

Decision No. 86908

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of DOLPHIN TRANSPORTATION, INC., )  
a California corporation, for an )  
Order authorizing applicant to )  
deviate from certain minimum rates )  
on shipments transported for Mead )  
Products, pursuant to Section 3666 )  
of the Public Utilities Code of )  
the State of California. )

Application No. 56752  
(Filed September 14, 1976)

INTERIM OPINION AND ORDER

By this application, Dolphin Transportation, Inc., a corporation, requests authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of 40,000-pound shipments of paper articles, stationery and art supplies from Garden Grove to Sunnyvale for Mead Products.<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 September 16, 1976. California Trucking Association protested the granting of the sought relief stating: "The reasonableness of the proposed rates cannot be measured from data submitted by the applicant. The relationship of anticipated costs to the proposed rate and service is not apparent from what appear to be system-wide average cost figures". Revenue and expense data submitted by applicant, and additional information received in a letter dated November 16, 1976 from applicant's counsel regarding

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<sup>1</sup> The present and proposed charges in cents per 100 pounds for a representative truckload shipment of writing paper between Garden Grove and Sunnyvale, excluding any applicable surcharges, are 135 cents and 90 cents, respectively.

the availability of backhaul shipments are sufficient to indicate that the transportation involved may reasonably be expected to be profitable under the proposed rates. The letter of November 16, 1976, indicates that a copy was mailed to protestant. The Commission has received no written indication that protestant's objections have not been satisfied.

In the circumstances, the Commission finds that applicant's proposal is reasonable on a temporary basis pending hearing. Applicant in its income statement for the month of February, 1976 alluded that a portion of revenue and expenses is derived from subhauling and/or leasing. The figures submitted do not indicate, however, what the real costs of the subhaulers are. Since no provisions for the payments to subhaulers have been made or justified, they should be paid no less than the rates authorized herein. The Commission will consider actual costs of subhaulers when they join in the application and submit same.

The Commission concludes that the interim authority 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. Dolphin Transportation, Inc., 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.
3. A public hearing shall be scheduled on this application at a date to be set.

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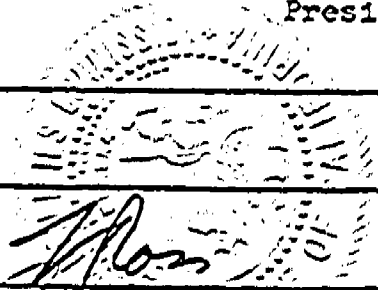
The effective date of this order is the date hereof.

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

I will file a dissent.  
William Sprouso Jr.

I dissent only to  
the effective date  
Yernon L. Sturgeon

Robert Bateman  
President



Ross

Richard D. Swalle  
Commissioners

## APPENDIX A

Dolphin Transportation, Inc., a corporation, is authorized to transport for Mead Products from said shipper's manufacturing plant in Garden Grove to its distribution plant in Sunnyvale, shipments of the following commodities:

PADS, TABLETS, BLANKBOOKS, ruled, not ruled, not printed;

PAINT, COLD WATER, dry or liquid;

PAINT OR VARNISH DRIERS;

CHALK, school or marking;

LOOSE LEAF BOOK FILLERS, not printed; or ruled, not otherwise printed;

CARDS, INDEX, ruled or plain;

PAPER, COMPUTING MACHINE, FILE FOLDERS;

PAPER, DRAWING, PRINTING, not newsprint;

PAPER, WRITING, not folded, not printed;

BINDERS OR COVERS, book or loose leaf, cloth, paper, plastic, pulpboard;

ALBUMS OR SCRAP BOOKS, paper or pulpboard;

CLIPBOARDS, ARTISTS BOARD, pulpboard or fibreboard, cloth covered or painted;

CRAYONS, school or marking;

BOOKS, NOI, actual value not exceeding 75¢ each, in boxes;

PAPETERIES;

ENVELOPES, noibn, printed or not printed;

PAINT SETS, dry watercolor, with or without brushes, in metal inner boxes;

FINGER PAINT SETS;

PAINT CAKES, in metal holders, refills;

PAINT SETS, oil, NOI, in boxes;

PAINTS, NOI, in metal tubes, in boxes;

EASELS, sketching or studio, KD or folded flat, in boxes;

BRUSHES, NOI;

ARTISTS MATERIALS OR PAINTS, NOI, in boxes;

STRETCHER OR STRETCHER FRAMES, ARTISTS;

RACKS OR STANDS, STORE DISPLAY, NOI.

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Subject to the following conditions:

1. All the above-listed commodities shall be shipped in boxes.
2. The rate shall be no less than 90 cents per hundred pounds on a truckload minimum weight of 40,000 pounds.
3. Shipments shall be loaded by shipper and unloaded by consignee without assistance of, or expense to, the carrier.
4. Shipper shall assume liability for the accuracy of the load and count.
5. Applicant has indicated that subhaulers will be engaged. 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.
6. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)

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Dolphin Transportation, Inc.: INTERIM DEVIATION

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

This decision granting an interim 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 indicate that the transportation involved may reasonably be expected to be profitable under the proposed rates."

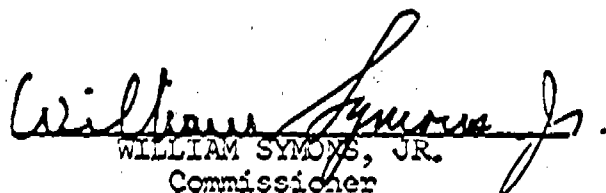
Little regard was given to the protest of the California Trucking Association (CTA). CTA's request for evidentiary hearing was ignored; CTA's protest over use of uncertain financial data is not well met. To cite a letter from applicant's "counsel" regarding the "availability of backhaul shipments" is not convincing grounds upon which I would venture an interim deviation. This is doubly true when, as page 2 relates, there is indication that "a portion of revenue and expense is derived from subhauling and/or leasing", and this decision allows no less than deviation rates to subhaulers.

If there is uncertainty in the financial facts, they should be cleared up prior to granting either a deviation or an interim deviation. This is 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