

**ORIGINAL**Decision No. 54546

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 (commodities for )  
 which rates are provided in Minimum )  
 Rate Tariff No. 7). )

Case No. 5437  
(Petition No. 25)

Edward M. Berol, Arlo D. Poe, and J. C. Kaspar,  
 for California Trucking Associations, Inc.,  
 petitioner.

E. O. Blackman, for California Dump Truck  
 Owners Association, Incorporated, interested  
 party in support of petition.

J. W. Mallory and E. H. Griffiths, for the  
 staff of the Public Utilities Commission of  
 the State of California.

O P I N I O N

Minimum Rate Tariff No. 7 sets forth minimum rates, rules and regulations governing the transportation of sand, rock, gravel and related items between points in this State by highway carriers. In addition to providing rates and charges to apply as minimum for services which highway carriers perform for shippers, the tariff also contains a rule (Item No. 94-B) that for services performed by one carrier (an underlying carrier or subhauler) for another carrier (an overlying carrier) the payments to be made by the overlying carrier to the subhauler shall be not less than 95 percent of the charges applicable under the minimum rates in the tariff less certain taxes.

This phase of Case No. 5437 deals with the form of the payments to subhaulers under the provisions of Item No. 94-B of the tariff. It appears that in the course of their services for and on

behalf of overlying carriers subhaulers obtain advances from overlying carriers; that settlement for the advances is made at the time of payment by the overlying carriers for the subhaulers' services; and that the settlements are in the form of offsetting deductions from the amounts otherwise due subhaulers. It further appears that question has recently arisen whether said offsetting deductions properly may be made within the scope of the tariff. By the above-numbered petition, filed in this proceeding on June 29, 1956, the California Trucking Associations, Inc., request that the question be resolved by an interpretation of the tariff provisions to the extent they permit the described deductions. In the alternative, petitioner associations ask that the item in question be modified by the addition of the following note:

"Note: Nothing herein contained shall prevent an overlying carrier, in paying such charges, from deducting therefrom such liquidated amounts as may be due from the underlying carrier to the overlying carrier, providing such deductions have been authorized in writing by the underlying carrier."

On August 16, 1956, subsequent to notice to persons and organizations believed to be interested, public hearing on the petition was held before Examiner C. S. Abernathy in San Francisco. Evidence was submitted by petitioner associations through representatives of various carriers. A transportation rate expert of the Commission's staff presented evidence on behalf of the Commission's Transportation Division. On October 11 and 15, 1956, briefs were submitted by the Transportation Division and by petitioner, respectively. The matters involved are ready for decision.

The showing of petitioner in this matter, as developed through the carrier witnesses and on brief, may be summarized as follows:

Carriers operating dump truck equipment are engaged primarily in the transportation of rock, sand, gravel and related materials utilized in the building of highways and in other construction work. Service demands upon the carriers as a group are subject to substantial variations for seasonal reasons. Service demands upon the carriers individually are also subject to substantial variations because of conditions under which contracts for transportation services by dump truck equipment are awarded.

As a general rule the contracts are awarded to the larger and more financially responsible carriers. These carriers, for reasons of economic operation, do not undertake to own or maintain all of the equipment and personnel needed to meet peak demands for their services. Instead, they augment their facilities by the employment of subhaulers as needed. In the course of a year an overlying carrier may employ as many as 75 subhaulers, drawing them from virtually all parts of the State.

In his principal area of operation the overlying carrier is usually an individual or firm of established standing. In contrast, the subhaulers, because of the transient nature of their operations, according to the varying demands for their services, are not so established. Moreover, they generally do not possess financial resources corresponding to those of the overlying carriers. For these reasons subhaulers frequently have neither the funds nor the ability to obtain credit to sustain their operations pending receipt of payments for work performed. To facilitate the operations of subhaulers in the circumstances, overlying carriers make advances to their subhaulers principally in the form of fuel, oil, repair parts and money, subsequently deducting for the advances in their monthly settlement with the subhaulers for services rendered.

