

ORIGINAL

Decision No. 89969 , FEB 14 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DOLPHIN TRANSPORTATION, INC., a California corporation, for an Order authorizing applicant to deviate from certain minimum rates on shipments transported for Mead Products, pursuant to Section 3666 of the Public Utilities Code of the State of California.

Application No. 56752
(Filed September 14, 1976)

Murchison & Davis, by Fred H. Mackensen, for
Dolphin Transportation, Inc., applicant.
Charles D. Gilbert and H. Hughes, for California
Trucking Association, interested party.
George L. Hunt and Tom Fann, for the Commission
staff.

O P I N I O N

Applicant Dolphin Transportation, Inc. (Dolphin) requests authority pursuant to Section 3666 of the Public Utilities Code to deviate from the provisions of Minimum Rate Tariff 2 in connection with the transportation of 40,000-pound shipments of paper articles, stationery, and art supplies in connection with Dolphin's contract carrier authority from the plant site of Mead Products (Mead) at Garden Grove to Mead's distribution center located in Sunnyvale. Dolphin is currently performing the involved services at the requested rates under interim authority issued in Decision No. 86908 dated February 1, 1977, as amended by Decisions Nos. 87215 and 88627. A hearing to determine whether permanent authority to charge the requested rates should issue was held in Los Angeles on July 13, 1978 before Administrative Law Judge Pilling.

In June 1976 Mead ceased manufacturing at its Sunnyvale facility and converted the facility into a distribution warehouse

supplied with products from its manufacturing facility at Garden Grove. The products consist principally of various art supplies, such as crayons, watercolors, and paints; pads, tablets, and blank books; loose leaf fillers; writing or printing paper, not folded; binders or covers, book or loose leaf, envelopes; and papeteries (writing paper and envelopes in a common package). Officers of Mead entered into negotiations with Dolphin; and it was agreed between the parties that Dolphin would transport the products for 90 cents per hundredweight, minimum 40,000 pounds, between the involved points subject to the approval of the Commission, which was obtained on an interim basis. . During the nine months ending October 31, 1977, Mead made 203 mixed truckload shipments via Dolphin under the deviation rate, all without damage to the lading. Shipments consist of mixed items and are loaded and stacked by hand and take about four hours to load and somewhat less time to unload. Occasionally, some of the items will be palletized. Mead operates a private fleet of trucks between its Garden Grove plant and its plants in the eastern part of the country and will sometimes use one of those trucks to haul a load from Garden Grove to Sunnyvale. The witness for Mead testified that if the rate deviation is not permitted to continue, his company would use private carriage and piggyback. The witness estimated that approximately 250 truckloads per year would be given to Dolphin if its application is granted. Dolphin has transported substantially all of the involved traffic moving in for-hire service since Mead converted its Sunnyvale facility into a distribution warehouse.

Dolphin claims that the class rates applicable to the multiple items being shipped vary from Class 35 to Class 70 and that the application of those rates to a truckload of the involved commodities would yield approximately \$700 per trip which is far out of line for the 380-mile haul. During the ten months ended October 31, 1978 Dolphin transported 203 loads for Mead for which Dolphin received \$80,194 total gross revenue, or an average of \$395 per load, while incurring expenses

of \$65,207 and a net profit of \$14,987 for an operating ratio of 81.3 percent. During the same ten-month period, Dolphin had a gross revenue from all sources of \$1,161,085.

Dolphin claims it is overbalanced from the San Francisco Bay Area to the Los Angeles Area in its 40-foot van operations, the type of trailers required to haul Mead's products. It contends that the Mead movement does not lend itself to normal common carrier operations because it requires spotting equipment and pickups in the very early morning or late evening hours. Dolphin has requested the deviation rate be restricted to shipper-load-and-count moves. Subhaulers will not be used in the operation.

California Trucking Association objects on principle to the granting of the application contending that there are no special circumstances or conditions upon which the deviation is based, and that the systemwide average cost figures used by Dolphin have no apparent relationship with the anticipated costs of the proposed service.

Findings

1. Dolphin requests authority to establish a freight, all-kinds rate of 90 cents per hundred pounds on a truckload minimum weight of 40,000 pounds from the manufacturing plant of Mead in Garden Grove to Mead's warehouse at Sunnyvale.

2. Current applicable class rates on the various commodities to be shipped by Mead vary from Class 35 to Class 70 and are higher than the requested rate.

