

ORIGINALDecision No. 64149

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 BINSWANGER SERVICES, INC., a Cali-
 fornia corporation, for authority
 to charge less than minimum rates
 pursuant to Section 3666 of the
 Public Utilities Code, for the trans-
 portation of lightweight aggregates,
 viz: clay, burnt or calcined; sand,
 burnt shale; shale, burnt or cal-
 cined, for Susquehanna-Western, Inc.

Application No. 44414Filed May 7, 1962
Amendment Filed May 18, 1962

R. Y. Schureman and Carl H. Fritze, for
 Binswanger Services, Inc., applicant.

E. O. Blackman, for California Dump Truck
 Owners Association, Inc., protestant.

Russel T. Swendseid, for Ridgelite Products,
 protestant.

E. A. Petersen, for Rocklite Products,
 interested party.

Lauren M. Wright, for Susquehanna-Western,
 Inc., interested party.

W. F. Webster, for Rodeffer Industries, Inc.,
 interested party.

James Quintrall, A. D. Poe and J. C. Kaspar,
 for California Trucking Associations, Inc.,
 interested party.

J. M. Jenkins and Carl B. Blaubach, for the
 Commission's staff.

O P I N I O N

Applicant, Binswanger Services, Inc., is authorized to
 operate as a highway contract carrier. By this application it

seeks authority to transport certain lightweight aggregates at rates which are less than those that apply under minimum rate orders of the Commission.

Public hearings on the application were held before Examiner C. S. Abernathy at Los Angeles on June 4, 11 and 12, 1962. Evidence in support of the application was submitted by applicant's president and by two representatives of Susquehanna-Western, the shipper of the lightweight aggregates involved. Evidence in opposition to the application was submitted by another shipper of lightweight aggregates and by two representatives of the California Dump Truck Owners Association, Inc.

Susquehanna-Western is a subsidiary of a multimillion dollar corporation which is engaged primarily in mining and related activities. Susquehanna-Western has recently constructed a plant at San Clemente where it will produce the following lightweight aggregates: clay, burnt or calcined; sand, burnt shale; and shale, burnt or calcined. These aggregates are to be sold and distributed throughout southern California. The principal points of delivery will be in the Los Angeles and San Diego areas. For the most part the users of such aggregates are manufacturers of concrete blocks and concrete articles, cement batching plants, and distribution yards. The anticipated total volume of the movements involved is about 22,000 tons per month.

Applicant's proposals in this proceeding stem from an agreement which it has entered into with Susquehanna-Western

(subject to Commission authorization) whereby Binswanger will transport all of Susquehanna's shipments of lightweight aggregates to southern California destinations during the ensuing five years. Salient features of the agreement, other than those pertaining to the rates in issue herein, deal with the following:

- a. The efficient performance of the transportation;
- b. Procedures for termination of the agreement;
- c. The profit to be realized by the carrier.

With respect to the performance of the transportation in an efficient manner, the agreement provides that Susquehanna "shall use its best efforts consistent with its plant facilities, sales and distribution patterns to schedule shipments and to load the equipment of the Carrier in a manner which will result in maximum use and efficiency of the equipment of the Carrier." The agreement provides, moreover, that in order to facilitate the operations of the carrier, Susquehanna shall furnish Binswanger, without charge, facilities at its plant site at San Clemente for the parking, fueling and dispatching of Binswanger's equipment. On Binswanger's part the agreement provides that the carrier "will accept, transport and deliver all ... shipments in an efficient and truckman-like manner."

The termination clauses of the agreement provide that the agreement may be terminated at the option of either party upon 120 days' notice to the other. Upon termination by the shipper the carrier may require the shipper to purchase all of its motor vehicle

equipment at the book value as of the date of termination. Similarly, upon termination by the carrier, the shipper may, at its option, purchase the carriers' motor vehicle equipment upon a like basis. Book value of the equipment is defined for this purpose as the original purchase price of the equipment less depreciation computed at the rate of 20 percent of the purchase price per year.

Assertedly, the rates which applicant proposes to assess for its services for Susquehanna-Western contain provision for adequate profit. Nevertheless, the agreement contains a guarantee that for each of the years that the agreement is in force applicant's profit will not be less than \$25,000 a year, before allowance for income taxes. On this point the agreement states that within 30 days after the close of the contract year in which this amount of profit is not realized by Binswanger from the proposed rates Susquehanna-Western will pay "a sum of money sufficient to provide the Carrier with a net profit of . . . \$25,000.00" for the year "above all necessary and reasonable expenses of the trucking operations contemplated under this Agreement, but before federal income taxes." This guarantee, after allowance for federal and state income taxes, is approximately 5 percent of the annual gross revenues of about \$330,000 which are anticipated under the proposed rates.

