

ORIGINAL

Decision No. 86949

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Vacuum type vehicle. Application )  
of Bill Brasher dba Bill Brasher )  
& Son Vacuum Service, for relief )  
under Section 3666 to name a )  
lesser rate than the minimum )  
established rate to haul oil for )  
Standard Oil Co. of Calif. to )  
service generators on lease opera- )  
tions in MPT 13 CAL-T-105-455 on )  
volume small shipments. )

Application No. 56784  
(Filed September 30, 1976)

OPINION AND ORDER

By this application, Bill Brasher, doing business as Bill Brasher & Son Vacuum Service, requests authority to deviate from the provisions of Minimum Rate Tariff 13 in connection with transportation of crude oil and petroleum products in vacuum-type tank vehicles within a radius of 20 miles of Bakersfield for Standard Oil Company of California.<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 October 1, 1976. California Trucking Association (CTA) protested the granting of the sought relief stating that the applicant's costs are understated "by the exclusions of such basic cost components as depreciation, insurance and taxes (other than payroll)."

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<sup>1</sup> The present and proposed charges, per hour per vehicle for a representative shipment of crude oil in equipment with a capacity in excess of 95 barrels in the Bakersfield area, are \$22.95 and \$19.00, respectively.

In a subsequent letter to the Commission, dated December 15, 1976, applicant clarified its administrative costs, listing among other factors, those that the C.T.A. contended were excluded. Applicant informed the Commission that he mailed a copy of said letter to protestant.

The original and supplemental 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 charge.

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. Bill Brasher 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 charge 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.

A. 56784 - CB/gm

The effective date of this order is the date hereof.

Dated at San Diego, California, this 7<sup>th</sup> day of February, 1977.

I will file a dissent  
William Squous, Jr

Palat Bokun  
President

[Signature]

I dissent only to  
the effective date  
Vernon L. Sturgeon

[Signature]

[Signature]  
Commissioners

APPENDIX A  
Bill Brasher  
(doing business as  
BILL BRASHER & SON VACUUM SERVICE)

Bill Brasher is authorized to transport crude oil and other petroleum products for Standard Oil Company of California between points within a radius of 20 miles of Bakersfield, in vacuum-type tank vehicles subject to the following charge and conditions:

1. The charge per hour per tank vehicle shall be not less than \$19.00.
2. Applicant shall transport a minimum of seven truck-loads per day seven days a week for Standard Oil Company of California.
3. 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.
4. In all other respects, the rates and rules set forth in Minimum Rate Tariff 13 shall apply.

(END OF APPENDIX A)

A. 56784 - D.  
Bill Brasher & Son Vacuum Service: 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 sufficient 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

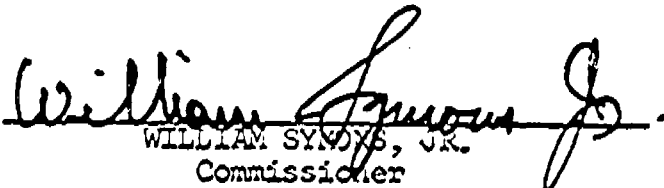
"The original and supplemental revenue and expense data submitted by applicant are sufficient to determine that the transportation involved may reasonably be expected to be profitable under the proposed charge."

Further, protestant is not afforded an opportunity to a public hearing or an opportunity to cross-examine the basis for allegations by applicant. As a result of the boiler plate and no hearing we are left with the result that no figures are mentioned in the opinion even as to the applicant's alleged revenues, costs, profits or loss. 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. 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 Diego, California  
February 8, 1977

  
WILLIAM SYNOVS, JR.  
Commissioner