

ORIGINAL

Decision No. 86363

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
BBD TRANSPORTATION CO., INC. for
authority to deviate from minimum
rates pursuant to Section 3666 of the
California Public Utilities Code for
transportation performed for NORRIS
INDUSTRIES.

Application No. 56024
(Filed October 24, 1975;
amended July 28, 1976)

FINAL OPINION

By Decision No. 85217 dated December 9, 1975, BBD Transportation Co., Inc. (BBD) was granted interim authority under Section 3666 of the Public Utilities Code to transport "Wheels, NOI, requiring or suitable for use with tires, with or without tires, iron, steel or wood" for Norris Industries (Norris) from the Norris Automobile Wheel Division at 5215 South Boyle Avenue, Vernon, to General Motors Corporation assembly plant located at 45500 Fremont Boulevard, Fremont, at a charge based on the Class 35.2 rate in Minimum Rate Tariff 2, subject to a minimum weight of 50,000 pounds. The interim authority granted in that decision was extended by Decisions Nos. 85900 and 86361 and is scheduled to expire December 31, 1976. ✓

Decision No. 85217 provided that if subhaulers are used to perform the service, subhaulers shall receive not less than the charges based on the rates authorized therein.

In the amendment filed July 28, 1976, BBD has furnished comprehensive cost and revenue data designed to show that the round-trip transportation of wheels northbound and general commodities southbound between the Los Angeles metropolitan area and the San Francisco Bay area is profitable. The amendment also contains data to show that payment to subhaulers based on a rate of 49 cents per mile adequately covers the costs experienced by subhaulers performing service for BBD.

The amendment to the application requests:

1. That applicant be authorized to deviate from the provisions of Minimum Rate Tariff 2 as sought in the application;
2. That such order not contain any restriction or limitation on the payments to be made to subhaulers when such carriers are used to perform the transportation service;
3. That the matter be decided ex parte and without hearing; and
4. That the order granting the requested relief be made effective on the date of issuance.

The amendment shows that it was served upon California Trucking Association. Notice of the filing of the amendment appeared on the Commission's Daily Calendar. There are no protests or requests for hearing.

We have carefully analysed the cost and revenue data appended to the amendment to the application. Those data show that, on a round-trip basis, revenues are adequate to cover expenses and provide a reasonable margin of profit. Similarly, the data show that payments to subhaulers based on 49 cents per loaded mile reasonably cover the expenses incurred by subhaulers, including provisions for wages.

We find that:

1. The proposed rates to be assessed for transportation of wheels for Norris Industries will be compensatory, and such rates are reasonable.

2. A charge of 49 cents per loaded mile is adequate to cover the reasonable expenses (including wages) of subhaulers employed by BBD in connection with the transportation services in issue.

3. A public hearing is not necessary.

We conclude that:

1. The interim authority to assess less than minimum rates should be made final.

2. Applicant should be authorized to pay subhaulers 49 cents per loaded mile when subhaulers are used to perform the transportation service.

3. The authority granted herein should expire in one year because circumstances surrounding the transportation may change at any time.

FINAL ORDER

IT IS ORDERED that:

1. BED Transportation Co., Inc. is authorized to transport automobile wheels, with or without tires, for Norris Industries at a rate less than the established minimum rate, but not less than a rate based on the Class 35.2 rates set forth in Minimum Rate Tariff 2, minimum weight 50,000 pounds per shipment, from the plant of Norris Industries, Automobile Wheel Division, located at 5215 South Boyle Avenue, Vernon, to the General Motors Corporation assembly plant located at 45500 Fremont Boulevard, Fremont. Each shipment shall be tendered on one shipping document at one time. If subhaulers are used to perform the transportation service, subhaulers shall receive not less than the charges based on 49 cents per actual loaded mile.

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

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th
day of SEPTEMBER, 1976.

I will file a written
dissent.

William Symons, Jr.

[Signature]
President

[Signature]
Leonard Ross

Commissioners

I will file a
written opinion
concurring in part
and dissenting in part
Yermon L. Sturgeon

Abstain
Robert Babinach

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

Here again, as detailed in my dissent to Decision Nos. 86274, 86275, 86276, 86277, 86279, the majority would achieve their objective by ex parte decision, effective immediately, in a matter which apparently could not withstand the normal inquiry involved in the public hearing process.

However, the majority also further erodes well-established regulatory policy designed to protect the public interest. The applicant originally advised the Commission that the traffic would be handled as a carrier and that subhaulers would not be used (letter of November 24, 1975). However, the majority now finds that the deviation is justified on the basis of subhaulers' costs and removes the limitation provided by Ordering Paragraph 1 of Interim Decision No. 85217.

The Commission majority continues to change long-standing precedents involving deviations without facing the problems such well-considered precedents had resolved after many public hearings, but which now hang unanswered. Is the applicant in this proceeding a "carrier" entitled to deviation relief under Section 3666, or is he an unauthorized "broker" utilizing other carriers (subhaulers) to perform the transportation services involved? If the subhaulers involved can provide transportation services required by the shipper (for 49 cents), how is the public interest served by permitting the applicant (broker) to access a rate of 116 cents? And, if a "broker's" self-interest is involved, can the Commission reasonably rely on "broker" provided subhauler cost data, untested by public hearing?

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The issue, whether a person or corporation using subhaulers is a carrier or a broker, was raised by Interim Decision No. 85424 (page 3) in Application No. 56129, and was to be considered by the Commission after further hearings in that proceeding. But as with so many tough questions involving the public interest, recently presented to the Commission, the issue was ducked. Decision No. 86030 struck the issue from Application No. 56129, and thus deferred indefinitely the resolution of this important question of public policy.

Again, the Commission majority arrogantly departs from the spirit and the letter of the law. The public must begin to inquire into the motivations or directives which tempt the Commission majority to provide private advantages, and to allege "public interest" as the justification. Particularly, the public must ask why, if such results are proper and in the public interest, the majority will not permit public hearing.

I would deny any relief unless and until justified by evidence and argument presented and tested at public hearing.

San Francisco, California
September 14, 1976


WILLIAM SYMONS, JR.
Commissioner

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COMMISSIONER VERNON L. STURGEON, Concurring in Part
and Dissenting in Part

I concur with that part of Decision No. 86363 which grants a deviation from the applicable minimum rate. However, I dissent from the part which provides that if a subhauler is used to perform the transportation service, it shall receive not less than a charge based on forty-nine cents (49¢) per actual loaded mile.

Such dissent is based on the fact that there is insufficient evidence to establish that such subhaul charge is compensatory. It follows that any payment which is not in fact compensatory is clearly in violation of the principles set forth in Section 3502 of the Public Utilities Code.



VERNON L. STURGEON
Commissioner