

Decision 88 04 074 APR 27 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Viking Freight System, Inc., for)
permanent authority to deviate from)
Distance Table 8 issued by the)
California Public Utilities)
Commission by using Viking)
Distance Table 1 as authorized by)
Decision 86-012-073.)

Application 87-09-034
(Filed September 24, 1987)

OPINION

Background

By Decision (D.) 86-12-073 dated December 17, 1986 in Application (A.) 86-06-013 we authorized Viking Freight System, Inc. (Viking) to deviate from the provisions of Distance Table (DT) 8 by filing its own DT 1. DT 1 sets forth mileages between certain U. S. Postal Service five-digit ZIP Code zones, for use in determining rates and charges found in Viking's rate tariffs.

D.86-12-073 provided that the authority granted would expire December 31, 1987 unless sooner extended or canceled, and required the filing of certain reports. The decision also specified that if Viking desired to extend or eliminate the expiration date, it should file a petition in A.86-06-013 on or before September 30, 1987, with a statement summarizing its experience in using its DT during the first three quarters of 1987. D.87-09-007 dated September 10, 1987 modified D.86-12-073 by requiring the filing of a report of operations during the first, second, and third quarters of 1987, containing one-way rerate samples of its California intrastate shipments and showing various DT 1/DT 8 comparison information.

This Application

In the instant application Viking requests permanent authority to deviate from DT 8 by using its own DT 1, Cal PUC 18, as authorized by D.86-12-073. Viking alleges that in the filing of its initial application, as well as the filing of subsequent reports required by D.86-12-073, it has demonstrated that use of its DT 1 has minimal impact upon its systemwide revenues, and provides the most accurate implementation of DT 8 by ZIP Code to date. Viking has furnished the following table in its application, showing the results of operations under use of its DT 1 as reported in the initial application, and in its first quarter report:

<u>Report</u>	<u>Revenue Impact</u>	<u>Mileage Impact</u>
Initial Application	-0.29%	+0.22%
First Quarter Report	-0.66%	+0.20%

Viking asserts that since the filing and approval of its original application, rules and regulations governing the issuance of new distance tables have been simplified when the revenue impact of such a distance table is demonstrated to be less than 1.0%. Under Rule 7.7 of General Order (GO) 147-A, Viking maintains, it is only required to seek permission to deviate from § 461.5 of the Public Utilities (PU) Code.

Viking contends that when A.86-06-013 was filed, no convenient means existed for providing the methodology for determining the appropriate ZIP Code to be used for a named point. The carrier notes that the tariff in use on its interstate shipments, ATA NMF 105, was not on file with this Commission and would have have required additional time for application and filing. Therefore, Viking provided an index of points (Section 2, pages 3 through 10) within Viking's DT 1. Viking professes that this has proved to be a cumbersome method and one difficult to keep current with changes made by the U. S. Postal Service. Thus,

the carrier requests permission to make the U. S. Postal Service National Five-Digit ZIP Code & Post Office Directory (Directory) the governing publication for application of ZIP Codes. Viking believes that since this is a publication of the United States Government, it is an acceptable governing publication for interstate traffic under the jurisdiction of the Interstate Commerce Commission, and provides an appropriate method for determining mileages within the State of California. The applicant notes that it is a publication that is readily available to the shipping public, providing the most up-to-date methodology for determining applicable ZIP Codes.

Finally, Viking seeks permanent authority to make publications without formal application correcting and/or changing its DT, provided the revenue impact of such publication is less than 1.0%. The applicant believes this will permit it to make minor necessary adjustments in order to implement changes in the transportation and highway system within California. Further, Viking asserts, this will allow it to file its DT 1 with the rate bureaus with whom it participates and make DT 1 available to the transportation industry through the collective ratemaking process. Viking argues that over 275,000 shipments moved under its DT 1 in the first quarter of 1987, with minimal revenue impact, demonstrating that its DT 1 can have application in all but the most restrictive of situations.

In summary, Viking requests in this application:

1. Permanent authority to make publications without formal application when the revenue impact of such publications is less than 1.0%, to permit the implementation of minor adjustments to its distance table and allow for more general usage through the collective ratemaking process; and

2. Authority to use the Directory as a governing publication for determining applicable ZIP Codes in Viking's DT 1.

Staff Position

Staff makes the following observations and recommendations:

1. Viking's second and third quarter reports have been received and reviewed. The reports continue to demonstrate that use of Viking's DT 1 results in a revenue impact of less than 1.0%.
2. Concerning Viking's request to use the Directory, GO 80-B requires that each governing publication be on file and authorized for use by the concerned carrier by the Commission. The Directory is now on file, and may be used by Viking and other carriers.
3. Regarding Viking's request to use its DT 1 on a permanent basis, staff notes that D.86-12-073 gave Viking authority to deviate from DT 8, and that this authority was to expire with December 31, 1987. On March 1, 1987 GO 147-A became effective. Rule 7.7 thereof allows carriers to change units of measurement such as distances under an expedited procedure when revenue impact is plus or minus not more than 1.0%. However, staff's interpretation in the use of Rule 7.7 is that it apply only in connection with minor tariff changes. Staff refers us to D.86-04-045, Conclusion of Law 17, and to "GUIDELINES, Interpreting GO 147-A and Other Regulations Governing the General Freight Reregulation Program" dated November 19, 1987, page 20, question 64.

