

ORIGINALDecision No. 60698

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 for Modification No. 51 Petition for Modification No. 53
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(Appearances are listed in Proposed Report)

O P I N I O N

Petition No. 51 of the California Trucking Associations, Inc., hereinafter called C.T.A., seeks modification of Minimum Rate Tariff No. 7 to provide that when hourly rates are applicable, rates and charges may be quoted or assessed by overlying or principal carriers upon a different unit of measurement provided the aggregate of the charges so assessed for the job involved is not lower than those applicable under hourly rates.

Petition No. 53 of the Northern and Central California Chapter of the Associated General Contractors of America, hereinafter called A.G.C., seeks the exemption from minimum rates, with certain exceptions, of transportation performed by dump truck on a construction project under a written contract entered into by the carrier and a general engineering contractor, a general building contractor or a specialty contractor providing for a rate or charge other than an hourly rate.

Public hearing was held and a proposed report was issued by Examiner Jack E. Thompson who was the presiding officer. Exceptions to the proposed report were filed by both petitioners. Replies

to those exceptions were filed by California Dump Truck Owners Association, hereinafter referred to as C.D.T.O.A., and Southern California Rock Products Association, hereinafter referred to as Southern Rock.

Briefly stated, the ultimate findings proposed by the examiner are that the proposal by C.T.A. is unreasonable because it cannot reasonably be enforced, and that the minimum rates are reasonable for transportation of commodities by dump truck on construction projects and are still necessary to assure the maintenance of adequate and dependable transportation service.

C.T.A. takes exception to the proposed finding that its proposal is unreasonable because it cannot reasonably be enforced and contends that if minimum rates are clearly and definitely stated their enforceability necessarily exists and the relative difficulty of enforcement of rates or rules is not a standard upon which their reasonableness should be determined. It is stated that under the present minimum rates on a job extending over a period of 60 days, the observation of one day's operation could scarcely be said to enable the Commission to determine whether or not the charges assessed by the carrier for the whole job were in compliance with the tariff, and, that under the proposed rule, on such a construction project observation of one day's operation would enable the Commission to determine whether or not the carrier is in compliance with the minimum rates just as well as similar checks under the hourly rates today.

That contention is contradicted by the evidence offered by petitioner in support of its proposal to "aggregate the charges". The record shows that on large construction projects, and particularly freeways, the distance from the pits changes as the construction

progresses and the time in transit will increase as the haul road deteriorates and diminishes after maintenance and repair by the contractor. Numerous carriers, including petitioner's witnesses testified that loading and unloading conditions vary not only among various jobs, but also on a single job. Under the present minimum hourly rates the proper charges must be assessed for a period not exceeding 24 hours. Failure to assess the proper charges for the number of hours during that period that the carrier was engaged by the shipper is a violation for which the carrier is subject to imprisonment for not more than three months, a fine not exceeding \$500, a penalty not exceeding \$500, suspension or revocation of operating authority, or all of said penalties or forfeitures. The fact that, the day before or the day after, the carrier may have assessed charges in excess of the minimum rates does not remove the offense. The staff, therefore, may prove a violation before any tribunal on evidence of one day's operation and one or more of the aforementioned penalties may be imposed. This is not the case under C.T.A.'s proposal in that the charges for one day's operation may be set off or balanced by the charges assessed for another day's operation on the same job. We adopt the proposed finding that enforcement of the rates under the rule proposed by C.T.A. would not be feasible. Establishment of rules and regulations that cannot be adequately policed or enforced is but an idle gesture.

A.G.C. takes exception to a number of proposed findings of fact and offers substitute findings. All of them are directed towards the proposed findings that the present minimum rates are reasonable and that minimum rates are still necessary to assure the maintenance of adequate and dependable dump truck service.