Assertedly, this procedure benefits the subhaulers not only because of the manner in which it facilitates their operations but

also because the subhaulers are able to obtain fuel, oil and supplies at lower prices through their overlying carriers than apply on direct purchases for their own accounts.<sup>1</sup> From the standpoint of the overlying carriers the procedure for deducting for advances to subhaulers enables them to allow the advances without the expense and delay of investigation of the ability of the subhaulers to repay the advances and without extensive collection methods to recover the amounts advanced. According to testimony of overlying-carrier witnesses, the overlying carriers would undertake to limit their use of subhaulers as much as possible in the event that the present procedure may not be continued. By way of argument, petitioner declared that the procedure is essential to the practical operation of the dump truck transportation business; that it is reasonable and not contrary to the public interest, and that the amendment which is proposed is in accordance with an existing legal right of setoff.<sup>2</sup>

Adoption of either the sought interpretation of Item No. 94-B of Minimum Rate Tariff No. 7, or the proposed amendment thereto, was opposed by the representative of the Commission's Transportation Division on the grounds (a) that the terms of the item do not permit, and cannot be interpreted as permitting, an overlying carrier to deduct amounts due from a subhauler in paying a subhauler for transportation services performed for the overlying carrier; (b) that intercarrier debts involving other than transportation charges should be settled apart from the settlement of

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<sup>1</sup> It appears that because of the volume of their operations overlying carriers are able to obtain quantity discounts in the purchase of fuel, oil, parts and supplies, and that the savings are passed on to the subhaulers in whole or in part on advances of these items to the subhaulers.

<sup>2</sup> Section 440, Code of Civil Procedure: (Counterclaim not barred by death or assignment.) When cross-demands have existed between persons under such circumstances that, if one had brought an action against the other, a counterclaim could have been set up, the two demands shall be deemed compensated so far as they equal each other, and neither can be deprived of the benefit thereof by the assignment or death of the other.

transportation charges; and (c) that the amendment which petitioner proposes would make enforcement of the minimum rates more difficult for the reason that the Commission would be obliged to ascertain the propriety of the deductions by inquiry into commercial transactions not related to transportation.

On brief the Transportation Division argued also that the convenience of the present procedure does not constitute sufficient justification for amendment of Item No. 94-B as proposed; that the statutory provision concerning counterclaims relate to actions in the civil courts and have no application to matters before the Commission; and that authorization of the deductions would be contrary to a long-established principle that transportation charges should be paid in money and not in commodities or nontransportation services.

#### Discussion and Conclusions

The amounts to be paid by overlying carriers for transportation services performed by subhaulers were first made subject to minimum rate regulation in 1948. In July of that year the following rule was established in Minimum Rate Tariff No. 7:

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

Initially, these regulations applied only in Southern California territory. On January 15, 1956, however, the territorial restriction was removed and the rule became applicable statewide. On July 10, 1956, the rule was modified to its present form to provide that the charges paid by overlying carriers "shall be not less than 95 percent of the charges applicable under the minimum rates . . . ., less the gross revenue taxes applicable and required to be paid by the overlying carrier."

It is evident from the record herein that over the years the carriers have construed and applied the quoted and related provisions of Minimum Rate Tariff No. 7 as designating the amounts of the liability of overlying carriers for services performed by sub-haulers but not the form of the payments to be made by sub-haulers. However, inasmuch as the rates and charges which the tariff names are in cents per ton, or in dollars and cents per hour, and inasmuch as the tariff makes no specific provision for the settlement of transportation charges by other than cash, check or money order, it is concluded that the settlement of intercarrier charges by the application of offsetting deductions is contrary to the plain intent of the tariff and, in fact, prohibited thereby. In order that there may be no doubt henceforth, the tariff will be clarified on this point.<sup>3</sup>

There remains to be considered whether, for the purpose of providing reasonable minimum regulations for the future, Minimum Rate Tariff No. 7 should be amended to authorize overlying dump truck carriers and their sub-haulers to continue to offset counterclaims in the settlement of their intercarrier charges. The evidence is undisputed that the procedure is one that has been developed and proved by experience to be particularly suited to the circumstances in which sub-haulers are employed and is economical to administer, efficient, and conducive to the free flow of transportation by dump truck vehicles. On the evidence presented, it appears that no practical substitute is available which would not materially add to the cost of the transportation involved or which would not impede the performance of the service. In the absence of controlling considerations otherwise, it appears that the procedure should be authorized since it is clearly in the interests of carriers and shippers alike that carriers be permitted to utilize procedures of demonstrated worth.