The anticipated gross revenue figure of \$330,000 is based on applicant's estimates that the delivery of the lightweight aggregates for Susquehanna-Western will involve approximately 1,000,000 miles of vehicle operation annually, and that the revenue

which will be realized from the proposed rates will average 33 cents per vehicle mile. The cost of the transportation was estimated by applicant's president as amounting to 29.09 cents per mile, leaving 3.91 cents per mile available for contingencies and profit.

Factors upon which the cost estimate was developed are as follows:

	<u>Costs in Cents per Mile</u>
Labor	11.650
Running Costs (fuel, oil, tires, maintenance and repairs)	9.730
Depreciation and Interest	3.044
Licenses and Fees	.480
Taxes (Board of Equalization, Public Utilities Commission) and Insurance	1.429
Administrative Expense	<u>2.760</u>
Total Cost per Mile	29.093

Assumptions upon which this cost estimate was developed are that in the delivery of Susquehanna-Western's shipments, applicant will be able to operate 16 hours a day, 5 to 6 days a week; that about 27 tons of aggregates will be transported each trip; that total loading and unloading time will be about one-half hour per load, and that in the operation of its vehicles applicant will be able to maintain an average running speed of about 36 miles per hour. Although these factors and assumptions necessarily do not reflect actual experience in the transportation of the aggregates for Susquehanna, since Susquehanna's plant at San Clemente

has just been completed, they assertedly rest in large part upon experience of applicant's president in providing a substantially similar kind of service involving the transportation of bulk cement in the southern California area.

The rates which applicant seeks to have authorized are set forth in Appendix "A" attached hereto. In general, these rates are from 20 to 40 percent less than those that would apply for the same transportation under the provisions of Minimum Rate Tariff No. 7. Protestants -- a present producer of lightweight aggregates and the California Dump Truck Owners Association, Inc. -- particularly assailed the proposals because of the substantial differentials in rates that would be established in favor of the transportation for Susquehanna-Western. They declared, in substance, that the authorization of the reduced rates for Susquehanna's shipments would break down the present minimum rate structure for the transportation of lightweight aggregates in southern California territory; would disrupt present practices in the marketing of lightweight aggregates, and would thereby be detrimental to present for-hire carriers and shippers of lightweight aggregates alike. They also took issue with the various cost estimates and related factors upon which the proposed rates were developed. They asserted that such costs reflect optimum transportation conditions which will not be realized in the actual performance of the services involved.

Authority to charge lesser rates than those which apply as minimum may be granted upon a finding that the proposed rates

are reasonable. Section 3666 of the Highway Carriers' Act reads as follows:

"If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate."

A principal test of the reasonableness of proposals to charge lesser rates than those which have been established as minimum is whether the proposed rates are sufficient to return the costs of the services involved plus a profit. Since by the terms of its agreement with Susquehanna-Western applicant is guaranteed its costs and a profit, it is evident that from an over-all standpoint applicant's proposals meet the test of being compensatory. On this basis it can be concluded that the sought deviations from the minimum rates are reasonable. ✓

Another factor to be considered in this connection, however, is whether the specific rates which are proposed are themselves reasonably related to the costs of service. It should be pointed out that although applicant has undertaken to justify its proposals on the grounds that they will return an average rate of 33 cents per mile -- which rate allegedly is profitable -- the proposed rates vary substantially from the 33-cent average. This fact is illustrated in the following table in which are compared examples of the charges per load of 27 tons which would accrue

under a rate of 33 cents per mile and those which would accrue under the proposed rates:

<u>Length of Haul in Miles</u>		<u>Charges at 33 Cents per Mile</u>	<u>Charges at Proposed Rates</u>
<u>Over</u>	<u>But Not Over</u>		
24	25	\$16.50	\$22.68
29	30	19.80	23.76
34	35	23.10	25.11
39	41	27.06	26.46
43	45	29.70	29.16
50	55	36.30	34.56
60	65	42.90	41.31
70	75	49.50	47.79
80	85	56.10	54.54
90	95	62.70	61.02

As the foregoing table shows, the charges under the sought rates for the short hauls would be greater (up to about 40 percent) than those from the rate of 33 cents. On the other end of the scale, however, the charges for the long hauls would be less (about 3 percent) than those under the average of 33 cents. In view of the level of the rates for the long hauls there is serious question as to whether said rates will prove to be reasonably sufficient.

