

Decision No. 87847 SEP 13 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
 for the purpose of considering and )  
 determining minimum rates for )  
 transportation of any and all )  
 commodities statewide including, )  
 but not limited to, those rates )  
which are provided in Minimum Rate )  
 Tariff 2 and the revisions or )  
 reissues thereof. )

Case No. 5432  
 Petition for Modification  
 No. 917  
 (Filed September 20, 1976;  
 amended January 12, 1977)

Handler, Baker & Greene, by Daniel W. Baker,  
 Attorney at Law, for Doudell Trucking  
 Company, petitioner.  
Richard W. Smith, Attorney at Law, and H. W.  
Hughes, for California Trucking Asso-  
ciation, protestant.  
John T. Reed, for Pacific Coast Tariff Bureau;  
Richard S. Hill, for C. T. Supply Co.;  
Raymond D. Kunde, for San Jose Steel  
Transportation, Inc.; Robert Crawford, for  
Crawford Trucking, Inc.; interested parties.  
Everest A. Benton, Harry E. Cush, and Patrick  
O'Hanlon, for the Commission staff.

O P I N I O N

Doudell Trucking Company (Doudell) seeks authority to publish rates which are less than the Commission's established minimum rates for the transportation of plain, coated, lacquered, painted, lithographed or printed N.O.I. tin mill black plate, tin plate, terne plate, and chrome-plated black plate; aluminum plate or sheet; can ends, steel, tin, aluminum or chrome coated, between Fremont and Modesto.

Public hearing was held before Administrative Law Judge O'Leary at San Francisco on March 18 and May 16, 1977. The matter was submitted on May 24, 1977 with the filing of Exhibit 12 by the Commission staff.

Doudell holds a certificate of public convenience and necessity authorizing operations as a highway Common carrier pursuant to Decision No. 61092 in Application No. 41636. It also holds authority as a radial highway common carrier and highway contract carrier. The transportation for which it here seeks authority to publish less than the Commission's established minimum rates is conducted under its highway common carrier certificate.

Evidence on behalf of petitioner was presented through its vice president and a certified public accountant with a specialty in motor carrier accounting. The rate proposed is 33 cents per 100 pounds, subject to a minimum weight of 96,000 pounds. Doudell has been transporting the involved traffic and assessing equipment rental rates set forth in Pacific Coast Tariff Bureau tariffs. The equipment rental rates produce less revenue than the revenue anticipated under the proposed rates. During April 1977, 83 loads moved from Fremont to Modesto. It is anticipated 1,500 loads will be moved during 1978.

Doudell's vice president testified that costs of transportation are the same whether the transportation is conducted pursuant to its certificated or permitted authority. He further testified the authority sought is similar to authorities granted to Frank's Trucking by Decision No. 86565 and Guthmiller Trucking, Inc. by Decision No. 86485.

Exhibit 11 is a revenue and expense study prepared by the certified public accountant which discloses that transportation at the proposed rates would be compensatory to Doudell. The exhibit also discloses that payments to subhaulers of 25 cents per 100 pounds would be compensable to the five subhaulers whose costs are set forth in the exhibit.

Section 3666 of Division 2 of the Public Utilities Code provides:

"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." (Emphasis added.)

Section 3666 does not apply to highway common carriers. Part 1 of Division 1 of the Public Utilities Code does not contain a similar provision. Section 452 of Part 1 provides:

"Nothing in this part shall be construed to prohibit any common carrier from establishing and charging a lesser than a maximum reasonable rate for the transportation of property when the needs of commerce or public interest require. However, no common carrier subject to the jurisdiction of the commission may establish a rate less than a maximum reasonable rate for the transportation of property for the purpose of meeting the competitive charges of other carriers or the cost of other means of transportation which is less than the charges of competing carriers or the cost of transportation which might be incurred through other means of transportation, except upon such showing as is required by the commission and a finding by it that the rate is justified by transportation conditions. In determining the extent of such competition the commission shall make due and reasonable allowance for added or accessorial service performed by one carrier or agency of transportation which is not contemporaneously performed by the competing agency of transportation."

It is clear that a common carrier under, Part 1, must show that the needs of commerce or public interest require the establishment of a lower than a maximum reasonable rate. It has not been demonstrated in the record herein that the needs of commerce or the public interest require the establishment of a lower than a maximum reasonable rate.

Different tests should be employed for rate reductions under Section 452 and rate deviations under Section 3666 because the resulting impacts in each instance are different. A rate deviation under Section 3666 affects only the involved carrier, whereas rate reductions under Section 452 result in a reduction of the minimum rate since Section 3663 of the Public Utilities Code provides:

"In the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

The authority granted to Frank's Trucking by Decision No. 86565 in Application No. 57566 and Case No. 5432, Petition No. 919, encompassed rate reductions pursuant to Sections 452 and 3666 of the Public Utilities Code. By Decision No. 86938 dated February 1, 1977 partial rehearing of Decision No. 86565 was granted limited to a reconsideration of the record (as it exists or as it may be supplemented at the discretion of the assigned Commissioner and Administrative Law Judge) for the purpose of determining (1) whether or not the granting of a less than maximum reasonable rate to this applicant is required by the needs of commerce or the public interest, and (2) whether or not it is designed to meet the competitive charges of other carriers or the cost of other means of transportation.

By Decision No. 87181 dated April 5, 1977 in Application No. 56589 the highway common carrier certificate issued to Frank's Trucking was amended to exclude the following transportation:

Plain, coated, lacquered, painted, lithographed or printed N.O.I. tin mill black plate, tin plate,terne plate, or chrome-plated black plate; aluminum plate or sheet; originating at Pittsburgh,

California, except when interlined with water, rail, or motor carrier for further transportation.

As a result, the less than maximum reasonable rates authorized by Decision No. 86565 in Case No. 5432, Petition No. 919, were canceled effective June 7, 1977.

By Decision No. 87182 dated April 5, 1977 Frank's Trucking was authorized to assess less than the minimum rates pursuant to Section 3666 of the Public Utilities Code for the traffic which it previously was granted by Section 452 authority. The authority granted to Guthmiller Trucking, Inc. by Decision No. 86485 is under 3666. The authority granted to Frank's Trucking and

Guthmiller Trucking, Inc. encompass the same commodities as the instant petition but apply between different points.

Findings

1. Doudell holds authority as a highway common carrier, radial highway common carrier, and highway contract carrier.
2. The transportation for which Doudell here seeks authority is conducted under its authority as a highway common carrier.
3. It has not been shown that the needs of commerce or the public interest require the establishment of the lower than maximum reasonable rate proposed.

The Commission concludes that the petition should be denied.

O R D E R

IT IS ORDERED that Petition For Modification No. 917 in Case No. 5432 is denied.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of SEPTEMBER, 1977.

Robert Batminal  
President  
William Lyons Jr.  
Vernon L. Stinson  
Charles D. Charles  
Alan L. Leitch  
Commissioners