

Decision No. 86907

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PROGRESSIVE TRANSPORTATION COMPANY,)
a California corporation, to deviate)
from minimum rates pursuant to)
Section 3666 of the Public Utilities)
Code for the transportation of steel)
plate, coils and billets for the)
account of Norris Industries.)

Application No. 56557
(Filed June 14, 1976)

SECOND INTERIM OPINION

By Decision No. 86139 dated July 19, 1976 Progressive Transportation Company (Progressive) was granted interim authority, pending hearing, under Section 3666 of the Public Utilities Code to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of steel plate, coils, and billets from the plant of Kaiser Steel Corporation near Fontana to various points in the Los Angeles metropolitan area for Norris Industries.

Condition 4 of the interim authority states:

"Although applicant has indicated that subhaulers will be engaged, no costs of any subhaulers have been submitted. Therefore, if subhaulers are employed, they shall be paid no less than the rates authorized herein."

On September 24, 1976, Progressive filed a Petition for Modification of Decision No. 86139 requesting that Condition 4 be modified to read as follows:

"If applicant engages subhaulers, they shall be paid no less than:

- 18 cents per 100 pounds to Vernon.
- 17 cents per 100 pounds to Bell Gardens.
- 19 cents per 100 pounds to Long Beach and Torrance."

The petition for modification contains data to show that payment to subhaulers based on the above rates adequately covers the costs experienced by subhaulers performing service for Progressive.

There are no protests or requests for hearing.

In the circumstances, the Commission finds that applicant's suggested modification of Decision No. 86139 is reasonable on a temporary basis pending hearing. The Commission concludes that Decision No. 86139 should be modified 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 modification.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Condition 4 of Appendix A of Decision No. 86139 is amended as follows:

"If applicant engages subhaulers, they shall be paid no less than:

18 cents per 100 pounds to Vernon.

17 cents per 100 pounds to Bell Gardens.

19 cents per 100 pounds to Long Beach and Torrance.

Payments to be based upon a minimum weight of 40,000 pounds or actual weight whichever is greater."

2. In all other respects Decision No. 86139 shall remain in full force and effect.

The effective date of this order is the date hereof.

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

I will file a dissent.
William Sproull, Jr.

I dissent
Vernon L. Sturgeon

Robert B. Brown

President
Edward R. ...

Michael D. ...

Commissioners

A. 56557 - D.

Progressive Transportation Company: AMENDMENT TO INTERIM DEVIATION

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

Today's opinion fails to set forth any facts which a person might review to see if the amendment, allowing subhaulers on this interim deviation, is justified. Instead it relies on boiler-plate language:

"The petition for modification contains data to show that payment to subhaulers based on the above rates adequately covers the costs experienced by subhaulers performing service for Progressive."

It even fails to state the going rate so that a comparison with the deviated subhaul rate cannot be made. 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)

Further, 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