

Decision No. 86904

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the applica-)
tion of:)Angel Chavez, dba CHAVEZ)
TRUCKING)for authority to deviate from)
the provisions of Minimum)
Rate Tariff Number 2, pur-)
suant to the provisions of)
Section 3666 of the Public)
Utilities Code.)Application No. 56712
(Filed August 26, 1976)OPINION AND ORDER

By this application, Angel Chavez, doing business as Chavez Trucking, requests authority to deviate from the provisions of Minimum Rate Tariff 2 by assessing the common carrier rates of United Parcel Service, Inc., for same-day delivery service in lieu of next-or later-day delivery service. The authority would apply to the transportation of shipments of drugs or medicines weighing less than 100 pounds from Riverside to retailers and hospitals within 150 miles of said city.¹

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

¹ The present charges including the applicable surcharges and the proposed charges in cents for representative shipments of packages weighing ten pounds from Riverside are:

<u>To</u>	<u>Present Charges</u>	<u>Proposed Charges</u>
San Bernardino	594	126
Redlands	594	126
Palm Springs	594	126

The application was listed on the Commission's Daily Calendar of August 27, 1976. California Trucking Association (CTA) objected to the ex parte handling of this matter, stating that the granting of the application will give the applicant a competitive advantage over not only United Parcel Service, the rate making carrier for special delivery carriers, but also other special delivery carriers in southern California who are restricted against same-day service. CTA contended that the figures in applicant's financial statement are "lump sum in nature and are not developed in a manner sufficient to determine the profitability of same-day service at United Parcel Service rates." The Commission is not aware of any other carrier presently providing the service in this particular area.

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.

Recently authority was granted to a carrier relieving it from the service restrictions governing the application of certain rates.²

Should an application be filed by any other carrier seeking similar authority for services performed in the area involved herein, it will be given prompt attention.

In the circumstances, the Commission finds that:

1. Applicant's proposal is reasonable to the extent herein-after indicated.
2. It may reasonably be expected that the pickup and delivery of shipments on the same day will diminish deadheading and layover expenses and result in corresponding savings to applicant.

² See Decision No. 86463, in Application No. 56659, dated October 5, 1976.

3. The immediate needs of hospitals and pharmacies will be greatly enhanced by applicant's proposed same-day delivery services.

4. By providing same-day delivery services for the transportation of drugs, or medicines, applicant's security problems involved in storing the commodities at his freight dock will be minimized.

5. The proposal will enable applicant to contribute to the conservation of fuel.

6. 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 an immediate need for this rate relief.

IT IS ORDERED that:

1. Angel Chavez 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 this Commission.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 12 day of February, 1977.

Robert Bateman

President

L. Ross

Richard D. Shwartz

Commissioners

*I will file a dissent
William Symons Jr*

*I dissent only to
the effective date*

Vernon L. Sturgeon

APPENDIX A

ANGEL CHAVEZ

(doing business as

CHAVEZ TRUCKING)

Angel Chavez is authorized to transport drugs or medicines in shipments of less than 100 pounds from Riverside to retailers and hospitals within 150 miles of said city. The rates to be assessed and charges to be collected shall be not less than those as published in United Parcel Service, Inc., Local Parcel Tariff, Cal.P.U.C. No. 20 and any revisions or reissues thereof. Same-day delivery service may be performed under this authority.

(END OF APPENDIX A)

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A. 56712 - D.
CHAVEZ TRUCKING

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

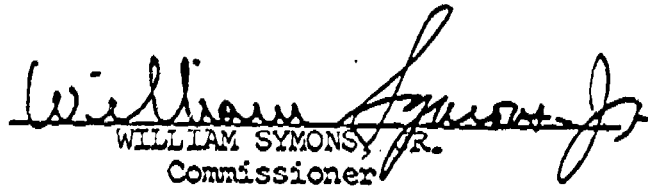
"Revenue and expense data submitted by applicant are sufficient determine that the transportation involved may reasonably be expected to be profitable under the proposed rates."

The protest of the California Trucking Association (CTA) was noted but CTA's request for evidentiary hearing on the lump sum nature of financial statement was overridden. Is this a responsible way to administer Public Utilities Code Section 3666 which calls for a finding 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