

Decision 84 03 038 MAR 7 1984

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Barbara L. Bibb,
for authority to deviate from
the minimum rates established
in Minimum Rate Tariff 17-A
for the transportation of crushed
aggregate base for the account of
Best Western Paving, Inc. under
Section 3666 of the Public
Utilities Code.

Application 82-11-51
(Filed November 24, 1982;
amended January 6, 1983)

James C. Powers, Attorney at Law, for
applicant.
Michael Lindeman, for Lindeman Brothers, Inc.;
Larry Farrens, for California Carriers
Association; and J. D. Martens, for
California Dump Truck Owners Association;
protestants.
James R. Foote, for Associated Independent-
Owner/Operators, Inc., interested party.
Dan Callaghan, for the Commission staff.

FINAL OPINION

Applicant Barbara L. Bibb (Bibb), dba Dispatch Trucking, requests authorization to deviate from the minimum rate set forth in Minimum Rate Tariff (MRT) 17-A for the transportation of approximately 412,000 tons of crushed aggregate base, better known as "Class A Base", from the producing plant of Conrock [Reliance Plant] Company (Conrock) located at 16001 Foothill Boulevard, Irwindale. Conrock is located in Production Area 19-G. The base is to be transported to a jobsite located within the Los Angeles harbor for the account of Best Western Paving, Inc. (Best). Bibb requests a rate of \$3.40 per ton while the

current MRT 17-A calls for a rate of \$3.93 per ton in five-axle equipment. Bibb alleges that since she specializes in double-bottom dump equipment, only doubles will be used on this "one-time" project. The anticipated gross revenue is approximately \$1,400,800. Best was awarded this project by the general contractors, Continental-Heller Company, as part of a \$28,000,000 contract. Best, in turn, is looking for a trucking company that is responsible and reliable enough to deliver the 412,000 tons of Class A Base to the project quickly, efficiently, and economically.

In her application Bibb states that she has studied this project in its entirety for a long period of time and that since it is a public works project of immense magnitude (trucking-wise), she feels that with extremely careful management, proper equipment, and an efficient loading and unloading area, a large sum of money could be saved by the taxpayers and yet generate business for and revitalize the severely depressed dump truck industry. Bibb alleges she made many trial runs at all hours of the day and night and her studies found the following: an average trucker could cycle the Reliance Plant, travel to the project, dump his load, and get back to the Reliance Plant in an average of 1.8 hours or less. This is based on using different haul routes, plus slow, medium, and high-powered equipment, and obeying all speed laws at all times. The night runs, according to Bibb, took less time because of the traffic factor. Although Bibb states she cannot direct a trucker in his mode of delivery, she would suggest the route to the truckers which has an actual distance for the run of 39.6 miles. Bibb states she ran this exact recommended route with loaded truck

equipment observing all traffic regulations at all times, never exceeding 50 miles per hour, and that her investigation confirms a 55-minute average loaded trip and a 52-minute return for a combined run time of 107 minutes. The MRT 17-A zone system time/distance network provides 128 minutes for this zone.

Bibb owns and maintains 15 sets of bottom-dump trailers with pullers. With a production goal of 4,000 tons per shift, she estimates it will require her to use many full unit owner-operators with an average haul of 25½ tons per unit. To maintain her production goal, Bibb estimates she will use 40 units per shift, thereby creating work again for a very battered industry. In meetings with her regular subhaulers Bibb found they have a very positive attitude about the rate requested and that they feel they will earn well above the income they have made the past several years.

Bibb states the contract time calls for some 15 months although the general contractor feels 12 months will be all that is required. Accordingly, she requests the full deviation for one year and three months.

Bibb compares the effect of the proposed rate of \$3.40 per ton to the hourly rate under MRT 7-A. Based on her confidence that actual experience of hauling some 16,000 loads will reflect an average haul of 25½ tons per unit, she calculates as follows:

25½ tons at \$3.40 per ton equals \$86.70.

