

ORIGINAL

Decision No. 86583

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Apex Bulk Com- )  
modities, a corporation, for )  
authority to deviate from the )  
otherwise applicable minimum )  
rates in the transportation of )  
Silica sand for the account of )  
Thatcher Glass Manufacturing )  
Company. )

Application No. 56686  
(Filed August 13, 1976)

OPINION AND ORDER

By this application, Apex Bulk Commodities, a corporation, requests authority to deviate from the provisions of Minimum Rate Tariff 7-A in connection with transportation of silica sand for Thatcher Glass Manufacturing Company from Mission Viejo to Saugus.<sup>1</sup>

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

The application was listed on the Commission's Daily Calendar of August 16, 1976. California Trucking Association (CTA) opposed the granting of the sought relief stating that: (1) the basic cost study and relief requested appear to be the same for both Apex Bulk Commodities and Pyramid Commodities (Pyramid), (2) the need is apparent for the Commission to reopen the proceeding and resolve the matters encompassed in OSH 233 in Case 5437.

Applicant responded to CTA's protest stating that: (1) its place of business is located in the same building as Pyramid, (2) it shares with Pyramid the services of the office

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<sup>1</sup>The present and proposed rates for this transportation are 547 cents per ton, minimum weight 23 tons, and 412 cents per ton, minimum weight 26 tons, respectively.

employees and terminal facilities, (3) it and Pyramid are two separate entities, (4) its operating costs are consequently similar to those of Pyramid and (5) the shipper is supporting both applications.

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 rate.

Protestant's suggestion that the Commission reopen the proceeding encompassed in OSH 233 in Case 5437 will not be considered in this proceeding.

In the circumstances, the Commission finds that applicant's proposal is reasonable. 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 rate relief.

IT IS ORDERED that:

1. Apex Bulk Commodities, a corporation, is authorized to perform the transportation shown in Appendix A attached hereto and by this reference made a part hereof at not less than the rate set forth therein.
2. 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.

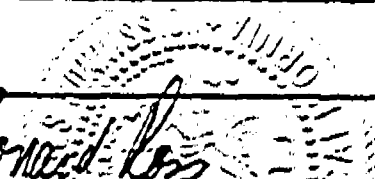
A. 56686 - FN/jmw

The effective date of this order is the date hereof.  
Dated at San Francisco, California, this 2<sup>nd</sup> day  
of November, 1976.

I will file dissent.  
William Squero, Jr.

I dissent  
Vernon L. Sturgeon

  
\_\_\_\_\_  
President

\_\_\_\_\_  
  
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Leonard Ross

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Robert Bateman  
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Commissioners

A. 56686 - FN/jmw

APPENDIX A

Carrier: Apex Bulk Commodities  
Commodity: Silica Sand  
For: Thatcher Glass Manufacturing Company  
From: Mission Viejo production plant of  
Owens-Illinois, Inc., located five  
miles east of Interstate Highway 5  
on California State Highway 74 near  
San Juan Capistrano.  
To: Thatcher Glass Manufacturing Company, Saugus  
Rate: \$4.12 per net ton  
Minimum  
Weight: 26 tons

Applicant has not indicated that subhaulers will be engaged nor have any costs of subhaulers been submitted. Therefore, if subhaulers are employed, they shall be paid no less than the rate authorized herein without any deduction for use of applicant's trailing equipment.

In all other respects, the rates and rules in Minimum Rate Tariff 7-A shall apply.

(END OF APPENDIX A)

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A. 56597 - D.  
A. 56686 - D.  
A. 56633 - D.  
A. 56685 - 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:

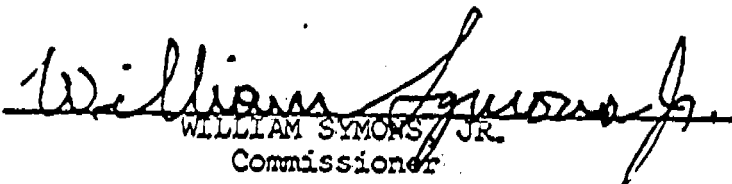
"The application is based on special circumstances and conditions detailed thereon."

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  
November 2, 1976

  
WILLIAM SYMONS, JR.  
Commissioner