

ORIGINAL

Decision No. 56366

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

Order Setting Hearing
dated August 13, 1957

E. O. Blackman, for the California Dump Truck
Owners' Association, interested party.

Warren P. Marsden, for the Department of Public
Works, Division of Highways, State of
California, interested party.

Arlo D. Poe, J. C. Kaspar, James Quintrall and
A. J. Mateik, for the California
Trucking Associations, Inc., interested
party.

Gardiner Johnson, for the Northern California
Chapter of Associated General
Contractors, interested party.

R. A. Lubich, Leonard Diamond, John B. Nance,
Arthur M. Mooney and J. P. Merrick,
for the staff of the Public Utilities
Commission of the State of California.

O P I N I O N

This phase of Case No. 5437 deals with the term "dump
truck equipment" as defined in Minimum Rate Tariff No. 7. In this
tariff are set forth the rates, rules and regulations which apply as
minimum for the transportation of rock, sand, gravel, and other
specified materials in dump truck equipment by for-hire highway

carriers. When these materials are transported in other-than-dump truck equipment, different minimum rate provisions apply.

Pursuant to the Commission's order of August 13, 1957, in this proceeding, public hearings were held before Examiner C. S. Abernathy at Los Angeles on October 9, 1957, and at San Francisco on November 22, 1957, for the purpose of receiving recommendations concerning what revisions, if any, should be made in the present definition of dump truck equipment. Proposals in this respect were submitted by members of the Commission's staff and by the manager of the California Dump Truck Owners' Association. Representatives of the Associated General Contractors, of the California Trucking Associations, Inc., and of the Division of Highways, State of California, participated in the hearings as interested parties.

At the present time the term "dump truck equipment" is used in Minimum Rate Tariff No. 7 as meaning

"... 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."

According to testimony of a rate expert of the Commission's staff, question has arisen whether certain recently-developed vehicles which are used for the transportation of sand, gravel and other bulk materials are dump truck vehicles within the meaning of the tariff. One such vehicle, he said, has a "V" shaped body which is unloaded by gravity through openings in the bottom onto a conveyor belt operated longitudinally to the rear of the vehicle.

Another such vehicle he described as having an inverted "V" shaped body which is unloaded by gravity by opening the sides. To remove doubt concerning the applicability of the rates in Minimum Rate Tariff No. 7 to these vehicles when transporting commodities for which rates are named in that tariff, he recommended that the definition of dump truck equipment be revised to read as follows:

"Dump truck equipment means any motor vehicle as defined in the Highway Carriers' and City Carriers' Acts, which is equipped to discharge its load by gravity, or by means of a conveyor belt which is an integral part of the vehicle, but does not mean a motor vehicle engaged in the transportation of concrete mechanically mixed in transit."

Exceptions to the definition recommended by the Commission rate witness were taken by representatives of the California Dump Truck Owners Association, of the Associated General Contractors, and of the State's Division of Highways. In general the exceptions were on the grounds that the proposed definition is not sufficiently descriptive of the vehicles primarily engaged in dump truck transportation. The manager of the California Dump Truck Owners Association urged that the following be adopted as the governing definition in Minimum Rate Tariff No. 7:

"Dump truck equipment, for the purposes of this tariff, means any motor vehicle (including component trailing equipment) as defined in the Highway and City Carriers' Acts, which discharges its load by gravity either (a) by mechanical means that are an integral part of the vehicle, or (b) by opening all or a portion of the bottom, sides, or end; or (c) by a combination of (a) and (b). It does not include a motor vehicle engaged in the transportation of concrete mechanically mixed in transit."

This proposed revision was advanced not only for the purpose of clearly bringing within the term "dump truck equipment" the vehicles which the Commission rate witness described, but also as a means of eliminating asserted uncertainties concerning the meaning of the present definition.

The representative of the State's Division of Highways argued against adoption of this definition insofar as it would classify as dump truck equipment those vehicles which discharge their loads by gravity by opening the ends of the vehicles. He expressed concern that inclusion of the reference to opening of the ends would subject certain earth-moving equipment used in highway construction work to minimum rates.¹ He said, furthermore that it would extend the application of Minimum Rate Tariff No. 7 to transportation not now considered to be subject to the provisions of that tariff. In other respects no exceptions were taken to the definition proposed by the manager of the California Dump Truck Owners Association.

The appropriate definition of dump truck equipment is important from the standpoint of proper application of minimum rates to the transportation in question. As has been indicated heretofore, the minimum rate provisions which are promulgated in Minimum Rate Tariff No. 7 have been designed for transportation of specified

¹In advancing this argument the representative of the State's Division of Highways evidently misunderstands the effect of the proposals. Transportation which is not subject to minimum rates at the present time is not in issue in this phase of this proceeding. Whether or not the transportation by the earth moving equipment involved is now subject to minimum rates is a separate matter, and no finding with respect thereto is made here.

commodities where the material moves in bulk and where gravity is the principal means by which the vehicles are unloaded. The minimum rates which otherwise would apply under other of the Commission's minimum rate tariffs reflect transportation conditions of a more general character. Clearly, if the transportation involved is essentially the same as that which is subject to the rates in Minimum Rate Tariff No. 7, it should be governed by the provisions of that tariff, instead of other minimum rate tariffs, in order to avoid discriminatory differences in charges.

With reference to the transportation of sand, rock, gravel and certain other bulk materials in the vehicles described by the Commission rate witness, it appears that the transportation is virtually the same as that which is currently governed by the provisions of Minimum Rate Tariff No. 7. The rates, rules and regulations of this tariff, therefore, should apply. The tariff term "dump truck equipment" should be amended so that the vehicles in question clearly are covered by the definition. The revised definition recommended by the manager of the California Dump Truck Owners Association appears suitable for this purpose. It appears, moreover, that the definition would provide a clearer and more certain basis for distinguishing between the application of Minimum

Rate Tariff No. 7 and of other of the Commission's minimum rate tariffs. The definition should be adopted, subject to minor modifications for reasons of clarity.

Upon careful consideration of all of the facts and circumstances of record, it is concluded and found as a fact that revision of the definition of dump truck equipment in Minimum Rate Tariff No. 7 has been shown to be reasonable and justified to the extent provided in the order which follows.

O R D E R

Based on the evidence of record and on the conclusions and findings in the preceding opinion,

IT IS HEREBY ORDERED that:

1. 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 27, 1958, Third Revised Page 3-A, which page is attached hereto and by this reference is made a part hereof.

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

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

Dated at San Francisco, California,
this 17th day of MARCH, 1958.

Carl E. Mitchell
President
James L. ...
Michael ...
E. ...

Commissioners

Item No.	SECTION NO. 1-RULES AND REGULATIONS
	<p style="text-align: center;">DEFINITION OF TECHNICAL TERMS (Items Nos. 10 and 11)</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 (including component trailing equipment) as defined in the Highway Carriers' Act and City Carriers' Act, which discharges its load by gravity either (a) in conjunction with mechanical means that are an integral part of the vehicle, or (b) by opening all or a portion of the bottom, sides or end, or (c) by combination of (a) and (b). It does not include 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 stockpiles or bunkers, and/or where stone is crushed and graded, and placed into stockpiles 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>

*10-F
Cancels
10-E

(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.

(Continued in Item No. 11)

* Change)
o Reduction) Decision No. 56386

EFFECTIVE APRIL 27, 1958

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 605