

Decision No. 90041 FEB 27 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of A.M. DELIVERY, INC.,)
 for authority to deviate from minimum)
 rates pursuant to Section 3666 of the)
 California Public Utilities Code for)
 the transportation of intravenous)
 solutions, hemodialysis solutions,)
 distilled water and expendable)
 administration sets for McGAW)
 LABORATORIES.)

Application No. 58431
 (Motion Filed February 23, 1979)

ORDER STRIKING PROTEST AND
 REMOVING MATTER FROM CALENDAR

In this application A.M. Delivery, Inc. seeks authority under Section 3666 of the Public Utilities Code to deviate from the established minimum rates for the transportation of intravenous solutions and other articles for McGaw Laboratories.

Public hearing has been set in Los Angeles on March 7, 1979 because of letter protests to the granting of the application submitted by California Trucking Association (CTA).

On February 23, 1979, applicant filed the following motions:

1. That the responses heretofore made by CTA by letters dated November 13, 1978, December 8, 1978, and December 19, 1978 in this matter be stricken.
2. That CTA not be considered as a party to this proceeding.
3. That the Commission issue its ex parte order granting the application for deviation and vacate its order setting this matter for hearing.

Applicant alleges in support of its motions that CTA has failed to comply with the Commission's Rules of Practice and Procedure 42.1 and 42.2, which set forth the specific procedures for filings to deviate from the minimum rate tariffs established by the Commission, and for protests to such filings.

As pertinent here, Rule 42.2 provides:

"A protest to an application or petition for authority to assess less than the established minimum rate(s) under Sections 452, 3666, and 5195 of the Public Utilities Code may be filed by any person or entity. The specific facts upon which the protest is based shall be set forth in ordinary and concise language. The protest shall be so drawn as to completely advise the applicant or petitioner and the Commission of the facts constituting the grounds of the protest, the injury complained of and the exact relief which is desired. The protest shall be verified and contain a certificate of service as required by Rules 2 through 8 of the Rules of Practice and Procedure.

"A protest to a deviation must be received by the Commission within 20 days of the publication of the filing of the application or petition to deviate in the Commission calendar."

Applicant states that CTA has failed to comply with the provisions of Rule 42.2 inasmuch as it has failed to set forth the specific facts upon which the protest is based; it has failed to completely advise applicant and the Commission of the facts constituting the grounds of the protest, the injury complained of, and the exact relief which is desired; and more importantly CTA has failed to file any verified statement as is required by Rule 42.2. Applicant requests that the Commission rule on its motions as soon as possible, as the hearing is scheduled for March 7, 1979.

We find that the letters filed by CTA in protest to the relief sought in Application No. 58431 fail to comply with Rules 42.1 and 42.2 of the Commission's Rules of Practice and Procedure and conclude that the motions should be granted.

Therefore, IT IS ORDERED that:

1. The letters forwarded to the Commission under the dates November 13, 1978, December 8, 1978, and December 19, 1978 by CTA are hereby stricken from the record in Application No. 58431.

2. The hearing set for March 7, 1979 is removed from the Commission's Calendar.

3. Application No. 58431 will be decided on an ex parte basis.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 25th day of FEBRUARY, 1979.

Commissioner JOHN E. BRYSON

Present but not participating.

President
Yerron L. Sturgeon
Commissioners
Richard W. Howell
Clair J. DeFuria
Lawrence J. ...