

ORIGINALDecision No. 86516

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Brothers Trans-)
 portation, Inc. for authority)
 to transport lead from Los)
 Angeles to those cities and)
 areas within 20 miles on either)
 side of Highway 99 between Mo-)
 desto and Sacramento, those)
 cities and areas within 20 miles)
 on either side of Interstate 80)
 between Sacramento and Oakland,)
 those cities and areas 20 miles)
 on either side of Interstate 580)
 between Manteca and Oakland, and)
 all cities within 50 miles of)
 Oakland with return loads of)
 junk batteries and plates from)
 Sacramento, Oakland, and South)
 San Francisco, under the provi-)
 sions of Section 3666 and 5195)
 of the Public Utilities Code.)

Application No. 56684
 (Filed August 12, 1976)

OPINION AND ORDER

By this application, Brothers Transportation, Inc., a corporation, requests authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of lead from Los Angeles to various points in northern California and old batteries and plates from Sacramento, Oakland and South San Francisco to Los Angeles for the N. L. Industries.¹

¹ The present rates, excluding the applicable surcharges, and the proposed rates in cents per 100 pounds for representative shipments of lead and old batteries are:

<u>From</u>	<u>To</u>	<u>Commodity</u>	<u>Present Rates</u> <u>Minimum Weight</u> <u>40,000 Pounds</u>	<u>Proposed Rates</u> <u>Minimum Weight</u> <u>36,000 Pounds</u>
Los Angeles MZ 235	Sacramento	Lead	141	120
Oakland MZ 111	Los Angeles MZ 235	Old Batteries	141	90

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 objected to the ex parte handling of this matter stating that, although applicant alleges that the proposed rates are reasonable based on average costs, the carrier has not demonstrated that the cost savings are directly attributable to the transportation involved. Nevertheless, 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.

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:

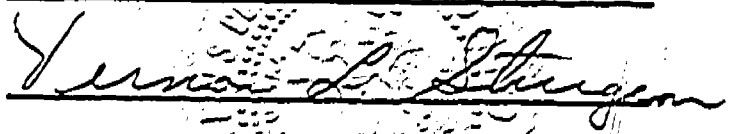
1. Brothers Transportation, Inc., a corporation, is authorized to perform the transportation shown in Appendix A attached hereto and by this reference made a part hereof at not less than the rates set forth therein.
2. The authority granted herein shall expire one year after the effective date of this 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 9th day of November, 1976.

I will file a dissent
William Gross


President


Vernon L. Sturgeon

I concur in part
and dissent only as
to the effective date


Commissioners.

Vernon L. Sturgeon

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Brothers Transportation, Inc., a corporation, is authorized to: (1) transport lead from Los Angeles to points and places and along routes listed in the note below and (2) old batteries and plates from Sacramento, Oakland and South San Francisco to Los Angeles for the N. L. Industries at the charges indicated:

Note: From Los Angeles to: (1) Sacramento and Modesto, including all points and places within a radius of 20 miles on either side of State Highway 99 between Modesto and Sacramento; (2) all points and places within a 20 mile radius on either side of Interstate Highway 80 between Sacramento and Oakland; (3) all points and places within a 20 mile radius on either side of Interstate Highway 580 between Manteca and Oakland; (4) all points and places within a 50 miles radius of Oakland.

RATES AND RULES

- a) For the transportation of lead from Los Angeles to the points and places listed in the note above, the rate shall be \$1.20 per hundred pounds, minimum weight 36,000 pounds.
- b) For the transportation of old batteries and plates from Sacramento, Oakland and South San Francisco to Los Angeles, the rate shall be 90 cents per hundred pounds, minimum weight 36,000 pounds.
- c) Loading and unloading time in excess of one hour shall be assessed at the charges as set forth in Item 145 of Minimum Rate Tariff 2.
- d) All shipments shall be palletized, loaded and unloaded by power equipment furnished by shipper and consignees, without assistance of, or expense to, the carrier.
- e) All transportation charges shall be paid by N. L. Industries.

- f) 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 rates authorized herein without any deduction for use of applicant's trailing equipment.
- g) In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

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

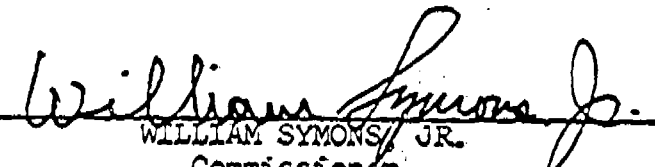
"The application is based on special circumstances and conditions detailed therein."

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 9, 1976


WILLIAM SYMONS, JR.
Commissioner