

ORIGINAL

Decision No. 86865

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of: GUTHMILLER TRUCKING, INC., a California Corporation for authority to deviate from the provisions of Minimum Rate Tariff Number 2 in connection with the transportation of glass bottles, carboys, demijohns, and jars for GLASS CONTAINER CORPORATION, pursuant to the provisions of Section 3666 of the California Public Utilities Code.

Application No. 56185  
(Filed January 8, 1976;  
amended May 3, 1976)

In the matter of the application of: MGM TRANSPORTATION CO., a partnership for authority to deviate from the provisions of Minimum Rate Tariff Number 2 in connection with the transportation of glass bottles, carboys, demijohns, and jars for GLASS CONTAINER CORPORATION, pursuant to the provisions of Section 3666 of the California Public Utilities Code.

Application No. 56232  
(Filed January 26, 1976;  
amended May 10, 1976)

Eldon M. Johnson, Attorney at Law, for Guthmiller Trucking, Inc., and Milton W. Flack, Attorney at Law, for MGM Transportation Co.; applicants.  
Silver, Rosen, Fischer, and Stecher, by Martin J. Rosen and Michael J. Stecher, Attorneys at Law, for Frontier Transportation, Inc., protestant.  
Knapp, Stevens, Grossman & Marsh, by Warren N. Grossman, Attorney at Law, for Blackburn Truck Lines, Inc., Container Express, Inc., and Schaldach Container Corporation; and C. D. Gilbert and Herbert W. Hughes, for California Trucking Association, interested parties.  
Russell D. Corning, for the Commission staff.

O P I N I O N

Applicants hold radial highway common carrier and highway contract carrier permits. By these applications they seek to assess less than the minimum rates set forth in Minimum Rate Tariff 2 (MRT 2) for the transportation of glass containers, with a capacity of one gallon or less for Glass Container Corporation from its facilities located at Hayward, Antioch, and Vernon, to various destinations.

The applications were heard on a consolidated record before Examiner O'Leary at San Francisco on May 17, 18, and 19, and September 22, 1976, and at Los Angeles on September 23 and 24, 1976. The matters were submitted on September 27, 1976 with the filing of Exhibits 41 and 42.

The matters were protested by Frontier Transportation, Inc. By letter dated September 15, 1976, (Exhibit 21) counsel for protestant advised that the protest was withdrawn.

The rates proposed by applicants are as follows:

<u>Minimum Weight</u>	<u>Rate in Cents Per 100 Pounds</u>
30,000 lbs.	100
35,000 lbs.	93
40,000 lbs.	86

The rates are to be subject to the 3 percent surcharge set forth in Decision No. 85755. All other surcharges including those which may be prescribed in the future will not apply. The proposed rates will be applicable to shipments from Hayward and Antioch to the counties of Los Angeles, Orange, and Ventura, and the cities of Corona, Cucamonga, Guasti, Mira Loma, Ontario, and San Bernardino; and from Vernon to the counties of Alameda, Contra Costa, Madera, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, and Stanislaus.

The applicable minimum rate set forth in MRT 2 is Class 35, minimum weight 30,000 pounds resulting in rates between \$1.27 and \$1.47 per one hundred pounds depending upon the length of haul. MRT 2 also sets forth a volume incentive rate of Class 35.1, minimum weight 45,000 pounds resulting in rates between \$1.17 and \$1.39 depending upon the length of haul. A rate of 95 cents per one hundred pounds, minimum weight 40,000 pounds is published in Pacific Southcoast Freight Bureau Tariff No. 300-B. Under the provisions of Item 200 of MRT 2 the rail rate is the applicable minimum rate for shipments to destinations located at railhead. Under the provisions of Item 210 of MRT 2 the 95 cent rail rate plus an off-rail additive can be utilized to destination points which are not located at railhead. Should the combination of the rail rate plus the off-rail additive be less than the rates set forth in MRT 2, the combination rate is the applicable minimum rate. In the event more than one unit of equipment is utilized to perform transportation at the rail rate or rail rate combination under the provisions of Item 85 of MRT 2 a minimum payment of \$275 per unit of equipment utilized is guaranteed by Glass Container Corporation. The rail rate is scheduled to expire July 31, 1977.

The director of traffic for Glass Container Corporation testified that his company is not satisfied with the present minimum rates in MRT 2 and relies on rail rates for transportation by for-hire carriers. Because of the dissatisfaction with the rates in MRT 2 the director of traffic contacted numerous carriers regarding the filing of an application for deviation authority. As a result the instant applications were filed.

Guthmiller Trucking Inc. (Guthmiller) presented evidence (Exhibits 22, 23, 41, and 42) which discloses that from January 1, 1976 to August 31, 1976 a total of 293 shipments were transported by Guthmiller from the three origin points to various destinations

covered by the applications. Approximately 7 of the 293 shipments moved at the rates set forth in MRT 2, 241 shipments moved at the rail rate, the remainder moved at a rail combination rate, or the guaranteed minimum of \$275 per load. Similar evidence was not presented by MGM Transportation, Co. (MGM). Since the director of traffic of Glass Container Corporation testified that his company relies on the rail rates for its transportation we will assume that had such evidence been presented by MGM it would be similar to that presented by Guthmiller.