There are occasions, because of unusual conditions, when rates lower or based on a different unit of measurement than those set forth in Minimum Rate Tariff No. 7 may be just and reasonable for transportation. Section 3666 of the Public Utilities Code provides one avenue of relief to the carriers in those instances. In some instances, involving public works projects particularly, time required by the procedure under Section 3666 exceeds the time before bids are closed. In those instances there is no avenue of relief available to the carrier or the shipper. That it is desirable to the contractors and to some carriers that the latter be permitted in those instances to assess and collect charges on a basis other than the minimum rates there is no doubt. We have said that, where possible, minimum rates should reflect the needs and requirements of the shippers and the carriers. Because of extremely varying transportation conditions surrounding construction projects, only rates based upon time can reasonably reflect the cost to the carrier of providing the service. A.G.C. proposes that the problem be met by cancelling the minimum rates on those projects subject to certain limitations and exclusions which are: (1) transportation in northern territory of commodities to a concrete batching plant or hot plant set up for the purpose of serving the construction project be excluded from the exemption as is transportation subject to zone rates in southern territory; (2) the transportation must be to, from or within a construction project of a general engineering contractor, a general building contractor or a specialty contractor;

(3) the carrier and contractor must enter into a written contract prior to the transportation; (4) freight charges shall be paid on a rate other than an hourly rate to a single carrier; (5) if the carrier engages subhaulers, they shall be paid no lower than 95 percent of the otherwise applicable hourly rate. While the above are limitations on the application of the proposed exemption, the scope of the exemption would still be wide. Assuming that the contractors would desire a fixed price bid in all instances and were willing to enter into a written contract to obtain that fixed price, which would appear to be a reasonable assumption, the exemption would extend to almost all traffic in northern territory and to virtually all traffic in southern territory except certain commodities moving within the area about Los Angeles, sometimes called the Los Angeles Basin Territory, and also the area about San Diego. It would cover, at least in northern territory, the transportation of a ton of sand to a tile contractor or brick masonry contractor engaged in installing a bath or a fireplace in a residence. In fact, the proposed exemption could cover virtually all the traffic that presently moves under hourly rates or ton-mile rates, including the very small jobs as well as the very large ones. In the circumstances the proposal, in effect, is to cancel the minimum rates.

California Dump Truck Owners Association takes the position that the Commission does not have the power to cancel minimum rates which have been found to be reasonable. The examiner concluded otherwise. The purpose of minimum rate making is clearly set forth

in Section 3502 of the Public Utilities Code.^{1/} The questions before us then are whether minimum rates are necessary to assure or to promote the maintenance of adequate and dependable transportation service by dump truck and, if so, is such fact outweighed by the benefits that would result from permitting carriers to contract with contractors for transportation to, from or within a construction project at a fixed price or at a rate other than an hourly rate. From the evidence of record we find that the public interest requires that minimum rates be maintained except to the limited extent specified hereinafter. The conditions today are not unlike those that existed in 1935 and which necessitated the establishment of minimum rates. Trucking is still probably the easiest of the businesses to enter. It is more difficult to become a licensed contractor, for example, than a permitted carrier. There are many dump truck carriers and the competition for employment is great. The demand for dump trucks by the construction industry is for the most part seasonal and varies widely. There are many instances where no carrier can supply from his own fleet the number of trucks required for a single job; therefore, the demand for trucks is met primarily from the numerous small carriers owning one

1/ Section 3502, Public Utilities Code:

"The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public the full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon such highways; to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public."

or two trucks. Without regulation, in 1935, the dump truckers cut rates to such an extent that they were hauling at less than cost of operation. The underlying conditions in dump truck transportation being similar to those in 1935, there are good grounds for the conclusion that if minimum rates were canceled, the smaller carriers would again proceed on the path towards self destruction. Assuming for the moment, however, that destructive rate cutting would not necessarily result, it is of record that the minimum rates are necessary for the proper marketing of the products of the commercial sand, rock and gravel producers. While A.G.C. amended their proposal so that the marketing of processed materials in the Los Angeles and San Diego areas by members of Southern Rock would not be exempted, that is not the case in other parts of the State and it is noted that the A.G.C.'s proposal was opposed by the commercial producers represented by the Rock, Sand and Gravel Producers Association of Northern California.

