPUC 190; W. E. Daniel (1964) 63 CPUC 147; El Camino Transportation Co. (1966) 66 CPUC 565; Major Truck Lines, Inc. (1970) 71 CPUC 447; and Dolphin Transportation, Inc. (Decision No. 84361, April 22, 1975, unreported).

The staff position was, in general, in agreement with CIA. Additionally, the staff called attention to the cost estimates, which indicated that while costs would be covered one way, the revenues so derived were not sufficient for round-trip operations.

We are not convinced that this application represents a departure from past policy. Applicant is simply requesting an opportunity to gain sufficient operating experience, upon which a determination may be made as to whether a deviation from the minimum rates is in fact justified and, if so, what level of rates would be appropriate for such a deviation. We are convinced that there are circumstances which are different from those upon which the minimum rates were based. The minimum rates include the services of one man for loading and unloading, while the proposal before us contemplates that Kaiser will assume full responsibility for those functions. The expected volume which includes operations in both directions cannot be overlooked. We believe that we must provide the regulated industry the latitude for innovation; the matter before us is no more than that. We are also aware that the cost of transportation is but one factor which adds value to a product. It is incumbent upon this Commission to avoid regulatory policies which may result in higher consumer costs. This responsibility also includes consideration of the competitive position in the market place for the producers and distributors of California products.

After consideration we find that applicant has made a prima facie showing that the proposed operation for Kaiser is reasonable and conclude that the application be granted. Applicant will be required to maintain records of all transportation service conducted pursuant to the authorization in the order which follows. The authority will be for one year which will allow sufficient time to reflect changed conditions such as seasonality. Applicant will be expected to present the data so accumulated at a public hearing for the purpose of determining whether the authority shall be continued or modified.

INTERIM ORDER

IT IS ORDERED that:


1. Fred John Crikos is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging those rates set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, or regulations except as specifically set forth in Appendix A.

2. The authority granted shall expire one year after the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

3. A public hearing shall be scheduled on this application at a date to be set.

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

Dated at San Francisco, California, this 22nd
day of JULY, 1975.


President


Leonard L. Sturgeon


Leonard L. Sturgeon


Robert B. ...

Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
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Shipper: Kaiser Aluminum.

Commodities:

1. Lineal Shapes, NOI, other than pipe conduit or tubing; or Molding; roll formed or extruded, Item 13515, Sub. 1 - straight lengths 45 30.2, Item 13515, Sub. 2 - continuous lengths 55 24.2
2. Cable, Electric, Aluminum, with or without steel core, Item 61150 40 30.2
3. Foil or Foil Wrappers, NOI, with paper back or backed with paper, 30 pounds or less, Item 71720 45 30
4. Boxes, Fibreboard, Paper, Paperboard or Pulpboard, NOI, KD flat or folded flat, or in sheet form with ends not joined, combined or not combined with cellulose film, foil or plastic film, other than corrugated, Item 29280 35 36.2
5. Aluminum Nails or Tacks, Item 13530 45 30.2
6. Rods, Item 13640 45 30.2
7. Roofing or Siding, Aluminum, not combined with other materials, other than shingles, not combined with other materials, Item 170370, Sub. 3 45 30.2
8. Dispersant Gases, NOI, in metal drums, cylinders or tanks, Item 169270 40 30.2
9. Screening, other than wire cloth, Item 13670 70 24.2
10. Cups, Dishes, Pans, Plates or Trays, foil or sheet, with or without covers
Nested or nested solid, in bulk in boxes or Package #1402
Item 13374, Sub. 1 55 20.2
Nested or nested solid, in nestable inner packages, in boxes or Package #1402
Item 13374, Sub. 2 70 15.2

Between: Kaiser Aluminum Plants, warehouses, and storage sites in San Leandro, Newark, South San Francisco, and Permanente and those located in Los Angeles and La Mirada, and customers of Kaiser Aluminum who are located enroute between said interplant points.

Rate: 95 cents per cwt.

Minimum Weight: 40,000 pounds per shipment (per unit of equipment).

APPENDIX A
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- Conditions:
- (a) Service to customers enroute shall include those located along routes usually and normally traversed.
 - (b) Other than the authority described above, all provisions of Minimum Rate Tariff 2 shall apply.