Under MRT 7-A, 1.85 hours at \$46.87 an hour also equals \$86.70.

Bibb estimates all trucks on each shift will collect and deliver four loads minimum and that some trucks will deliver five loads each due to the proposed scheduling which will allow every truck to gain one load every few days.

Accompanying the application are the signatures of approximately 185 subhaulers who state that they are familiar with the request for authority to deviate from the applicable rates established in MRT 17-A, that they believe the proposed deviation is reasonable and compensatory, that they support the application, and that they urge the application be granted. The application was protested by Lindeman Brothers, Inc., California Dump Truck Owners Association (CDTOA), and California Carriers Association (CCA). On January 6, 1983 applicant filed a First Amendment to the Application and Response to the Allegations of Protestants, which was followed by additional protests filed by Lindeman Brothers, Inc. and CCA.

On February 16, 1983 in Decision (D.) 83-02-078 we issued an interim opinion granting Bibb authority for a period of 120 days to deviate from the minimum rates of MRT 17-A inasmuch as the harbor project was scheduled to start in February 1983 and that there was an immediate need to provide the relief sought. While no actual performance data for the transportation in issue were submitted, an analysis of the proposal was made by staff using Dispatch Trucking's (Dispatch) [Bibb's] projected performance times and the most recent operational costs developed in Case 9819-Pet. 52. The analysis indicated the transportation under the proposed reduced rate could reasonably be expected to be profitable. In her amendment, Bibb had submitted cost and operational data for a number of subhaulers supporting the application as required by Commission Resolution TS-284. It has generally been the policy of the Commission to require carriers seeking a deviation from minimum rates to furnish data based on actual performance of the transportation prior to authorizing the reduced rate. However,

in D.83-02-078 we found that because commencement of the public works harbor project was imminent, we were accepting the staff recommendation that the requested deviation be granted for an interim period of 120 days, subject to several conditions among which were:

1. Unless appropriate cost showing for Dispatch [Bibb] and for subhaulers is furnished, no continuation of the authority will be authorized.
2. Dispatch [Bibb] agrees to pay subhaulers the full amounts provided in MRT 17-A for all transportation subject to this order in the event that results of operations during an appropriate test period should show the relief not to be justified.

We further indicated that an appropriate test period would be the first 750 loads transported at the interim deviated rate and that for each load transported, Bibb was to furnish the Commission with information listed in Appendix B to the decision which included vehicle and driver identification, time and mileage, loading and unloading data, and relief and breakdown time.

An issue raised by protestant Lindeman Brothers, Inc. concerned the issue of equipment utilization and productivity. Lindeman argued that the best evidence would be the data developed from actual operations. Staff reviewed the operational data as amended and the data presented by the subhaulers detailing their operational costs, and concluded that performance under the reduced rate would be profitable. We therefore granted interim authority subject to further review upon consideration of evidence which might be received at a public hearing and the conditions set forth in the order.

In supplemental interim opinion D.83-05-035 issued May 4, 1983, we reiterated the order in D.83-02-078 and we added the names of all qualified subhaulers who indicated their desire to participate in the project who were omitted from D.83-02-078 because they could not be readily identified due to illegible signatures and T numbers. The effect of D.83-05-035 was to continue the interim authority granted for an additional 120 days after the effective date of the order, which was dated May 4, 1983.

In D.83-06-068 dated June 15, 1983, the interim authority granted in D.83-02-078, which was subject to cancelation on June 15, 1983, was extended for an additional 90 days because staff needed additional time to complete its monitoring of transportation because of earlier weather constraints. In D.83-09-047 dated September 7, 1983, another supplemental opinion and order, we again authorized Bibb to depart from the rates of MRT 17-A subject to Bibb furnishing the Commission with the information listed in Appendix B prior to renewal of this latest interim authority. The order was to expire February 16, 1984 or upon further order of the Commission.

