

ORIGINALDecision No. 78104

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 ALLYN TRANSPORTATION COMPANY, a
 California corporation, for authority
 to deviate from minimum rates
 pursuant to Section 3666 of the
 Public Utilities Code, for specified
 shipper.

Application No. 51968
 (Filed June 12, 1970)

Carl H. Fritze, Attorney at Law, for
 Allyn Transportation Company,
 applicant.

E. O. Blackman, for California Dump
 Truck Owners Association, interested
 party.

Arlo D. Poe, Attorney at Law, J. C. Kaspar
 and H. F. Kollmyer, for California
 Trucking Association, interested party.

Fred P. Hughes and B. I. Shoda, for the
 Commission's staff.

O P I N I O N

Applicant, Allyn Transportation Company, is engaged in the business of transporting property as a highway common carrier, as a petroleum irregular route carrier, as a radial highway common carrier and as a highway contract carrier. By this application it seeks authority, as a highway contract carrier, to transport petroleum coke for the Great Lakes Carbon Corporation at a rate which is less than the applicable minimum rate specified in Minimum Rate Tariff 2 (MRT 2).

Public hearing on the application was held before Examiner Abernathy at Los Angeles on August 25, 1970, and the matter was taken under submission for decision.

Evidence was presented by applicant's secretary/treasurer and by applicant's vice-president/general manager to the following effect:

The transportation which is the subject of this proceeding consists of the movement of petroleum coke in bulk from the Torrance plant of Mobil Oil Company to the Wilmington plant of Great Lakes Carbon Corporation. Applicant now is, and has been since June 1, 1970, performing said transportation. Initially the coke was being moved at a rate of 1,500 tons per day. Expectations are that by October, 1970, the rate of movement will have been increased to 2,200 tons per day.

The transportation is being performed by hopper-type, bottom-dump vehicles having a load capacity of about 27½ tons. Loading is accomplished by skip loader operated by employees of Mobil Oil Company, and requires three to four minutes per load. Unloading is accomplished by dumping into pits at destination, and requires about a minute per load. Weighing of the loads is accomplished by automatic weighing devices of Great Lakes Carbon Corporation. The length of haul is about 11 miles, one way. The movement is mainly by freeway. The flow of traffic along the segment of the freeway used is relatively constant. The vehicles which are used in the service are operated 16 hours a day, seven days a week. The drivers of the vehicles work in two shifts, from

6:00 A.M. to 2:00 P.M. and from 2:00 P.M. to 10:00 P.M. Applicant's terminal is located in the immediate vicinity of the plant of Great Lakes Carbon Corporation, thus permitting convenient servicing of the vehicles at a minimum cost. Because of the continuous and repetitive nature of the hauling very little supervision is required.

The rate for the transportation which applies as minimum pursuant to MRT 2 is 27 cents per 100 pounds. The rate which applicant proposes to assess, and which it seeks to have authorized, is 63 cents per ton (3.15 cents per 100 pounds). The rates which applicant has been assessing for its services from June 1, 1970, have been the minimum hourly rates which are set forth in Minimum Rate Tariff 5. The revenues which have been generated under such rates have been the equivalent of 60.78 cents per ton. Analysis of a week's experience in performing the transportation indicates that under the proposed rate of 63 cents a ton, applicant would realize earnings, before provision for income taxes, as represented by an operating ratio of 89.98 percent.

Evidence was also presented by the assistant director of transportation for Great Lakes Carbon Corporation who testified that approximately 1,500 tons of raw petroleum coke are used daily in that company's operations at Wilmington; that the daily usage of coke will be increased to about 2,200 tons by about October, 1970, as a result of an expansion of the company's plant facilities; that a further expansion of the plant facilities which is programmed for 1971 will increase the daily usage to 2,900 tons; that the plant's storage facilities are limited in capacity to about 20 hours of

production; that it is essential to the plant's operations that there be motor carrier transportation service adequate to meet the daily production needs;^{1/} that Great Lakes Carbon Corporation prefers to use the services of for-hire carriers instead of operating transportation facilities of its own; that applicant has demonstrated its capability of providing the services required, and that Great Lakes Carbon Corporation fully supports applicant's request to deviate from the minimum rates.

Discussion

It is evident that the circumstances in which applicant is transporting petroleum coke for Great Lakes Carbon Corporation are particularly favorable from a transportation standpoint. The high vehicle use factor resulting from the virtually continuous operations 16 hours a day, seven days a week, the high load factor of about 27 tons per load, the short loading and unloading times totaling only about 5 minutes per load,^{2/} and the absence of en route delays of consequence, all are factors which permit the achievement of low operating costs per unit of service provided. It appears that applicant's showing of the costs of its services for Great Lakes Carbon Corporation reasonably measure such costs.