That it would be desirable to the construction industry to have carriers permitted to quote charges in advance for services to be rendered must be recognized. The proposals set forth in Petitions 51 and 53, however, do not provide a reasonable method by which this may be accomplished. From the evidence, it would appear that the principal problems encountered by the contractors, and at least those under which remedy might not be obtained under Section 3666, involve contracts for the transportation of so-called excavated material and imported borrow^{2/} on public works projects which are awarded on open competitive bid. Apparently there is very little

^{2/} These items are not defined. A reasonable description of excavated material is that material which is taken directly from the ground at the site of a construction project. Imported borrow is unprocessed material taken directly from the ground not located at the construction site and brought to the construction site.

difficulty in connection with processed materials, which in many instances are obtained from commercial producers F.O.B. job site. The order which follows will establish provisions under which carriers lawfully may quote and assess rates other than those prescribed in Minimum ate Tariff No. 7 in certain instances which will not adversely affect dump truck transportation as a whole. Reasonable exclusions from rate regulation have heretofore been made by the Commission and also appear in the Public Utilities Code. Section 531, for example, authorizes common carriers to transport materials free or at reduced rates for contractors engaged in carrying out contracts with the United States, this State, or any governmental agency in this State to the extent that such free or reduced rate transportation is provided for in the specifications upon which the contract is based and in the contract itself.

Upon consideration of all the facts and circumstances of record we are of the opinion and find as a fact that an exclusion from the minimum rates in this tariff is justified with respect to the transportation of excavated material or imported borrow to, from or within a public works construction project of a general engineering contractor, a general building contractor or a specialty contractor awarded on an open competitive bid; provided, however, that if any underlying carrier is engaged in such transportation the charges paid by the overlying carrier to the 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 otherwise applicable minimum hourly rates.

The Commission is of the further opinion and finds that rates, rules and regulations which would be so established, and which are prescribed by the order which follows, are, and will be, just, reasonable and nondiscriminatory minimum rates for the transportation subject thereto. To the extent that Petitions for Modification Nos.

51 and 53 seek revisions in the minimum rates not granted herein, such petitions will be denied.

O R D E R

Based on the evidence of record and findings and conclusions 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 October 26, 1960, the following revised tariff pages, which pages are attached hereto and by this reference made a part hereof:

First Revised Page 3-B

Eighth Revised Page 4.

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

3. Except as otherwise provided herein, Petitions for Modification Nos. 51 and 53 in this proceeding be and they are hereby denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 6th day of SEPTEMBER, 1960.

[Signature]
President
[Signature]
[Signature]
[Signature]

Commissioner Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.

