

Decision No. 86902**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of ALADDIN LAND MANAGEMENT AND)
 DEVELOPMENT INCORPORATED, for)
 authority to depart from the mini-))
 mum rates, rules and regulations)
 of Minimum Rate Tariff No. 2,)
 pursuant to the provisions of)
 Section 3666 of the Public)
 Utilities Code for transportation)
 for SIERRA BUILDING MATERIALS.)

Application No. 56852
 (Filed November 5, 1976)

OPINION AND ORDER

By this application, Aladdin Land Management and Development Incorporated, a corporation, requests authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of plaster joint system, gypsum board and roofing, building or paving materials for Sierra Building Materials from South Gate and Santa Fe Springs to points in the Fresno Extended Area.¹

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

¹The present rates, exclusive of applicable surcharges, and the proposed rates in cents per 100 pounds, for representative shipments of the aforementioned commodities are:

<u>From</u>	<u>Commodities</u>	<u>Present Rates</u> <u>Minimum Weight</u> <u>96,000 Pounds</u>	<u>Proposed Rates</u> <u>Minimum Weight</u> <u>100,000 Pounds</u>
South Gate MZ 235	Plaster joint system	78	68
<u>To</u>	Gypsum board	78	68
Points in the Fresno Extended Area	Shingles	78	55

The application was listed on the Commission's Daily Calendar of November 8, 1976. California Trucking Association (CTA) protested the granting of the sought relief stating that the revenue and expense figures of applicant for the period ending September 30, 1976, indicate a net loss and suggest that transportation at the proposed rates may further contribute to that unfavorable condition. CTA alleged that traffic for another shipper must subsidize the sought reduced rates.

Applicant responded to CTA's allegations stating that protestant assumed that it had been hauling for the shipper herein involved for the entire period. Applicant avers that it had been exclusively hauling an exempt commodity (citrus) from the Fresno-Porterville-Yuma areas to various locations in the Los Angeles Basin Area and returned empty to the Fresno-Porterville area from October 1975 through April 1976 at an average revenue of 43.6 cents per mile. Applicant declares that it began hauling for Sierra Building Materials in May of 1976 and its average revenue per mile steadily increased from that date until it reached 90.08 cents per mile in August of 1976.

Applicant avers that it convinced Sierra Building Materials of the advantages of using for-hire carriers and said shipper disposed of its proprietary fleet of trucks in July of 1976. Applicant asserts that its proposal would eliminate the possibility of said shipper returning to the proprietary trucking field and enable it to continue on a profitable basis as a for-hire carrier.

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.

Applicant is placed on notice that, should its operations for Sierra Building Materials be between fixed termini or over a regular route, it should apply for a highway contract carrier permit.

A. 56852 - FBN/anv * *

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. Aladdin Land Management and Development Incorporated, 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 13th day of February, 1977.

I will file a dissent.
William Sproull Jr.

I dissent only to
the effective date
Vernon L. Sturgeon

Robert Bateman
President

[Signature]

Richard D. Howell
Commissioners

APPENDIX A

T-103,146

Carrier: Aladdin Land Management and Development
Incorporated

Shipper: Sierra Building Materials

From: South Gate and Santa Fe Springs

To: Fresno Extended Area as described in the
Commission's Distance Table 8.

Commodities and Rates:	<u>Commodities</u>	<u>Rate in Cents Per 100 Pounds</u>
	Plaster Joint System as described in Item 35240, National Motor Freight Classification NMF 100-C.	68
	Gypsum board as described in Item 91890, National Motor Freight Classifi- cation NMF 100-C.	68
	Roofing, building or paving materials as described in Item 761 of Minimum Rate Tariff 2.	55

Minimum Weight: 100,000 pounds

Conditions:

1. The above rates shall apply to multiple truckload shipments only.
2. Applicant has not indicated that subhaulers will be used nor have subhaulers' costs been submitted. 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.
3. The inbound and outbound load relationship referred to in paragraph VIII of the application shall be maintained in assessing the authorized rates.
4. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)

H-4

A. 56852 - D.
Aladdin Land Management & Development Inc. : DEVIATION

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.

Indiscriminate granting of deviations undermines the regulatory framework established by the Commission and the Legislature for motor freight transport (Major Truck Lines, Inc. (1970) 71 Cal P.U.C. 447). Minimum rate regulation in California is being washed away by this and similar Commission decisions which have opened the flood gates on deviations.

Reasonable? Today's opinion fails to set forth sufficient facts about special circumstances of the transportation which a person might review to see if the deviation is justified. Instead it relies on 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."

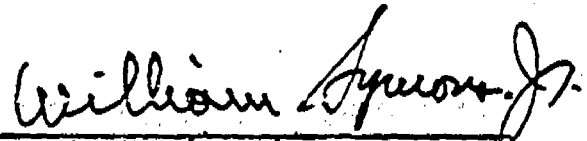
The protest of the California Trucking Association (CTA) did not result in a public evidentiary hearing, but merely insertion of averments as to an unrelated backhaul.

Less than 20-day effective date? This order is made effective immediately. This Commission would be best advised to heed its own tradition and the spirit of Public Utilities Code Section 1705, which provides that Commission orders normally "... take effect and become operative 20 days after the service thereof ..." If no good reason for instantaneous effect is shown, extraordinary haste is out of order.

A. 56852 - D.

Parties are cut off from Public Utilities Code Section 1733(a) provisions allowing a suspension while their application for rehearing is reviewed. Whistling decisions through this Commission is hardly judicious and not good policy for orderly conduct of the people's business.

San Francisco, California
February 1, 1977



WILLIAM SYMONS, JR.
Commissioner