

ORIGINAL

Decision No. 86676

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of FRED JOHN CRIKOS for authority under Section 3666 of the Public Utilities Code of the State of California to deviate from the minimum rates for the transportation of various aluminum products for KAISER ALUMINUM, between certain interplant points.

Application No. 55480
(Filed February 5, 1975;
amended February 14, 1975)

O P I N I O N

Applicant Fred John Crikos was granted interim authority, after public hearing, to deviate from the minimum rates for the transportation of certain articles for Kaiser Aluminum (Kaiser) by Decision No. 84696 dated July 22, 1975. That authority was modified by Decision No. 85632 dated March 30, 1976. The authorization will expire November 30, 1976.

Among other things, Decision No. 84696 required applicant to maintain records of all transportation service conducted pursuant to the temporary authority. Applicant was expected to present such data at a public hearing following which a determination would be made whether the authority would be continued or modified.

By letter dated June 17, 1976 applicant was requested by the assigned examiner to provide the cost and operational data required by Decision No. 84696 covering the period when the operations commenced through July 30, 1976. Applicant was instructed to supply copies of these data to all parties of record.

On September 21, 1976 the operational report was received. According to the report, applicant has earned \$165,014 from the Kaiser operations during the period of October 1, 1975 to July 31, 1976. During the same period, \$156,503 was earned from transportation

services performed for other accounts. The average revenue per mile from the Kaiser operation was 83.5 cents and from other sources was 141.7 cents. According to the cost estimates, the total one-way cost is \$310.17, a cost per mile of 76.5 cents. The revenue for a 40,000 pound load is \$435.44 resulting in an operating ratio of 71 percent. The revenue estimates were based on a rate of \$1.05 per cwt plus the applicable surcharges, which is the rate now being assessed.

By letter dated October 19, 1976, California Trucking Association (CTA) questioned the reasonableness of the proposed rate as it is based on costs for a one-way haul and that the 15½ hours for loading, driving, and unloading make no provision for overtime or layover costs. CTA requests a further public hearing to explore these and other areas, including the use of subhaulers.

After the public hearing of April 25, 1975, we found in Decision No. 84696 that "applicant has made a prima facie showing that the proposed operation for Kaiser is reasonable..." The operational data reflecting the experience gained under the temporary authority confirms our finding. There is nothing in the data supplied that would indicate any significant departure from the evidence received at the public hearing. The 15½ hours for loading, driving, and unloading do not appear unreasonable when compared to the 15 hours used for the driver cost estimate in Exhibit 1. The omission of a layover cost does not appear inappropriate in consideration of the comfortable margin between the total cost and revenue per trip.

CTA's contention that round-trip costs must be shown is not well taken. These operations are between the San Francisco and Los Angeles metropolitan areas, both major industrial centers. The circumstances in this matter are similar to those in re Guthmiller Trucking, Inc. (Decision No. 86527 dated October 19, 1976) where we

held: "In certain instances it is necessary that round-trip costs must be considered in determining whether or not the proposed rate is reasonable especially when it can be seen that there is no expectation of the carrier obtaining a return load. Such is not the case here; the evidence shows that applicant can reasonably expect a return northbound load in view of the fact that it has an essentially balanced operation."

The possible use of subhaulers alluded to by CTA is a valid point. There is no cost or other evidence in the record, other than applicant's statement at the April hearing that he might have to use subhaulers, but that was not his intention. In view of this, the authority should be restricted.

Nothing has been brought to our attention which would indicate that further public hearing would be productive. The factual presentation by applicant at the original hearing has been confirmed by the data supplied on September 21, 1976. The record includes ample argument, including supporting citations, reflecting all the parties' positions with respect to such facts. The points raised by CTA in its letter of October 19, 1976 were adequately presented at the original hearing.

Findings

1. Applicant was granted authority by Decision No. 84696, as amended by Decision No. 85632, to transport certain articles for Kaiser Aluminum.
2. Applicant has conducted operations pursuant to that authority since October 1, 1975.
3. By letter dated June 17, 1976, applicant was requested to provide to the assigned examiner cost and operational data required by Decision No. 84696, and to send copies of such data to all parties of record.
4. On September 17, 1976 the data requested described in Finding 3 was received.

5. The operational data supplied confirms the estimates made and received in evidence at the public hearing.

6. No factual information has been brought to the Commission's attention requiring further public hearing.

7. The proposed rate of \$1.05 per cwt is reasonable and should be authorized.

8. The authority to deviate from the minimum rates should be restricted by providing that if underlying carriers are employed, the underlying carrier shall be paid 100 percent of the rate authorized.

The Commission concludes that the application be granted to the extent provided in the following order.

Since conditions under which the service is performed may change at any time, the authority granted in the ensuing order will expire at the end of one year unless sooner canceled, modified, or extended by order of the Commission.

ORDER

IT IS ORDERED that:

1. Fred John Crikos is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging not less than those rates set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, or regulations except as specifically set forth in Appendix A.