4. Staff observes that Resolution TS 682 orders that renewals of deviations under PU Code § 452 must be subject to annual extensions for the first two years; further, that PU Code § 3666 prohibits deviations from established minimum rates of non-common carriers to exceed one year. Therefore, staff recommends that the request for permanent authority of Viking's DT 1 be denied, and that the authority contained in D.86-12-073 be extended for one year.

We concur with staff in this matter. Resolution TS-682, adopted January 13, 1988 is still in effect, notwithstanding our adoption of GO 147-A and the various decisions issued in connection with the general freight reregulation program. The resolution provides that carriers must request annual extensions of deviations from minimum rates for the first two renewals. We are not concerned here with minimum rates. However, the resolution is titled "RESOLUTION ADOPTING A GUIDE TO FILING INITIAL APPLICATIONS AND RENEWALS FOR AUTHORITY TO ASSESS LESS THAN A MAXIMUM REASONABLE RATE UNDER THE PROVISIONS OF SECTION 452 OR LESS THAN MINIMUM RATES UNDER SECTIONS 3666 AND 5195 OF THE PUBLIC UTILITIES CODE." We consider the rates resulting from use of Viking's DT 1, to the extent they produce charges less than those authorized under our decisions in the reregulation proceedings (D.86-04-045, etc.) to be rates less than maximum reasonable rates within the meaning of PU Code § 452 and Resolution TS-682.

Conditions may change with respect to the application of Viking's DT 1. Furthermore, we are presently involved with our determination of whether to adopt a distance table which will utilize ZIP codes on a statewide basis. That proceeding, Case 7024, Order Setting Hearing 40, stands submitted subject to the filing of briefs April 15, 1988. It would be inopportune to authorize the permanent use of Viking's DT 1 when we are about to decide this generic distance table proceeding.

We will renew the authority originally granted pursuant to D.86-12-073 for one year, subject to the filing of the same type reports described in D.87-09-007. We do not deem these reports unduly burdensome, since they involve essentially only a sample based upon a portion of a single days' operations. This renewal will authorize use of the Directory, now on file with this Commission.

Findings of Fact

1. By D.86-12-073 we authorized the use by Viking of its DT 1, such authority to expire with December 31, 1987.
2. Viking requests authority to use its DT 1 on a permanent basis, and to make publications in connection with amendments to its DT 1 without formal application when the revenue impact is less than 1.0%.
3. Viking also requests authority to use the Directory as a governing publication for determining applicable ZIP Codes in its DT 1.
4. The Directory is now on file with this Commission.
5. The Commission has traditionally required annual renewals of authorities involving departures from otherwise applicable rate levels.

Conclusions of Law

1. Viking's request to use its DT 1 on a permanent basis should be denied.
2. Viking's request to use the Directory as a governing publication should be granted.

ORDER

IT IS ORDERED that:

1. Viking Freight System, Inc. (Viking) is authorized to publish and file its proposed Distance Table 1, governed by

National Motor Freight Zip Code Tariff, Cal. P.U.C. 28 and reissues thereof, subject to the following conditions:

- a. Unless sooner extended or canceled by Commission, the authority granted herein shall expire one year after the effective date of this decision.
- b. On or before June 15, 1988 and September 15, 1988, Viking shall file with the Commission at its Los Angeles Office a report of operations during the first and the second and third calendar quarters of 1988, respectively. Each report shall contain:
 - (1) A one-way rerate sample of its California intrastate shipments, showing freight bill number, origin, destination, Commission DT 8 mileage and charge, and Viking's DT 1 mileage and charge. The sample shall contain all freight bills for the stated day where the freight bill number ends in the same digit, which will be selected at random.
 - (2) The number of California intrastate shipments handled during the period.
- c. The reports named in paragraph 1 above shall be filed in triplicate at:

California Public Utilities Commission
Attn: Freight Economics Branch
107 South Broadway, Suite 5109
Los Angeles, CA 90012
- d. If Viking desires to extend the expiration date, it shall file a petition in this proceeding on or before September 30, 1988. Such petition shall be filed in accordance with the Commission's Rules of Practice and Procedure, and shall include a statement summarizing applicant's experience in using its DT 1 during the first three quarters of 1988.