It is clear that the instant applications were prompted by the anticipated expiration of the rail rate on July 31, 1977. Based on the evidence in these proceedings it is also clear, that for all practical purposes, the minimum rate for the transportation of the commodities involved between northern and southern California is the rail rate published in Pacific Southcoast Freight Bureau Tariff No. 300-B.

The instant applications are similar to Application No. 51685 wherein Major Truck Lines, Inc. sought to charge less than the minimum rates for Morton Salt Company because a rail rate lower than the minimum rate in MRT 2 was canceled. In denying Application No. 51685 the Commission stated:

"The less-than-minimum rates authorized under Section 3666 are not available to any carrier other than the one to which the authority has been granted. Other carriers may not compete for such traffic at the authorized rate. If the Commission were to grant such authority merely on the basis that the proposed rate is within the zone of reasonableness from the standpoint of the cost of providing the service, the policy of maintaining an adequate and dependable transportation system through providing equal opportunity to all transportation agencies to compete would be frustrated.

"A finding of reasonableness, as that term is used in Section 3666, contemplates something more than a determination that the rate will provide the carrier with something more than its cost of providing the service. In a proceeding to authorize a lesser rate than the established minimum rate the principal cost consideration is the cost savings directly attributable to the transportation involved and not to the ability of an individual carrier to operate at lower costs than other carriers similarly situated. (William E. Daniel, 63 Cal. P.U.C. 147.)

"The briefs contain numerous citations to decisions on applications for authorities under Section 3666. Review of those decisions discloses that in instances when the authority has been granted there were circumstances and conditions attendant to the transportation not present in the usual or ordinary transportation performed by public utility carriers or performed by highway carriers under the applicable minimum rates. Those circumstances involved such things as unusual or extraordinary conditions of tender or of delivery, transportation conditions under which the traffic was not available to public utility carriers or other for-hire carriers, the application of common carrier rates or of the minimum rates was unduly restrictive to permit the traffic under consideration to move, the conditions of transportation were such that the application of the minimum rates would be excessive. In the latter circumstance where it has been shown that the traffic is available to other for-hire carriers under the same circumstances and conditions it has been the policy of the Commission to establish commodity minimum rates for such transportation so that all interested carriers will have equal opportunity to compete for the traffic. (Roland Hougham et al., 55 Cal. P.U.C. 34.)" (Re Major Truck Lines, Inc. (1970) 71 CPUC 447, 453.)

Although we have recently encouraged highway permit carriers to avail themselves of Section 3666 of the Public Utilities Code when they wish to offer service at rates less than the minimum the instant applications will be denied. Rather than seeking deviations when minimum rates will be increased because of the expiration or cancellation of rail rates, carriers and shippers alike should avail themselves of the Commission processes to seek the establishment of a commodity rate in the various minimum rate tariffs by the filing of a proper petition in the continuing minimum rate proceedings so that all carriers and shippers in similar circumstances may avail themselves of the lower commodity rates.

Findings

1. Applicants hold radial highway common carrier and highway contract carrier permits.
2. Applicants seek authority to assess less than the minimum rates for the transportation of glass containers with a capacity of one gallon or less for Glass Container Corporation from its facilities at Hayward, Antioch, and Vernon to various destinations.
3. The bulk of the traffic for which applicants seek the deviation moves at a rate of 95 cents per 100 pounds minimum weight of 40,000 pounds published in Pacific Southcoast Freight Bureau Tariff No. 300-B.
4. The rates set forth in MRT 2 for the transportation involved herein are higher than the rate set forth in Finding 3.
5. Under the provisions of Items 200 and 210 of MRT 2 the rate set forth in Finding 3 or a combination thereof is the applicable minimum rate.
6. The rate set forth in Finding 3 is scheduled to expire July 31, 1977.
7. Upon the expiration of the rate set forth in Finding 3 the minimum rates will be increased to the level of the rates set forth in MRT 2.

8. Less than minimum rate authority granted under Section 3666 of the Public Utilities Code is not available to any carrier other than the ones to which the authority is granted.

9. The mere fact that a rate published by a common carrier which under the provisions of Items 200 and 210 of MRT 2 is the applicable minimum rate or combination thereof is not sufficient justification for Section 3666 authority.

The Commission concludes that the applications should be denied.

O R D E R

IT IS ORDERED that:

1. Application No. 56185 is denied.
2. Application No. 56232 is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 18<sup>th</sup> day of JANUARY, 1977.

Ralph B. Baker  
President

William J. Quinn

Veron L. Sturgeon

Donald Ross

Commissioners