

ORIGINALDecision No. 70820

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of
 William Doran, An Individual,
 Doing Business As: DIAMOND SERVICE,
 Under Section 3666 of the Public
 Utilities Code, for an order
 permitting departure from the
 provisions of Minimum Rate Tariff
 No. 7.

Application No. 48371
 (Filed April 4, 1966)

Marshall A. Smith, Jr., for applicant.
C. D. Gilbert, H. F. Kollmyer and A. D. Poe,
 for California Trucking Association,
 protestant.
R. J. Carberry and J. C. Matson, for the
 Commission staff.

O P I N I O N

This application was heard and submitted May 9, 1966 before Examiner Thompson at Fresno. Copies of the application and notice of hearing were served in accordance with the Commission's procedural rules. California Trucking Association (C.T.A.) protests one of the proposals of applicant.

William Doran is engaged in the business of transporting property as a highway contract carrier under the name of Diamond Service. For several years past he has transported asbestos ore belonging to Union Carbide Corporation from a mining facility near Condon Peak (San Benito County) to Welby (Monterey County) on some occasions as a principal carrier and on other occasions as a sub-hauler. He seeks authority to engage in this transportation at rates different from those prescribed by the Commission in Minimum Rate Tariff No. 7.

The minimum rate applicable to the transportation to be performed on week days is \$14.21 per hour. Applicant proposes to charge a rate of \$3.22 per ton, minimum weight 24 tons, when loading is performed by the shipper and \$3.50 per ton when loading is performed by the carrier. The movement of the ore will require from ten to fourteen units of equipment. Applicant has four units and intends to employ ten subhaulers. He seeks authority to pay the subhaulers \$2.75 per ton, which is a departure from the rule in Item No. 94 of Minimum Rate Tariff No. 7. C.T.A. protests this latter proposal. It does not protest the rates applicant proposes to charge Union Carbide Corporation.

Union Carbide Corporation operates a mine near Condon Peak and the ore removed therefrom is placed in stockpiles. The road from the highway to the mine (a distance of approximately 6 miles) will not permit the trucking of heavy ore shipments during rainy weather. Trucking operations commence on June 1 and continue for about six months until the rainy season starts, usually in November. Ore has been and will be loaded at the stockpiles by the shipper into the carrier's hopper-bottom dump trailers by means of a conveyor. At times when the conveyor is not functioning, the vehicles will be loaded by a skip-loader. Applicant has stationed a skip-loader at the mine for that purpose.

The trucks will be stationed at a trading post located at a point on the highway approximately three miles from the road to the mine. Applicant has employed a superintendent who will be stationed at the trading post to dispatch drivers, service the equipment and in general supervise the transportation operation. The superintendent is an employee of applicant and his compensation will be \$2.00 for each shipment transported by applicant.

The round-trip distance to be traversed by the trucks in transporting a shipment is 116 miles. The time required to make a round trip, including the loading and unloading, is 5 hours and 20 minutes. Applicant testified that the average load weighs 26.5 tons. He said that he intends to employ six drivers to operate the four units and that the number of trips per unit per day will exceed two.

A certified public accountant estimated the cost to applicant of performing the transportation. His estimate was based to some extent upon certain data supplied to him by applicant which it developed at the hearing was erroneous. He was informed that the driver's rate of pay will be \$3.25 per hour but it was shown that on July 1, 1966 the wage rate will be increased to \$3.325 per hour. He was informed that there would be four drivers; however, applicant testified that he intends to employ two additional drivers. The witness assumed, from the compensation to be paid, that the superintendent would not be on applicant's payroll, but applicant testified otherwise. In other respects the accountant's estimates were not challenged and appear to be reasonable. While the estimate of the ratio of indirect expense to direct expense appears to be inordinately low, an examination of applicant's statement of revenues and expenses for the year 1965 discloses very little overhead expense. Although the accountant's estimate does not adequately reflect the full cost of providing the service, the evidence of record permits a reasonable estimate to be made.

The following table sets forth the estimates made by applicant together with the revenues and expenses that reasonably may be expected in the transportation by applicant of the asbestos ore at the proposed rate:

Estimates of the Cost per
Trip of the Transportation
of Asbestos Ore by Wm. Doran
from Condon Peak to Welby.

	<u>Applicant's Estimates</u>	<u>Reasonable Estimates</u>
<u>Revenue per trip</u> (@ \$3.22 per ton)	\$85.33	\$77.28
Expenses per trip:		
Driver Expense	22.20	24.34
Equipment Expense - Fixed	15.11	15.11
" " - Running	21.81	21.81
Weighing	1.00	1.00
Supervision	2.00	2.10
Insurance (4% of Rev.)	3.41	3.09
B.E. & P.U.C. (1.833% of Rev.)	<u>1.56</u>	<u>1.42</u>
Total Direct Expense	\$67.09	\$68.87
Indirect Expense (2.25%)	1.51	1.55
Owner Salary Allowance	<u>1.61</u>	<u>1.61</u>
Total Operating Expense	\$70.21	\$72.03
Net Income per Trip	15.12	5.25

