

ORIGINAL

Decision No. 72406

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of GLENN L. WILKES, an individual, for a certificate of public convenience and necessity to operate as a Freight Forwarder of petroleum products in volume by tank trucks, trailers and cars.

Application No. 48938
(Filed November 7, 1966)

- Hugh N. Orr, for applicant.
- R. Y. Schureman, for Allyn Transportation Company, Consolidated Freightways Corporation of Delaware, Matich Transportation Company and Western Gillette, Inc.; Frank Loughran, for Arizona Pacific Tank Lines & Ringsby Pacific, Ltd.; W. S. Pilling, for Pacific Intermountain Express Co., protestants.
- Glen R. Baker, for Union Oil Co. of California, interested party.
- John R. Laurie, for the Commission staff.

O P I N I O N

Glenn L. Wilkes requests a certificate of public convenience and necessity authorizing statewide operations as a freight forwarder of liquid petroleum products in bulk, by tank truck, tank trailer and tank semitrailer motor vehicle equipment, operated by certificated carriers of petroleum products.

A public hearing was held before Examiner Daly on February 20, 1967, at San Francisco and the matter was submitted upon briefs since filed and considered.

Applicant states he has had more than thirty years of experience as Rate Clerk, Traffic Analyst, Auditor, and Tank Truck Rate Specialist. Until recently he was employed by Western Gillette, Inc., protestant herein. He further states his net worth is in excess of \$10,000.00.

As a freight forwarder, applicant intends to obtain commitments from small shippers, who, because of insufficient volume, must pay the point-to-point rates as set forth in Minimum Rate Tariff No. 6-A and by consolidating said shipments take advantage of the lower volume tender rates provided by the existing carriers. The rates applicant proposes to charge shippers are above the volume tender rates, but below the point-to-point rates of Minimum Rate Tariff No. 6-A.

According to applicant his proposed service would have a beneficial rather than an adverse effect upon the existing carriers. Assertedly his service is designed to attract traffic from proprietary carriers, which, in turn, would be diverted through applicant to the existing carriers.

Two public witnesses testified, one represented the Phillips Petroleum Company and the other represented American Oil Company. A representative of Union Oil Company of California made a statement of position. All three stated that their respective companies would not commit themselves to the use of applicant's proposed service until a study was made to determine whether it would be economically advantageous and that no study would be conducted until the service was first in operation.

The staff takes the position that applicant's proposed tariff, if authorized, would destroy the minimum rate structure established by the Commission for the transportation of petroleum products in tank trucks. The reason advanced by the staff is that pursuant to the alternative rate provision of Section 3663 of the Public Utilities Code petroleum contract carriers would be authorized to assess the same rates as set forth in applicant's tariff, which in effect would be less than the point-to-point rates of Minimum Rate Tariff No. 6-A.

Protestants argue that the provisions of Minimum Rate Tariff No. 6-A are binding upon freight forwarders. In support thereof they cite Decision No. 67154, dated April 28, 1964, which established Minimum Rate Tariff No. 6-A and particularly Ordering Paragraph 3, which made the rates, rules and regulations of said tariff applicable to all common carriers. Since Section 211 of the Public Utilities Code defines a freight forwarder as a common carrier, protestants contend that the service herein proposed would be in direct violation of Minimum Rate Tariff No. 6-A in that the rates applicant would assess would be less than the minimum point-to-point rates as set forth therein. Protestants further contend that if applicant were authorized to institute the service the competitive impact would require petroleum highway common carriers and petroleum irregular route carriers, as well as petroleum contract carriers, either to meet the reduced rates or suffer diversion of their traffic.

After consideration the Commission finds as follows:

1. Applicant requests authority to operate a statewide service as a freight forwarder for the transportation of petroleum products in tank trucks and trailers of existing certificated carriers.
2. Applicant has had experience in the field of transportation and particularly in transportation of bulk, liquid commodities.
3. Three oil companies stated their use of applicant's service would first depend upon tests establishing its economic feasibility. The record includes, in addition, letters of support for the proposed service from three other potential users.

4. A freight forwarder is defined in Section 220, Part 1, Division 1 of the Public Utilities Code as a common carrier and is subject to the provisions of Minimum Rate Tariff No. 6-A as established by Decision No. 67154.

5. The rate proposed by applicant would be less than the point-to-point rates established by Minimum Rate Tariff No. 6-A, and therefore would be in violation thereof.

The Commission therefore concludes that the application should be denied without prejudice.

O R D E R

IT IS ORDERED that Application No. 48938 is hereby denied without prejudice.

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

Dated at San Francisco, California, this 16th day of MAY, 1967.

[Signature]
President
[Signature]
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Commissioners