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2. The authority granted shall expire one year after the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

The effective date of this order shall be November 30, 1976.

Dated at San Francisco, California, this 23rd day of NOVEMBER, 1976.

*I will file a dissent
William Snows Jr.*

[Signature]
President

[Signature]

[Signature]
Commissioners

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Shipper: Kaiser Aluminum.

Commodities:

1. Lineal Shapes, NOI, other than pipe conduit or tubing; or Molding; roll formed or extruded.
2. Cable, Electric, Aluminum, with or without steel core.
3. Foil or Foil Wrappers, NOI, with paper back or backed with paper, 30 pounds or less.
4. Boxes, Fibreboard, Paper, Paperboard or Pulpboard, NOI, KD flat or folded flat, or in sheet form with ends not joined, combined or not combined with cellulose film, foil or plastic film, other than corrugated.
5. Aluminum Nails or Tacks.
6. Rods.
7. Roofing or Siding, Aluminum, not combined with other materials, other than shingles, not combined with other materials.
8. Dispersant Gases, NOI, in metal drums, cylinders or tanks.
9. Screening, other than wire cloth.
10. Cups, Dishes, Pans, Plates or Trays, foil or sheet, with or without covers.
 Nested or nested solid, in bulk in boxes.
 Nested or nested solid, in nestable inner packages, in boxes.
11. Aluminum Plate and Sheet, NOI, $\frac{1}{2}$ -inch thick or over and less than $\frac{3}{4}$ -inch thick.
12. Aluminum Billets, Blooms, Granulated Shot, Ingots, Pigs or Slabs.
13. Plastic Articles.

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14. Plastic Film or Sheeting, other than cellulose, not printed, not embossed, in lengths of not less than 100 feet rolled to a diameter not less than 3 inches.
15. Alumina, calcined or hydrated.

Between: Kaiser Aluminum plants, warehouses, and storage sites in San Leandro, Newark, South San Francisco, and Permanente and those located in Los Angeles and La Mirada, and customers of Kaiser Aluminum who are located enroute between said interplant points.

Rate: 105 cents per cwt.

Minimum Weight: 40,000 pounds per shipment (per unit of equipment).

Conditions:

- (a) Service to customers enroute shall include those located along routes usually and normally traversed.
- (b) If underlying carriers are employed, the underlying carriers shall be paid 100 percent of the rate authorized herein.
- (c) Other than the authority described above, all provisions of Minimum Rate Tariff 2 shall apply.

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F. J. CRIKOS

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

The Deviation Merry-Go-Round

This case presents another angle of the "free-and-easy" deviation game now featured at the Public Utilities Commission.

Applicant originally filed for its deviation on February 5, 1975. Substantial cost data on the intended transportation was not submitted. The temporary outcome was positive, however and a deviation was granted (D.84696). The decision appeared to be strongly affected by the fever of the "New Regulatory Policy" that three commissioners first "surfaced" in Decision No. 84539 in Case No. 5432 on June 18, 1975.

It was just seven days later, June 25, 1975, that Decision No. 84696 in this proceeding was drafted which authorized the movement at less than minimum rates. The Public Utilities Code Section 3666 requirement -- that the Commission, before authorizing the lesser rate, find that "the proposed rate was reasonable" -- was met by a bit of "stretching".

Both protestant California Trucking Association and staff were of the opinion that applicant's showing was not adequate. However, the opinion decided that a "prima facie" showing was enough to go with an "interim" deviation authority. Once in effect, facts in support of the authority were to be gathered for a future hearing.

I have commented before that the real-world effect of an "interim deviation" is indistinguishable from a "deviation". This is particularly so when, as in this case, the interim period was one year, exactly the same period of time being granted under a standard deviation authority. It appears the use of the term "interim" is employed primarily for its mollifying effect.

Also soothing was the promise to hear the evidence in the case at a future date. The expectation of such a hearing was explicitly set up in this case, wherein the original Decision No. 84696 granting the interim deviation stated:

"Applicant will be expected to present the data so accumulated at a public hearing for the purpose of determining whether the authority shall be continued or modified." (Emphasis added) (Page 3)

The Hearing That Never Was

But now we see that this was not to come to pass. Instead, applicant mailed in six pages of unverified data and a three-page Balance Sheet which noted "prepared without audit -- no opinion expressed".

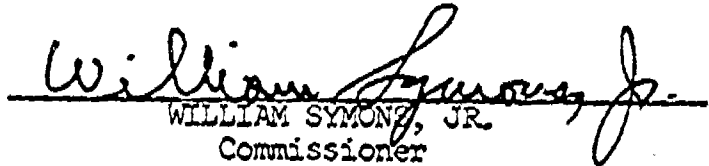
Even on its face the supporting value of this data was thin, showing gross revenue on the move per mile over the last four months averaging 77.8¢ and cost per mile averaging 76.5¢. During the interim year, applicant changed his posture somewhat, he abandoned any attempt to shore up the "interim" 95¢/mile deviation, instead he sought a new deviation rate of 105¢/mile, which was granted.