2. In the publication and filing authorized in Ordering Paragraph 1, Viking is authorized to deviate from the long- and short-haul provisions of PU Code § 461.5.

3. In the publication and filing authorized in Ordering Paragraph 1, Viking is authorized to deviate from the mileages in DT 8.

4. Viking is authorized to make the publication in Ordering Paragraph 1 on 5 days' notice.

This order is effective today.

Dated April 27, 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weissert
Victor Weissert, Executive Director

2. Authority to use the Directory as a governing publication for determining applicable ZIP Codes in Viking's DT 1.

Staff Position

In its Advice of Participation dated December 24, 1987 staff makes the following observations and recommendations:

1. Viking's second and third quarter reports have been received and reviewed. The reports continue to demonstrate that use of Viking's DT 1 results in a revenue impact of less than 1.0%.
2. Concerning Viking's request to use the Directory, GO 80-B requires that each governing publication be on file and authorized for use by the concerned carrier by the Commission. The Directory is not on file, nor authorized by this Commission. The carrier may publish the Directory for his own account according to the rules of GO 80-B. However, until the Directory is accepted by the Commission, Viking should continue to file its own index of points with updates on an annual basis.
3. Regarding Viking's request to use its DT 1 on a permanent basis, staff notes that D.86-12-073 gave Viking authority to deviate from DT 8, and that this authority was to expire with December 31, 1987. On March 1, 1987 GO 147-A became effective. Rule 7.7 thereof allows carriers to change units of measurement such as distances under an expedited procedure when revenue impact is plus or minus not more than 1.0%. However, staff's interpretation in the use of Rule 7.7 is that it apply only in connection with minor tariff changes. Staff refers us to D.86-04-045, Conclusion of Law 17, and to "GUIDELINES, Interpreting GO 147-A and Other Regulations Governing the General Freight Reregulation Program" dated November 19, 1987, page 20, question 64.

4. Staff observes that Resolution TS 284 orders that renewals of deviations under PU Code § 452 must be subject to annual extensions for the first two years; further, that PU Code § 3666 prohibits deviations from established minimum rates of non-common carriers to exceed one year. Therefore, staff recommends that the request for permanent authority of Viking's DT 1 be denied, and that the authority contained in D.86-12-073 be extended for one year.

We concur with staff in this matter. Resolution TS-284, adopted January 24, 1978 is still in effect, notwithstanding our adoption of GO 147-A and the various decisions issued in connection with the general freight reregulation program. The resolution provides that carriers must request annual extensions of deviations from minimum rates for the first two renewals. We are not concerned here with minimum rates. However, the resolution is titled "RESOLUTION ADOPTING A GUIDE TO FILING INITIAL APPLICATIONS AND RENEWALS FOR AUTHORITY TO ASSESS LESS THAN A MAXIMUM REASONABLE RATE UNDER THE PROVISIONS OF SECTION 452 OR LESS THAN MINIMUM RATES UNDER SECTIONS 3666 AND 5195 OF THE PUBLIC UTILITIES CODE." We consider the rates resulting from use of Viking's DT 1, to the extent they produce charges less than those authorized under our decisions in the reregulation proceedings (D.86-04-045, etc.) to be rates less than maximum reasonable rates within the meaning of PU Code § 452 and Resolution TS-284.

Conditions may change with respect to the application of Viking's DT 1. Furthermore, we are presently involved with our determination of whether to adopt a distance table which will utilize ZIP codes on a statewide basis. That proceeding, Case 7024, Order Setting Hearing 40, stands submitted subject to the filing of briefs April 15, 1988. It would be inopportune to authorize the permanent use of Viking's DT 1 when we are about to decide this generic distance table proceeding.

Permission to use the Directory as Viking's governing publication must be denied until such time as the document is on file or authorized by this Commission, as required by GO 80-B. (Rule 1, Definitions, Governing Publications.) The definition offers examples of such publications, including DT 8, Hazardous Materials Tariff ATA, 111-G, and National Motor Freight Classification NMF 100-M. Alternatively, Viking could publish the Directory for its own account, as indicated by the staff. This assumes that the carrier may be able to obtain permission to publish the document from the party owning the copyright thereto. In that eventuality we will consider authorizing its use by Viking, depending upon the circumstances surrounding its use and application. Although cumbersome, Viking's DT 1 is evidently workable. If too difficult to apply, Viking has the option of using the Commission's DT 8, as do most carriers with operating characteristics similar to those of Viking. In the interim, we will renew the authority originally granted pursuant to D.86-12-073 for one year, subject to the filing of the same type reports described in D.87-09-007. We do not deem these reports unduly burdensome, since they involve essentially only a sample based upon a portion of a single days' operations.

