

MC

GENERAL

Decision No. 29198.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of
L. S. MITCHELL, for an order author-
izing the establishment of rates for
the transportation of specified com-
modities between specified points
under Section 11 of the Highway
Carriers' Act.

} Application No. 20668

Carl L. Schulz for Applicant,
J. E. McCurdy for Poultry Producers of Central
California,
Sanborn & Roehl by Clair MacLeod for W. L. Brooks and
S. B. Ferrick, doing business as The Herrick Co.,
interested party.

BY THE COMMISSION:

O P I N I O N

L. S. Mitchell, an individual, engaged in the business,
among other things, ¹ of transporting property as a highway contract
carrier, seeks authority to charge rates less than the minimum
rates established in the Commission's Decision No. 28761, dated
April 27, 1936, in Case No. 4088 (Part "A"), 39 C.R.C. 732, in so
far as they apply to the transportation of shipments of feed
(poultry or animal), eggs, live poultry and egg cases and poultry
coops between Middletown and Calistoga.

The matter was submitted at a public hearing had before
Examiner Johnson in San Francisco.

The established minimum rates from which relief is sought
under Section 11 of the Highway Carriers' Act are based upon the
lowest common carrier rates for the same transportation. The lowest

¹Applicant is also engaged in the feed business in Calistoga, and
for some years past has acted as the agent of Poultry Producers of
Central California in the buying and selling of eggs, feeds and other
poultry products.

common carrier rate from Calistoga to Middletown on the commodities here involved is 30 cents per 100 pounds, and from Middletown to Calistoga 25 cents per 100 pounds.² Applicant proposes to assess a rate of 15 cents per 100 pounds for the transportation of feed and 10 cents per case (weighing approximately 53 pounds gross) for the transportation of eggs, the latter rate to include the free return of a like number of empty cases. He also proposes a rate of 25 cents per coop for the transportation of live poultry, and 10 cents per coop for empty poultry coops returning.

In support of the proposed rates, applicant stated that he has transported the commodities involved in this proceeding for the account of Poultry Producers of Central California at the proposed rates for the past several years, and that these rates have been profitable; that a substantial portion of the expense of operating his truck equipment is allocated to the transportation of property between Calistoga and Middletown in connection with his own feed business, and that if the relief sought is not granted, Poultry Producers will arrange to transport their traffic on their own trucks. Applicant also submitted an exhibit purporting to show the cost of rendering the service here involved for the years 1934 and 1935, together with revenues received during each calendar month of 1935. The exhibit, however, merely contains a summarization of the total expenses, and does not, by the witness' own admission, include many of the essential elements entering into the cost of performing the service, such as driver's wages, garage rental, clerical expense and return on investment.

²The Herrick Company Local Freight Tariff No. 2, C.R.C. No. 2, effective June 17, 1928.

J. E. McCurdy, Traffic Manager for Poultry Producers of Central California, testified that his company has concluded that if the present contract rates now being paid to their contract carriers are increased, they will put on their own trucks. The record shows that applicant is assessing and Poultry Producers of Central California are paying freight charges for the transportation here involved on the basis of the proposed rates, which as has been pointed out, are substantially lower than the minimum rates heretofore established and from which applicant seeks relief.

In an application for relief under Section 11 of the Highway Carriers' Act, the burden of establishing the reasonableness of the proposed rates rests upon the applicant. The applicant here has failed to sustain this burden. A mere self-serving declaration that rates of the volume of those proposed have proven profitable in the past is not in and of itself sufficient to establish their reasonableness for the future, particularly when, as here, the record clearly shows that numerous factors entering into the cost of performing the service were not given proper consideration. Upon this record the application should be denied.

The fact that applicant has assessed and collected transportation charges on the basis of the proposed rates in violation of Section 10 of the Highway Carriers' Act cannot be allowed to go unnoticed. It will be expected that on all shipments transported since the effective date of Decision No. 28761 in Case 4088 (Part "A") supra, upon which rates less than the minimum rates established in said decision have been assessed, applicant forthwith collect the outstanding undercharges, and advise the Commission in writing, under oath, when this has been accomplished and the amount so collected.

O R D E R

This application having been duly heard and submitted,
IT IS HEREBY ORDERED that the above entitled application
be and it is hereby denied.

Dated at San Francisco, California, this 19th day of
October, 1936.

M. B. Harris

Leon Whittell

W. A. Cur

Arthur M. ...

Frank ...

Commissioners.