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For conclusions similar to those expressed herein concerning the payment of charges under Minimum Rate Tariff No. 7, see Decision No. 54286, December 18, 1956, in Case No. 5700, In re rates, operations, practices and methods of Hayden W. Church.

The objections which were registered by the Commission's Transportation Division do not appear to warrant denial of a procedure which the carriers deem essential to their efficient and effective operations. They have all been carefully considered. Discussion of each does not appear necessary except with respect to two of the points raised, namely, that it is an established principle that transportation charges due a carrier may not be paid in commodities or by the performance of nontransportation services, and that adoption of petitioner's proposals would make enforcement of the minimum rate provisions involved impracticable, if not impossible.

The rule against the payment of transportation charges by commodities or by the performance of nontransportation services was established as a means of prohibiting carrier discrimination among shippers which might result through the offsetting of transportation charges by commodities or services of uncertain value. However, discrimination among shippers is not an issue herein, inasmuch as the matters in question relate to intercarrier relationships only. Moreover, the element of uncertainty is not present in petitioner's proposal, since only liquidated obligations of subhaulers to overlying carriers would be taken into account by the overlying carriers in their settlements with subhaulers for transportation services performed by the latter.

The objections on enforcement grounds lack foundation. The showing of the staff's witness indicates that the asserted enforcement difficulties from the offsetting of counterclaims in the settlement of intercarrier charges are more of a speculative nature than actual. The witness was unable to support his allegations in this respect by examples of where the procedure has operated to make enforcement of minimum rates impracticable or impossible, even though, as has been previously stated, payments of overlying carriers

to subhaulers have been subjected to regulation in Southern California territory throughout the past eight years.<sup>4</sup>

Neither are the staff arguments convincing that adoption of the proposed procedure of offsetting liquidated counterclaims in the settlement of intercarrier charges would impose a new and substantial burden upon the Commission in its enforcement of minimum rates applicable to the services involved. These arguments were advanced upon the apparent assumption that under the proposed procedure it would be necessary for the Commission to make inquiries into intercarrier transactions which are not necessary where the settlement of such transactions is wholly on a cash basis. This assumption disregards the fact that the propriety of the settlements is fixed by the essential character of the transactions and not by the form by which the payments are made. In either instance a determination of whether collusion or fraud had been practiced by an overlying carrier and a subhauler for the purpose of evading the minimum rates would require inquiry beyond the form of the settlement. In so far as the fixing of the essential character of an intercarrier transaction is concerned, it appears that in the process of liquidating an offsetting claim the character of the transaction is as clearly defined as it is where the claim is settled for cash.

Although it is thus concluded that authorization of the sought offsets would not impose new and substantial regulatory

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<sup>4</sup> The more extensive record herein justifies revision of conclusions previously expressed in Decision No. 54286 *supra*, wherein the propriety of offsetting obligations in the settlement of intercarrier charges was considered and wherein it was concluded that the allowance of offsets would be conducive to the defeat of the tariff provisions requiring overlying carriers to pay 95 percent of the charges under the minimum rates to their subhaulers.



burdens upon the Commission, the practicalities of the matters involved cannot be ignored. Obviously, appropriate enforcement of the provisions which would govern the intercarrier transactions would entail review of numerous bills, vouchers and like documents which would establish the regularity of the offsetting deductions. To the end that this review may be accomplished efficiently, it appears that carriers who elect to employ the procedure of offsetting claims may reasonably be required to maintain for the Commission's inspection the documents indicated. The order which follows will so provide.

Upon careful consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds as a fact that the procedure hereinabove discussed of offsetting liquidated claims in the settlement of intercarrier charges of overlying dump truck carriers and their subhaulers has been shown to be reasonable in the limited circumstances in which it would apply. It will be authorized by appropriate amendment of Minimum Rate Tariff No. 7.

