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ORIGINAL

Decision No. 86924

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Woodrow W. Gilbert & Oscar D. McGarity dba McGarity & Gilbert Trucking for authority to deviate from Minimum Rate Tariff 2 when transporting lumber for Diamond International Corporation under provision of Section 3666 of the Public Utilities Code	Application No. 56864 (Filed November 12, 1976)

OPINION AND ORDER

By this application, Woodrow W. Gilbert and Oscar D. McGarity, doing business as McGarity & Gilbert Trucking, request authority to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of lumber and related articles for Diamond International Corporation from Red Bluff and vicinity to various points.[1]

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

Revenue and expense data submitted by applicants 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 November 12, 1976. California Trucking Association opposed the ex parte consideration of the application stating

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[1] The present and proposed charges for representative 50,000-pound shipments of lumber are:

From Red Bluff To	Present Charges	Proposed Charges
Sacramento	$254.40	$240.00
San Francisco	355.10	335.00
Los Angeles Zone 235	524.70	495.00

that the radial highway common carrier authority of applicants is clearly inadequate for the transportation service described.

Applicants are placed on notice that, should their operations for Diamond International Corporation be between fixed termini or over a regular route, they shall apply for a highway contract carrier permit.

In the circumstances, the Commission finds that applicants' 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. Woodrow W. Gilbert and Oscar D. McCarity are 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

Leonard Ross

Richard D. Gravelle
Commissioners

I will file dissent.
William Symons, Jr.

I dissent only to the effective date
Vernon L. Sturgeon

APPENDIX A

Carrier: Woodrow W. Gilbert & Oscar D. McGarity, doing business as McGarity & Gilbert Trucking

Commodity: Lumber and related articles as described in Item 685 of Minimum Rate Tariff 2 (MRT 2)

For: Diamond International Corporation

From: Red Bluff and vicinity

To: Various points

Rates: As set forth in Twenty-fifth Revised Page 51-CC (Item 690) and Tenth Revised Page 51-CCC (Item 691) of MRT 2 excluding any surcharges.

Minimum Weight: 50,000 pounds

Conditions:

1. Shipments shall be fork-lift loaded by shipper without assistance of carrier's personnel.

2. Shipments shall be unloaded by consignee.

3. Applicants have not indicated 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 applicants' trailing equipment.

4. In all other respects, the rates and rules set forth in Minimum Rate Tariff 2 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