In D.83-09-047 we found that Bibb had submitted her actual performance data, in compliance with the prior decisions, for traffic performed under the authorized rate and that due to inclement weather conditions during the period in which the data were to be compiled, staff had requested an extension of time to make its study of the operations at the jobsite locations. The staff study, submitted as Exhibit 1, found that the applicant's original round-trip time estimate of 107 minutes was not being realized and that the round trips were averaging 115 minutes. The increased travel time factor of 115 minutes

was used by staff to recompute applicant's cost for determining the reasonableness of the deviated rate authorized during the interim period and this analysis developed that Dispatch's Bibb's operating ratio changed from 95.2 to 96.3. This analysis also disclosed that a typical subhauler supplying only power equipment could achieve an operating ratio of 92.5. The jobsite study by staff disclosed that Dispatch Bibb was not accorded preferential loading times by the contractor and the prime contractor was not providing night lighting to extend the work day at the jobsite. Because of these unfavorable operational conditions staff recommended the interim authority issued February 16, 1983 be continued until further order of the Commission pending final results of staff study.

On September 26, 1983 a letter of protest was received from CCA in which it was pointed out that the interim authority originally granted was to last four months and that all parties were led to believe the Commission would hold a hearing well within that four-month period of time for the purpose of examining applicant's cost data. The protest pointed out that the only developments that took place within the four-month period, however, were the issuance of two more interim decisions which extended the initial interim authority to allow staff time to study and develop the traffic characteristics involved in the transportation. The protest also stated that nearly three months later, we issued D.83-09-047 wherein we again extended Bibb's authority for an additional five months with no mention of the requirement for a public hearing. CCA strenuously objected to the Commission's extension of this deviation authority without its holding a public hearing, which we had previously ordered. Partly as

a result of this latest letter of protest plus the length of time which has elapsed from the date of our initial interim order, we set the matter for a public hearing.

Following notice, public hearing in the matter was held on November 22 and 23, 1983 before Administrative Law Judge Turkish in Los Angeles. Testifying on behalf of Bibb was John S. Schaefer, Sr., a consultant; Best's William Miller, project manager on the job in question; and four subhaulers engaged by Bibb for transportation in connection with this particular project.

During the second day of proceedings, based on the evidence presented thus far and the analysis, conclusions, and recommendations of staff based on its study, the parties entered into a stipulation whereby Bibb agreed that commencing December 1, 1983 all remaining hauling on the Best job would be at the rate of \$3.60 per ton for daytime hauling and \$3.49 per ton for night hauling. Night hauling is defined as those trips which leave the Reliance Plant premises between the hours of 6 p.m. and 2 a.m., all other hauling being deemed to be daytime hauls. Such rates are for the transportation of Class A Base only. The division of revenue between Bibb and her subhaulers will be maintained as in the previous order between prime carrier and subhaulers. The stipulation will expire effective 6 p.m. March 31, 1984. All parties and protestants present throughout the hearing agreed to the above stipulation and the protestants were permitted to submit a statement expressing their concerns about the Commission's policy with respect to granting deviations from minimum rates as applied in this case and as they will apply in the future.

CDTOA, in its statement, believes that the MRT 17-A zone rate presently prescribed for the hauling in Bibb's application is a reasonable minimum rate and more of a true minimum rate than any other type of hauling under the Commission's minimum rate system. CDTOA believes the rate is based on a very detailed, explicit cost formula which gives effect to all time and distance costs for the particular haul and that such time costs are based on actual observed operations along traversed routes and include average running times, some of which already encompass the sample times produced by applicant. CDTOA believes that Bibb's operations are not unusually favorable nor substantially different from those considered in establishing the minimum rates. CDTOA points out the Southern California freeway system and numerous other large projects have been constructed in recent years and the zone cost-rate formula has been the basis for those hauling rates. CDTOA points out that historically deviations have been granted for operations that have been tested and that have already been in existence over a period of time. It objects to any manipulation of any cost model or cost formula by inserting and changing only those factors which are favorable for reducing the cost. For example, if increased use hours are employed, the service life of the equipment is decreased, thus increasing the fixed costs. CDTOA is unalterably opposed to this Commission entertaining, receiving, or granting any applications which use procedures such as Bibb's application until we have had an opportunity to hold hearings regarding such proceedings, especially in light of official protests to such applications. It supports the stipulation made by all parties at the hearing on November 23, 1983 only