Protestant called for the public hearing explicitly contemplated in the Decision No. 84696 granting the interim authority, but this request was brushed aside. Protestant wanted to explore why the cost studies made no provision for overtime or for layover costs, seeing that the example movement for loading, driving and unloading was shown as taking 15½ hours. Protestant wished to develop what the quality of the backhaul arrangements really were -- whether they were reliable, such as in a "related" or "assured" backhaul situation. Also, one expects protestant would examine the basic documents and calculations underlying the conclusory data sheets. These are proper areas for exploration -- not just to give a fair opportunity for protestant to protect its interests, but to allow the ultimate judges of the case, the commissioners, to have a properly developed record -- not just a one-sided work up.

This merry-go-round treatment might be funny if our precincts were an amusement park. However, we are an agency with the full power of state emanating from our orders, and to issue decisions affecting serious interests of the public and the transportation industry in such an inadequate and improper way is unjustifiable.

We must return to a responsible deviation policy. To illustrate the serious nature of complexities faced and the damaging potential of the Commission majority's new course, I incorporate by way of attachment a letter received last week from Mr. Daniel Baker, an attorney long recognized and respected in transportation matters before this Commission.

San Francisco, California
November 23, 1976


WILLIAM SYMON, JR.
Commissioner

MARVIN HANDLER
DANIEL W. BAKER
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19 November 1976

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Commissioner's Symbol Office

William R. Johnson, Executive Director
California Public Utilities Commission
State Building, Civic Center
San Francisco, California 94102

Re: A.F. & R.D. Mello, d.b.a.
Northern Refrigerated Transportation
Application No. 56420

Dear Mr. Johnson:

A client of this office, Mammoth of California, Inc., protested Application No. 56420 of Adeline F. Mello and Richard D. Mello, doing business as Northern Refrigerated Transportation, seeking authority to deviate from the provisions of Minimum Rate Tariff No. 2 for transportation to be performed for Hersey Foods Corporation. In the protest letters of May 11, 1976 and June 21, 1976 the Commission was advised that the applicant was not then transporting any shipments for Hersey, that its costs were predicated upon unsupportable estimates and the operation was dependent upon utilization of subhaulers, for which no costs had been submitted. Based upon the application, the evidence submitted therewith, and the opinion of the protestant and its accountant-adviser, Mr. Robert F. Lautze, the Commission was advised that the applicant had not met the statutory requirement that the proposed charges were "reasonable".

Mammoth opposed the application for the reasons mentioned and because it feared the loss of traffic it was then enjoying from Hershey. However, because it filed the letters of protest and opposed the application, Hershey terminated the utilization of the services which Mammoth has provided to the shipper over a period of many years. As it has lost the business of this shipper, Mammoth does not wish to incur further expenses in appearing and being represented at the hearing now scheduled for Thursday, December 16, 1976 at the Commission's courtroom in San Francisco. A copy of this letter is being sent to the hearing examiner and to the applicant's attorney. The Calendar Clerk, Mrs. Porter, has also been notified.

Further, Mammoth requests that this matter be brought to the attention of the Commission, since the present rate deviation policy is fostering and encouraging the predatory practices which are condemned by Decision No. 86507 in Case No. 5432. Motor carriers are advising shippers that after they give these carriers traffic which the shippers control, deviation applications will be

filed for reductions in the rates that are being charged. Or, the soliciting carriers will agree to file rate deviation applications if the shippers will agree to give them their traffic should the rate deviations be granted. The soliciting motor carriers are, almost invariably, those which have no employee-drivers but rely upon subhaulers or independent owner-operators to provide the actual transportation. The applications which are filed are predicated upon cost studies that do not support the statutory requisite that a rate be "reasonable", or that do not include supportable subhauler costs. Certain of them request that the Commission grant an "ex parte interim order" to afford the carriers sufficient time to develop the necessary costs for the preparation of the required studies, justifying the proposed rates.

Based upon this arrangement the traffic is diverted, frequently from carriers which have provided the service over long periods of time. If the carriers which are threatened with the loss of such revenues oppose the applications, even though the representations and supporting cost studies are untrue or without merit, the shippers' use of their services is terminated. In addition to the Northern Refrigerated Transportation case, there is pending before the Commission another rate deviation proceeding where Mammoth has also been threatened with the loss of a shipper's business. This situation is not unique to Mammoth; it is being experienced throughout the industry. This regulatory policy of encouraging predatory rate cutting is resulting in unjust discrimination, undue preferences and destructive competitive practices.

Very truly yours,

/s/ D.W.B.

DANIEL W. BAKER

DWB:d

cc: All Commissioners
Examiner Frank J. O'Leary
California Trucking Association
George M. Carr, Esquire
Mammoth of California, Inc.
Mr. Robert F. Lautze