3. The special circumstances and conditions warranting the granting of the deviation rate are:

- a. Mead will load and unload all trailers.
- b. Mead will assemble and disassemble mixed shipments.
- c. Mead will be responsible for the accurate count of the items in a shipment.

- d. Driver waiting time at both origin and destination will be reduced to merely spotting and picking up trailers.
 - e. The proposed move entails but a single origin and destination.
 - f. Dolphin can match its northbound moves for Mead with southbound moves for other shippers.
4. The shipments would move in Dolphin's contract carrier service.
 5. Most of the loads would consist of mixed shipments of various commodities.
 6. During the ten months ending October 31, 1978, Dolphin transported 203 loads for Mead under the requested rate authorized on an interim basis at an operating ratio of approximately 81.3 percent.
 7. The deviation rate was arrived at between Mead and Dolphin through arms-length bargaining.
 8. The involved traffic constitutes a new movement of traffic not heretofore existing and will move in 40-foot trailers.
 9. The proposed rate has not been shown to constitute predatory ratemaking.
 10. The cost figures presented by Dolphin are reasonably related to the Mead movement.
 11. The proposed rate is reasonable and compensatory.
 12. Since the applicant has conducted operations at the requested rate pursuant to interim authority and has shown that the requested rate is compensatory and otherwise reasonable, the authority granted in the ensuing order will be effective until further order of the Commission.
 13. The following order should be effective on the date of signature since the requested rates have been instituted and such rates should be available to the shipper at the earliest time.

The Commission concludes that the application should be granted to the extent set forth in the following order.

O R D E R

IT IS ORDERED that:

1. Dolphin Transportation, Inc. is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 2 by charging not less than those rates set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, or regulations except as specifically set forth in Appendix A.

2. The interim authority granted by Decision No. 86908 is extended until further order of the Commission. ✓

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th day of FEBRUARY, 1979.

John E. Geyer
President
Deborah L. Sturgeon

Clair T. DeBach

Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

APPENDIX A

Dolphin Transportation, Inc., a corporation, is authorized to transport for Mead Products from said shipper's manufacturing plant in Garden Grove to its distribution plant in Sunnyvale, shipments of the following commodities:

PADS, TABLETS, BLANKBOOKS, ruled, not ruled, not printed;

PAINT, COLD WATER, dry or liquid;

PAINT OR VARNISH DRIERS;

CHALK, school or marking;

LOOSE LEAF BOOK FILLERS, not printed; or ruled, not otherwise printed;

CARDS, INDEX, ruled or plain;

PAPER, COMPUTING MACHINE, FILE FOLDERS;

PAPER, DRAWING, PRINTING, not newsprint;

PAPER, WRITING, not folded, not printed;

BINDERS OR COVERS, book or loose leaf, cloth, paper, plastic, pulpboard;

ALBUMS OR SCRAP BOOKS, paper or pulpboard;

CLIPBOARDS, ARTISTS BOARD, pulpboard or fibreboard, cloth covered or painted;

CRAYONS, school or marking;

BOOKS, NOI, actual value not exceeding 75¢ each, in boxes;

PAPERERIES;

ENVELOPES, noibn, printed or not printed;

PAINT SETS, dry watercolor, with or without brushes, in metal inner boxes;

FINGER PAINT SETS;

PAINT CAKES, in metal holders, refills;

PAINT SETS, oil, NOI, in boxes;

PAINTS, NOI, in metal tubes, in boxes;

EASELS, sketching or studio, KD or folded flat, in boxes;

BRUSHES, NOI;

ARTISTS MATERIALS OR PAINTS, NOI, in boxes;

STRETCHER OR STRETCHER FRAMES, ARTISTS;

RACKS OR STANDS, STORE DISPLAY, NOI.

APPENDIX A

Subject to the following conditions:

1. All the above-listed commodities shall be shipped in boxes.
2. The rate shall be no less than 90 cents per hundred pounds on a truckload minimum weight of 40,000 pounds.
3. Shipments shall be loaded by shipper and unloaded by consignee without assistance of, or expense to, the carrier.
4. Shipper shall assume liability for the accuracy of the load and count.
5. Applicant has indicated that subhauers will not be engaged. If subhauers are employed, they shall be paid no less than the rates authorized herein without any deduction for use of applicant's trailing equipment. ✓
6. In all other respects, the rates and rules in Minimum Rate Tariff 2 shall apply.

(END OF APPENDIX A)