because the job project is highly likely to being completed prior to the issuance of any decision by this Commission.

The concerns and frustrations of the various protestants in this application are expressed in post-hearing statements presented by CCA, CDTOA, and Lindeman Brothers, Inc.

CCA points out that this application was filed on November 24, 1982, two days short of one year before public hearing, although the initial protests requested early public hearings. Bibb's application was opposed by the various protestants because it was felt that the application failed to conform to the Commission's accepted deviation procedures and that it represented a dangerous departure from fair competitive practices in the industry. Protestants felt that Bibb had entered a bid for the job project in question predicated upon unapproved rates substantially lower than the applicable zone rates contained in MRT 17-A. After being awarded a job based on unapproved rates, Bibb then approached the Commission with the job "already in hand" for authorization of her proposed deviated rate on an ex parte basis. Protestants feel that since the application did not set forth the applicant's and subhaulers' cost data for the proposed movement as required by Resolution TS-284, a determination as to whether the proposed operations would be compensatory was therefore not possible. Protestants are particularly concerned with our interim approval of the application and deem it unfair to competing overlying carriers who played by the rules in adhering to the Commission's minimum rate system and established procedures for deviating from that system. Protestants point out that despite their protests we issued interim D.83-02-078 on February 16, 1983,

conditioning the authorization, however, upon applicant coming forth at a public hearing with performance and cost data experienced by Bibb and her subhaulers when performing the transportation in question. We initially contemplated that such hearing would be held following applicant's completion of the first 750 loads transported under the interim authority. A major concern of protestants was the fact that within the four-month period of interim authority, no public hearing was conducted and that at the end of that period an order extending the initial interim authority was granted for an additional three months. This added period was intended to allow staff adequate time to complete its monitoring of the transportation which had been delayed because of weather conditions. Protestants objected to our September 7, 1983 opinion in D.83-09-047 wherein the interim authority was continued without conducting a public hearing.

Protestants acknowledge that as a result of the stipulation reached at the hearing on November 23, 1983 the immediate issues presented by this application have been resolved. However, protestants feel this proceeding remains of extreme importance as an example of the dangers arising from our ex parte authorization of unsubstantiated deviations which bail out applicant carriers who have bid jobs "on the come". As a result, protestants feel the Commission's failure to promptly hold hearings to review the reasonableness of the deviated rate permitted the applicant to continue to assess the rate for nearly the entire course of the movement in question and that, as a result, the minimum rate system has been jeopardized. They feel that the Bibb

application must not be allowed to stand as a precedent for other carriers who in the future may wish to skirt the established deviation procedures and make up their own rules. They further urge the Commission not to be pressured, by claims of urgency, into authorizing unsupported deviations seeking low rates for applications on jobs bid "on the come". It is the contention of protestants that if the existing rules are to have any meaning, and if those carriers who abide by these rules are to receive fair treatment, deviations must be authorized by this Commission only when accompanied by the requisite cost data demonstrating the reasonableness of proposed deviated rates.

We have thoroughly considered the position of the protestants in this proceeding. Although we do not necessarily agree with each of the points raised by them, we do agree that the interim authority granted to Bibb went beyond the length of time originally envisioned.