The above estimates are based upon the assumption that each vehicle unit will make two trips per day for 122 working days. The differences in the estimates result in part from applicant's applying a rate of \$3.22 per ton to an average load of 26.5 tons, whereas the record indicates that the rate should be applied to 24 tons, which is the minimum weight proposed for the application of that rate. In addition, applicant's estimate of driver expense was calculated by applying the wage rate of \$3.25 per hour to the hours required for the trip and from the payroll taxes and fringe benefits applicant would be required to pay for the employment of a single driver, whereas the wages should be calculated at a rate of \$3.325 per hour and there should be an allocation of a portion of the payroll taxes and fringe benefits which applicant must pay in connection with the employment of the relief drivers (6 drivers for 4 trucks). We have also included an allowance for payroll

taxes applicable to the employment of the superintendent. In all other respects we have used the factors presented by applicant in arriving at the estimates herein found reasonable.

With respect to the proposed rate of \$3.50 per ton, applicant stated that the amount of 28 cents per ton (the difference between \$3.22 and \$3.50) is his estimate of the cost to him of performing loading. There is no other evidence supporting that estimate. The testimony discloses that virtually all of the loading of trucks at the mine has been done by a conveyor system operated by the shipper. The applicant testified that loading by the carrier would occur only in those instances when the conveyor is not functioning and a skip-loader operated by one of the shipper's employees is not available. The distribution manager of the shipper testified that the stockpiles of ore are available to the carrier at any time but that there are employees at the mine available to perform loading of the carrier's vehicles only during the regular working hours. He said that any loading required to be performed during such hours would be done by shipper employees. He stated that the ore can be delivered to the shipper at its facilities at Welby at any time, day or night. In view of the fact that the ore is unloaded by dumping the assistance of a shipper employee is not required. From the aforementioned testimony an inference may be drawn that applicant intends, upon occasion, to load vehicles at certain times other than the regular working hours of the employees at the mine.

The expense per shipment to applicant of loading the vehicles will necessarily vary with the amount of wages he will pay to his employee to perform that operation for the amount of time expended in loading and in standing by waiting to load. Under

certain conditions, particularly when several trucks are loaded consecutively, the additional revenue of between \$6.72 and \$7.56 per load would more than offset the additional expense to the carrier. Under certain other circumstances, more particularly if he has to pay employees to load one truck per hour, the rate might not be compensatory.

The distribution manager of the shipper testified that the mining operation and the processing of the asbestos ore by Union Carbide Corporation is a pilot operation the unit costs of which the company is attempting to determine by experience. He stated that the payment of transportation charges based upon hourly rates does not permit such cost analyses. For that reason, he stated, the company must either have the ore transported at a rate per ton by for-hire carriers or look to other methods.

With respect to its proposal that it be authorized to engage subhaulers at a rate of \$2.75 per ton, applicant did not offer evidence other than to request that official notice be taken of Decision No. 66201 in Application No. 45642 (Pacific Motor Trucking Company). In that application, filed August 5, 1963, a carrier sought authority under Section 3666 of the Public Utilities Code to perform this same transportation of asbestos ore from Condon Mine to Welby for Union Carbide Corporation at a rate of \$2.75 per ton when equipment is loaded by the shipper and \$3.00 per ton when loaded by the carrier. It also sought authority to engage subhaulers and to pay them a rate of \$2.40 per ton when the equipment is loaded by the shipper and \$2.75 per ton when loaded by the carrier. The authorities sought were granted. Decision No. 66201 states:

"With respect to the request to depart from Item No. 94-C, applicant's vice president and controller testified that applicant is employing a subhauler to perform the transportation and loading services. The subhauler is paid a negotiated \$2.40 per ton for transportation and 35 cents per ton for loading. Applicant desires to continue to pay the subhauler at the specified rates per ton, in lieu of the hourly rates provided in the minimum rate tariff. Until it is known whether the operations of the pilot plant at Welby are fully practical, applicant does not intend to purchase the specialized equipment necessary for the hauling. It will do so, however, as soon as Union Carbide concludes that the Welby asbestos plant will be operated on a permanent basis."

Applicant states that because the plant at Welby is still in the pilot stage and it is not known whether it will be operated on a permanent basis, he finds it practical to dedicate only four units of equipment to the transportation and to employ subhaulers to obtain the remaining ten pieces of equipment. Unlike the Pacific Motor Trucking case, he and not the subhaulers will perform the loading when required.

