

Decision No. 87345

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of TRAILS TRUCKING, INC., application under Section 3666 of the California Public Utilities Code to deviate from the provisions of Minimum Rate Tariff No. 2 in the transportation of glass bottles or jars for the account of Kerr Glass Manufacturing Corporation of Santa Ana, California.

Application No. 56520
(Petition for Modification of Decision No. 86374)
(Filed December 7, 1976)

SUPPLEMENTAL OPINION

Decision No. 86374 dated September 14, 1976 in this proceeding authorized Trails Trucking, Inc., a corporation, to assess less-than-minimum rates for the transportation of palletized shipments of glass bottles or jars for Kerr Glass Manufacturing Corporation from Santa Ana to various points. Decision No. 86374 stated: "While applicant has provided an analysis of a representative subhauler's cost, there is no indication that any one subhauler will actually experience such a cost. The provision for the payment to subhaulers has not been justified and will not be authorized." As a result, Decision No. 86374 contained the following restriction:

- "3. Applicant has indicated that subhaulers will be engaged. 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."

By Petition for Modification of Decision No. 86374 in this proceeding, Trails Trucking, Inc. seeks to amend said decision by removing the aforementioned restriction and increasing the authorized rates from Santa Ana to Richmond and Watsonville.^{1/}

The petition was listed on the Commission's Daily Calendar of December 8, 1976. No objection to the granting of the petition has been received.

Petitioner has submitted a verified statement by Ruben Espinoza, one of its subhaulers, which indicates that the division of revenue (60 percent to Espinoza and 40 percent to petitioner) may reasonably be expected to be profitable to both parties.

As a matter of policy, the Commission has required that subhaulers be paid 100 percent of the authorized rates in Section 3666 proceedings when revenue and expense data of subhaulers are not submitted. This requirement was intended to prevent abuses of Section 3666 authorities through the excessive use of subhaulers. The Commission is considering changing its policy in this regard to require that carriers utilize their own equipment when transporting shipments under Section 3666 authority.

Petitioner is one of several highway permit carriers who owns a large fleet of trailing equipment but does not own or lease any power equipment. This type of carrier obtains its power equipment by employing owner operators usually on a long-term basis; said

^{1/} Decision No. 86374 authorized less-than-minimum rates of 98, 93, and 88 cents per 100 pounds, minimum weights of 35,000, 40,000, and 45,000 pounds, respectively, from Santa Ana to Richmond and Watsonville. Petitioner proposes to increase the 35,000-, 40,000-, and 45,000-pound rates to Richmond to 116, 105, and 97 cents per 100 pounds and to Watsonville to 112, 100, and 90 cents per 100 pounds, respectively.

owner operators are usually compensated for each shipment on a percentage of revenue basis. Such an arrangement may be a device to evade the provisions of General Order No. 130 which sets forth rules and regulations governing the leasing of motor vehicles. The Commission is contemplating issuing an Order Instituting Investigation to determine whether highway carriers, who regularly obtain power equipment from owner operators, should be compelled to lease such equipment pursuant to the provisions of General Order No. 130.

Should the Commission change its policy regarding the utilization of subhaulers in Section 3666 authorities, the new policy may apply to all outstanding authorities. In the interim, the Commission will continue to consider actual costs of subhaulers when they join in the application and submit same.

The request of petitioner will be granted insofar as transportation performed by Ruben Espinoza is concerned. Since no other subhauler costs have been submitted and there is no evidence that Ruben Espinoza's revenue and expense data are representative of other subhaulers other than the statement of petitioner, the restriction shall remain in effect for other subhaulers.

Authority is not needed for the sought increases in the rates from Santa Ana to Richmond and Watsonville inasmuch as the rates previously authorized are minimum in application only. However, the rates will be revised to reflect the higher rates.

The Commission concludes that the petition 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 relief. To the extent not granted herein the petition should be denied.

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SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. Decision No. 86374 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 herein shall expire September 14, 1977, unless sooner cancelled, modified, or extended by further order of the Commission.

3. To the extent not granted herein the Petition for Modification of Decision No. 86374 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17th day of MAY, 1977.

I dissent.
William Synnott.

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Robert Bakumil
President

Virginia L. Ferguson
Richard J. Truitt

Commissioners

AMENDED APPENDIX A
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Trails Trucking, Inc., a corporation, is authorized to transport palletized shipments of glass bottles and jars (as described in Item 87700 of the National Motor Freight Classification NMF 100-C) for Kerr Glass Manufacturing Corporation at the following rates:

From Santa Ana To	<u>Rates in Cents Per 100 Pounds</u>		
	<u>Minimum Weight in Pounds</u>		
	<u>35,000 Pounds</u>	<u>40,000 Pounds</u>	<u>45,000 Pounds</u>
Castroville	98	93	88
Fresno	93	88	83
Oakland	98	93	88
Orland	150	145	140
Redwood City	98	93	88
Richmond	116	105	97
Salinas	98	93	88
San Jose	98	93	88
Sebastopol	150	145	140
South San Francisco	98	93	88
Sunnyvale	98	93	88
Tracy	98	93	88
Watsonville	112	100	90
Visalia	85	80	75
From Santa Ana To the <u>Counties of:</u>			
Alameda	98	93	88
Contra Costa			
Monterey			
San Francisco			
San Joaquin			
San Mateo			
Santa Clara			
Santa Cruz			
Stanislaus			

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Conditions:

1. Shipments shall be loaded by shipper and unloaded by consignee without assistance of, or expense to, the carrier.
2. The minimum weights per shipment shall be 35,000, 40,000, or 45,000.
3. In the event applicant employs subhaulers they shall be paid no less than the rates herein without any deduction for use of applicant's trailing equipment, except that Ruben Espinoza, when employed as a subhauler, shall be paid no less than 60 percent of assessed rates.
4. In all other respects, the rates and rules set forth in Minimum Rate Tariff 2 shall apply.