

**ORIGINAL**Decision No. 52288

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation )  
 into the rates, rules, regulations, )  
 charges, allowances and practices )  
 of all common carriers, highway )  
 carriers and city carriers relating )  
 to the transportation of sand, rock, )  
 gravel and related items (commodi- )  
 ties for which rates are provided )  
 in Minimum Rate Tariff No. 7). )

Case No. 5437

(See Appendix "A" hereof for appearances)

O P I N I O N

Minimum rates, rules and regulations for the transportation of sand, rock, gravel and related items are named in Minimum Rate Tariff No. 7. By petition filed January 27, 1954, in Case No. 4808, the Dump Truck Owners Association of Northern California requested that the Commission's staff develop estimated costs, and recommended minimum rates reflecting current economic conditions and circumstances for such transportation within Northern Territory.<sup>1/</sup> The staff proceeded with the cost and rate studies.<sup>2/</sup> Pursuant to the Commission's Order Setting Hearing, dated February 15, 1955, in Case No. 5437, public hearings in the matter were held before Examiner Carter R. Bishop in San Francisco on

<sup>1/</sup> Northern Territory consists of all of the counties in California except the following: Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, San Bernardino, Inyo and Mono.

<sup>2/</sup> Petitioner had requested that the Commission reopen the record in a previous investigation, in Case 4808, involving the rates in question; however, that part of the petition of January 27, 1954 was denied by Decision No. 49656, dated February 9, 1954.

May 25 and 26, June 29 and 30, July 1, August 2, 3 and 4, and September 20, 1955. With the filing of a late exhibit on October 13, 1955, the phase of Case No. 5437 embraced by the aforementioned order of February 15, 1955, was taken under submission.

At the hearings, the manager of California Dump Truck Owners Association moved that, before issuing its comprehensive decision disposing of the many issues and rate proposals involved in the current phase of Case No. 5437, the Commission issue a decision relating solely to the proposal of the staff rate witness for the establishment of a rule governing payments to underlying carriers. In support of his motion, the manager asserted that, in view of the lack of regulation between overlying and underlying carriers in Northern Territory, the proposed rule was urgently needed. A decision disposing of the entire current phase of Case No. 5437, he felt, would not be forthcoming for quite some time because of the magnitude and complexity of the record. The motion will be granted. This decision will deal solely with the proposed rule.

The rule suggested by the staff witness, an associate transportation rate expert, reads as follows:

"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 per cent of the charges applicable under the minimum rates prescribed in this tariff."

The record discloses that this rule has been in effect for several years in connection with transportation for which rates are provided in Minimum Rate Tariff No. 7 from, to and between points in Southern Territory.<sup>2/</sup>

<sup>2/</sup> Southern Territory embraces the counties specifically named in Footnote No. 1 of this decision. The rule in question is set forth in Item No. 94 of Minimum Rate Tariff No. 7. It was first established by Decision No. 40724, dated September 16, 1947, in Cases Nos. 4246 and 4434.

The rate expert testified that a substantial part of the fore-hire dump truck operations in Northern Territory is conducted under so-called "subhauling" arrangements. The "overlying" carrier, the carrier dealing with the shipper, arranges to provide the service requested, but does so by employing another carrier to perform the transportation. The latter carrier is known as the "underlying" carrier or "subhauler". The amounts paid by overlying carriers to underlying carriers, the witness had found, fluctuate markedly and have no apparent relationship to costs or other rate-making considerations. His investigation had disclosed that the amounts retained by the overlying carriers ranged up to 20 per cent of the gross revenues received from the shippers.<sup>4/</sup> According to the testimony of the vice president of the Independent Dump Truck Owners Association,<sup>5/</sup> overlying carriers retain as high as 30 per cent of the gross revenue in connection with subhaul operations. The record indicates that the amounts received by the subhaulers for their services vary with the season. During the slack time in the winter and spring, when competition among the carriers for jobs is keen, overlying carriers are able to retain

