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Decision 92-07-004 July 1, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Transystems, Inc., doing business in)
 California as Transport Newco, Inc.,)
 for authority to deviate from the)
 rates, rules and regulations of)
 Minimum Rate Tariff 7-A for the)
 transportation of rock, sand, gravel)
 and asphalt materials pursuant to)
 Section 3666 of the Public Utilities)
 Code.)

Application 92-03-041
 (Filed March 23, 1992)

O P I N I O N

By this application Transystems, Inc. (applicant), doing business as Transport Newco, Inc., requests authority to deviate from the rates, rules and regulations of Minimum Rate Tariff (MRT) 7-A when performing transportation of rock, sand, gravel, and asphalt materials for Kaiser Sand & Gravel Company (Kaiser).

By Decision (D.)89-09-104, the Commission adopted a new three-tiered approach to the filing of requests for the expedited handling of deviations from dump truck minimum rates. Concurrently, we ordered that former deviation procedures set forth in Resolution TS-682 and Rules 42.1 and 42.2(b) of the Commission's Rules of Practice and Procedure (Rules) be superseded by the three new deviation methods. Nevertheless, there is consensus among the parties attending the current proceedings concerning dump truck regulation (Case (C.) 5437, Order Setting Hearing (OSH) 325, et al.) that in specialized circumstances, parties may file requests pursuant to Public Utilities (PU) Code § 3666 for authority to deviate from rates and rules in the Commission's minimum rate tariffs naming rates for the transportation of commodities in dump truck equipment, rather than observing those

expedited procedures available under D.89-09-104. This application is filed pursuant to Resolution TS-682, as well as under the provisions of PU Code § 3666.

We find that the expedited procedures adopted pursuant to D.89-09-104 are applicable insofar as they apply to the processing of deviation requests filed in accordance with those procedures; but that in special circumstances, such as those alleged in this application, the provisions of TS-682 apply.

The application was filed and consolidated with C.5437, OSH 325, and the two proceedings were to have been the subjects of evidentiary hearings on May 11, 1992. However, before the commencement of hearings on that date it became apparent that none of the parties intended to conduct cross-examination of applicant's witness. Therefore, the application may be processed by ex parte action without the need for the filing of a proposed decision under the provisions of PU Code § 311.

Applicant alleges that the following circumstances support its request:

1. Applicant functions as a "house" carrier for Kaiser, handling most of the tonnage from this shipper's Sonoma County facilities.
2. Applicant's fleet of equipment in Sonoma County is dedicated to Kaiser. This equipment is used exclusively in the performance of transportation services for this shipper. The transportation is akin to that of a proprietary trucking operation.
3. Kaiser works closely with applicant to insure that trucks are fully loaded whenever possible. It does this by radio communications links which enable contact with drivers in order to minimize empty miles.
4. The equipment has been designed to meet the transportation needs solely of Kaiser. It is lighter in weight than the equipment of most carriers because it does not have to be

used in a wide range of transportation circumstances. This permits payloads (depending upon product) of 28 tons or more.

5. All of applicant's drivers are employees, rather than independent subhaulers.

6. In rare circumstances, when subhaulers are needed to provide excess capacity in serving Kaiser, they are paid on the basis of minimum, rather than deviated rates.

7. Because of the integrated nature of this transportation with Kaiser's overall business, it is possible to realize efficiencies throughout the entire transportation operation. It is possible to reflect these efficiencies in the rates applicant proposes to assess. However, the three-tiered processes adopted by D.89-09-104 make this procedurally impossible because of a requirement that the specific origin and specific destination of each haul be named in the deviation application. When conducting the type of integrated transportation service described, it is not possible to know each destination location in advance, and to respond with an appropriate deviation request which becomes effective before the transportation is performed.

Applicant has submitted a copy of the California Highway Patrol's (CHP) acknowledgement of receipt of applicant's application and fee for a Biennial Inspection of Terminals (BIT inspection) at its Santa Rosa facility. Applicant received a "satisfactory" rating from the CHP. Applicant's Requestor Code number assigned by the Department of Motor Vehicles as part of its participation in the Pull Notice Program is A8400. Applicant has furnished a letter of support from Kaiser. Its balance sheet dated December 31, 1991 indicates total assets of \$8,821,085, and total equities of \$2,972,356.

