

JUN 19 1979

ORIGINAL

Decision No. 90464

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of File Keepers, Inc.,)
for authority to deviate from the)
provisions of Minimum Rate Tariff)
Number 2 pursuant to the provi-)
sions of Section 3666 of the)
Public Utilities Code.)

Application No. 58805
(Filed April 13, 1979)

OPINION AND ORDER

File Keepers, Inc., is authorized to operate as a highway contract carrier. By this application, applicant seeks an exemption from the minimum rates in Minimum Rate Tariff 2 for "courier type" transportation.^{1/}

The Commission in Decision 89004, dated June 27, 1978, found:

"There is a need for the proposed exemption because the present rates are not responsive to the transportation characteristics of courier service transportation of business records..., and the Public interest does not require the continuance of minimum rates for this service."

Applicant was required to file for this exemption. It operates a vehicle weighing over 4,500 pounds in its fleet. This larger vehicle is not utilized in the courier service but is used for general support and maintenance functions of applicant's basic business service.

^{1/} Minimum Rate Tariff 2 - Item 10 defines a courier service as follows:

- "... (o)perations having the following characteristics;
(a) A carrier vehicle fleet consisting of only vehicles having a licensed weight of 4,500 pounds or less;
(b) Delivery shall be made within 24 hours after pickup."

The application was listed on the Commission's Daily Calendar of April 17, 1979. A protest from the California Trucking Association (CTA) complying with the requirements of Rule 42.2 of the Commission's Rules of Practice and Procedures has been received.

The CTA protest cites the potential competitive advantage that the applicant can gain if an exemption from the rates is granted. The CTA protest also cites a remedial action suggesting that applicant could seek a deviation under Section 3666 of the Public Utilities Code. Then, in further discussion, CTA describes a situation wherein two competing package delivery carriers, one with an exemption and one with a deviation, engage in a rate war. Describing the conclusion to the destructively competitive rate war, CTA cites the Commission's cancellation of the "exempt" status of one carrier in order to place both of the carriers on an equal "pricing" competitive basis.

Discussion:

The present situation arises because the applicant operates a vehicle in excess of 4,500 pounds which is used in the furtherance of applicant's storage of historical business records service.

CTA's protest quoted Decision 89004:

"Courier service must have an element of spontaneity; it cannot be distinguished by the commodity or package size. It is the kind of service that is controlling; it is characterized by quick response, speedy delivery, and usually involves on-call service."

From the above ^{we can conclude} ~~it can be surmised~~ that the integrity of the courier service concept adopted by Decision 89004 requiring no vehicles over 4,500 pounds was intended to prevent two abuses: LS

- 1) There would be no commingling of normal "small package deliveries" with the "courier type" service.
- 2) Vehicles engaged in this exempt traffic would not be able to offer transportation services beyond that of a courier.

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Decision 88297 (Case 5432, Pet. 928 - Thompson Photo Service, Inc.) is cited by CTA as a situation wherein the transportation was incidental to the primary business. The petitioner in that case sought an exemption from minimum rates as a "courier type" operation. The exemption was denied and a deviation was granted establishing a minimum package rate to be assessed. A public hearing was held in that matter which revealed that the transportation services were being performed simultaneously with the petitioner's primary business. It was decided that this transportation was that of a package delivery carrier and could not qualify for the courier service definition set forth in Decision 85703.

Decision 89348, issued September 6, 1978 in A. 58198, granted an exemption to a "courier type" carrier. This carrier had a vehicle in its fleet with a licensed weight over 4,500 pounds. The exemption was granted with a restriction prohibiting the carrier to use any vehicle weighing in excess of 4,500 pounds in its "courier type" operations. This decision was not protested and was issued ex parte subsequent to Decision 89004.

The Commission in establishing the courier type service exemption recognized the competitive advantages of the exemption and has held that service is the controlling factor. Applicant has established its intentions to engage in a bona fide courier type service using vehicles weighing less than a licensed weight of 4,500 pounds.

Analysis of the application and CTA's protest was made to determine applicant's conformity with the courier type service description as enunciated in Decisions 85703 and 89004. It was determined that the application presents ample material to make a proper determination and a public hearing would not present any additional data.

The applicant in the present instance services businesses which generate volumes of records which must be maintained for prescribed periods of time. Applicant's service implements a recently developed business concept of providing record storage warehouses for the retention of historical business documents. Applicant is definitely not a general commodity or a small package type carrier. Nor does the structure of its business indicate an intent to engage in business as a general commodity or small package carrier.

Conclusion:

Applicant should not be denied the opportunity to fully service its accounts, nor should the applicant be penalized by economic restrictions in meeting its competitor's pricing mechanisms. The authority granted should be conditioned so that the courier exemption can be revoked: 1) if at any time the applicant utilizes a piece of equipment in excess of 4,500 pounds in its courier operations; or 2) if at any time applicant utilizing this exemption transports packages which do not contain the items listed as business records in Decision 89004, Appendix A.

In the circumstances, the Commission finds that applicant intends to engage in "courier type" transportation for which competing highway carriers have heretofore been exempted from the otherwise governing minimum rates and that applicant's request for similar relief has been shown to be justified. A public hearing is not necessary. The Commission concludes that the application should be granted as indicated in the ensuing order and that the effective date of this order should be the date hereof because there is an immediate need for this relief.

IT IS ORDERED that:

File Keepers, Inc., is exempted from the otherwise governing provisions of Minimum Rate Tariff 2 when engaged in the "courier type" transportation of:

1. Checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards,

data processing material, legal documents and printed or reproduced documents or data and related items.

2. At no time shall "courier type" transportation be performed in a vehicle exceeding 4,500 pounds.

3. At no time shall "packages" be transported within the "courier" vehicles which do not contain the items listed in Number 1 above.

4. The "courier type" transportation shall conform with the element of spontaneity as characterized by quick response, speedy delivery and the maintenance of on-call service.

5. Delivery shall be made within 24 hours after pickup.

6. Nonconformance with any of the above conditions (1, 2, 3, 4, or 5) shall be just cause for revocation of the exemption granted herein.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 19th day
of JUNE, 1979.

John E. Byrne
President
George L. Stinson
Robert D. Wood
Clair J. DeLoach
Edward M. Gurnea
Commissioners