

ORIGINAL

Decision 82 09 101 SEP 22 1982

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of J. S. Shafer, Jr., for  
authority to deviate from the minimum  
rates established in Minimum Rate Tariff  
17-A for the transportation of crushed  
aggregate base for the account of Best  
Western Paving, Inc. under Section 3666  
of the Public Utilities Code.

Application 82-08-41  
(Filed August 20, 1982)

INTERIM OPINION AND ORDER

By this application, J. S. Shafer, Jr., (Shafer) an individual doing business as Trucking by J. S. Shafer, requests authority to charge less than the applicable rate in Minimum Rate Tariff 17-A (MRT 17-A) for the transportation of crushed aggregate base from Conrock Company in Irwindale to Berths 121-126 A.P.L. Terminal site in Los Angeles Harbor for the account of Best Western Paving, Inc., a subcontractor for Continental-Heller Company which holds a contract with the Los Angeles Harbor Department to provide grading and asphaltic concrete paving at this harbor location. Approximately 412,000 tons are to be transported over about a 13½ month-period.

In support of the sought authority, the application asserts that special circumstances exist, including favorable loading, unloading, and route conditions, and better than average use of equipment resulting from the operation of two shifts. It states that, based on Shafer's past experience on similar projects, the proposed rate is reasonable.

While no actual performance time and cost data for the transportation in issue were submitted, a cost statement based on cost exhibits presented in Case 9819, Petition 52, the most recent general MRT 17-A rate proceeding, modified to reflect Shafer's alleged efficiencies and economies was attached to the application. According to this cost analysis, transportation under the proposed reduced rate may reasonably be expected to be profitable.

Shafer operates 35 sets of bottom-dump trailers. Subhaulers would provide all power equipment and some of the trailing equipment for the proposed transportation. Attached to the application are a number of statements signed by subhaulers supporting the application. However, no performance or operating cost data have been furnished for these subhaulers.

The application states that the harbor project is now underway and that the shipper will require the crushed aggregate base in mid- to late September 1982. It requests that if a hearing is to be held on the matter, interim authority be granted immediately.

It has been the policy of the Commission generally to deny carriers granted minimum rate deviations the authority to base payments to subhaulers on the deviated rates unless adequate subhauler costs justifying the reasonableness of such payments have been furnished. Here, because commencement of the public works harbor project is imminent, the Commission staff recommends that the requested deviation be granted for an interim period of 120 days, including the request to pay subhaulers on the basis of the deviated rate, subject to the following conditions:

1. Unless appropriate cost showings for Shafer and for subhaulers are furnished, no continuation of the authority will be authorized.

2. Shafer agrees to pay subhaulers the full amounts provided in MRT 17-A for all transportation subject to this order in the event that results of operations during an appropriate test period should show the relief not justified.
3. The acceptance by Shafer of the interim authority is evidence of his agreement to these conditions.

We agree with the staff recommendations. An appropriate test period would be the first 1,500 loads transported at the interim deviated rate. For each load transported, Shafer shall furnish the Commission with the information listed in attached Appendix B, which includes vehicle and driver identification, time and mileage, loading and unloading data, and relief and breakdown time.

The application was listed on the Commission's Daily Calendar of August 23, 1982. By letter dated September 10, 1982, the California Dump Truck Owners Association (CDTOA) stated that:

(1) because of deficiencies in the financial data for Shafer and subhaulers, it is opposed to the application; and (2) in the event the Commission should consider interim authority appropriate, the interim decision should require an expedited public hearing for the presentation of all necessary financial information for Shafer and subhaulers together with actual performance data relating to operations under the deviation. The following interim order does provide for a public hearing for the presentation of the financial and performance data referred to by CDTOA. No formal objection to the granting of the application has been received.

Because of the urgent need for the interim authority, this order will be made effective on the date it is issued.

Findings of Fact

1. The proposed transportation involves unique circumstances.
2. Although Shafer has not furnished actual performance times and cost data for the proposed transportation, some cost information has been provided, and based on this information, Shafer's costs for this transportation are less than those used to set the rates in MRT 17-A.
3. Subhaulers are to provide all power equipment and some trailing equipment for the proposed transportation.
4. No performance times or cost data for subhaulers to be used have been included with the application.
5. Subject to further review upon consideration of evidence which may be received at a public hearing and the conditions set forth in the following order, the proposed rate is reasonable.

Conclusions of Law

1. Shafer should be granted interim authority for a period of 120 days as provided in the following order.
2. A hearing should be scheduled in this proceeding at which Shafer should present: (1) performance and cost data experienced by his company and subhaulers he engages in performing the transportation in issue, and (2) other material evidence in support of the sought authority.
3. Because there is an immediate need for the interim authority, the following order should be made effective today.