The longer hauls, it should be noted, are those which involve deliveries into the Los Angeles and San Diego areas. These are areas which, in the Commission's own knowledge and experience, are affected by traffic congestion that impedes the free

movement of vehicles. Applicant's president asserted that the availability of freeways within the areas will permit the maintenance of estimated delivery schedules. In the absence of specific information reflecting experience in this respect, however, we believe that the more realistic view is that the actual delivery times in traffic congested areas will exceed applicant's estimates and that the costs of service will be increased as a consequence. In the circumstances we conclude that the record does not permit a finding that the relatively low rates which applicant proposes to assess for the longer hauls are, and will be, reasonable.

We are persuaded, nevertheless, that subject to certain conditions the sought rates may be authorized. As represented by applicant's president, the costs of applicant's services (exclusive of provision for profit) is 29.1 cents per vehicle mile. Converted to an hourly basis this rate is the equivalent of \$10.59 per hour of roundtrip time exclusive of loading and unloading time totaling 30 minutes per load. Expansion of this figure to include an allowance for profit corresponding to that for which provision is made as a minimum guarantee in the agreement between applicant and Susquehanna-Western results in a figure of \$11.45 per hour. Were this amount to be established as a minimum hourly charge in connection with authorization of the sought rates, the infirmities of applicant's showing relating to delivery times would be largely overcome. Such a charge would not become applicable except in instances where actual delivery times exceed those upon which applicant's proposed rates are constructed. In these instances the

application of the minimum charge would prevent applicant's charges from dropping to unreasonably low levels in relation to the services performed, and would return additional revenues substantially in consonance with the additional costs incurred.

A further condition which should be considered in connection with the applicant's proposals deals with the settlement of accounts between applicant and Susquehanna-Western. The agreement provides that applicant's charges thereunder will be paid by Susquehanna within the credit period specified by the applicable minimum rate provisions of the Commission.¹ Insofar as the settlement of profit under the guarantee is concerned, however, the agreement provides that said settlement is to be made at the close of the contract year. Thus, in the event that through a series of adverse circumstances it should develop that the payments under the agreed rates would not be sufficient to return the costs of service, applicant would be required to advance the differences until the close of contract year when settlement for the year is made. It appears that this eventuality neither was considered nor is in accordance with the wishes of applicant and Susquehanna-Western, and that in order to avoid applicant's having advances of this kind outstanding for substantial periods of time applicant and Susquehanna would agree to interim settlements whereby during each succeeding month after a contract month in which applicant has

¹ According to applicant's president, applicant will bill Susquehanna-Western each Monday for services provided during the preceding week, and Susquehanna will undertake to pay such bills during the ensuing week.

transported lightweight aggregates for Susquehanna applicant would render bills for, and Susquehanna-Western would pay, such additional charges as necessary to cover any deficiency between applicant's total costs of services for the month and the total of the charges for said services under the agreed rates.²

We find that, subject to the conditions which are set forth in the following Order, the rates which are listed in Appendix "A", attached hereto, are reasonable for the transportation of lightweight aggregates as identified hereinabove from the San Clemente plant of Susquehanna-Western, Inc., to destinations in Orange, Los Angeles, Imperial, Riverside, San Bernardino and San Diego Counties. Subject to these conditions, deviation authority will be granted.

As previously stated herein, the rates reflect efforts of applicant and the shipper to achieve material efficiencies in the transportation of Susquehanna's products. They also reflect improvements in the technology of transportation of which applicant is taking advantage and which permit the transportation of greater loads per unit of equipment at higher speeds. The Commission has heretofore authorized deviations from the minimum rates in similar circumstances, and has also adjusted the minimum rates upon proper showings that transportation conditions in general have likewise

^{2/} The items of costs which are involved are those which are listed as the applicable costs in Exhibit No. 2 in this proceeding.

changed to reflect such improvements. If protestants are of the opinion that conditions warrant similar changes in the minimum rates, they may advance such proposals in an appropriate proceeding. In claiming that authorization of the sought rates will disrupt present marketing practices, protestants apparently assume that denial of the application will limit Susquehanna-Western to the marketing of its products on the basis of the present minimum rates. However, evidence which was presented in this respect shows that Susquehanna's management is persuaded that Susquehanna can transport its aggregates with facilities of its own at substantially the same costs as those which would result under the rates in issue herein, and that it will do so unless deviation rates are authorized. Since it thus appears that irrespective of whether the sought rates are authorized Susquehanna-Western will enter the market under a level of transportation costs substantially as proposed by applicant, it is evident that denial of the application as urged by protestants would only deprive applicant of the transportation without any assurance that present marketing practices would be preserved.