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<sup>4/</sup> This maximum figure of 20 per cent, the staff witness said, relates to those situations in which the subhauler furnishes his own vehicles. Frequently the subhauler utilizes trailers which are supplied by the overlying carrier. Under such an arrangement, he stated, the amounts retained by the latter carrier were found to be as high as 45 per cent of the gross revenue. This figure, he testified, includes rental for the vehicles and gross revenue taxes of 3.25 per cent, as well as compensation to the overlying carrier for services customarily rendered by it under the subhaul arrangement. All references hereinafter to percentages of gross revenue or percentages of the applicable minimum rates shall be deemed to be exclusive of gross receipts taxes paid by an overlying carrier on behalf of an underlying carrier and of any compensation to an overlying carrier for vehicles, fuel, tires or other materials and supplies furnished by it to an underlying carrier.

<sup>5/</sup> According to the record, the Independent Dump Truck Owners Association is a nonprofit organization of approximately 300 for-hire carriers engaged in dump truck hauling in Northern Territory.

larger percentages of the gross revenue than during the busy season.

The results of the rate expert's investigation indicated that in many instances the remuneration received by subhaulers in Northern Territory was insufficient to compensate them for their services. Assertedly, all the subhaulers whom he contacted expressed the need for a minimum revenue provision such as herein proposed, if they were to continue in business. Aside from the fact that the proposed 95 per cent figure would achieve uniformity with the provision now in effect in Southern Territory, the witness was of the opinion that it would constitute a reasonable requirement for application in Northern Territory, with respect both to overlying and underlying carriers.<sup>6/</sup>

In connection with the proposed 95 per cent rule the staff witness recommended also modification of the definition of an overlying carrier, as set forth in Minimum Rate Tariff No. 7. That definition now reads:

"Overlying carrier (principal carrier) means a carrier which contracts with a shipper to provide transportation service for the latter, but which carrier in turn employs another carrier (independent-contractor subhauler), to perform that service."

Under the staff proposal this definition would be made subject to a note, as follows:

"Note: In Northern Territory, the term Overlying Carrier also includes an underlying carrier which employs another underlying carrier to perform service."

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<sup>6/</sup> While the transportation service under a subhaul arrangement, the staff witness testified, is performed by the subhauler, certain services are customarily rendered in connection therewith by the overlying carrier. These include such items as solicitation, dispatching, billing shipments, collecting transportation charges and remitting gross revenue taxes to state agencies.

The purpose of this additional modification, the witness stated, is to avoid vitiation of the proposed 95 per cent rule by insertion of additional carriers in the subhauling arrangement. It was his opinion that, without the proposed "note", the 95 per cent rule would not govern the revenue received by a sub-subhauler, that is, one who is employed in turn by a subhauler to perform the actual transportation.

Adoption of the proposals involved herein was urged by California Dump Truck Owners Association, Dump Truck Owners Association of Northern California and Independent Dump Truck Owners Association. According to the record these organizations include the bulk of the for-hire dump truck carriers operating between points in Northern Territory.<sup>7/</sup> The general manager of the first-named association, testifying on its behalf, stated that the proposed 95 per cent rule is urgently needed because there has been considerable abuse of subhaulers by some overlying carriers with respect to rates. He emphasized the importance of the subhaul relationship in the industry, pointing out the flexibility which it makes possible in the fleets of overlying carriers, enabling those carriers to meet fluctuations in transportation requirements. The adoption of the rule, he indicated, would help to strengthen the financial position of the subhaulers, and was necessary for the maintenance of an adequate complement of that class of dump truck haulers in Northern Territory. Testimony in support of the rule was also adduced by three carrier witnesses. One of these, an overlying carrier who makes extensive use of subhaulers, stated

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<sup>7/</sup> While most of the members of the California Dump Truck Owners Association are domiciled in Southern Territory the record indicates that some of the latter also engage in dump truck hauling between points in Northern Territory.

that he retains 3 per cent of the gross revenue as overlying carrier and that he finds that amount to be adequate. Counsel for six carriers who utilize hopper bottom equipment in their operations expressed opposition to the 95 per cent rule in so far as transportation in hopper bottom equipment is concerned. However, they offered no evidence purporting to show that the rule in question would be improper in connection with such transportation.

