

ORIGINAL

Decision No. 87851 SEP 13 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. 56129
(Filed December 18, 1975)

- Graham & James, by Boris H. Lakusta and David J. Marchant, Attorneys at Law, for J. S. Shafer, Jr., applicant.
- E. O. Blackman, for California Dump Truck Owners Association, protestant.
- James R. Foote, for Associated Independent Owner-Operators, Inc.; and Ronald C. Broberg, C. D. Gilbert, and H. W. Hughes, for California Trucking Association; interested parties.
- George L. Hunt, Mark Wetzell, and Clyde H. Peeples, for the Commission staff.

FINAL OPINION AND ORDER

By this application, J. S. Shafer, Jr. (Shafer) requests authority to assess tonnage rates in Item 300 of Minimum Rate Tariff 7-A (MRT 7-A) in lieu of otherwise applicable hourly rates in Item 65 of Minimum Rate Tariff 17-A (MRT 17-A). The authority would apply to the transportation of about 54,000 tons of asphaltic concrete for the Griffith Company from its plant in Irwindale to a construction project on Venice Boulevard in Los Angeles. Shafer would use subhaulers on the project who would pull Shafer's bottom dump trailers. Shafer has only one power unit of his own. The subhaulers

would be paid 70 percent of the rate collected by Shafer, Shafer receiving 5 percent as provided in Item 210^{1/} of MRT 7-A and 25 percent for trailer rental.

The Commission authorized the request on an interim basis by Decision No. 85424 dated February 3, 1976. Because of procedural delays and delays to the project three extensions have been granted; the interim authority is now due to expire September 30, 1977. As of June 1, 1977, about 60 percent of the transportation had been completed.

Hearings were held in Los Angeles before Administrative Law Judge Albert C. Porter on June 1, and on June 2, 1977 when the matter was submitted on briefs to be filed by July 1, 1977. Briefs were filed by applicant, California Dump Truck Owners Association (CDTOA), and the California Trucking Association.

Applicant's Presentation

Shafer testified that special circumstances warrant the granting of the application: the shipper desires distance rates in order to be sure of the exact cost of transportation for the project, (if hourly rates are used, the shipper has no way of knowing what his exact costs will be); there are favorable road conditions involved as a result of easy access and exit from freeways; there are efficient facilities for loading; there is efficient management of the unloading process at destination; and there is a guaranteed substantial volume to be moved over a long period of time.

^{1/} "Charges paid by any overlying carrier to an underlying carrier and collected by the latter carrier from the former for the service of said underlying carrier shall be not less than 95 percent of the charges applicable under the minimum rates prescribed in this tariff, ..."

Shafer sponsored an exhibit which shows the average hourly revenue received for the transportation, although, under the interim deviation, it has been billed on a tonnage basis. Data in the exhibit are based on the 60 percent of the move already accomplished. The equivalent hourly rate varies from \$25 to \$41; the average is \$32.08. The current hourly rate in MRT 7-A, which would have to be used if the deviation were not authorized, is \$27.61. A random selection of 13 hourly revenues based on one day's work showed only one to be below the \$27.61.

CDTOA's Presentation

The only other evidence presented was by a representative of CDTOA. CDTOA testified that the current hourly rates in MRT 7-A were established by Decision No. 86326 and are based on Commission staff Exhibit 289-1. The costs for bottom dump trailing units reflected in that exhibit are less than 15 percent of the total costs, and therefore CDTOA maintained the 25 percent rental fee charged by Shafer is unreasonable.

The Issues

We see the following issues to be resolved:

1. Is the rate which results from the requested deviation from the applicable method of charging a reasonable rate?
2. Should subhaulers engaged in the project be required to become a party to the application so that they might be granted the same deviation received by Shafer?
3. If the answer to Issue 2 is no, should there be a restriction on the payments to subhaulers?

Discussion

Although this application is brought under Section 3666^{2/} of the Public Utilities Code, it is not strictly a request to charge less than a Commission established minimum rate. It is a request to depart from the prescribed method of charging for the transportation but not from the minimum rates which would be subject to that method of charging. We have termed this in the past a "unit of measurement" deviation. (Re Progressive Transportation Co. (1964) 62 CPUC 392.) Under a Section 3666 deviation the only thing required of the Commission to authorize the deviation is to find that the proposed rate is reasonable. We have found in prior proceedings on MRT 7-A that the hourly rates presently in effect are reasonable. Applicant has shown that the charges resulting from the application of a different unit of measurement for billing purposes are, in the preponderance of cases, equal to or greater than the charges which would have resulted if hourly rates had been used and on the average are 16.2 percent greater. We have faced this situation before and authorized the alternative method of billing with the proviso that the carrier keep records to show that the revenues under distance/tonnage rates would at least equal revenues for the same transportation based on hourly rates. (Decision No. 85188 dated December 2, 1975 in Application No. 55639.)

That case was different in that there was no showing that the average hourly rate would be significantly above the minimum,

^{2/} 3666. "If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate." (Emphasis added.)

but only that the revenue earned under the authorized rate would, in total, exceed the revenue which would have accrued under the application of the hourly rates under the same circumstances.

If Shafer had used the applicable hourly rates and never requested the deviation, we would have no concern about the payments to subhaulers as long as Item 210 and the minimum rates of MRT 7-A were protected. We have said that where a less-than-minimum rate is authorized and subhaulers are to be used that such subhaulers shall be paid no less than the applicable minimum rate when subhauler costs are not submitted. (Decision No. 87345 dated May 17, 1977 in Application No. 56520, and Decision No. 87594 dated July 12, 1977 in Application No. 56055.) The majority of the transportation involved will be accomplished by the subhaulers pulling Shafer trailers with their own power units. On the average they will be paid 70 percent of \$32.08, or \$22.46 per hour. \$22.46 is, however, 81 percent of the otherwise applicable hourly rate of \$27.61. Using the complement of 81 percent, 19 percent, and backing out the 5 percent due Shafer by the application of Item 210 of MRT 7-A, leaves 14 percent of revenues to Shafer for trailer rental. This compares favorably with the CDTOA testimony that MRT 7-A rates are based on a staff exhibit reflecting trailer costs of less than 15 percent of total costs. In its brief CDTOA looked at the result to the subhaulers another way. It assumed a 15 percent trailer rental under the applicable minimum rates would net the subhauler \$22.09, whereas under the deviation the subhauler would receive \$22.17 on the average.

Findings

1. The circumstances and conditions attendant to transportation for which this deviation is requested are different than those of the usual and ordinary transportation performed under the applicable minimum rates.

2. The rate which will result from the requested unit of measurement deviation is a reasonable rate.

3. Under the circumstances involved herein, and especially in consideration of the revenues to be received by subhaulers and the time and volume limits of the project, it would be an idle act to require subhaulers to become a party to this application.

4. The possible abuse of Section 3666 which we have protected against in other proceedings by putting restrictions on payments made to subhaulers is not present in the deviation we will authorize in the following order; therefore, it would serve no purpose to impose such restrictions.

We conclude that the present deviation should be extended for six months, a period which should see the conclusion of the project involved.

IT IS ORDERED that:

1. The authority granted by Decision No. 85424 shall expire March 31, 1978 unless sooner canceled, modified, or extended by order of the Commission.

2. In all other respects Decision No. 85424 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th day of SEPTEMBER, 1977.

Robert B. ...
President
William ...
...
Richard ...
...
Commissioners