JMW

Decision No. 86276

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application of Wallace Transport for Authority to depart from the rates, rules, and regulations of Minimum Rate Tariff 2 under the provisions of Section 3666 of the Public Utilities Code, for the transportation of Prepared Dough Products (72800) for the Pillsbury Company.	)	Application No. 56553 (Filed June 11, 1976)

OPINION AND ORDER

By this application, Wallace Transport, a corporation, requests authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of prepared dough, other than frozen, from Los Angeles to various points for The Pillsbury Company.[1]

The application is based on special circumstances and conditions detailed therein.

Revenue and expense data submitted by applicant indicate that the transportation involved may reasonably be expected to be profitable under the proposed rates.

The application was listed on the Commission's Daily Calendar of June 15, 1976. No objection to the granting of the application has been received.

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[1] The present rates, excluding the applicable surcharges, and the proposed rates in cents per 100 pounds for representative shipments of prepared dough, other than frozen, are:

From Los Angeles To MZ 235	Present Rates Minimum Weight 30,000 Pounds	Proposed Rates Minimum Weight 45,000 Pounds
Fresno	110	82
Modesto	127	93
Sacramento	141	104

In the circumstances, the Commission finds that applicant's proposal is reasonable. A public hearing is not necessary. The Commission concludes that the application should be granted as set forth in the ensuing order and the effective date of this order should be the date hereof because there is an immediate need for this rate relief.

IT IS ORDERED that:

1. Wallace Transport, a corporation, is authorized to perform the transportation shown in Appendix A attached hereto and by this reference made a part hereof at not less than the rates set forth therein.

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

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 24th day of August, 1976.

President

Commissioners

I will file a written dissent.

William Symons, Jr.
Commissioner

Concurrence and dissent

I dissent only to the effective date

Vernon L. Sturgeon
Commissioner

APPENDIX A

Wallace Transport, a corporation, is authorized to transport prepared dough, other than frozen, subject to Class 35.3 truckload rating on a 45,000 pound minimum weight for The Pillsbury Company from Los Angeles to various points throughout the state, subject to the following conditions:

1. Applicant has not indicated that subhaulers will be engaged nor have any costs of subhaulers been submitted. Therefore, if subhaulers are employed they shall be paid not less than the rates authorized herein.

2. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)

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COMMISSIONER WILLIAM SYMONS, JR., Dissenting

A warning: California transportation industry, shippers and the Legislature must heed the direction this Commission's majority is going before the excellent transportation system in our state is destroyed.

The majority abandoned last summer's frontal assault on our tested minimum rate regulation method in the face of united opposition up and down California. But this season the same push has returned, as strong as ever, but now in a low profile. The assault on minimum rates proceeds on two new fronts. It moves first to render normal increases in minimum rates nigh impossible when it imposes unreasonable burdens of proof on carrier-applicants and promulgates unattainable standards for them to meet. Thus stultified, regulation under minimum rates will break down as the pressure from unrelieved cost increases mount. Secondly, the majority opens the flood gates on deviations. This rapidly undercuts minimum rate tariffs.

Today's five deviation decisions further the second prong of this assault. I am not opposed to deviations where the facts have shown that they are justified as reasonable by the special circumstances of the transportation (Major Truck Lines, Inc., (1970) 71 Cal P.U.C. 319). But I am not satisfied with the Commission's recent indiscriminate handling of petitions for deviations. Over the past three years, 1973-1975, the average number of deviations in effect has remained fairly stable at about 127. In recent months this number has swelled to nearly double. Deviations reached 256 as of August 1, 1976, and the increase continues unabated.

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1. Shortened Effective Dates The majority's newest twist in deviations is to ramrod the decisions through effective immediately, instead of the normal 20-day effective date. This nicely cuts off protestant's opportunity for filing a petition for rehearing and effecting a stay of the order. To me, Public Utility Code § 1705 sets the tone for regular Commission procedures. It provides that orders shall "...take effect and become operative 20 days after the service thereof..." It does allow the Commission to provide otherwise, and, given a critical time deadline or rate order, a shorter time may seem in order. But 20 days is the general rule. We even allowed the 20 days in orders dismissing applications for deviations, as in Application No. 56449 on today's agenda. The decision to insert language to order an immediate effective date in all deviation decisions followed oral debate and works as a further device to forestall opposition to the new profligate policy on deviations.

2. Lack of Hearings This shortening of effective date, together with the elimination of hearings on deviations, combines to ride roughshod over the rights of protesting carriers. Earlier this year the majority abandoned public hearings and directed instead "ex parte" handling. What is left of the concept of letting the staff and affected parties test the figures and the allegations of the applicant to see whether they are sound? We should be wary of depriving affected parties of their right to be heard. The August 3, 1976 Writ from the California Supreme Court in S.F. 23473 (Commission Decisions 85584, 85585, 85586 and 85587) should give us pause whether our recent penchant for deciding contested matters "ex parte" will stand up as proper due process.

3. Lack of Sound Reasons And are we regularly pursuing our authority in these deviation cases? Public Utilities Code Section 3666 mandates that before any highway carrier can perform transportation services at a lesser rate than the minimum established rates, the Commission "shall" make a "...finding that the proposed rate is reasonable..."

But what is happening to our established concept of "findings" and "reasonableness"? To discuss the latter first -- "reasonableness" is massaged so that it loses its traditional meaning. The concept ably laid down in Major Truck Lines, Inc. (supra) of setting minimum rates based on determining the "cost of performing transportation in a reasonably efficient manner by the type of carrier best suited to perform the service" and requiring special conditions of transportation for a deviation, is being evaded. Perhaps as a transitory standard, a loose notion of "compensatory" is being put forward. The non-wage receiving wife-accountant, the no-mortgage old truck, the low-compensated driver are among the potential reasons for allowing the deviation. But even this standard may be transitory, as some urge the "predatory practice" standard -- undefined in the Public Utilities Code, brought in from anti-trust case law, and so vague and hard to prove that deviations can scarcely be successfully opposed.

We are becoming loose with Section 3666 in another way. It requires findings. This should require specifics in the decision on the facts which make the cut rate reasonable. Instead, our opinions are vague and now filled with this standard boilerplate: "The application is based on special circumstances and conditions detailed therein." And even in face

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of protests and no hearings, we insert the conclusory statement that "revenue and expense data submitted by applicant indicate that the transportation involved may reasonably be expected to be profitable..." In one case, which may presage others, we went so far as to make no finding of reasonableness, saying the "practical" reading of Section 3666 required the granting of the deviation despite protests so that applicant could operate for a substantial period of time and then come in with evidence of reasonableness! (Trans-Aero Systems Corp. D.86220, August 3, 1976)

The only conclusion I can reach is that the Commission is at variance with the spirit and letter of the law in this venture. Those who will be affected by the Commission's actions should give early attention to these developments.

San Francisco, California
August 24, 1976

/s/ William Symons, Jr.
WILLIAM SYMONS, JR.
Commissioner