

Decision No. 89680

NOV 28 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Bayview Trucking, Inc.,
for authority to charge less than
minimum rates in Minimum Rate Tariff
No. 2 for Reynolds Metals Company, as
provided in Section 3666 of the Public
Utilities Code.

Application No. 55796
(Decision Reopening filed
September 6, 1978)

OPINION AND ORDER

On March 30, 1976 by Decision No. 85649 in the instant proceeding, applicant Bayview Trucking, Inc. (applicant) was granted authority pursuant to Section 3666 of the Public Utilities Code to assess Class 35.2 rates for the transportation of aluminum can ends for Reynolds Metals Company. The authority, scheduled to expire March 30, 1977, has been extended by Commission resolutions. The current authority is set forth in Order No. SDD-779 and is scheduled to expire August 10, 1979. The current authority provides that if certain specified subhaulers are engaged they shall be paid not less than 53 cents per mile for two-axle tractors, 54 cents per mile for three- axle tractors, and 32 cents per mile for all dispatched empty miles. The above provision is subject to cancellation and Order No. SDD-779 provides, "Pending hearing the subhauler shall be paid no less than the rates authorized herein without any deduction for use of applicant's trailing equipment effective December 10, 1978." By Decision No. 89349 dated September 6, 1978, the Commission ordered Application No. 55796 reopened for hearing for receipt of evidence pertaining to the reasonableness of payments to subhaulers.

As a result of an informal prehearing conference held (without a reporter) by Administrative Law Judge O'Leary on October 12, 1978, applicant has filed a petition to amend Application No. SDD-779. The petition requests that applicant be allowed to continue its method of payment to subhaulers for the involved transportation beyond

December 10, 1978. There are no protests to the application or the amendment. As justification for its request, applicant submits (1) the payments to subhaulers for this transportation is the same as any other traffic transported by subhaulers, and (2) there is presently pending Case No. 5432, Order Setting Hearing No. 1022 which is a proceeding wherein the Commission's Transportation Division staff is proposing commodity rates for the transportation of various commodities including aluminum can ends. Recently the Commission staff issued its proposed exhibits in Case No. 5432, Order Setting Hearing No. 1022. Review of Associate Transportation Rate Expert Corning's exhibit discloses that the rates proposed for aluminum can ends are less than the authorized rates of applicant in Order No. SDD-779. It is possible when OSH 1022 in Case No. 5432 is decided the minimum rates for the commodity involved herein will be less than the Section 3666 rates authorized for applicant and this proceeding will be moot.

We find that applicant has justified the order which follows. Since there is no protest and immediate need for the relief has been demonstrated, the following order should be effective the date of signature.

Therefore, good cause appearing,

IT IS ORDERED that:

1. The following provision contained in Order No. SDD-779 is rescinded:

" . . . The authority granted herein is subject to the cancellation of subhauler payments per loaded and empty dispatched miles. Pending hearing the subhauler shall be paid no less than the rates authorized herein without any deduction for use of applicant's trailing equipment effective December 10, 1978.

"A public hearing in this proceeding for the receipt of evidence pertaining to the reasonableness of payments to the subhaulers shall be scheduled at a date to be set."

2. Decision No. 89349 dated September 6, 1978 is rescinded.
The effective date of this order is the date hereof.

Dated at San Francisco, California, this 28th
day of NOVEMBER, 1978.

Commissioner Vernon E. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Robert Bateman
President

William J. Quinn

Robert A. Goble

Clare J. Dedrick
Commissioners