Findings of Fact

1. By D.86-12-073 we authorized the use by Viking of its DT 1, such authority to expire with December 31, 1987.
2. Viking requests authority to use its DT 1 on a permanent basis, and to make publications in connection with amendments to its DT 1 without formal application when the revenue impact is less than 1.0%.
3. Viking also requests authority to use the Directory as a governing publication for determining applicable ZIP Codes in its DT 1.
4. The Directory is not on file with this Commission.

5. The Commission has traditionally required annual renewals of authorities involving departures from otherwise applicable rate levels.

6. The Commission's investigation into the question of adoption of a distance table using U. S. Postal ZIP Codes as the basis for determining mileages is under consideration in Case 7024, Order Setting Hearing 40, having been submitted subject to the filing of briefs by April 15, 1988.

7. No valid reason has been presented which would indicate the the authority granted here should be on a permanent basis.

Conclusions of Law

1. Viking's request to use its DT 1 on a permanent basis should be denied.

2. Viking's request to use the Directory as a governing publication should be denied without prejudice.

3. The authority granted by D.86-12-073 should be renewed for one year and be subject to the filing of the same type reports required by D.87-09-007.

ORDER

IT IS ORDERED that:

1. Viking Freight System, Inc. (Viking) is authorized to publish and file its proposed Distance Table 1, as it appears in Application 86-06-013, as amended, subject to the following conditions:

- a. Unless sooner extended or canceled by Commission, the authority granted herein shall expire one year after the effective date of this decision.

National Motor Freight Tariff 103, Cal. P.U.C. 28 subject to the following conditions:

- a. Unless sooner extended or canceled by Commission, the authority granted herein shall expire one year after the effective date of this decision.
- b. On or before June 15, 1988 and September 15, 1988, Viking shall file with the Commission at its Los Angeles Office a report of operations during the first and the second and third calendar quarters of 1988, respectively. Each report shall contain:
 - (1) A one-way rerate sample of its California intrastate shipments, showing freight bill number, origin, destination, Commission DT 8 mileage and charge, and Viking's DT 1 mileage and charge. The sample shall contain all freight bills for the stated day where the freight bill number ends in the same digit, which will be selected at random.
 - (2) The number of California intrastate shipments handled during the period.
- c. The reports named in paragraph 1 above shall be filed in triplicate at:

California Public Utilities Commission
Attn: Freight Economics Branch
107 South Broadway, Suite 5109
Los Angeles, CA 90012
- d. If Viking desires to extend the expiration date, it shall file a petition in this proceeding on or before September 30, 1988. Such petition shall be filed in accordance with the Commission's Rules of Practice and Procedure, and shall include a statement summarizing applicant's experience in using its DT 1 during the first three quarters of 1988.

- b. On or before June 15, 1988 and September 15, 1988, Viking shall file with the Commission at its Los Angeles Office a report of operations during the first and the second and third calendar quarters of 1988, respectively. Each report shall contain:

- (1) A one-way rerate sample of its California intrastate shipments, showing freight bill number, origin, destination, Commission DT 8 mileage and charge, and Viking's DT 1 mileage and charge. The sample shall contain all freight bills for the stated day where the freight bill number ends in the same digit, which will be selected at random.
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- c. The reports named in paragraph 1 above shall be filed in triplicate at:

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Los Angeles, CA 90012

- d. If Viking desires to extend the expiration date, it shall file a petition in this proceeding on or before September 30, 1988. Such petition shall be filed in accordance with the Commission's Rules of Practice and Procedure, and shall include a statement summarizing applicant's experience in using its DT 1 during the first three quarters of 1988.

2. In the publication and filing authorized in Ordering Paragraph 1, Viking is authorized to deviate from the long- and short-haul provisions of PU Code § 461.5.

3. In the publication and filing authorized in Ordering Paragraph 1, Viking is authorized to deviate from the mileages in DT 8.

2. In the publication and filing authorized in Ordering Paragraph 1, Viking is authorized to deviate from the long- and short-haul provisions of PU Code § 461.5.

3. In the publication and filing authorized in Ordering Paragraph 1, Viking is authorized to deviate from the mileages in DT 8.

4. Viking is authorized to make the publication in Ordering Paragraph 1 on 5 days' notice.

This order is effective today.

Dated APR 27 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

4. Viking is authorized to make the publication in Ordering Paragraph 1 on 5 days' notice.

This order is effective today.

Dated _____, at San Francisco, California.