The record is convincing that there is urgent need for a rule in Minimum Rate Tariff No. 7 which will assure underlying carriers operating within Northern Territory a fair percentage of the gross revenues collected from shippers by the overlying carriers. In the absence of probative evidence to the contrary, the suggested percentage figure of 95 per cent appears reasonable. It also appears reasonable that the rule in question should be made applicable in connection with transportation performed between points in Northern Territory in all types of equipment for which minimum rates are provided in the above-mentioned minimum rate tariff. Upon consideration of all of the facts and circumstances of record the Commission is of the opinion and hereby finds that the suggested rule relating to payments to underlying carriers, together with the proposed modification in the definition of the term "overlying carrier", has been justified.

O R D E R

Based upon the evidence of record and the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that Minimum Rate Tariff No. 7 (Appendix "A" of Decision No. 32566 as amended) be and it is hereby

further amended by incorporating therein, to become effective January 15, 1956, the revised pages attached hereto and by this reference made a part hereof, which pages are numbered as follows:

First Revised Page 3-A  
Cancels

Original Page .... 3-A

First Revised Page 5-A  
Cancels

Original Page .... 5-A

In all other respects said Decision No. 32566, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 26<sup>th</sup> day of December, 1955.

Robert E. Mitchell  
President  
Justin S. Caswell  
Raymond E. ...  
William J. ...  
R. Hardy  
Commissioners

APPENDIX "A"

Appearances

Edward M. Berol, for Miles and Sons Trucking Service, and Lindeman Brothers; N. E. Keller, for Universal Transport System, Inc., West Trucking Service, Inc., Wilfred J. Fleury and Thorsted Trucking Company; Frank R. Golzen, for Universal Transport System, Inc.; Les Calkins, for Les Calkins Trucking; and Arthur J. Maxam, in propria persona; respondents.

E. O. Blackman, for California Dump Truck Owners Association and Dump Truck Owners Association of Northern California; Edward T. Mara, for Dump Truck Owners Association of Northern California; Frank B. Blum, James G. Shaw and Chet Smith, for Independent Dump Truck Owners Association; Arlo D. Poe, J. C. Kaspar and R. D. Boynton, for California Trucking Associations, Inc.; Johnston and Stanton, by John A. Sproul, for Northern California Chapter, Associated General Contractors of America, Inc.; Eugene R. Booker, for Rock, Sand and Gravel Producers Association of Northern California and Northern California Ready Mixed Concrete and Materials Association; N. E. Keller, for Monterey Sand Company; and Warren P. Marsden and E. J. Saldine, for Division of Highways, Department of Public Works of the State of California; interested parties.

Cyril M. Saroyan, Grant Malquist and Robert A. Lane, for the Commission's staff.



