

ORIGINALDecision 93437 AUG 18 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of Edward K. Bernal, doing business
as ACCESS DELIVERY SERVICE, for an
order granting an exemption from the
provisions of Minimum Rate Tariffs
1-B, 2 and 19 for courier type
service.

Application 59447
(Filed February 13, 1980;
amended January 30, 1981)

O P I N I O N

Edward K. Bernal (Bernal), doing business as Access Delivery Service, was issued a statewide general commodity common carrier certificate on April 30, 1980 in GC 821, File T-120,027, under Public Utilities (PU) Code § 1063.5. He excepted drugs, prescription items, and pharmaceuticals from his certificate by his adoption notice effective August 27, 1980, which adopted Transition Tariffs (TTs) 1-B (East Bay), 2 (statewide), and 19 (San Francisco) as his tariffs except for these items. He also holds a highway contract carrier permit.

By this application, as amended, Bernal seeks exemption from the provisions of TTs 1-B, 2, and 19^{1/} for courier-type transportation of drugs, prescription items, and pharmaceuticals. Courier service is described in Item 10 of each of the three transition tariffs as follows:

"COURIER SERVICE is defined as operations 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."

^{1/} The application and amendment inadvertently referred to Minimum Rate Tariffs 1-B, 2, and 19 which were canceled April 30, 1980.

As originally filed, the application also sought an exemption for medical and dental supplies and related equipment (such as canes and crutches) and toilet preparations. The requested exemption for these items was protested. There are no protests to the sought authority as restricted by the amendment. The application and amendment were each listed on the Commission's Daily Calendar, a copy of the application was served on Advanced Business Services, Inc. (ABS), doing business as A Advanced Mail Delivery Service, which holds a similar exemption to that sought here, and copies of both were served on the California Trucking Association.

The application, as amended, states as follows:

1. Many other carriers have been granted exemptions for similar courier-type operations. By Decision (D.) 86446 dated September 28, 1976 as amended by D.86682 dated November 23, 1976, in Case (C.) 5432 (Petition 915), et al., ABS was granted an identical exemption to that sought here.
2. ABS is presently providing courier service for AMFAC from the shipper's Santa Clara distribution facility under its drugs, prescription items, and pharmaceuticals exemption. Bernal has been requested by AMFAC to provide the same type of service from this facility, as evidenced by AMFAC's letter in Exhibit B to the application. He will be unable to provide this service and compete with ABS unless he is authorized the flexibility of the sought exemption.
3. The application of the three transition tariffs to the service in question is not practical.
4. Bernal is using two small pickups and a passenger automobile in his present operations. All are under the weight limit for courier service. The vehicles are leased by Bernal and driven by the owners, who are lessor-employees of Bernal. This sort of arrangement is typical in courier-type operations and has been approved by the Commission in prior proceedings. (See D.91247 dated January 15, 1980 in C.10278, mimeograph copy, pages 21 and 22; also ABC Messenger Service, Inc., et al. (1971) 71 CPUC 694.)

5. As of December 31, 1979, Bernal's transportation business had assets of \$13,505, liabilities of \$6,940, and an owner's equity of \$6,565. For the year ended December 31, 1979, the net profit from the business before taxes was \$12,609.01.
6. Bernal has had experience in courier-type service since 1978. The proposed service under the sought exemption will be profitable.
7. Based on these special circumstances, the requested exemption is justified and should be granted.

Findings of Fact

1. Bernal holds a statewide general commodity highway common carrier certificate issued under PU Code § 1063.5 on April 30, 1980 in GC 821, File T-120,027 and a highway contract carrier permit.

2. Bernal excepted drugs, prescription items, and pharmaceuticals from his certificate by his adoption notice effective August 27, 1980, which adopted TTs 1-B, 2, and 19 as his tariffs except for these commodities.

3. Because of the procedure referred to in Finding 2, any transportation of drugs, prescription items, or pharmaceuticals by Bernal would be under his contract authority.

4. Our reregulation program provides that: (1) Contract carriers may operate only under contracts on file with the Commission, and (2) any rate filed by a contract carrier below the transition tariffs during the transition period must be accompanied by justification, such as reference to a motor carrier competitor's rate or cost data showing the proposed rate will contribute to carrier profitability. (D.90663 dated August 14, 1979 in C.5432 (Petition 884), et al., mimeograph copy, paragraphs 8 and 9, page 8.)

5. Bernal seeks an exemption from the provisions of TTs 1-B, 2, and 19 and applicable requirements of the reregulation program for courier-type transportation of drugs, prescription items, and pharmaceuticals.

6. The transportation referred to in Finding 5 is to be provided for AMFAC from the shipper's Santa Clara distribution facility.

7. ABS has been granted an exemption for courier-type transportation of various commodities, including drugs, prescription items, and pharmaceuticals. It is presently transporting the three named commodities for AMFAC from the shipper's Santa Clara distribution facility.

8. "The Commission may exempt selected commodity transportation from rate regulation under Division 2 of the Code." (D.90663 mimeograph copy, Conclusion 8, page 12.) Among other things, Division 2 governs highway contract carriers.

9. While Bernal is not seeking authority to charge the same specific rates as ABS, he is requesting the rate exemption flexibility that has been granted to ABS for the commodities in issue. This comes within the purview of justification based on reference to a motor carrier competitor's rate referred to in Finding 4.

10. Based on the special facts and circumstances shown, the requested exemption is justified and is just and reasonable for the transportation of drugs, prescription items, and pharmaceuticals by Bernal for AMFAC from the shipper's Santa Clara distribution facility.

11. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusion of Law

The application should be granted as set forth in the ensuing order.

O R D E R

IT IS ORDERED that Edward K. Bernal is exempt from the otherwise governing provisions of our reregulation program set forth in D.90663 and TTs 1-B, 2, and 19 when engaged in courier-type highway contract carrier transportation of drugs, prescription items, and pharmaceuticals for AMFAC from the shipper's distribution facility in Santa Clara.

This order becomes effective 30 days from today.

Dated AUG 18 1981, at San Francisco, California.

John E. Byrne President
Richard W. Brock
Samuel W. Jones
Walter C. Jones
Frederic C. Jones Commissioners