Rates proposed will apply from Kaiser's facilities located in Sonoma County, to all Kaisers and Kaiser customer facilities located in Sonoma, Napa, Marin, Lake, Mendocino, Solano, and Humboldt Counties. They will apply on broad distance and

hourly bases, without particularity as to precise points of origin and destination.

Applicant proposes to assess hourly and distance rates 10% less than those applicable under MRT 7-A. It has submitted a cost study demonstrating that the proposed rates are justified in light of the costs portrayed in its study. The study includes hourly labor costs as well as vehicle fixed and running costs. Costs are those incurred by applicant. Most performance elements are brought forward from existing datum plane studies underlying rates in MRT 7-A. However, in connection with average payloads applicant's own experience has been substituted. In the case of insurance costs, premiums are based on a percentage of gross revenues; therefore, such costs are included in the development of indirect expenses.

The summaries of revenues and expenses included with the study indicate that applicant, in performing this transportation, will experience operating ratios, depending upon length of haul, ranging from 78% to 85% (in connection with the transportation of rock, sand, and gravel in bottom dump units); from 87% to 94.71% (in connection with the transportation of rock, sand, and gravel in transfer units); from 79% to 89% (in connection with the transportation of asphaltic concrete in bottom dump units); and from 85% to 99% (in connection with the transportation of asphaltic concrete in transfer units).

Notice of filing of the application appeared in the Commission's Daily Transportation Calendar. No objection has been received to the granting of the request. In the circumstances the application will be granted.

Findings of Fact

1. Applicant requests authority, pursuant to PU Code § 3666 and Resolution TS-682 to depart from the rates, rules, and regulations named in MRT 7-A.

2. D.89-09-104 adopted a three-tiered procedure for obtaining expedited deviations from rates in the Commission's minimum rate tariffs naming rates for commodities when transported in dump truck equipment.

3. In adopting the expedited three-tiered deviation procedure, the Commission in D.89-09-104 stated that the procedure superseded the provisions of Resolution TS-682 and Rules 42.1 and 42.2(b). However, that decision superseded the TS-682 resolution procedure and Rules 42.1 and 42.2(b) only in connection with applications filed pursuant to such expedited procedures, and did not foreclose applicants from prosecuting requests pursuant to PU Code § 3666 and Resolution TS-682 in connection with applications involving special circumstances such as those presented here.

4. The rates proposed by applicant are justified by the conditions and circumstances surrounding the transportation described in the application.

Conclusions of Law

1. The application should be granted for a period of one year, as provided in PU Code § 3666.

2. Since there is an immediate opportunity for rate relief and there is no objection to the request, the effective date of this order should be today.

ORDER

IT IS ORDERED that:

1. Transystems, Inc. may depart from the provisions of Minimum Rate Tariff 7-A by assessing not less than the rates shown in Appendix A.

2. This authority shall expire one year after the effective date of this decision.

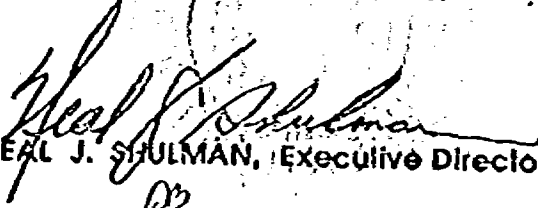
This order is effective today.

Dated July 1, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President

JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
PB

APPENDIX A

TRANSYSTEMS, INC.

Points of Origin: Facilities of Kaiser Sand & Gravel Company in Sonoma County.

Points of

Destination: Facilities of Kaiser Sand & Gravel Company and its customers located in Sonoma, Napa, Marin, Lake, Mendocino, Solano, and Humboldt Counties.

Conditions: Distances used in the determination of charges on hauls moving at distance rates will be determined in accordance with Item 150 of MRT 7-A. Hourly rates will be applied only when the shipper and the carrier execute a written agreement in accordance with Item 360 of MRT 7-A.

Commodities: Rock, Sand, Gravel, and Asphalt materials ("Hot Stuff" and "Plant Mix").

