

ORIGINALDecision No. 70306

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 SHELDON TRANSPORTATION COMPANY, a
 corporation, for authority to charge
 rates for the transportation of
 asphalt and road oils from Richmond
 to Radum less than those prescribed
 as minimum in Minimum Rate Tariff
 No. 6-A.

Application No. 47761
 (Filed July 22, 1965)

Handler, Baker & Greene, by Marvin Handler,
 for applicant.
C. D. Gilbert, A. D. Poe and H. F. Kollmyer,
 for California Trucking Association;
 interested party.
Arthur F. Burns and R. J. Carberry, for
 the Commission staff.

O P I N I O N

This application was heard and submitted December 7, 1965 before Examiner Thompson at San Francisco. Copies of the application and notice of hearing were served in accordance with the Commission's procedural rules. There are no protests.

By interim order in Decision No. 69628, dated August 31, 1965, in this application, Sheldon Transportation Company was authorized to transport shipments of asphalt and road oils in tank truck equipment from the plant of Chevron Asphalt Company at Richmond to Kaiser Sand and Gravel located at Radum at a rate less than the established minimum rate but not less than \$2.25 per ton, minimum weight 74 tons per shipment, in three loads per tender. The interim authority was scheduled to expire six months from August 31, 1965 and the decision ordered that a public hearing be scheduled on this application.

Testimony was given by applicant's president, a certified public accountant engaged by applicant, and by the manager of purchases of Kaiser Sand and Gravel, Division of Kaiser Industries. The manager of purchases testified that Kaiser Sand and Gravel operates trucks, including tractors and semi-trailers, in its business. In order for it to transport asphalt and road oils it would need only to acquire insulated tanker semi-trailers. Kaiser has made a study of the cost to it of transporting asphalt and road oils from Richmond to Radum and found that it can perform that transportation at a cost of something less than \$2.25 per ton. He testified that if the cost to Kaiser of transportation by for-hire carrier exceeds \$2.25 per ton it will perform the transportation; however, if the application herein is granted Kaiser will continue to use applicant's services.

Applicant's president stated that the transportation is desirable. There are storage facilities at Radum which will accommodate 80,000 gallons of asphalt. Loading at Richmond and unloading at Radum may be done at any time 24 hours per day. Those circumstances permit flexibility of dispatching of vehicles which is beneficial to applicant's business.

The accountant presented an estimate of the cost of performing the service. This estimate was based upon data of 105 loads transported by applicant during the months of September, October and November. The estimate shows that the transportation at the proposed rate will result in an operating ratio of 89.9 percent.

We find that:

1. The proposed rate will be compensatory.
2. The traffic can be retained by applicant only at the proposed rate.
3. The proposed rate is reasonable.

The Commission staff directed our attention to the fact that applicant's permit to operate as a petroleum contract carrier contains the following restriction:

"(10) Permittee shall not engage in the transportation of property over the public highways under this permit when such transportation is covered by the petroleum irregular route carrier operative authority of Sheldon Oil Company, a corporation."

The certificate of public convenience and necessity granted to Sheldon Oil Company by Decision No. 58770, dated July 21, 1959, in Application No. 36131 authorizes it to transport asphalt and road oil as a petroleum irregular route carrier between Richmond and Radum. That authority was suspended to and including December 31, 1965 by Decision No. 68452, dated January 12, 1965, in Application No. 47048.

As a result of the foregoing, on January 1, 1966 Sheldon Transportation Company will lack authority to transport asphalt and road oils between Richmond and Radum. Counsel for applicant stated that Sheldon Oil Company desires that its operative authority as a petroleum irregular route carrier be revoked and that it would make an appropriate filing with the Commission requesting that this be done. We take notice that on December 15, 1965 there was filed by Sheldon Oil Company in Application No. 47048 a petition that its operative rights as a petroleum irregular route carrier be revoked.

The petition in Application No. 47048 and the instant application are two separate proceedings involving two corporate entities. While it is obvious that any authority granted herein to Sheldon Transportation Company would be a nullity as long as Sheldon Oil Company has authority to transport petroleum products from Richmond to Radum as a petroleum irregular route carrier, that circumstance does not prohibit our consideration of the issues in

this application. By reason of the petition filed in Application No. 47048 there is a possibility that there may be a change in such circumstance.

Section 3666 of the Public Utilities Code provides:

"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 a finding that the proposed rate is reasonable, authorize the lesser rate." (Emphasis added.)

Authority granted under that section does not confer the right to transport property for compensation over the public highways, it merely authorizes a carrier to assess a lesser rate than the minimum rate when transportation is performed by it as a highway permit carrier.

Having found that the proposed rate is reasonable, we conclude that Section 3666 requires the authorization of the proposed rate. We further conclude that because the transportation conditions are subject to change the authority should be scheduled to expire February 28, 1967; and that the authority should be restricted to transportation performed by applicant pursuant to its Petroleum Contract Carrier Permit No. 42-1298.

O R D E R

IT IS ORDERED that:

1. Sheldon Transportation Company, a corporation, is authorized to charge a lesser rate than the established minimum rates, but not lower in volume or effect than \$2.25 per ton, minimum weight 74 tons per shipment, for transportation performed by it, pursuant to its Petroleum Contract Carrier Permit No. 48-1298, of asphalt and road oils in shipments of three loads per tender from the plant of Chevron Asphalt Company at Richmond to Kaiser Sand and Gravel at Radum.

2. The authority herein granted supersedes the interim authority granted in Decision No. 69628 and shall expire February 28, 1967 unless sooner canceled, modified or extended by order of the Commission.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 1st day of FEBRUARY, 1966.

Frederick B. Holbrook
President
John E. Mitchell
George T. Brown
Augustin
William W. Bennett
Commissioners