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>(p) ENGAGEMENT means the employment at hourly rates of one (or more) unit(s) of dump truck equipment with operator by one shipper or overlying carrier on one shipping document.</p> <p>(q) BATCHING PLANT means a fixed installation for the mixing of concrete by mechanical means.</p> <p>(r) CONCRETE ARTICLE FACTORY means a fixed installation for the manufacture of articles from concrete mechanically mixed on the premises.</p> <p>(s) HOT PLANT means a fixed installation for the heating of road oil or asphalt and the mixing of such heated oil or asphalt with rock, sand and any other ingredients to produce cold road oil mixture ("plant mix") or asphaltic concrete ("hot stuff").</p> <p>(t) SEWAGE DISPOSAL PLANT means a fixed installation in which filtering rock is used for getting rid of sewage.</p> <p>(u) DISTRIBUTING YARD means an area for storage of rock, sand, gravel, or cold road oil mixture (commonly called "plant mix") in piles, bins, silos or bunkers.</p> <p>(v) DEBTOR means the person assuming responsibility for payment of transportation charges. It also includes an overlying carrier when he utilizes the services of an underlying carrier.</p> <p>(w) UNIT OF EQUIPMENT means a truck, a truck and trailer, a tractor and semitrailer, or any combination of the foregoing operated in a train.</p> <p>#(x) EXCAVATED MATERIAL means that material which is taken directly from the ground at the site of a construction project.</p> <p>#(y) IMPORTED BORROW means unprocessed material taken directly from the ground at points not located at the site of a construction project and brought to the site of a construction project.</p> <p>#(z) PUBLIC WORKS CONSTRUCTION PROJECT means a construction project on which bids are let by or on behalf of the State, or any county or municipal government or any subdivision thereof.</p> <p>#(aa) GENERAL ENGINEERING CONTRACTOR means a contractor as defined in Section 7056, Division 3, Chapter 9 of the Business and Professions Code of California.</p> <p>#(bb) GENERAL BUILDING CONTRACTOR means a contractor as defined in Section 7057, Division 3, Chapter 9 of the Business and Professions Code of California.</p> <p>#(cc) SPECIALTY CONTRACTOR means a contractor as defined in Section 7058, Division 3, Chapter 9 of the Business and Professions Code of California.</p>

*11-A
Cancels
11

* Change
Addition

} Decision No.

60698

EFFECTIVE OCTOBER 26, 1960

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 827

Item No.	SECTION NO. 1 - RULES AND REGULATIONS (Continued)
20-B Cancels 20-A	<p style="text-align: center;">APPLICATION OF TARIFF-CARRIERS</p> <p>Rates provided in this tariff are minimum rates, established pursuant to the Highway Carriers' Act, and the City Carriers' Act. They apply for transportation of property by radial highway common carriers and highway contract carriers, as defined in said Highway Carriers' Act, and by carriers as defined in said City Carriers' Act, in bulk in dump truck equipment.</p> <p>Except as otherwise provided in Items Nos. 45, 93 and 94 rates, rules and regulations named in this tariff shall not apply to transportation by underlying carriers (independent-contractor subhaulers) when such transportation is performed for other carriers. This exception shall not be construed to exempt from the tariff provisions carriers for whom the underlying carriers are performing transportation service.</p>
*25-B Cancels 25-A	<p style="text-align: center;">APPLICATION OF TARIFF-GENERAL</p> <p>Rates in this tariff do not apply to the transportation of property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services.</p> <p>#The minimum rates set forth in this tariff do not apply to the transportation of excavated material from or within or imported borrow to a public works construction project of a general engineering contractor, a general building contractor or a specialty contractor, awarded on an open competitive bid; provided, however, that if any underlying carrier is engaged in such transportation the charges paid by the overlying carrier to the 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 otherwise applicable minimum hourly rates provided in Section No. 4 of this tariff. A shipping document, as provided in Item No. 93, shall be issued to the overlying carrier by the underlying carrier for each 24-hour period of service, as defined in Note 2 of Item No. 300.</p>
30-A Cancels 30	<p style="text-align: center;">APPLICATION OF TARIFF-TERRITORIAL</p> <p>Rates in this tariff apply for transportation between all points within the State of California.</p>
35	<p style="text-align: center;">REFERENCES TO ITEMS AND OTHER TARIFFS</p> <p>Unless otherwise provided, references herein to item numbers in this or other tariffs include references to such numbers with letter suffix, and references to other tariffs include references to amendments and successive issues of such other tariffs.</p>
40	<p style="text-align: center;">COMPUTATION OF DISTANCES</p> <p>Distances to be used in connection with distance rates named herein shall be the actual mileages traversed, including any detour to and from scales to obtain weight of shipment.</p>
* Change # Addition) Decision No. 60698
<p>EFFECTIVE OCTOBER 26, 1960</p>	
<p style="text-align: center;">Issued by the Public Utilities Commission of the State of California, San Francisco, California.</p> <p>Correction No. 828</p>	