Inasmuch as the conditions under which applicant's services for Susquehanna-Western may change at any time, the authority which is granted by the following Order will be made to expire at the end of one year unless sooner changed, canceled, or extended by order of the Commission.

O R D E R

Based on the findings and conclusions contained in the preceding opinion,

IT IS ORDERED:

1. That Binswanger Services, Inc., be, and it hereby is, authorized to transport lightweight aggregates, viz., clay, burnt or calcined; sand, burnt shale; shale, burnt or calcined, from the plant of Susquehanna-Western, Inc., at San Clemente to points of destination within the Counties of Orange, Los Angeles, Imperial, Riverside, San Bernardino and San Diego at rates as set forth in Appendix "A" attached hereto, subject to conditions as set forth in Appendix "B" attached hereto, which appendices by this reference are made a part hereof.

2. That the authority herein granted shall expire one year after the effective date of this Order unless sooner canceled, changed or extended by order of the Commission.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 21st day of AUGUST, 1962.

George L. Grover
President

W. D. Mitchell

D. L. Fox

Robert A. King

Frederic B. Holdorf
Commissioners

Rates for the transportation of lightweight aggregates, viz., clay, burnt or calcined; sand, burnt shale; shale, burnt or calcined, from the plant of Susquehanna-Western, Inc., at San Clemente to points of destination within the Counties of Orange, Los Angeles, Imperial, Riverside, San Bernardino and San Diego.

<u>ONE WAY HIGHWAY MILES</u>		<u>RATE IN CENTS PER TON OF 2,000 POUNDS</u>
<u>Over</u>	<u>But Not Over</u>	
0	21	82
21	22	82
22	23	83
23	24	83
24	25	84
25	26	84
26	27	85
27	28	86
28	29	87
29	30	88
30	31	89
31	32	90
32	33	91
33	34	92
34	35	93
35	37	94
37	39	96
39	41	98
41	43	103
43	45	108
45	50	116
50	55	128
55	60	141
60	65	153
65	70	165
70	75	177
75	80	189
80	85	202
85	90	214
90	95	226
95	100	238
100		

Add to the rate for 100 miles 12 cents per ton for each additional 5 miles or fraction thereof.

(End of Appendix)

Appendix "B" to Decision No. 64149

Conditions governing the transportation of light-weight aggregates by Binswanger Services, Inc., for Susquehanna-Western, Inc., under rates as set forth in Appendix "A" to this decision.

1. Except as is otherwise provided herein, the transportation shall be subject to the provisions of the Agreement between Binswanger Services, Inc., and Susquehanna-Western, Inc., which agreement is of record in this proceeding as Exhibit No. 1 as amended by Exhibit No. 3.
2. The transportation shall be performed in dump truck equipment as defined in Item No. 10 of Minimum Rate Tariff No. 7 of the Commission.
3. The legal carrying capacity of the equipment used shall be approximately 27 tons of lightweight aggregates (as designated in Appendix "A" of this Decision) per unit of equipment used. Unit of equipment: tractor, semi-trailer and trailer, or truck and trailer.
4. The minimum weight per load shall be 27 tons or the legal carrying capacity of the equipment used, whichever is the less.
5. The rates which are set forth in Appendix "A" of this Decision shall be subject to a minimum charge of \$11.45 per hour of total roundtrip time per load (inclusive of that for loading and unloading) less one-half hour.
6. Each succeeding month after a month during which Binswanger Services, Inc., has performed transportation services pursuant to the aforesaid Agreement, Binswanger Services, Inc., shall bill, and Susquehanna-Western, Inc., shall pay, for any deficiencies between the total costs of the services provided (exclusive of allowance for profit) and the total charges therefor under the rates authorized by this Decision.

(End of Appendix)