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Decision No. 88805

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of ADAMS DELIVERY SERVICE, INC. a California corporation for authority to depart from the provisions of Minimum Rate Tariff 2. | Application No. 56519 |
| And Related Matters. | Application No. 56867 |

ORDER DENYING REHEARING

Adams Delivery Service, Inc., has filed a petition for reconsideration or rehearing of Decision No. 88481. The Commission has considered each and every allegation contained therein and is of the opinion that no good cause for granting the requested relief has been shown; therefore,

IT IS ORDERED that reconsideration or rehearing of Decision No. 88481 is denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 2nd day of MAY, 1978.

Robert Batinovich
President
William Symons, Jr.
Vernon L. Sturgeon
Leonard M. Grimes, Jr.
Clair W. Dedrick
Commissioners

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Decision No. 88481 February 7, 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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| In the Matter of the Application of ADAMS DELIVERY SERVICE, INC. a California orporation for authority to depart from the provisions of Minimum Rate Tariff 2. | Application No. 56519 (Filed June 1, 1976; amended July 13, 1976) |
| And Related Matters. | Application No. 56867 (Filed November 12, 1976; amended December 15, 1976)<br>Application No. 57026 (Filed January 24, 1977) |

Dunne, Phelps & Mills, by Marshall G. Berol, Attorney at Law, Edward J. Marnell, and Randy Marnell, for applicant.
Ronald C. Broberg, for California Trucking Association; and Joseph MacDonald, for California Motor Express; interested parties.
Robert I. Shoda and Harry Cush, for the Commission staff.

## O P I N I O N

These applications were consolidated for hearing which was held before Administrative Law Judge O'Leary at San Francisco on October 13 and 14, 1977. The matters were submitted subject to the filing of concurrent briefs no later than November 14, 1977. Briefs were filed by the applicant and the California Trucking Association.

Each application seeks authority pursuant to Section 3666 of the Public Utilities Code to perform certain transportation at rates less than the otherwise applicable minimum rates as follows:

Application No. 56519, distribution of shipments of drugs and sundries weighing between 101 and 500 pounds.

Application No. 56867, distribution of packages of drugs and sundries weighing 100 pounds or less.

Application No. 57026, transportation of packages weighing 100 pounds or less between various points in northern California.

The authorities requested in Applications Nos. 56519 and 56867 will apply only from the terminal of applicant as proportional charges in connection with the transportation of a pool shipment as defined in Item 11 of Minimum Rate Tariff 2.

By Decision No. 86373 in Application No. 56519, applicant was granted interim authority to assess less than the otherwise applicable minimum rates for the distribution of shipments of drugs and sundries weighing between 101 to 500 pounds pending hearing. The interim authority was scheduled to expire September 14, 1977. The expiration date was extended to December 14, 1977 by Decision No. 87853 and to February 14, 1978 by Decision No. 88248.

By Decision No. 85216, as amended by Decision No. 86241 in Application No. 55645, applicant was granted authority to assess less than the otherwise applicable minimum rates with respect to the distribution of packages of drugs and sundries weighing 100 pounds or less. The authority was scheduled to expire December 31, 1976. The expiration date was extended to September 14, 1977 by Decision No. 86771, to December 14, 1977 and to February 14, 1978 by Decision No. 88248. Application No. 56867 is a request to continue that authority with certain modifications.

The authorities set forth in Decisions Nos. 86373 and 85216 are conditioned as follows:

"The provisions hereof will not apply when Adams Delivery Service, Inc., provides pickup service in connection with any shipment transported."

The authority sought by Application No. 57026 is similar to authority previously granted to applicant by Decision No. 83236 in Application No. 54970 and renewed by Order No. SDD 307. The authority expired December 31, 1975.

Evidence with respect to operation of the distribution service from applicant's terminal (Applications Nos. 56519 and 56867) discloses that the shipments originate in the Los Angeles area from a shipper association called Caltop and from a group of individual shippers (the group).

The Caltop shipments are transported from Los Angeles to applicant's terminal by a highway common carrier, referred to in the testimony as Viking, which is not affiliated with applicant. The shipments are tendered to Viking at Caltop's facility in southern California. Caltop utilizes the service of Northern California Express (NCX) pursuant to the provisions of Minimum Rate Tariff 15 to pick up shipments from its members which are consolidated into one large shipment at Caltop's facility and tendered to Viking for delivery to applicant's terminal at Oakland.

Component parts of the group shipments are picked up by NCX from individual shippers comprising the group on a daily basis and consolidated into one shipment for delivery to applicant's terminal at Oakland. The charges for the consolidated shipment are billed on a pro rata basis to the individual shippers whose components comprise the consolidated shipment.

NCX is a permitted carrier owned by the president of applicant who is the majority stockholder of applicant.

