

ORIGINAL

Decision No. 86951

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of: OSTERKAMP TRUCKING, INC., a)
corporation, for authority to)
deviate from the provisions of)
Minimum Rate Tariff 2 in connec-)
tion with the transportation of)
palletized (sic) glass bottles,)
demijohns, and jars in truckload)
lots, for the Kerr Glass Manufac-)
turing Corporation, pursuant to)
the provisions of Section 3666 of)
the California Public Utilities)
Code.)

Application No. 56569
(Filed November 19, 1976)

SUPPLEMENTAL OPINION AND ORDER

Decision 86372 dated September 14, 1976, in this proceeding authorized Osterkamp Trucking, Inc., a corporation, to assess less-than-minimum rates for the transportation of palletized shipments of glass bottles, demijohns and jars for Kerr Glass Manufacturing Corporation between Santa Ana (MZ 256) and points in or north of the counties of Inyo, Kings, Monterey and Tulare, and points in or south of the counties of Butte, Glenn, Mendocino, Sierra and Yuba.

By Petition for Modification of Decision 86372 in this proceeding, Osterkamp Trucking, Inc., seeks to amend said decision by providing that payment to subhaulers (owner operators) for services performed by them under the rates authorized by said decision shall be not less than 44.5 cents per mile traveled, including empty miles.

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

The petition was listed on the Commission's Daily Calendar of November 22, 1976. No objection to the granting of the petition has been received.

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Additional revenue and expense data submitted by petitioner on behalf of the subhaulers, are sufficient to determine that the transportation involved may reasonably be expected to be profitable under the proposed rate.

In the circumstances, the Commission finds that petitioner's proposal is reasonable. A public hearing is not necessary. The Commission concludes that the petition should be granted 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. Decision 86372 is hereby amended by substituting for Appendix A thereof Amended Appendix A which is attached hereto and by this reference made a part hereof.

2. The authority granted herein shall expire September 14, 1977, 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 Diego, California, this 8th day of February, 1977.

*I will file a dissent.
William Lyons, Jr.
I dissent only to
the effective date
Gerron L. Sturgeon*

Robert B. ...

President
[Faded Stamp]

[Signature]

[Signature]
Commissioners

AMENDED APPENDIX A
(Supersedes Appendix A of Decision 86372)

Carrier: Osterkamp Trucking, Inc.
 Commodity: Palletized shipments of glass bottles, demijohns and jars (National Motor Freight Classification NMF 100-C, Item 87700).
 Shipper: Kerr Glass Manufacturing Corporation.
 Between: Santa Ana (MZ 256)
 And: Points in or north of the counties of Inyo, Kings, Monterey and Tulare and points in or south of the counties of Butte, Glenn, Mendocino, Sierra and Yuba.

<u>Miles</u>		<u>Rates in Cents per 100 pounds</u>
<u>Over</u>	But Not <u>Over</u>	
170	425	95
425	475	100
475	550	120

Minimum Weight: 40,000 Pounds

Conditions:

1. Shipments shall be power loaded by shipper and power unloaded by consignee without assistance of, or expense to, the carrier.
2. Applicant has indicated that subhaulers will be engaged. Subhaulers shall be paid no less than the rate of 44½ cents per mile operated (includes loaded and empty miles), not exceeding 350 empty miles per load of glass loaded.
3. General provisions of subhaulers (owner - operator) agreement are:
 - (a) Osterkamp Trucking, Inc. provides:
 - (I) Fuel from Osterkamp bulk storage facilities at 47 cents per gallon, including taxes;

AMENDED APPENDIX A
(Supersedes Appendix A of Decision 86372)

- (II) Low cost insurance plan to qualified owner - operator;
 - (III) All dispatch, sales, billing, collection, and administrative functions;
 - (IV) Maintenance of all trailing equipment, including tires;
 - (V) Maintenance at \$16.00 per hour in Osterkamp Trucking, Inc.'s own shop facility.
- (b) Osterkamp Trucking, Inc. shall consider in every way, subhaulers (owner - operators) and company leased line haul tractors as equal in priority for dispatch.
4. Any revision of the subhauler (owner - operator) agreement which would change the terms of compensation to either carrier or subhauler shall not apply to this rate authority unless such change is approved in advance by written order of the Commission.
5. To the extent not otherwise specifically provided herein the provisions of Minimum Rate Tariff 2 shall apply.

(END OF AMENDED APPENDIX A)

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Osterkamp Trucking, Inc.: DEVIATION AUTHORIZING LOWER THAN DEVIATION RATE TO SUBHAULER

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

Deviations should be granted with care because they provide to a select carrier a price advantage in the marketplace, not enjoyed by all other competing carriers who are bound by the minimum rate tariff. Such care cannot be exercised when proposed decisions are filled with boiler-plate language such as "The petition is based on special circumstances and conditions detailed therein." instead of a factual discussion.

In today's order we are not even informed of either the existing minimum rate or the deviated rate. A sense of perspective is impossible.

In the conference of February 1, 1977, an inquiry as to the relation of a proposed subhaul rate to an already deviated rate, produced the answer that the subhauler would only be receiving about 50% of the deviated rate. This raised a red flag in my mind. Was the overlying carrier really justified in taking 50% of the rate for his "administrative services"? Some refer to this process as "skimming". I'd liken it more to a scalping.

I think we should be suspect of deviations which seem to require shorting subhaulers in order to make a losing operation into a profitable one.

This opinion does not describe in any way the additional data submitted by applicant as to subhaulers. I would prefer to see the evidence directly from the subhauler, and further, since the data is presumably particular to the subhauler (as the deviation circumstances are presumably unique to the applicant authorized to deviate), the conditions of the deviation should allow subhauling only as to the particular subhaulers who have introduced evidence.

San Diego, California
February 8, 1977

William Symons, Jr.
WILLIAM SYMONS, JR.
Commissioner