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Decision No. 86920

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of FLOUR TRANSPORT, INC., a California corporation, for authority to deviate from minimum rates pursuant to Section 3666 of the Public Utilities Code for the transportation of sugar, flour and mill run, in bulk:	Application No. 56903 (Filed December 1, 1976)

OPINION AND ORDER

By this application, Flour Transport, Inc., a corporation, requests authority to deviate from the provisions of Minimum Rate Tariffs 2, 14-A and 15 in connection with the transportation of flour, sugar, and mill run, in bulk, within a radius of 250 miles from the base of operations for various shippers. Applicant proposes to assess rates in cents per hour in lieu of rates in cents per one hundred pounds.

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

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 application was listed on the Commission's Daily Calendar of December 2, 1976. No objection to the granting of the application has been received.

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. Flour Transport, 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.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 1st day of February, 1977.

Robert Batinovich
President

I will file a dissent.
William Symons, Jr.

I dissent only to the effective date
Vernon L. Sturgeon

Richard D. Gravelle
Commissioners

APPENDIX A

Carrier: Flour Transport, Inc.

For:
California Milling Company
Capitol Milling Company
Centennial Mills Incorporated
Fisher Mills, Inc.
General Mills, Inc.
The Pillsbury Company

Territory: Radius of 250 miles from the base of operations designated in the written agreements.

Commodities:
Grain or Rice Flour, in bulk.
Grain or Rice Flour, in bulk, chemical or other ingredients not to exceed four percent.
Semolina or Semolina and Grain Flour, in bulk.
Sugar, in bulk.
Mill Run, in bulk.

Rates: Hourly vehicle unit rates as set forth in Section 4-A of Minimum Rate Tariff 15.

Conditions:

1. 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.

2. In all other respects, the rates and rules in Minimum Rate Tariff 15 shall apply.

(END OF APPENDIX A)

A. 56878 - D. EL Crews: DEVIATION
A. 56904 - D. Keeney Truck Lines, Inc.: DEVIATION
A. 56903 - D. Flour Transport, Inc.: DEVIATION
A. 56864 - D. McGarity & Gilbert Trucking: DEVIATION

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

These four decisions granting deviations are 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 these and similar Commission decisions which have opened the flood gates on deviations.

2. Unreasonable. Today's opinions fail to set forth any facts about the special circumstances of the transportation which a person might review to see if the deviations are justified. Instead each 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."

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. Each 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.
WILLIAM SYMONS, JR.
Commissioner