^{1/} It appears that railroad facilities at the plant of Great Lakes Carbon Corporation are designed primarily for outbound shipments, and are not suitable for handling inbound shipments in quantity.

^{2/} The rates in MRT 2 include provision for loading time up to 8 minutes per ton and a like amount for unloading time.

It further appears that under current cost levels the proposed rate of 63 cents a ton is sufficiently compensatory for said services.^{3/}

As mentioned at the outset of this opinion, applicant is operating as a highway common carrier, as a petroleum irregular route carrier, as a radial highway common carrier and as a highway contract carrier. It is seeking to perform the transportation involved herein as a highway contract carrier.

Applicant's operations as a highway common carrier are conducted under a certificate of public convenience and necessity issued under Decision No. 57786, dated December 30, 1958, authorizing the transportation of petroleum products in bulk, except liquid asphalts, hot road oils and other products requiring insulation between points on or within 50 miles airline distance laterally of "U.S. Highways Nos. 101 By-Pass, 101-Alternate and 101, between San Francisco and the boundary line between California and Mexico" The services which applicant provides for Great Lakes Carbon Corporation come within the scope of said highway common carrier operating authority.^{4/}

Applicant's operations as a highway contract carrier are conducted under a permit which authorizes the transportation of general commodities (except petroleum products transported in tank trucks and tank trailers, and certain other commodities) throughout the State except within the City and County of San Francisco. The permit also contains the restriction that applicant

^{3/} Under the terms of applicant's labor contract, increased labor costs will become applicable July 1, 1971.

^{4/} Petroleum coke is a petroleum product.

"... shall not engage in the transportation of property over the public highways under this permit when such transportation is covered by said carrier's highway common carrier operative authority." The restriction is in consonance with the provisions of Section 3542 of the Public Utilities Code, viz.:

"No person or corporation shall engage or be permitted by the Commission to engage in the transportation of property on any public highway, both as a highway common carrier and as a highway contract carrier ... of the same commodities between the same points."

In order that it might perform the transportation involved herein as a highway contract carrier, applicant has submitted a separate request that its highway common carrier certificate be restricted as follows:

"Restricted against the transportation of petroleum coke, in hopper type trucks, moving from Torrance, California, to Wilmington, California."

It should be noted that the restriction would apply only to transportation performed in hopper type trucks. Thus, applicant apparently would continue to transport coke by other than hopper type trucks -- by end dump trucks or by tractor and trailing equipment, for example -- from Torrance to Wilmington as a highway common carrier.

The prohibitions of Section 3542 against transportation as a highway common carrier and as a highway contract carrier of the same commodities between the same points are not qualified as to the type of vehicles used in the transportation. Since applicant has chosen to confine its restriction to only transportation

by a specified type of vehicle, the aforesaid prohibitions of Section 3542 continue to preclude applicant from engaging in the transportation of coke from Torrance to Wilmington as a highway contract carrier. Hence, the authority which applicant seeks may not be either granted or exercised on the basis on which the request is made.

But even if applicant's requested restriction were broadened to include all transportation of petroleum coke from Torrance to Wilmington, the special rate authority which applicant seeks should not be granted on such restriction. In seeking to perform the transportation involved as a highway contract carrier, applicant in effect is seeking to evade the prohibitions of Article XII, Section 21, of the State Constitution and of Section 453 of the Public Utilities Code against discrimination. Were applicant to undertake to provide the transportation at the proposed rate as a highway common carrier, it would be obligated by the cited prohibitions against discrimination to provide like transportation under comparable conditions for others at comparable rates. By performing the transportation as a contract carrier, however, it ostensibly avoids said prohibitions.

In our conclusions here we should look to the substance of the proposed action, not on the facade. We have heretofore held that a highway common carrier may not lawfully perform transportation through a contract carrier affiliate for a selected shipper at rates different from those maintained in the filed tariff of the common carrier.^{S/} Said holdings apply with even

^{S/} Compare In re Direct Delivery System, 54 Cal. P.U.C. 258.

greater force in this instance where applicant, a highway common carrier, is seeking to escape its highway common carrier obligations by purportedly operating as a contract carrier.

Insofar as the proposed rate is concerned, we find that under prevailing cost conditions (which are scheduled to change on July 1, 1971) the rate is reasonable and justified by transportation conditions. Subject to an expiration date of June 30, 1971, the rate could be authorized for the transportation in question, whether performed by applicant as a highway common carrier or as a highway contract carrier.

The circumstances which inhibit the authorization of the rate for the transportation in contract carriage would be obviated were applicant's highway common carrier authority to be limited to exclude therefrom all transportation of petroleum coke in bulk. Since applicant seeks to perform the service as a contract carrier, we presume that such limitation is desired, and will take action accordingly, subject to applicant's acceptance thereof. With this action the sought rate may be authorized with an expiration date of June 30, 1971.

