

ORIGINAL

Decision No. 88891 MAY 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of TRANS-AERO SYSTEMS CORPORATION for the authority to apply a maximum charge of Class 100 commodity rates and/or minimum charges as per MRT-2, Item 150 to the following items:

<u>Description</u>	<u>NMFC</u>
Hampers, Clothes, Wood and Fibre	79500 Sub 1
Willow Ware	197700
Hassocks, Storage	79520 Sub 2

Application No. 56081  
(Filed November 20, 1975)

The shipper for whom transportation is to be performed is Joy of California, a California corporation, located at 148 East Virginia Street, San Jose, California, 95112.

Deviation authority is requested pursuant to the Public Utilities Code, Section 3666.

Virgil J. McVicker, for Trans-Aero Systems Corporation, applicant.

Ronald C. Broberg, Charles D. Gilbert, and Philip W. Smith, for California Trucking Association; and Douglas G. Moore, for Joy of California; interested parties.

Everest A. Benton and Geoffrey W. Meloche, for the Commission staff.

#### OPINION AND ORDER ON REHEARING

Trans-Aero Systems Corporation requests authority to deviate from the provisions of Minimum Rate Tariff 2 (MRT 2) for the transportation of clothes hampers, willowware, and hassocks for Joy of

California (Joy) from San Jose to points in the Los Angeles area.<sup>1/</sup> By Decision No. 85782 dated May 4, 1976 the Commission granted the request ex parte on an interim basis pending hearing. The California Trucking Association (CTA) filed a petition for rehearing and reconsideration on May 14, 1976 which automatically stayed Decision No. 85782 under Section 1733 of the Public Utilities Code. By Decision No. 86220 dated August 3, 1976 the Commission granted rehearing but rescinded the stay of Decision No. 85782 thereby granting the deviation on an interim basis pending resolution of the matter on rehearing.<sup>2/</sup>

Rehearing before Administrative Law Judge Albert C. Porter was held on September 23, 1977 and March 7, 1978 when the matter was submitted. CTA and the Commission staff participated in the development of the record. No one protests the request.

Applicant's cost development consisted of an analysis on a shipment basis of the operations involving Joy for the first seven months of 1977. CTA closely questioned the method used. Applicant maintained it was the best it could do given the circumstances of the transportation which involves not only the traffic covered by the requested deviation but other traffic handled in concert with such transportation. The development lacked precise application to the deviation traffic in that part of the cost applied only to shipments for Joy, part was allocated from common transportation with other shippers' commodities, and part reflected system average costs. A major error in the presentation was not providing for the expense of returning vehicles to northern California after the southbound movement. However, when this expense

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<sup>1/</sup> The application also asked for authority covering shipments from San Jose to the San Francisco territory, but applicant now has a certificate for that operation and amended out that part of the request at the hearing in this matter held on September 23, 1977.

<sup>2/</sup> CTA petitioned the California Supreme Court (S.F. 23516) for a writ of review on the issue of the grant of interim authority which the court denied on November 24, 1976.

was added and applied entirely to the Joy account, the operation still showed a profit. Applicant maintained that there is always freight moving north and its trucks never come back empty, earning some revenue northbound. The record shows that applicant earned between \$2.79 and \$9.27 per Joy shipment depending on the amount of the northbound expense allocated to Joy shipments. The \$9.27 applies if no northbound expense is allocated to Joy and the \$2.79 if all such expense is allocated. Relating this to an average revenue per Joy shipment of \$40 results in an operating ratio of between 77 and 93 percent. It follows that regardless of the return trip expense allocable to the Joy account the operation at the deviation rates is profitable. No other party offered evidence to refute applicant's showing. We accept applicant's cost evidence as sufficient to show that the proposed rates will be compensatory.

We turn now to the second test required for Section 3666 deviations which is whether or not there are special characteristics and conditions present in the transportation here at issue which are not present in the usual and ordinary transportation for which the deviation is sought; such conditions should contribute to the cost savings available to justify the lower rates. (William E. Daniel (1964) 63 CPUC 147, and Major Truck Lines, Inc. (1970) 71 CPUC 447.) Applicant testified that it experiences low loss claims with the freight involved because of the low value of the commodity, the commodities are light in weight compared to average freight (pounds per cubic foot) affording easy handling and higher revenues per pound, multiple shipments are offered at one time, there is a single point of pickup, shipments are loaded by the shipper and the driver does not have to be in attendance, and shipments are steady and frequent averaging 9 to 15 per week running sometimes as high as 25.

While CTA appeared as an interested party, it became a protestant by recommending denial because the circumstances enumerated above are not unique to

*effectively*  
*the*

applicant. CTA claims that other carriers could and do enjoy the same conditions when transporting for Joy. This position came through a closing statement of counsel and was not supported by evidence, but we believe it is timely to clarify what we have meant in past decisions such as those cited above concerning the "special characteristics and conditions" test. This should be viewed as reflecting a comparison with the characteristics and conditions of the transportation which was used as a basis for the establishment of the minimum rates from which Section 3666 deviations are sought and not the conditions which are available to any carrier participating or ready and willing to participate in the transportation at issue. The remedy for those carriers, if they want to avoid competing with a carrier charging lower rates as a result of an authorized deviation, is to seek the deviation themselves.

Findings

1. There are special characteristics and conditions not present in the usual and ordinary transportation covered by MRT 2 for which the deviation is sought.
2. The proposed less-than-minimum rate is a reasonable rate.
3. Since no showing of the costs of operation for potential subhaulers has been made, if subhaulers are used, they should be paid 100 percent of the authorized rate.
4. Since conditions involving the transportation subject to the deviation may change, the authority should expire one year from the effective date of this order.

We conclude that the application should be granted.

IT IS ORDERED that:

1. Trans-Aero Systems Corporation is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging those rates set forth in Appendix A of this decision.

2. The authority granted shall expire one year from the date of this order unless sooner canceled, modified, or extended by order of the Commission.

3. Decisions Nos. 85782 and 86220 dated May 4, 1976 and August 3, 1976, respectively, are rescinded.

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

Dated at San Francisco, California, this 31<sup>st</sup> day of MAY, 1978.

Robert Bateman  
President  
William Gussow Jr.  
Vernon L. Sturgeon  
Richard D. Gould  
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

## APPENDIX A

Trans-Aero Systems Corporation is authorized to transport the following specific commodities at the less-than-truckload ratings as published below for Joy of California, located at 148 East Virginia Street, San Jose, from the aforesaid address to various points in the Metropolitan Los Angeles Area (as described in paragraph 5 of Item 270-3 of Minimum Rate Tariff 2):

<u>Commodity</u>	<u>N.M.F.C. Item No.</u>	<u>Less-than-truckload Rating</u>
Hampers, clothes, fibre, wood	79500 Sub 1	100
Hassocks, storage	79520 Sub 2	100
Willowware	197700	100

The above ratings are subject to the following conditions:

1. Applicant has not indicated subhaulers will be engaged nor have any costs of subhaulers been submitted. Therefore, if subhaulers are employed they shall be paid not less than the rates authorized herein.
2. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.