

ORIGINAL

Decision No. 86586

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pyramid Commodities)
a corporation, for authority to)
deviate from the otherwise ap-)
plicable minimum rates in the)
transportation of Silica sand for)
the account of Thatcher Glass)
Manufacturing Company.)

Application No. 56685
(Filed August 13, 1976

OPINION AND ORDER

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

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 Pyramid Commodities and Apex Bulk Commodities (Apex), (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 Apex, (2) it shares with Apex the services of the office employees and terminal facilities, (3) it and Apex are two separate entities, (4) its operating costs are consequently similar to those of Apex and (5) the shipper is supporting both applications.

¹ The present and proposed rates for this transportation are 547 cents per ton, minimum weight 23 tons, and 4122 cents per ton, minimum weight 26 tons, respectively.

Revenue and expense data 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 to the extent hereinafter indicated. 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. Pyramid 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.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 27th day of November, 1976.

*I will file dissent.
William Synovis Jr.*

*I dissent
Jerome L. Sturgeon*

[Signature]

President

Commissioners

[Signature]

Commissioners

[Signature]

Commissioners

[Signature]

Commissioners

Commissioners

A. 56685

APPENDIX A

Carrier: Pyramid Commodities
Commodity: Silica Sand
For: Thatcher Glass Manufacturing Company
From: Mission Viejo production plant of Owens-Illinois,
Inc., located five miles east of Interstate High-
way 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. 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:

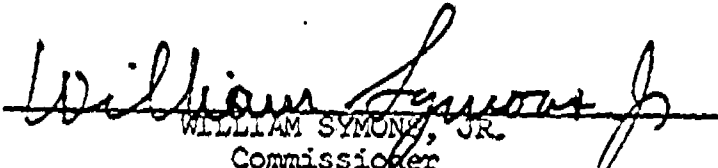
"The application is based on special circumstances and conditions detailed thereon."

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