Item No.	SECTION NO. 1-RULES AND REGULATIONS
<p>*10-D Cancels 10-C</p>	<p style="text-align: center;">DEFINITION OF TECHNICAL TERMS</p> <p>(a) CARRIER means a radial highway common carrier or a highway contract carrier, as defined in the Highway Carriers' Act, or a carrier, as defined in the City Carriers' Act.</p> <p>(b) DUMP TRUCK EQUIPMENT means any motor vehicle as defined in the Highway Carriers' Act, which is equipped to discharge its load by gravity either by tilting the body of the vehicle or opening all or a portion of the bottom, but does not mean a motor vehicle engaged in the transportation of concrete mechanically mixed in transit.</p> <p>(c) COMMON CARRIER RATE means any intrastate rate or rates of any common carrier, or common carriers, as defined in the Public Utilities Act, lawfully on file with the Commission and in effect at time of shipment.</p> <p>(d) RAILHEAD means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from rail cars or vessels. It also includes truck loading facilities of plants or industries located at such rail or vessel loading or unloading point.</p> <p>(e) POINT OF ORIGIN means the precise location at which property is physically delivered by the consignor or his agent into the custody of the carrier for transportation.</p> <p>(f) POINT OF DESTINATION means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent.</p> <p>(g) RATE includes charge, and also the ratings, minimum weight, rules and regulations governing, and the accessorial charges applying in connection therewith.</p> <p>(h) SAME TRANSPORTATION means transportation of the same kind and quantity of property and subject to the same limitations, conditions and privileges, although not necessarily transported in an identical type of equipment.</p> <p>(i) SHIPMENT means a quantity of freight tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one point of destination.</p> <p>(j) COMMERCIAL PRODUCING PLANT means the point at which sand or gravel is washed and sorted as to size and grade and placed into stock piles or bunkers, and/or where stone is crushed and graded, and placed into stock piles or bunkers.</p> <p>(k) TEAM TRACK means a point at which property may be loaded into or upon, or unloaded from rail cars by the public generally; it also includes wharves, docks and landings at which the public generally may receive or tender shipments of property from and to common carriers by vessel.</p>

(l) TON means 2,000 pounds.

(m) DRY MIXTURES OF SAND, CRUSHED STONE AND GRAVEL IN BATCHES means where such mixtures are loaded in dump truck equipment provided with one or more batch gates permitting of the loading or unloading of the contents of the individual portions of the load separately and distinctly from the other portions of the load.

\*(n) OVERLYING CARRIER (principal carrier) means a carrier which contracts with a shipper to provide transportation service for the latter, but which carrier in turn employs another carrier, known as the underlying carrier (independent-contractor subhauler), to perform that service (See Note):

# Note-In Northern Territory, the term OVERLYING CARRIER also includes an underlying carrier which employs another underlying carrier to perform service.

(o) UNDERLYING CARRIER (independent-contractor subhauler) means any carrier who renders service for an overlying carrier (principal carrier), for a specified recompense, for a specified result, under the control of the overlying carrier as to the result of the work only and not as to the means by which such result is accomplished.

\*Change }  
#Addition } Decision No. 52388

EFFECTIVE JANUARY 15, 1956

Issued by the Public Utilities Commission of the State of California,  
San Francisco, California.

Correction No. 456

Item No.	SECTION NO. 1-RULES AND REGULATIONS (Concluded)
93	<p style="text-align: center;">ISSUANCE OF SHIPPING DOCUMENT</p> <p>A shipping document (either in individual or manifest form) shall be issued by the carrier to the shipper for each shipment received for transportation. The shipping document shall show the following information:</p> <ul style="list-style-type: none"> <li>(a) Name of shipper.</li> <li>(b) Name of consignee.</li> <li>(c) Point of origin.</li> <li>(d) Point of destination.</li> <li>(e) Description of the shipment.</li> <li>(f) Weight of the shipment (or other factor or measurement upon which charges are based).</li> <li>(g) Rate and charge assessed.</li> <li>(h) Such other information as may be necessary to an accurate determination of the applicable minimum rate and charge.</li> </ul> <p>The form of shipping document in Item No. 370 will be suitable and proper.</p> <p>A copy of each shipping document shall be retained and preserved by the issuing carrier, subject to the Commission's inspection, for a period of not less than three years from the date of its issuance.</p>
*94-A Cancels 94	<p style="text-align: center;">PAYMENTS TO UNDERLYING CARRIERS ***</p> <p>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.</p>
<p>* Change        *** Provision deleted ) Decision No. 52288</p>	
EFFECTIVE JANUARY 15, 1956	
<p>Issued by the Public Utilities Commission of the State of California,        San Francisco, California.</p> <p>Correction No. 457</p>	