Protestants are disturbed that the Commission issued several interim decisions in this matter without granting public hearings. We point out to protestants that the filing of a protest is no guarantee of public hearings. Rule 42.2 of the Commission's Rules of Practice and Procedure provides that even after protests have been received with respect to an application for deviation from the minimum rate, the Commission may then without hearing grant or deny the proposed deviation or set the matter for hearing. Thus, the determination of whether or not a public hearing will be held is within the discretion of the Commission and not made mandatory merely by the filing of a protest.

As we stated earlier, D.83-06-068 extended the interim order authorizing deviation from the minimum rates only because additional time was needed by staff to complete its monitoring of the transportation in question. We believe that it was preferable to allow staff to study and develop traffic characteristics on the different time frames of the transportation for this project rather than to rely on information which could have been presented by protestants in a public hearing. For these reasons we delayed holding any public hearing in the matter. In D.83-09-047 we found that Bibb had supplied staff with actual performance data in compliance with the previous decisions for traffic performed under the interim authorized rates. The staff study found that applicant's original round-trip time estimate of 107 minutes was not being realized. Instead, staff found that the round trips were averaging 115 minutes. This increased time factor was used by staff to recompute applicant's costs for determining the reasonableness of the deviated rate authorized during the interim period and the analysis developed that Bibb's operating ratio changed from 95.2 to 96.3. The analysis also disclosed that a typical subhauler supplying only power equipment could achieve an operating ratio of 92.5. Thus, even at staff's average round-trip times, the deviated rates were deemed to be compensatory

During the public hearings in the matter on November 22 and 23, 1983, all parties present entered into a stipulated agreement which was based, in part, on staff's study which showed that the stipulated rates were cost-justified and the further fact that had the hearings been continued to hear the remaining witness testimony and receive documentary evidence, there was strong likelihood that the project would be

completed prior to the Commission issuing a final order in this matter. According to parties to the stipulation, the agreed rates for the remainder of the job are deemed reasonable.

We are sympathetic to protestants' concern that members of the industry bid on jobs predicated upon unapproved rates substantially lower than the applicable zone rates contained in MRT 17-A without any sound basis for doing so and that upon being awarded a job, approach the Commission with "job in hand" for authorization of its successful bid.

It was for this reason that the Commission issued OII 82-10-02 on October 20, 1982 for the purpose of exploring the feasibility of establishing special rate deviation procedures for dump truck carriers involved in major public works or other construction projects. It is anticipated that hearings will be held with respect to such special procedures mid-year 1984.

In the absence of special rules for handling dump truck rate deviations the Commission will not allow itself to be pressured by claims of urgency into authorizing unsupported deviations for applications on jobs which are bid on unsupported cost performance data. In the future, if supporting cost data are not furnished with an application for authority to deviate from minimum tariff rates, we will examine the facts behind the job bid more closely and if it appears that the lower-than-tariff rates were bid blindly and without a reasonable basis, we will deny such application.

Findings of Fact

1. Bibb, staff, and protestants present throughout the public hearing on November 23, 1983 stipulated that a rate of \$3.60 per ton for daytime hauls and \$3.49 per ton for nighttime hauls between the Conrock Reliance Plant and the Best Western Paving Company jobsite is deemed to be reasonable.

2. Night hauling is defined as those trips which leave the Conrock premises between the hours commencing at 6 p.m. in the evening until 2 a.m. in the morning. All other haulings are considered daytime hauls.

3. It was agreed by the parties that this stipulation will expire at 6 p.m. March 31, 1984.

Conclusion of Law

The stipulation entered into between the parties is reasonable and the requested authority to deviate from the current MRT 17-A rates as per the stipulated agreement should be granted.

FINAL ORDER

IT IS ORDERED that:

1. Barbara L. Bibb, dba Dispatch Trucking, may depart from the rates in Minimum Rate Tariff (MRT) 17-A by charging not less than the rates in Appendix A.

