

ORIGINAL

Decision No. 86906

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of Tally's Truck Line, for author-)
 ity to deviate from certain)
 minimum rates pursuant to Section)
 3666 of the California Public)
 Utilities Code for transportation)
 performed for WESTERN ELECTRIC.)

Application No. 56329
 (Filed October 25, 1976)

OPINION AND ORDER

By this application Tally's Truck Line, a corporation, requests authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of telephone equipment and supplies for Western Electric from Sunset-Whitney Ranch to Los Angeles and Vernon.¹

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

The application was listed on the Commission's Daily Calendar of October 27, 1976. California Trucking Association (CTA) objected to the ex parte handling of the matter stating the following:

"The highly questionable data submitted in Applicant's letter is simply not adequate to sustain the necessary finding of reasonableness required. In addition to the obvious deficiencies attendant to use of such lump sum figures, Applicant's basic 'justification' is that this traffic will enable a more balanced north-south

¹ The minimum rate, exclusive of applicable surcharges, and the proposed rates in cents per 100 pounds for telephone equipment are:

To Los Angeles From Sunset-Whitney Ranch	Present Rate Minimum Weight <u>30,000 Pounds</u>	Proposed Rates	
		Minimum Weight in Pounds	
		<u>36,000</u>	<u>45,000</u>
	153	102	83

operation. However, if the diversion of traffic to create a balance results in the loss of traffic by another carrier, with a resultant imbalance, we believe that the intended purposes of effective regulation are subverted."

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. Though CTA expressed concern about the probability of loss of traffic by another carrier, it has not specifically named any carrier that may be so affected and no other carrier has informed the Commission of its interest in this matter.

In answer to the CTA allegations, applicant has responded as follows:

"I again respectfully refer the Commission to our application of the special conditions of these shipments: (a) Volume movements (b) Shipments to be loaded by shipper and unloaded by consignee (c) Trailers may be left for loading without a driver (d) The time saved by elimination of classifying and rating a multitude of different commodities on a single shipment (e) Eliminating the need for individual weighing of each commodity description in the load."

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. Tally's Truck Line 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.

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The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15 day of February, 1977.

I will file a dissent.
William Gyrooz Jr

I dissent only to
the effective date
Vernon L. Sturgeon

Robert Bateman
President

J. Ross

Michael D. Howard
Commissioners

Carrier: Tally's Truck Line
Commodity: Telephone equipment and supplies
For: Western Electric
From: Western Electric Plant facilities located
at Sunset - Whitney Ranch.
To: Los Angeles and Vernon
Rates: Minimum Weight Rates in Cents per 100 Pounds.
36,000 Pounds 102
45,000 Pounds 83

CONDITIONS:

1. Shipments to be loaded by Shipper and unloaded by Consignee.
2. Trailers may be left for loading by Shipper or unloading by Consignee without additional charge.
3. Applies on authorized commodities in mixed shipments.
4. The provisions of Minimum Rate Tariff 2, requiring statement of individual weights or rates will not apply.
5. Applicant has not indicated subhaulers will be engaged nor have any costs of subhaulers been submitted. Therefore, if subhaulers are employed, they shall be paid not less than the rates authorized herein without any deduction for use of applicant's trailing equipment.
6. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)

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Tally's Truck Line: 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 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) was given short shrift. CTA's request for evidentiary hearing was ignored; CTA's protest over use of lump sum financial data and revenue from backhaul traffic unrelated to the movement at issue was not adequately explored or discussed. 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)

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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