O R D E R

Based on the evidence of record and on 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 April 1, 1957, Sixth Revised Page 4-A Cancels Fifth Revised Page 4-A, and Second Revised Page 5-B Cancels First Revised Page 5-B, which pages are attached hereto and by this reference made a part hereof.

IT IS HEREBY FURTHER ORDERED that overlying carriers electing to deduct from transportation charges due to underlying carriers any offsetting amount due to the overlying carrier shall itemize such

amounts and maintain for the Commission's inspection all documents involved in the transaction.

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 19th day of April, 1957.

Robert E. Mitchell  
President  
Paul J. [unclear]  
[unclear]  
[unclear]

Commissioners

Commissioner Rox Hardy, being necessarily absent, did not participate in the disposition of this proceeding.

Item No.	SECTION NO. 1 - RULES AND REGULATIONS (Continued)
	<p style="text-align: center;">(1) COLLECTION OF CHARGES</p> <p>*(a) Except as otherwise provided in this item, transportation and accessorial charges shall be collected by the carriers prior to relinquishing possession of property entrusted to them for transportation; said charges shall be collected in cash or in the form of valid checks, drafts or money orders (For exception concerning payments of overlying carriers to underlying carriers see Item No. 94).</p> <p>(b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of freight in advance of the payment of the charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called debtors, for a period not to exceed 20 days, excluding Sundays and legal holidays other than Saturday half-holidays, following the last day of the calendar month in which the transportation was performed.</p> <p>(c) Where the carrier has relinquished possession of freight and collected the amount of charges represented in a freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the debtor, the carrier may extend credit in the amount of such additional charges for a period of 30 calendar days to be computed from the first 12 o'clock midnight following the presentation of the subsequently presented freight bill.</p> <p>(d) Freight bills for all transportation and accessorial charges shall be presented to the debtors within 5 days after the last calendar day of the month in which transportation was performed.</p> <p>(e) Debtors may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by the carrier, as evidenced by the postmark, shall be deemed to be the time of presentation of the freight bills.</p> <p>(f) The mailing by the debtor of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such debtor may be deemed to be the collection of the charges within the credit period for the purpose of these rules. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.</p>

\*45-C  
Cancels  
45-B

UNITS OF MEASUREMENT IN QUOTATION OF RATES AND CHARGES

47-B  
Can-  
cels  
47-A

Rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated.

(1) Will not apply to the transportation of property for the United States, state, county or municipal governments.

\*Change, Decision No. 54546

EFFECTIVE APRIL 1, 1957

Issued by the Public Utilities Commission of the State of California,  
San Francisco, California.  
Correction No. 539

Item No.	SECTION NO. 1 - RULES AND REGULATIONS (Concluded)
*94-C Cancels 94-B	<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, less the gross revenue taxes applicable and required to be paid by the overlying carrier. (See Notes 1 and 2.)</p> <p>NOTE 1.- As used in this item the term gross revenue taxes means the California Transportation Tax payable to the California Board of Equalization and the tax payable to the California Public Utilities Commission under the Transportation Rate Fund Act.</p> <p>#NOTE 2.- Nothing herein contained shall prevent an overlying carrier, in paying such charges, from deducting therefrom such liquidated amounts as may be due from the underlying carrier to the overlying carrier, providing such deductions have been authorized in writing by the underlying carrier. Any overlying carrier electing to employ this procedure shall itemize such amounts and maintain for the Commission's inspection all documents involved in the transaction.</p>
96	<p style="text-align: center;">RATES BASED ON VARYING MINIMUM TRUCKLOAD WEIGHTS</p> <p style="text-align: center;">(Applies only in connection with rates making reference to this item)</p> <p>When charges on a shipment transported in one unit of dump truck equipment at one time based on actual weight exceed the charges which would accrue if charges were computed upon a rate based upon a higher minimum weight, the latter will apply.</p>
* Change ) # Addition )	Decision No. 54546
EFFECTIVE APRIL 1, 1957	
Issued by the Public Utilities Commission of the State of California, San Francisco, California. Correction No. 540	