2. This authority shall expire at 6 p.m., March 31, 1984.

3. The Commission staff is directed to monitor the transportation in question to ensure that the subhaulers are being paid within the time frame set forth in Item 460 of

MRT 17-A. Upon receipt of evidence from the staff that the subhaulers are not being timely paid, the Commission will consider suspending the authority granted by this order.

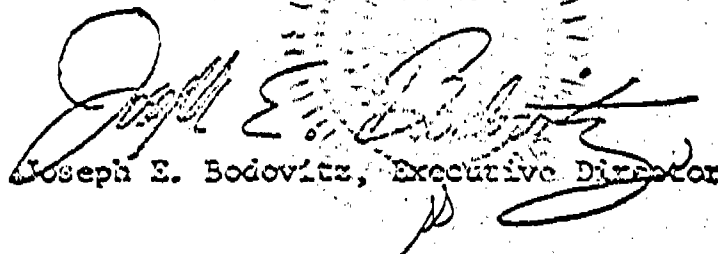
This order is effective today.

Dated MAR 7 1984, at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

Commissioner Leonard M. Grimes, Jr.
being necessarily absent, did not
participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

APPENDIX A
Page 1

Carrier: Barbara L. Bibb, dba Dispatch Trucking
Commodity: Crushed Aggregate Base
From: Conrock Company, Irwindale
To: Los Angeles Harbor - Berths 121-126
Minimum Weight: 25 tons per unit of equipment
Rates: \$3.60 per ton in connection with daytime
hauling;
\$3.49 per ton in connection with nighttime
hauling between the hours of 6 p.m. until
2 a.m.

Conditions:

1. The minimum weight shall apply per unit of carrier's equipment consisting of a tractor and one or more gravity dump semi- or full trailers.
2. Applicant has indicated that subhaulers are necessary and will be engaged by applicant but has not submitted costs for all of the subhaulers. Therefore, if any of the below-named subhaulers are employed, they shall receive 95% of the deviated rate authorized. If applicant provides trailing equipment, it may deduct an additional 20% for the use of the trailing equipment.
3. If any subhaulers other than those named on pages 2 thru 4 of this Appendix are employed, they shall be paid not less than the authorized deviated rate.

APPENDIX A
Page 3

T- 77,744	Santiago D. Arvizu	T-130,781	Militello Trucking
T-131,245	Allen Lee	T-132,581	R. E. Kist Trucking Co.
T- 86,446	Bobbie F. Martin	T- 32,581	Lester E. Bonty
T- 97,546	Roadway Construction Co., Inc.	T-119,583	Bivens Trucking
T- 74,347	Virgil L. Hampton	T-134,184	Allen Millender
T-125,447	Robert H. Jones	T-134,285	Otis Dorsey
T-126,747	Russell A. Tavares	T-130,286	Phillip W. Trautman
T-101,148	Gerald F. Smith	T-129,786	Guindon Trucking
T-126,248	William R. Atkins	T-125,387	Dirty Book Trucking
T-121,749	John Rock & Bruce Degler	T-136,187	Wooten Trucking Co.
T-125,549	Batups & Son	T- 61,788	Bill Brown
T-101,450	Carter Bros. Trucking	T- 73,619	Lorin Colwell
T- 97,993	Kenneth Poole	T-134,622	Roberto Gimeno
T-134,294	Lynwood Commodities Trans.	T- 61,998	Richard Rivera
T-125,594	Richard Kaspar	T-120,813	Harold Finnigan
T-130,495	O. C. Graves	T- 77,421	William N. Smith
T-130,995	H.N.T. Trucking	T-127,449	Fred Kelley
T-127,295	H & H Trucking	T-127,253	David Harlan
T-122,897	Paul W. Christian	T-126,557	Amos Dorsey
T- 95,497	Cale Coeho	T-129,833	Howard Beech
T-129,797	Vellema Transport	T-129,559	K & S Equipment
T- 61,998	Richard Rivera	T-133,932	R. C. Gray Trucking
T- 97,498	L & H Trucking	T- 69,688	Russ Tjarks
T-138,898	Don Francis	T- 92,117	Richard W. Hart
T-130,012	Elliot Carr	T-118,875	Julio Orantes
T-134,510	Juan P. Fierro	T-129,786	Larry T. Guindon
T-135,941	Archie Crump	T- 61,788	Bill Brown
T-109,814	Perley Fields	T- 91,290	Chas. McGee
T-133,916	Richard E. Kaufman	T-133,095	Robert Castro
T-132,817	Gwendolyn Griffin	T-112,310	P. A. Csiszer
T-129,971	George S. Schelhorn	T-123,816	G. G. & S. Industries
T-125,421	Jerry L. Fields	T- 92,117	R. W. Hart
T-133,432	Milton H. Boy	T-135,117	J. K. Lona
T-129,833	Howard W. Beech	T-134,638	A. A. Sias
T-138,735	Raymond E. Swope	T-136,547	M & T Transport
T-119,137	James L. Hines	T-127,449	F. Kelley
T-115,144	Al Smith	T-125,153	Uyekawa Bros., Inc.

