

ORIGINAL

Decision No. 86560

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
 of M G M TRANSPORTATION CO. a)
 partnership for authority to de-)
 viate from the provisions of)
 Minimum Rate Tariff No. 2 in con-)
 nection with the transportation of)
 glass, bottles, demijohns and jars)
 for KERR GLASS MANUFACTURING COR-)
 PORATION, pursuant to the provi-)
 sions of Section 3666 of the)
 California Public Utilities Code.)

Application No. 56632
 (Filed July 20, 1976)

OPINION AND ORDER

By this application, Michael Maddock, Gary Gileno and Thomas D. Alexander, Jr., doing business as M G M Transportation Co., request authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of glass bottles, demijohns and jars for Kerr Glass Manufacturing Corporation from Santa Ana to various points.¹

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

The application was listed on the Commission's Daily Calendar of July 23, 1976. California Trucking Association objected to ex parte handling of the matter and inferred that the reasonableness of the proposed rates cannot be measured by the average cost

¹The minimum rates, exclusive of applicable surcharges, and the proposed rates in cents per 100 pounds for representative palletized shipments of glass bottles, demijohns and jars are:

From Santa Ana To	Present Rates Minimum Weight 30,000 Pounds	Proposed Rates Minimum Weight in Pounds		
		35,000	40,000	45,000
Fresno	110	93	88	83
Oakland	141	98	93	88
Sacramento	141	116	105	97

data submitted in the application. Revenue and expense data submitted by applicants are sufficient to determine that the transportation involved may reasonably be expected to be profitable under the proposed rates.

In the circumstances, the Commission finds that applicants' proposal is reasonable to the extent hereinafter indicated. Applicants contemplate the use of subhaulers with remuneration at 70 percent of the deviation rates sought. While applicants have provided an analysis of a representative subhauler's cost, there is no indication that any one subhauler will actually experience such a cost. The provision for the payment to subhaulers has not been justified and will not be authorized. 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 relief.

IT IS ORDERED that:

1. Michael Maddock, Gary Gileno and Thomas D. Alexander, Jr., doing business as M G M Transportation Co., are 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. In the event that the radial highway common carrier and highway contract carrier permits of Michael Maddock, Gary Gileno and Thomas D. Alexander, Jr., are transferred from them to M G M Transportation Co., Inc., a corporation, the authority granted in ordering paragraph 1 hereof is transferred to said corporation concurrently with the effective date that the corporation acquires such permits.

3. 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.

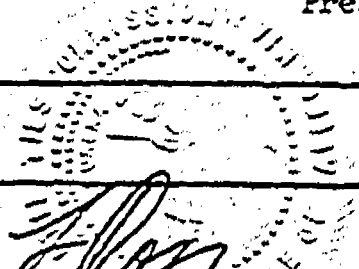
A. 56632 - PNK/jmw

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 26th day of
October, 1976.

I will file a dissent.
William J. Squares
Commissioner

I abstain
Vernon L. Sturgeon
Commissioner



President

Robert Bateman
Commissioners

APPENDIX A

(1) Michael Maddock, Gary Gileno and Thomas D. Alexander, Jr., are authorized or (2) M G M Transportation Co., Inc., a corporation, is authorized to transport palletized shipments of glass bottles, demijohns and jars (as described in Item 87700 of the National Motor Freight Classification NMF 100-C) for Kerr Glass Manufacturing Corporation at the following rates:

Rates in Cents Per 100 PoundsMinimum Weight in Pounds

From Santa Ana To	<u>35,000</u>	<u>40,000</u>	<u>45,000</u>
Fresno	93	88	83
Orland	150	145	140
Sacramento	116	105	97
Santa Rosa	125	120	115
Sebastopol	125	120	115
Sonoma	125	120	115
Visalia	85	80	75

The Counties
Of:

Alameda)			
Contra Costa)			
Monterey)			
San Francisco)	98	93	88
San Joaquin)			
San Mateo)			
Santa Clara)			
Santa Cruz)			

Conditions:

- (a) Shipments shall be loaded by shipper and unloaded by consignee without assistance of, or expense to, the carrier.
- (b) The carrier has indicated that subhaulers will be engaged. If subhaulers are employed, they shall be paid

A. 56632*

no less than the rates authorized herein without any deduction for use of the overlying carrier's trailing equipment.

- (c) In all other respects, the rates and rules set forth in Minimum Rate Tariff 2 shall apply.
- (1) Effective from the effective date of the order involved herein to but not including the effective date of the transfer of the authority granted in ordering paragraph 2 of said order .
- (2) Effective with the effective date of the transfer of the authority granted in ordering paragraph 2 of the order involved herein.

(END OF APPENDIX A)

22

A. 56616 - D.

A. 56632 - D.

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

These decisions granting deviations are defective for the reasons previously set forth in detail in my August 24, 1976, dissenting opinion to Decision Nos. 86274 through 86279. The decisions are granted ex parte, despite legitimate questions being raised by protestants -- their request for a hearing is overridden. Likewise, the decisions are made effective immediately, and they contain the boiler-plate language which is becoming so common in these decisions:

"The application is based on special circumstances and conditions detailed thereon."

and

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

Thereby, the majority avoids setting forth any facts about the special circumstances of the transportation which a person might review to see if the deviation is justified.

San Francisco, California
October 26, 1976


WILLIAM SYMONS, JR.
Commissioner