

ORIGINAL

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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
 BINSWANGER SERVICES, INC., a
 California 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 calcined,
 for Susquehanna-Western, Inc.

Application No. 45700

Filed August 21, 1963;
Amended October 18, 1963

R. Y. Schureman, for Binswanger Services, Inc.,
 applicant.
E. O. Blackman, for California Dump Truck Owners
 Association, Inc., interested party.
Arlo D. Poe, J. C. Kaspar, and W. H. Dillon,
 for California Trucking Association,
 interested party.
Russell Swendseid, for Ridgelite Products,
 protestant.
Fred J. Lutz, for himself.
J. M. Jenkins and Carl E. Blaubach, for the
 Transportation Division of the
 Commission's staff.

O P I N I O N

On October 17 and 18, 1963, public hearings were held before Examiner Abernathy at Los Angeles on the above-numbered application of Binswanger Services, Inc., a highway contract carrier, for authority to transport specified lightweight aggregates for Susquehanna-Western from San Clemente to various southern California destinations at lesser rates than those that apply for such transportation under minimum rate orders of the Commission. The authority which is sought

is a modification of authority heretofore granted to Binswanger by Decision No. 64149, dated August 21, 1962, in Application No. 44414. The authority so granted was to expire with October 1, 1963, but it was extended to February 1, 1964, by Decision No. 66077, dated September 24, 1963, in Application No. 45700, to permit consideration of, and decision on, the instant application.

The record which has been developed heretofore relative to the transportation involved herein shows that in 1962 Susquehanna constructed a plant at San Clemente for the production of burnt clay, burnt shale and burnt shale sand -- lightweight aggregates used mainly by manufacturers of concrete and concrete articles. At the time of commencement of its operations at San Clemente Susquehanna expected that it would ship about 22,000 tons of its products per month to destinations throughout southern California. Binswanger was employed under a 5-year contract as the carrier of these shipments at rates which were expected to average about 33 cents per vehicle mile. To assure that the rates would be adequately compensatory, Susquehanna guaranteed Binswanger a profit of \$25,000 per year. With certain conditions this basis of rates was found reasonable and was authorized by Decision No. 64149.¹

¹ The rates which were authorized by Decision No. 64149 are stated in cents per ton and vary with the length of haul. Examples of the authorized rates are as follows:

<u>Length of Haul</u> <u>in One-Way Miles</u>		<u>Rate in Cents per</u> <u>Ton of 2,000 Pounds</u>
<u>Over</u>	<u>But Not Over</u>	
25	26	84
30	31	89
35	37	94
41	43	103

Said rates are subject to minimum charge of \$11.45 per hour of total round-trip time per load (inclusive of that for loading and unloading) less one-half hour.

In connection with the present application Binswanger Services, Inc. states that experience over the past year has developed that the volume of the shipments actually transported is only about half of that which was anticipated at the outset. It asserts that in relation to this lesser volume the amount of the guaranteed profit is excessive and unrealistic. It further states that as a result of further negotiations with Susquehanna in the light of present conditions, it and Susquehanna have concluded that a just and reasonable basis of charges for the transportation of Susquehanna's shipments would be that which would produce an annual profit (before provision for federal income taxes) of \$12,500 or an amount represented by an operating ratio of 92 percent, whichever is the greater. In the computation of expenses for the purpose of determining the applicable profit, all necessary and reasonable expenses applicable to the operations would be included.² Subject to the Commission's authorization, Binswanger and Susquehanna have revised the contract between them to provide that for the remainder of the contract period the lower level of guaranteed profit would apply.

The authority which Binswanger seeks by the instant application differs from the authority heretofore granted in that the guaranteed profit would be reduced to that indicated above. Binswanger also asks that it be authorized to make a single charge for a month's

² Depreciation expense on trucking equipment would be computed on a 5-year straight line basis. The amount to be charged for officers' salaries would be \$800 per month.

services instead of rendering a separate bill for each shipment transported. As an alternative to the latter request Binswanger asks that it be authorized to continue charging the rates heretofore authorized.

The billing and collection procedure which Binswanger seeks to have approved is as follows: Within twenty days after each calendar month Binswanger would submit its income and expense statement for the month to Susquehanna. Within thirty days after the month Susquehanna would pay Binswanger for the expenses incurred plus the guaranteed profit. Within thirty days after the close of the contract year Binswanger would submit its income and expense statement for the year to Susquehanna. Within forty days after the close of the year Susquehanna would pay Binswanger the unpaid balance of the expenses for the year plus the unpaid portion of the guaranteed profit. To assure the correctness of the income and expense statements, the statements would be prepared by a certified public accountant. The final statement for the year would be a certified statement.