APPENDIX A
Page 4

T-135,150	James Hammerich	T-120,455	Rosas Trans. & Equip.
T-135,150	John E. Reed	T-127,459	F. R. Hernandez
T-126,554	Chas. H. Washington	T- 90,859	W. A. Peterson
T-126,557	Amos Dorsey	T-118,462	H. Gutierrez
T-138,961	David McClain	T-139,165	J. O. Delgado
T-127,666	Eddie Timmons	T-138,872	A. R. Messina
T-121,170	Eugene Gardner	T-109,581	D. M. Block, Jr.
T-125,493	Lawrence Waters	T-137,691	M. D. Tejeda
T-138,205	Jose D. Torres and Louis A. Garcia	T-105,052	Manuel Torres
T-106,720	Bob Zandina Trkg., Inc.	T-128,253	Alfredo Gutierrez
T-135,038	Mary C. Shafer	T-133,461	Eddie Johnson
T-132,539	Carl R. Walton	T-131,568	D & M Industries
T-113,343	W. C. Webb	R- 82,979	Alfred Biller
T-140,849	Vaughan Trkg.	T-109,581	Don Block
T- 95,896	William L. Garner	T-129,783	Jose Lozano
T- 76,310	O. M. Gomez	T-123,496	Jim Farr
		T-141,616	Kenneth Mead

Except as otherwise provided, the rules and regulations of Minimum Rate Tariff 17-A shall apply.

(END OF APPENDIX A)

application must not be allowed to stand as a precedent for other carriers who in the future may wish to skirt the established deviation procedures and make up their own rules. They further urge the Commission not to be pressured, by claims of urgency, into authorizing unsupported deviations seeking low rates for applications on jobs bid "on the come". It is the contention of protestants that if the existing rules are to have any meaning, and if those carriers who abide by these rules are to receive fair treatment, deviations must be authorized by this Commission only when accompanied by the requisite cost data demonstrating the reasonableness of proposed deviated rates.

We have thoroughly considered the position of the protestants in this proceeding. Although we do not necessarily agree with each of the points raised by them, we do agree that the interim authority granted to Bibb went far beyond that length of time which was reasonable in determining whether or not the requested deviated rates were supported by performance and cost data experienced by Bibb and her subhaulers.

Protestants are disturbed that the Commission issued several interim decisions in this matter without granting public hearings. We point out to protestants that the filing of a protest is no guarantee of public hearings. Rule 42.2 of the Commission's Rules of Practice and Procedure provides that even after protests have been received with respect to an application for deviation from the minimum rate, the Commission may then without hearing grant or deny the proposed deviation or set the matter for hearing. Thus, the determination of whether or not a public hearing will be held is within the discretion of the Commission and not made mandatory merely by the filing of a protest.