Applicable tariff: Minimum Rate Tariff 7-A.

Rates: See Attachment A, Parts A, B, and C hereto. Rates shown are plus all required surcharges in MRT 7-A. In all other respects, the provisions of MRT 7-A will apply.

Use of

Subhaulers: If independent contractor-subhaulers are used in the performance of this transportation, such carriers shall be paid not less than the applicable rates, including all applicable surcharges, shown in MRT 7-A.

ATTACHMENT A

PART A - Commodities Described in List A of Item 30, MRT 7-A

MILES		RATE (1)	MILES		RATE (1)
Over	Not Over		Over	Not Over	
0	1	50	45	46	441
1	2	59	46	47	449
2	3	69	47	48	457
3	4	79	48	49	466
4	5	88	49	50	474
5	6	98	50	52	489
6	7	108	52	54	504
7	8	117	54	56	520
8	9	126	56	58	535
9	10	136	58	60	550
10	11	146	60	63	568
11	12	154	63	66	593
12	13	164	66	69	617
13	14	172	69	72	641
14	15	182	72	75	665
15	16	190	75	80	702
16	17	199	80	85	737
17	18	207	85	90	774
18	19	216	90	95	811
19	20	225	95	100	848
20	21	234	100	110	909
21	22	242	110	120	970
22	23	251	120	130	1031
23	24	259	130	140	1103
24	25	269	140	150	1173
25	26	277	150	160	1243
26	27	285	160	170	1315
27	28	294	170	180	1387
28	29	302	180	190	1458
29	30	309	190	200	1530
30	31	317	200	210	1601
31	32	326	210	220	1673
32	33	334	220	230	1745
33	34	344	230	240	1816
34	35	350	240	250	1888
35	36	359	250	260	1959
36	37	367	260	270	2030
37	38	376	270	280	2102
38	39	384	280	290	2174
39	40	391	290	300	2245
40	41	399	For each additional 10 miles or fraction, add		78
41	42	408			
42	43	416			
43	44	424			
44	45	432			

(1) Plus all required surcharges in MRT 7-A.

ATTACHMENT A

PART B - Asphalt Material as described in Item 300, MRT 7-A

MILES		RATE (1) (a)	MILES		RATE (1) (a)
Over	Not Over		Over	Not Over	
0	1	73	40	41	423
1	2	83	41	42	432
2	3	93	42	43	441
3	4	102	43	44	449
4	5	112	44	45	457
5	6	122	45	46	466
6	7	132	46	47	474
7	8	141	47	48	481
8	9	151	48	49	489
9	10	161	49	50	498
10	11	170	50	52	513
11	12	179	52	54	529
12	13	188	54	56	545
13	14	197	56	58	560
14	15	206	58	60	576
15	16	215	60	63	599
16	17	223	63	66	623
17	18	233	66	69	646
18	19	241	69	72	669
19	20	249	72	75	693
20	21	258	75	80	727
21	22	266	80	85	763
22	23	275	85	90	799
23	24	284	90	95	824
24	25	292	95	100	850
25	26	301	100	110	915
26	27	309	110	120	986
27	28	317	120	130	1056
28	29	325	130	140	1128
29	30	333	140	150	1198
30	31	342	For each additional 10 miles or fraction, add		71
31	32	350			
32	33	359			
33	34	367			
34	35	375			
35	36	383			
36	37	391			
37	38	399			
38	39	408			
39	40	416			

(a) When the unloading condition at the point of destination requires the use of dump truck with transfer-type end dump pull trailer, the rates on this page shall be increased, subject to a minimum weight of 24 tons transported in one unit of equipment at one time, as follows:

	Rate in Cents Per Ton (1)
Asphaltic Concrete and Cold Road Oil Mixture	60

(1) Plus all required surcharges in MRT 7-A.

ATTACHMENT A

PART C - Hourly Rates Applicable to Commodities Described in Item 30

SAN FRANCISCO BAY AREA REGION		
No. of Axles	Column	HOURLY RATE (1)
5 or more	M	\$47.70
	O	\$62.10
	P	\$54.00

(1) Plus all required surcharges in MRT 7-A.

(END OF ATTACHMENT A)