IT IS ORDERED that:

1. J. S. Shafer, Jr., may depart from the rates in MRT 17-A by charging not less than the rate in Appendix A, subject to the following conditions:
  - a. Unless appropriate cost showings for Shafer and for subhaulers are furnished, no continuation of the authority will be authorized.

- b. Shafer agrees to pay subhaulers the full amounts provided in MRT 17-A for all transportation subject to this order in the event that results of operations for the first 1,500 loads transported at the authorized interim rate should show the relief not justified.
- c. Shafer shall furnish the Commission with the detailed performance data listed in attached Appendix B for the first 1,500 loads transported at the authorized interim rate.
- d. The acceptance by Shafer of the interim authority is evidence of his agreement to these conditions.

2. This authority shall expire 120 days after the effective date, unless sooner canceled by the Commission after hearing. ✓

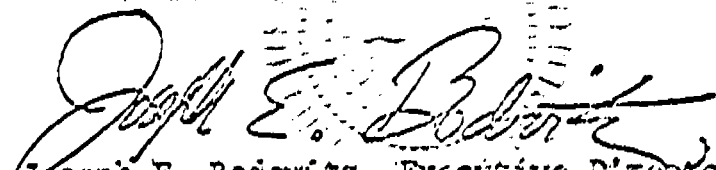
3. A public hearing on this application will be scheduled for the receipt of evidence regarding: (1) performance and cost data experienced by Shafer's company and subhaulers he engages in performing the transportation in question, and (2) other material issues, including determination of a reasonable rate for the future for the transportation in issue should the actual performance and cost data not support the rate authorized.

This order is effective today.

Dated SEP 22 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY:

  
Joseph E. Bodovitz, Executive Director

APPENDIX A  
Page 1

Carrier: J. S. Shafer, Jr., dba Trucking by J. S. Shafer  
Commodity: Crushed Aggregate Base  
From: Conrock Company, Irwindale  
To: Los Angeles Harbor-Berths 121-126  
Minimum Weight: 25 ton per unit of equipment  
Rate: \$3.40 per ton

## Conditions:

1. The minimum weight shall apply per unit of carrier's equipment consisting of a tractor and one or more gravity dump semi- or full trailers.
2. Applicant has indicated that subhaulers are necessary and will be engaged, but applicant has not submitted any costs for subhaulers. Therefore, if any of the below-named subhaulers are employed, they shall receive 95% of the deviated rate authorized. If applicant provides trailing equipment, he may deduct an additional 20% for the use of the trailing equipment.
3. If any subhaulers other than those named below are employed, they shall be paid not less than the authorized deviated rate.

T-129,512	Cecil Payne
T- 98,835	Noah Williams, Jr.
T-127,253	R. David Harlan
T-125,387	Herbert C. Book
T-131,343	Mike Chavez Elias
T-125,493	Lawrence Waters
T-125,421	Jerry L. Fields
T-126,557	Amos Dorsey
T-137,881	Gary D. Gill and Ronald G. Elliott

APPENDIX A  
Page 2

T-134,090	Martinez Trucking, Inc.
T-126,554	Charles H. Washington
T-127,666	Eddie Timmons
T-125,179	W. L. Parker
T-109,814	Perley Fields
T-130,495	Olen C. Graves
T-136,624	Will F. L. Perez
T-138,205	Jose D. Torres and Louis A. Garcia

4. Except as otherwise provided, the rules and regulations of Minimum Rate Tariff 17-A shall apply.

(END OF APPENDIX A)



APPENDIX B

Interim Order A.82-08-41

Detailed performance data to be recorded for the first 1,500 loads transported under the deviation:

1. For each unit of equipment used:
  - a. Tractor license numbers; and
  - b. Trailing equipment license numbers.
2. For each day's movement show:
  - a. Carrier's T-No.:
  - b. Driver's name:
  - c. Time and mileage reading when service commenced;
  - d. Loading time, en route loaded time and mileage, unloading time, en route empty returning time and mileage, and repeat for each subsequent load;
  - e. Time out for lunch and other breaks shall be noted; and
  - f. Breakdown of equipment or delays to equipment shall be noted.

(END OF APPENDIX B)

- b. Shafer agrees to pay subhaulers the full amounts provided in MRT 17-A for all transportation subject to this order in the event that results of operations for the first 1,500 loads transported at the authorized interim rate should show the relief not justified.
- c. Shafer shall furnish the Commission with the detailed performance data listed in attached Appendix B for the first 1,500 loads transported at the authorized interim rate.
- d. The acceptance by Shafer of the interim authority is evidence of his agreement to these conditions.

2. This authority shall expire 120 days after the effective date.