

ORIGINAL

Decision No. 87594 JUL 12 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of J. S. Shafer, Jr.,  
for authority, pursuant to  
provisions of Section 3666 of the  
Public Utilities Code, to depart  
from the minimum rates, rules and  
regulations of Minimum Rate Tariff  
No. 17-A.

Application No. 56055  
(Filed November 10, 1975;  
amended March 12, 1976 and  
January 3, 1977)

Graham & James, by David J. Marchant,  
Attorney at Law, for J. S. Shafer, Jr.,  
applicant.  
C. D. Gilbert and H. Hughes, for California  
Trucking Association; E. O. Blackman,  
for California Dump Truck Owners  
Association; and James R. Foote, for  
Associated Independent Owner Operators,  
Inc.; interested parties.  
Clyde H. Peeples, for the Commission staff.

O P I N I O N

By Decision No. 85254 dated December 16, 1975, as amended by Decision No. 85651 dated March 30, 1976, applicant J. S. Shafer, Jr. (Shafer) was authorized to deviate from the minimum rates in Minimum Rate Tariff 17-A (MRT 17-A) for transportation for Corona Rock and All American Asphalt. The authority was interim pending public hearing, was extended by further interim orders, and is now due to expire July 31, 1977.

By the amendment filed January 3, 1977 Shafer sought two things, an increase in the authorized rate to reflect increases ordered in MRT 17-A, and an extension of the authority to another shipper, Livingston-Graham Co., at a different rate. The increase in the Corona Rock rate was granted by Decision No. 87155 dated March 29, 1977, which also extended the original authority to

June 30, 1977. The addition of Livingston-Graham Co. was held in abeyance pending public hearing which was held before Administrative Law Judge Albert C. Porter in Los Angeles on June 1, 1977 and on which date the matter was submitted.

Three organizations<sup>1/</sup> are protestants to Shafer's request for one reason or another, but all are opposed to the requested authorization to use subhaulers to pull Shafer's trailers for a trailer rental charge of 25 percent of the deviated rate. This charge is presently authorized by the interim relief. Their opposition is based on the fact that Shafer has presented no evidence of the costs incurred by subhaulers for the transportation involved.

There are only two issues to be decided in this matter: (1) whether Shafer has shown that the proposed less than minimum rate is reasonable, and (2) whether the proposed use of subhaulers is reasonable.

The first issue can be readily disposed of. The rates currently in MRT 17-A are based on a blend of the cost of operating two different types of equipment, 5-axle truck and transfer trailer dump trucks and 5-axle tractor-trailer combinations with two bottom dump trailers. The rates are based on 70 percent use of the transfer trailer equipment and 30 percent use of the bottom dump equipment. The transfer trailer equipment is the more costly to operate of the two types. Shafer proposes a rate based on the exclusive use of the 5-axle bottom dump. The rate reflects the difference in cost to operate shown in Exhibit 5, Table 6, Petition No. 16 in Case No. 9819. This is the underlying cost exhibit used to develop the present rates in MRT 17-A. We will authorize the requested rate with the condition that 5-axle bottom dump equipment is used exclusively.

---

<sup>1/</sup> California Dump Truck Owners Association (CDTOA), California Trucking Association (CTA), and Associated Independent Owner Operators (AIOO).

The second issue is equally as easy to dispose of. The only evidence presented by Shafer concerning subhaulers were some verified statements of subhaulers attached to the application supporting the request but showing no cost information. As a matter of policy, the Commission has required that subhaulers be paid 100 percent of the authorized rates in Section 3666 proceedings when revenue and expense data of subhaulers are not submitted. This requirement is intended to prevent abuses of Section 3666 authorities through the excessive use of subhaulers. We will not alter that policy for this proceeding except, of course, to recognize that MRT 17-A provides for subhaulers to be paid 95 percent of the applicable tariff rate.

Shafer has requested through Exhibit 1 specific rates for the two services proposed. These rates would be adjusted should any changes in the MRT 17-A rates be made by the Commission. In order to eliminate the need for adjusting specific deviated rates, the rates authorized will be based on a percentage of the MRT 17-A rates, such percentage designed to produce the exact dollar rates requested.

Findings

1. The proposed less than minimum rates are reasonable.
2. If applicant uses subhaulers for this transportation, they should be paid no less than 95 percent of the authorized rate.
3. Since the present authority is due to expire shortly the effective date of this order will be July 31, 1977.

We conclude that the request should be granted to the extent authorized by the following order.

O R D E R

IT IS ORDERED that:

1. J. S. Shafer, Jr. is authorized to depart from the minimum rates set forth in Minimum Rate Tariff 17-A by charging those rates set forth in Appendix A of this decision.

2. The authority granted shall expire one year from the effective date of this order unless sooner canceled, modified, or extended by order of the Commission.

The effective date of this order is July 31, 1977.

Dated at San Francisco, California, this 12<sup>th</sup> day of JULY, 1977. ✓

*I dissent,*  
*William Lyons Jr.*

*Robert Batmang*  
\_\_\_\_\_  
President

*Verizon L. Sturgeon*  
*Richard W. Howell*  
\_\_\_\_\_  
Commissioners

Commissioner CLAIRE T. DEDRICK did not participate in the disposition of this proceeding.

A.56055 kd/ap \*

APPENDIX A

Carrier: J. S. Shafer, Jr.

Shippers: Corona Rock, Corona, California.  
All American Asphalt, Westminster, California.  
Livingston-Graham Co., El Monte, California.

Commodities: Rock, sand, and gravel as described in Item 60,  
Minimum Rate Tariff 17-A.

From: Corona Rock, Corona. Production Area 33-R.

To: All American Asphalt, Westminster. Delivery Zone 30041.

Rate: 91.1 percent of the applicable rate in Minimum Rate  
Tariff 17-A.

From: Livingston-Graham Co., El Monte. Production Area 19-F.

To: All American Asphalt, Westminster. Delivery Zone 30041.

Rate: 94.3 percent of the applicable rate in Minimum Rate  
Tariff 17-A.

Conditions:

- (1) Transportation shall be performed exclusively by 5-axle bottom dump equipment.
- (2) If subhaulers are used for this transportation, they shall be paid no less than 95 percent of the rates herein with no deduction for use of applicant's trailing equipment.
- (3) In all other respects the rates and rules of Minimum Rate Tariff 17-A shall apply.