

Decision No. 87127

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Application of H & N TRANS-
FER, INC., a California corpora-
tion, to cancel written contract
under tariff 15.)

Application No. 56832
(Filed October 26, 1976)

OPINION AND ORDER

Minimum Rate Tariff 15 names yearly, monthly and weekly vehicle unit rates for the transportation of property by permitted carriers. The yearly rates set forth therein apply when the shipper enters into a written agreement with the carrier for a period of one year or more. When such agreement is executed, rates otherwise provided in the Commission's minimum rate tariffs do not apply.

By this application, H & N Transfer, Inc. (H & N), a corporation, seeks authority to terminate a yearly vehicle unit rate agreement executed by it with McKesson & Robbins, Inc. (McKesson) under the provisions of Minimum Rate Tariff 15 (MRT 15).¹ In lieu thereof, H & N requests authority to assess the monthly vehicle unit rate provided in the tariff for services performed under the agreement from January 1, 1976 through the date said agreement terminated, August 2, 1976.²

Applicant alleges that it has continuously assigned equipment for the exclusive use of McKesson since 1967 under yearly vehicle unit rate agreements for the transportation of liquor

¹The minimum basic yearly vehicle unit rates of \$2,241 and \$2,353 per month, prior to May 15, 1976 and thereafter, respectively, apply to the transportation in question, with a single exception, because one piece of equipment differs in size.

²The minimum basic monthly vehicle unit rates for the type of equipment operated under the agreement are \$2,291 and \$2,406, prior to May 15, 1976 and thereafter, respectively, with a single exception because one piece of equipment differs in size.

within 125 miles of McKesson's base of operations, the City of Commerce.³ H & N states that the reason for the termination of the contract is based upon the fact that McKesson, on July 15, 1976, entered into an agreement of sale with Western Liquor Distributors, Inc. (Western), to sell its liquor business to the latter company. Since Western operated its own transportation vehicles to conduct its business, the services of H & N were no longer needed. On July 16, 1976, H & N was notified by Western, by letter, attached to the application as Exhibit D, that as of August 2, 1976, the carrier's services were no longer required.

Under applicant's proposal, the charges under the monthly vehicle unit rates for the specific transportation services performed from January 1, 1976, to August 2, 1976, would amount to \$468,754.89. Inasmuch as applicant assessed charges amounting to \$461,186.64 for the aforementioned services, it would be required to collect \$7,568.25 (the difference between the former and latter amounts) from McKesson & Robbins, Inc., under said proposal.

The application was listed on the Commission's Daily Calendar of October 27, 1976. No objection to the granting of the application has been received.

In Decision 67659, dated August 4, 1964, in Case 7783, Petition 1, wherein the Commission considered a rule to govern the apportionment of the yearly rates for service which has been terminated in less than one year, the Commission said:

"The record is clear that there have been no circumstances under which agreements for the use of yearly vehicle unit rates have been interrupted or terminated by either shippers or carriers. The need for a rule to govern such situations

³Subsequent to the filing of the application, H & N submitted freight bills covering the transportation services provided by it for McKesson for the seven months involved. The carrier's equipment consisted of: twenty-three (23) twelve-foot vans and one (1) twenty-foot van plus a driver for each of the twenty-four (24) vehicles exclusively assigned for the contracted services.

is speculative. The record shows that none of the rules proposed in this proceeding would meet all of the possible circumstances under which service could be interrupted or terminated.*** In the circumstances where an inequitable situation may result from interruption or termination of a written agreement beyond the control of the parties to the agreement, relief from the tariff provisions may be sought from the Commission through the filing of formal pleadings appropriate to the circumstances."

The instant application involves a specific termination. The situation is unusual in that the sales operation which generated the traffic has been sold and in turn purchased by a company which performs its own transportation services.

In the specific circumstances involved in this application, the Commission finds that the shipper, McKesson, should be relieved of the burden of paying for transportation services it is no longer in a position to use and that the sought relief is justified. The Commission further finds that the yearly vehicle unit rate agreement should be terminated, that the minimum monthly vehicle unit rate should be applied to the services performed by H & N for McKesson from January 1, 1976 through the date of termination of said agreement and that such monthly vehicle unit rate is reasonable for the transportation involved. A public hearing is not necessary. The Commission concludes that the application should be granted to the extent indicated in the ensuing order.

IT IS ORDERED that:

1. H & N Transfer, Inc. is hereby authorized to terminate the yearly vehicle unit rate agreement applicable to services that it performs for McKesson and Robbins, Inc., and to assess a rate not less than the monthly vehicle unit rate provided in Minimum Rate Tariff 15 for such services from January 1, 1976, to August 2, 1976.

2. H & N Transfer, Inc., is hereby directed to collect from McKesson & Robbins, Inc., not less than \$7,568.25, the difference between \$468,754.89 (the charges applicable under the monthly

vehicle unit rates of Minimum Rate Tariff 15 for the specific services performed from January 1, 1976, to August 2, 1976) and \$461,186.64 (the charges assessed for the transportation involved).

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 22nd day of March, 1977.

Robert Bateman
President
William J. Guion
Vernon L. Stinson
Richard W. Haxel
Commissioners