In arriving at a determination whether the proposed departure from the rule in Item No. 94-C is reasonable, it is necessary to consider the basis for the rule. The so-called 95 percent rule was established by the Commission for southern territory by Decision No. 40724, dated September 16, 1947, in Case No. 4246; it was established for northern territory by Decision No. 52388, dated December 20, 1955, in Case No. 5437. Examination of those decisions discloses that often the transportation of property involves projects requiring substantially more equipment than is available from a single carrier; that it is a common practice for one carrier to enter into a contract of carriage with a shipper and employ other carriers to perform transportation required under that contract, for compensation based upon a percentage of the rate applicable to the transportation; that the carrier contracting with the shipper, called the

overlying carrier, incurs certain expenses that are not borne by the subhauler, such as the expense of soliciting and estimating the transportation, billing, dispatching, and submitting the required reports to the Board of Equalization and to the Public Utilities Commission; that settlements between overlying carrier and subhauler may reflect such costs incurred by the former in connection with the transportation performed by the latter; and that 5 percent of the gross revenue is a reasonable remuneration to the overlying carrier to offset such costs. It appears from those decisions that the Commission, in establishing minimum rates for subhauling at a level of 95 percent of the otherwise applicable minimum rate, concluded that the overlying carrier should be compensated for his costs; it did not conclude that the subhauler should undertake transportation at rates lower than his costs nor that he should forego any profit (that is, the difference between the rate and the cost) which is reasonable for performing the service, including the assumption of the risk involved.

We now turn to an examination of the cost estimates to determine the costs incurred by this applicant in engaging sub-haulers to perform the service. Weighing is an expense which will be borne by applicant and not the subhauler; the same is true of the expense for supervision. The cost of insurance for protection against liability that may be imposed upon him by reason of the transportation is an expense that may be considered here. The expenses of billing and making required reports to State agencies, as well as solicitation, legal and other expenses relating to the

contractual arrangement between applicant and Union Carbide Corporation, are included in indirect expense. Those expenses are tabulated below:

Expenses per trip:	
Weighing	\$1.00
Supervision	2.10
Insurance	3.09
Indirect	1.55
Total	<u>\$7.74</u>

It is noted that the total of said expenses is almost 10 percent of the revenue that will accrue from the rate of \$3.22 per ton, minimum weight 24 tons. Ninety percent of \$3.22 is \$2.90.

We find that:

1. The proposed rate of \$3.22 per ton (with loading by the shipper) has been shown to be reasonable.
2. It is unlikely that loading will be performed by the carrier other than under circumstances where the cost of performing such service will be 28 cents per ton or less.
3. The proposed rate of \$3.50 per ton (with loading by the carrier) is reasonable.
4. The proposed rate of \$2.75 per ton for subhaulers has not been shown to be reasonable.
5. A rate of \$2.90 per ton, minimum weight 24 tons, for transportation services performed by subhaulers has been shown to be reasonable.

We conclude that the applicant should be authorized to charge rates less than the minimum rates for the transportation proposed to be performed for Union Carbide Corporation, but that such rates should be no lower than \$3.22 per ton, minimum weight 24 tons, when the shipper loads the shipments, and \$3.50 per ton, minimum weight 24 tons, when a shipment is loaded by the carrier, and that in all other respects the application should be denied.

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We further conclude that applicant should be authorized to depart from the rule in Item No. 94-C of Minimum Rate Tariff No. 7 to the extent that he may engage subhauliers, under the provisions of that rule, for the performance of the transportation of asbestos ore from Condon Mine to Welby, at rates less than 95 percent of the applicable hourly minimum rate but not less than \$2.90 per ton, minimum weight 24 tons.

The transportation is expected to commence June 1, 1966.

O R D E R

IT IS ORDERED that:

1. William Doran, an individual, doing business as Diamond Service, is authorized to charge and collect rates less than the applicable minimum rates but not less than the rates set forth in Appendix A, attached hereto and by this reference made a part hereof, for the transportation of asbestos ore for Union Carbide Corporation from a mine near Condon Peak to a plant site near Welby.

2. The authority granted herein shall expire January 31, 1967, unless sooner canceled, modified or extended by order of the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 8th
day of JUNE, 1966.

Frederick B. Whitliff
President
Peter S. Mitchell
George F. Grover
Augustus
Commissioners

Commissioner William M. Bennett, being
necessarily absent, did not participate
-10- in the proceedings.

APPENDIX A

William Doran, dba Diamond Service

Schedule of Minimum Rates for the
Transportation of Asbestos Ore for
Union Carbide Corporation

Section 1

Item 10 - Application of Rates - General

The minimum rates, rules and regulations set forth in Minimum Rate Tariff No. 7 are applicable to the transportation of asbestos ore, except as specifically provided in Sections 2 and 3.

Section 2

Item 20 - Rates in this section apply to the transportation of asbestos ore in bulk in dump truck equipment from a mine near Condon Peak (San Benito County) to the plant of Union Carbide Corporation near Welby (Monterey County).

Item 30 - Minimum Weight

The rates in this section are subject to a minimum weight of 24 tons per shipment. The minimum weight shall be transported in one unit of equipment at one time.

Item 40 - Commodity Rates

Rates applicable when carrier's equipment is loaded by:

	<u>Rate Per Ton</u>
Consignor	\$3.22
Carrier	3.50

Section 3

Item 50 - Payments to Subhaulers

When subhaulers are used to perform the transportation service at rates other than 95 percent of the applicable hourly minimum rates, such subhaulers shall receive from Diamond Service not less than \$2.90 per ton, minimum weight 24 tons.