Authority to assess less than the minimum rates for applicant's distribution service was first considered by the Commission in Application No. 55645. A description of the service contemplated by applicant in Application No. 55645 was set forth in paragraph V of the application as follows:

> "The 'unitized' parcel service involves a concept whereby shippers, generally located in the Los Angeles Basin area, would group together (in units) a number of parcels or packages; tender them to highway carriers (not affiliated with Applicant) as a single shipment for transportation to Applicant's Hayward facilities; where, upon arrival, Applicant would sort and segregate the individual parcels into appropriate parcel delivery vehicles for transportation to ultimate destination at Applicant's authorized parcel delivery rates."

The authority sought in Application No. 55645 was granted by Decision No. 85216. In granting the authority one of the factors we considered was the representation by applicant that the transportation to applicant's facilities would be performed by a highway carrier not affiliated with applicant. This factor was also considered in granting the interim authority set forth in Decision No. 86373 in Application No. 56519. In that application applicant stated that the authority is nearly identical to that currently authorized by Decision No. 85216.

During the course of the hearings on October 13 and 14, 1977, the representative of the Commission staff asked the president of applicant:

> "Why was the change made to an affiliated carrier?"

He replied:

> "It was our fullest intention at the time we filed that application to handle all shipments into Adams Delivery Service via a common carrier.
>
> "Adams reached a point in time that the common carrier refused to bring in the merchandise to our facilities, so in turn, to remain in business, I started the NCX operations." (Transcript page 85, lines 10 to 17 inclusive.)

Item 255 of Minimum Rate Tariff 2 specifically provides in paragraph 2 that carriers shall not apportion, prorate, or otherwise divide freight charges between or among the consignors, consignees, or other parties. Item 60 of Minimum Rate Tariff 2 prohibits the

consolidation of shipments. The evidence herein discloses that NCX is not abiding by these provisions of Minimum Rate Tariff 2. We can only speculate as to why common carriers refused to bring the merchandise to applicant's terminal; however, there is every indication that in order to perform the service they would not be able to abide by similar provisions contained in their filed tariffs.

Evidence with respect to Application No. 57026 discloses that applicant is presently assessing less than the otherwise applicable minimum rates even though it has not had such authority since December 31, 1975.

Findings

1. By Decision No. 86373 in Application No. 56519, applicant was granted interim authority to assess less than the otherwise applicable minimum rates for the distribution of shipments of drugs and sundries weighing between 101 to 500 pounds from its terminal at Oakland pending hearing.

2. By Decision No. 85216 as amended by Decision No. 86241 in Application No. 55645, applicant was granted authority to assess less than the otherwise applicable minimum rates for the distribution of packages of drugs and sundries weighing 100 pounds or less from its terminal at Oakland.

3. The authorities set forth in Findings 1 and 2 are scheduled to expire February 14, 1978.

4. The authorities set forth in Findings 1 and 2 do not apply when applicant provides pickup service in connection with any shipment transported.

5. Caltop and the group utilize applicant for distribution of shipments and packages pursuant to the authorities set forth in Findings 1 and 2.

6. Components comprising the Caltop shipments are picked up from members by NCX and delivered to Caltop's facility where the components are consolidated into a single shipment and tendered to Viking for delivery to applicant's terminal.

7. Components comprising the group are picked up from individuals comprising the group by NCX, consolidated into one shipment by NCX, and transported to applicant's terminal. Freight charges for the consolidated shipment are prorated by NCX to the individuals of the group whose components are a part of the consolidated shipment.

8. NCX is owned by the president of applicant who is also the majority stockholder of applicant.

9. In granting the authorities set forth in Findings 1 and 2, one of the factors we considered was the representation by applicant that the transportation to applicant's facilities would be performed by a highway carrier not affiliated with applicant.

10. NCX is consolidating shipments and prorating freight charges in connection with shipments transported to applicant's terminal for distribution.

11. Item 60 of Minimum Rate Tariff 2 prohibits the consolidation of shipments by carriers.

12. Item 255 of Minimum Rate Tariff 2 prohibits the apportionment, proration, or division of freight charges between or among consignors, consignees, or other parties.

13. Applicant has been providing service at less than the otherwise applicable minimum rates for the pickup and delivery of parcels weighing 100 pounds or less without having authority to do so since December 31, 1975

The Commission concludes that the applications should be denied.

# O R D E R

IT IS ORDERED that Applications Nos. 56519, 56867, and 57026 are denied.

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

Dated at San Francisco, California, this 7th day of February, 1978.

ROBERT BATINOVICH
President

WILLIAM SYMONS, JR.

VERNON L. STURGEON

RICHARD D. GRAVELLE

CLAIRE T. DEDRICK
Commissioners