

ORIGINALDecision No. 71665

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 RUSSELL M. BERNSTEIN, doing business
 as EL CAMINO TRANSPORTATION, for
 authority under Section 3666 of the
 Public Utilities Code to charge,
 assess and collect transportation
 charges based on units of measurement
 and minimum charges different from
 and lower than the minimum charge
 heretofore established by the
 Commission, Minimum Rate Tariff
 No. 6-A, in Decision No. 67154,
 Case No. 5436.

Application No. 48359
 (Filed March 28, 1966)
 (Amended July 29, 1966)

Murchison & Stebbins, by John Crawford and
Donald Murchison, for applicant.
Arlo D. Poe, J. C. Kaspar and Richard W. Smith,
 for California Trucking Association, protestant.
W. J. Knoell, for Western Motor Tariff Bureau,
E. N. Dunne, by D. L. DePaul, for Shell Oil
 Company, interested parties.
Norman Haley and J. M. Jenkins, for the
 Commission staff.

O P I N I O N

By this application, as amended, Russell M. Bernstein, doing business as El Camino Transportation, seeks authority under Section 3666 of the Public Utilities Code to assess charges for the transportation of lubricating oils lower than those specified as minimum in Minimum Rate Tariff No. 6-A (MRT 6-A).

Public hearing was held at Los Angeles before Examiner Turpen on July 19, 1966. The matter was submitted upon the filing of an amendment to the application on July 29, 1966.

Applicant operates a single tank truck and trailer in which he transports lubricating oils between points in Southern California. MRT 6-A provides that the weight of refined petroleum products shall be computed at 6.6 pounds per gallon, and that charges

will be based on a minimum weight of 49,500 pounds. Applicant herein seeks to assess charges on a minimum weight of 44,000 pounds, which was the minimum weight set forth in MRT 6-A prior to May 8, 1965.

Applicant testified that at the provided weight of 6.6 pounds per gallon, a minimum weight of 49,500 pounds represents 7,500 gallons. However, he said, the lubricating oils he transports have densities ranging from 7.4 to 8.0 pounds per gallon, and if he loads 7,500 gallons the total actual weight of petroleum products and vehicles would exceed the legal gross weight of 76,800 pounds permitted by the California Vehicle Code. Applicant said that his customers object to being billed transportation charges for 7,500 gallons and receiving several hundred gallons less. He stated that he has not been observing the 49,500 pound minimum charge, but has been assessing charges on the gallonage transported.

Applicant presented a profit and loss statement covering the first six months of 1966. This statement showed revenue of \$40,909 and expenses of \$31,517, for a net profit of \$9,392, for the six-month period, for an operating ratio of 77.1 percent. It was developed that the listed expenses do not include any payments to applicant for his services either as a driver or as manager. Also, he was unable to explain the basis of a number of the expense items. Accordingly, it is clear that the operating results as presented here cannot be accepted as a true indication of the cost of performing this transportation.

The purpose of relief under Section 3666 of the Public Utilities Code is to recognize situations where transportation can be performed for a particular shipper at lower cost than would normally be encountered for that transportation due to certain

special situations not generally encountered by other carriers for other shippers. In this proceeding, however, applicant has not demonstrated that the conditions surrounding the transportation he performs are any different from those experienced by any other carrier transporting the same commodities. In these circumstances, granting of the sought authority would give this particular carrier an advantage not enjoyed by other carriers. The proper procedure in a situation such as exists here is to seek a modification of the minimum rates.

The Commission finds that applicant has not shown that the sought deviation would be reasonable. We conclude that the application should be denied.

Applicant is placed on notice that failure to observe the minimum charges set forth in Minimum Rate Tariff No. 6-A is in violation of Section 3664 of the Public Utilities Code and that any further violations may be made the subject of a penalty action by this Commission.

O R D E R

IT IS ORDERED that Application No. 48359 is denied.

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

Dated at San Francisco, California, this 6th day of DECEMBER, 1966.

[Signature]
President
[Signature]
[Signature]
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Commissioners