In seeking approval of this billing and collection procedure, applicant stated that the services which it performs for Susquehanna constitute all of its services. Hence the monthly and annual income and expense statements would show the costs of the services furnished and thereby would provide the basis for Susquehanna to pay Binswanger for said services. Applicant asserted that in the circumstances a requirement that it render a separate bill for each shipment would impose upon it a needless expense.

At the hearings on the application the general manager of Crestlite Division of Susquehanna supported the granting of the application. He asserted that the nature of the transportation which is

involved is such that it permits operating efficiencies which reduce operating costs and justify rates lower than the minimum. He said that in the event Binswanger is not authorized to assess the lower rates for its services, Susquehanna would undertake to provide the transportation with facilities of its own.

A representative of Ridgelite Products, a producer of light-weight aggregates, opposed Binswanger's request for authority to assess charges on the basis of monthly expenses plus a guaranteed profit. He declared that the granting of the authority would set a pattern for assessing freight charges to which he was opposed. He said that such authority as is granted should be to assess specific rates developed on the basis of Binswanger's actual experience in transporting Susquehanna's shipments.

A member of the Transportation Division of the Commission's staff also opposed Binswanger's request to assess charges on the basis of monthly expenses plus profit. He said the provisions of Section 3666 of the Public Utilities Code under which deviations from the minimum rates may be authorized require the designation of a specific rate, and he asserted that the proposed basis of charges is not one that can be authorized under said Code provisions.³

On the other hand the manager of the California Dump Truck Owners Association, Inc., stated that he would be in accord with the

³"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." Section 3666, Public Utilities Code.

granting of authority to applicant to assess charges on the basis of monthly expenses plus profit. However, he opposed the application to the extent that it seeks continuation of the specific rates authorized by Decision No. 64149. He said that it is obvious that said rates cannot be found to be reasonable for the future inasmuch as applicant's experience over the past year has demonstrated that the volume of transportation which may reasonably be expected to be performed during the coming year is substantially less than that which was originally anticipated and upon which the rates were based.

The record is clear that the charges which applicant seeks to have authorized are intended to return amounts which are not less than the costs of the services involved plus a reasonable profit. Although it may be thus concluded that applicant's proposed charges in the aggregate would be fully compensatory and reasonable from that standpoint, the application may not be granted. The applicable costs of the services involved plus the agreed profit do not constitute a "rate" which may be authorized under the provisions of Section 3666 of the Public Utilities Code.

As part of its request for authority to assess charges on the basis of costs plus profit, applicant asked that in the event that the sought basis be held to be one that may not be authorized, it be afforded opportunity to supplement its showing with evidence relative to specific rates that would be reasonable for its services for Susquehanna. Inasmuch as it appears that in terms of total charges applicant's proposed basis of charges is reasonable and that the infirmity of said basis is one of form, applicant's request to supplement its showing will be granted. Applicant's present authority to charge other than the applicable minimum rates for services which it performs for Susquehanna will be extended to August 1, 1964,

to permit such supplemental showing to be made and decision thereon. In order that applicant not be required to collect an excessive profit for its services in the meantime, the provision for guaranteed profit which is included in the present authority will be modified to that which would be attained under an operating ratio of 92 percent, or an amount computed at the rate of \$12,500 per year, whichever is the greater (said profit to be computed before provision for income taxes).

O R D E R

IT IS ORDERED that

1. The expiration date of the authority which was granted to Binswanger Services, Inc., by Decision No. 64149 is hereby extended to August 1, 1964.
2. In assessing the rates authorized by Decision No. 64149, Binswanger Services, Inc., shall also assess a minimum charge per month equivalent to that amount which will enable it to realize an operating ratio of 92 percent for the month, or a profit of \$1,041.67 for the month, whichever is the greater (said operating ratio and profit to be computed before provision for income taxes).

For the purposes of computing the operating ratio and profit herein specified, the applicable expenses shall be computed in the manner outlined in the Opinion above.

3. The authority granted by Decision No. 64149 shall be deemed to be modified to the extent specified in Paragraph 2, above.

This order shall become effective February 1, 1964. ✓

Dated at San Francisco, California, this 14th ✓
day of January, 1964.

William W. Bennett
President
Edw. E. Bechtel
Edward H. Craig

Commissioners

I disagree with the holding that the requested authority does not involve a "rate". (Cf. Pub. Util. Code sec. 457.)
I would grant the application.

George G. Crocker
Commissioner