Findings

1. Applicant is engaged in the transportation of petroleum coke in bulk for Great Lakes Carbon Corporation from Torrance to Wilmington.
2. Applicant seeks authority, as a highway contract carrier, to assess rates for said transportation which are less than the applicable minimum rates pursuant to Minimum Rate Tariff 2.

3. Applicant holds a certificate of public convenience and necessity, granted by Decision No. 57786, dated December 30, 1958, authorizing applicant to operate as a highway common carrier of petroleum products in bulk (except liquid asphalts, hot road oils and other products requiring insulation) between various points within California, including Torrance and Wilmington.

4. Petroleum coke is a petroleum product.

5. The services which applicant provides in transporting petroleum coke for Great Lakes Carbon Corporation from Torrance to Wilmington come within the scope of those authorized by Decision No. 57786.

6. Applicant holds authority, pursuant to permit from this Commission, to transport as a highway contract carrier general commodities, with certain exceptions, which do not include petroleum coke.

7. Section 3542 of the Public Utilities Code prohibits the transportation of property by a person or corporation, both as a highway common carrier and as a highway contract carrier, of the same commodities between the same points.

8. If applicant is to engage in the transportation of petroleum coke as a highway contract carrier, its highway common carrier operative authority should be modified to exclude therefrom the transportation of petroleum coke in bulk.

9. Under current cost conditions the rate of 63 cents a ton, which applicant seeks to have authorized for the transportation of petroleum coke for Great Lakes Carbon Corporation from Torrance to Wilmington, is reasonable.

Conclusions

1. Subject to amendment of applicant's highway common carrier authority, as set forth in Decision No. 57786, dated December 30, 1958, to except therefrom the transportation of petroleum coke, in bulk, applicant should be authorized to transport, as a highway contract carrier, petroleum coke in bulk for Great Lakes Carbon Corporation from the Torrance plant of Mobil Oil Company to the Wilmington plant of said Great Lakes Carbon Corporation in hopper-type, bottom dump vehicles at a rate which is less than the applicable minimum rate under the provisions of Minimum Rate Tariff 2 but which is not less than 63 cents a ton.

2. The sought authority should become effective when applicant has filed its acceptance of the limitation of its highway common carrier operating authority, as stated above, and when applicant has filed and made effective such amendments to its highway common carrier tariff as necessary to carry out the effect of the order herein.

3. The authority to assess the rate of not less than 63 cents a ton for the aforesaid transportation of petroleum coke from Torrance to Wilmington shall expire with June 30, 1971, unless sooner modified, extended or canceled by further order of the Commission.

O R D E R

IT IS ORDERED that:

1. Subject to the conditions herein specified in Paragraph 2, Allyn Transportation Company is authorized to transport, as a highway contract carrier, petroleum coke in bulk in hopper-type dump vehicles for the Great Lakes Carbon Corporation from the production plant of Mobil Oil Co. in Torrance to the production plant of Great Lakes Carbon Corporation in Wilmington for a rate of not less than 63 cents a ton.

2. The exercise of the authority herein granted is subject to the conditions that

(a) The authority which was granted by Decision No. 57786, dated December 30, 1958, to Allyn Tank Line, Inc. (now Allyn Transportation Company) to conduct operations as a highway common carrier is modified to except therefrom the transportation of petroleum coke;

(b) Allyn Transportation Company has filed with the Commission its written acceptance of said modification of its highway common carrier operative authority;

(c) Allyn Transportation Company has filed and made effective appropriate amendments to its highway common carrier's tariff or tariffs to give effect to the operative authority modifications herein specified.

3. The modification of Allyn Transportation Company's highway common carrier operative authority in accordance with the provisions of Paragraph 2(a) shall become effective as of

the date Allyn Transportation Company has filed with the Commission the written acceptance, as specified in Paragraph 2(b), of the modification of said Allyn Transportation Company's highway common carrier operative authority.

4. Amendment or amendments to Allyn Transportation Company's highway common carrier tariff or tariffs to be made as a result of the order herein shall be filed not earlier than the effective date of this order, and may be made effective not earlier than the tenth day after the effective date of this order on not less than ten days' notice to the Commission and to the public.

5. The authority to assess a rate of not less than 63 cents per ton for the transportation described in Paragraph 1 shall expire with June 30, 1971, unless sooner canceled, changed or extended by further order of the Commission. In all other respects the authority herein granted shall expire ninety days after the effective date of this order.

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

Dated at San Francisco, California,
this 22nd day of DECEMBER, 1970.

[Signature]
Chairman
[Signature]
William Synovis, Jr.
[Signature]
Vernon L. Sturgeon
Commissioners