

Decision No. 86903

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application )  
of Clifford Wilson, an individual )  
doing business as C. W. Transpor- )  
tation Company, for authority to )  
deviate from minimum rates for )  
the transportation of boxes, )  
Fibreboard Paper or Pulpboard for )  
Menasha Corporation, shipper, )  
pursuant to Section 3666 of the )  
Public Utilities Code. )

Application No. 56791  
(Filed October 4, 1976)

OPINION AND ORDER

By this application, Clifford Wilson, doing business as C. W. Transportation Company, requests authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of fibreboard, paper, paperboard or pulpboard boxes for Menasha Corporation from Anaheim to Watsonville.<sup>1</sup>

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

The application was listed on the Commission's Daily Calendar of October 5, 1976. By letter dated October 21, 1976, California Trucking Association (CTA) objected to the ex parte handling of this matter stating that applicant's backhaul traffic is clearly unrelated to the movement at issue and thus inconsistent with the principles enunciated in Decision 77767 (Major Truck Lines).

<sup>1</sup>The present rates, excluding the applicable surcharges, and the proposed rates in cents per 100 pounds for representative shipments of fibreboard, paper, paperboard or pulpboard boxes are:

<u>From</u>	<u>To</u>	<u>Present Rate</u> <u>Minimum Weight</u> <u>36,000 Pounds</u>	<u>Proposed Rate</u> <u>Minimum Weight</u> <u>30,000 Pounds</u>
Anaheim MZ246	Watsonville	135	106

Applicant responded to CTA's protest by letter dated November 18, 1976, stating that he serves Martin Brothers Container and Timber Products Corporation which maintains its major warehouse facilities at Salinas, 23 miles south of Watsonville. Applicant averred that the movement of freight (wire bound crates) from the aforementioned facilities makes a natural backhaul by virtue of the fact that Salinas is on U. S. Highway No. 101 and directly intermediate to points in southern California where most of such backhaul shipments are destined.

By letter dated December 27, 1976, CTA replied to applicant's aforementioned letter by stating that neither the application nor said letter contains sufficient information to allow the Commission to make a determination as to the reasonableness of the proposed rates in view of the criteria set forth by Decision 77767.

In Decision 86220 in Application 56081 of Trans-Aero Systems Corporation, the Commission stated:

"In the past we have held that in determining a compensatory rate pursuant to Public Utilities Code Section 3666 round-trip costs must be considered. The statute, however, does not require consideration of round-trip costs, it only requires that the rate be reasonable, and we see no reason not to change our criteria for determining reasonableness when current transportation conditions no longer require adherence to past practices.

"We feel that practical approach to Section 3666 is best.\*\*\*"

Revenue, expense and backhaul data submitted by applicant are sufficient to determine that the transportation involved may reasonably be expected to be profitable under the proposed rate.

Applicant is placed on notice that, should his operations for Menasha Corporation be between fixed termini or over a regular route, he should apply for a highway contract carrier permit.

In the circumstances, the Commission finds that applicant's proposal is reasonable. A public hearing is not necessary.

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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. Clifford Wilson 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.

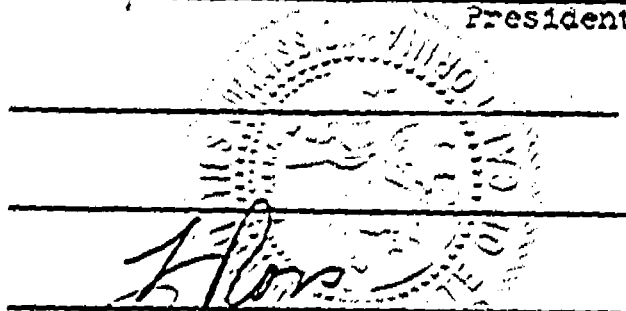
The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15<sup>th</sup> day of February, 1977.

I will file dissent.  
William Sproul Jr

I dissent only to  
the effective date  
Yemon L. Sturgeon

Robert Bakewell  
President



Michael D. Howell  
Commissioners

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APPENDIX A

T-76,355

Carrier: Clifford Wilson, doing business as C. W. Transportation Company.

From: Plant site of Menasha Corporation at Anaheim.

To: The facilities of Valley Crate Company at Watsonville.

Commodity: Boxes, fibreboard, paper, paperboard or pulpboard, KDF.

Rate: 106 cents per 100 pounds.

Minimum Weight: 30,000 pounds.

Conditions:

1. Shipments shall be prepaid by Menasha Corporation.
2. Thirty (30) minutes shall be allowed for loading and one (1) hour for unloading.
3. Time in excess of the time set forth in Condition 2 above for loading and unloading shall be assessed at the rate of \$4.00 per 15 minutes, or fraction thereof.
4. 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.
5. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)

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C. W. TRANSPORTATION COMPANY: 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.

1. Bad Public Policy. 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 CPUC 447). Minimum rate regulation in California is being washed away by this and similar Commission decisions which have opened the flood gates on deviations.

2. Unreasonable. Today's opinion fails to set forth any facts about the special circumstances of the transportation which a person might review to see if the deviation is justified. Instead it relies on boiler-plate language:

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

and

"Revenue, expense and backhaul data submitted by applicant are sufficient to determine that the transportation involved may reasonably be expected to be profitable under the proposed rate."

The protest of the California Trucking Association (CTA) was given short shrift. CTA's request for evidentiary hearing was ignored; CTA's protest over use of financial data on backhaul traffic unrelated to the movement at issue brought forth a citation to Decision No. 86220 (August 3, 1976). However that is hardly a case to cite to champion the cause of backhauls. For the most part, that decision is an attempt to cover tracks from an embarrassing grant of deviation: it is an order granting rehearing that hasn't returned to our attention since. To not consider round trip costs is unreasonable in deviation matters. In the Trans-Aero case it meant the serious misstating of underlying costs and basic expenditures, and real confusion whether total revenues are

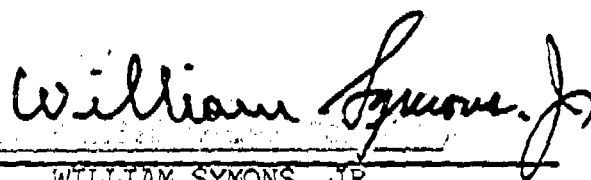
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compensatory or not. Is this a responsible way to administer Public Utilities Code Section 3666 which calls for a finding of reasonableness prior to granting deviations?

"3666. If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate. (Former Sec. 11. Amended 1959, Ch. 1566.)"  
(Emphasis added)

3. 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. Parties are cut off from statutory provisions allowing a suspension while their application for rehearing is reviewed (PUC § 1733(a)). Whistling decisions through this Commission is hardly judicious nor is it conducting the people's business in an orderly manner.

San Francisco, California  
February 1, 1977



WILLIAM SYMONS, JR.  
Commissioner