

**ORIGINAL**Decision No. 61672

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of LINDEMAN BROS., a corporation, for an order authorizing departure from the rates, rules and regulations of Minimum Rate Tariff No. 7 pursuant to the provisions of Section No. 2, Item 130K the distance rate for hauling aggregate.

Application No. 43007

E. H. Griffiths, for applicant.  
Thelen, Marrin, Johnson and Bridges, by Dario De Benedictis, for Gordon H. Ball and Gordon H. Ball, Inc.; E. O. Blackman, for California Dump Truck Owners Association; J. C. Kaspar, Arlo D. Poe and J. X. Quintrall, for California Trucking Associations, Inc.; interested parties.  
John R. Laurie and Grant L. Malquist, for the Commission staff.

O P I N I O N

By this application, filed December 29, 1960, Lindeman Bros., a corporation, seeks authority to depart from the provisions of Minimum Rate Tariff No. 7 in the transportation of aggregate sub-base material and aggregate base material (sand, gravel and stone) from the Brighton sand and gravel pit at Manlove and Jackson Roads, Sacramento County, to points on and along the South Sacramento Freeway construction project designated as Project III-Sac-4-B-Sac.

Public hearing was held February 17, 1961 before Examiner J. E. Thompson at San Francisco.

In the Spring of 1960, the State of California notified contractors it would receive bids for construction of a section of freeway located in and about Sacramento designated as Project III-Sac-4-B-Sac (South Sacramento Freeway). Gordon H. Ball, Inc., a

general contractor, solicited a bid from Lindeman Bros. for the transportation of 247,000 tons of aggregate sub-base material, 130,000 tons of aggregate base material and 56,450 tons of cement treated base material from the Brighton pit to the proposed construction project. On May 9, 1960, Lindeman Bros. submitted a "firm bid" of 43 cents per ton. This was the minimum rate set forth in Item 130 I, Minimum Rate Tariff No. 7 for the transportation of such material for distances over 7 miles but not over 8 miles subject to a minimum weight of 23 tons being transported in one unit of equipment at one time. On the basis of this "firm bid", Ball submitted his bid to the State.

Ball was awarded the contract and on August 10, 1960 contracted with Lindeman Bros. for the transportation of the sub-base material and base material at the price in the "firm bid". The cement treated base material was not included in the contract. During the Fall of 1960, Lindeman Bros. performed transportation under the contract of at least 5,592 loads averaging 25 tons or more per load. Prior to December 5, 1960, transportation work was interrupted and apparently has not resumed to date. Weather permitting, work will resume prior to April 1, 1961 and will be completed in about thirty days thereafter.

Effective December 5, 1960, the minimum rates in Item 130 were increased.<sup>1/</sup> Exhibit No. 1 sets forth what are purported to be the rates proposed to be assessed. From the testimony of applicant's

<sup>1/</sup> The rates in Item 130 for transportation subject to minimum weights of 23 tons per load are compared:

<u>Distance in Miles</u>		<u>Rates in Cents Per Ton</u>	
<u>Over</u>	<u>But Not Over</u>	<u>Prior to Dec. 5, 1960</u>	<u>On and After Dec. 5, 1960</u>
5	6	37	39
6	7	40	42
7	8	43	46
8	9	45	49

secretary it is apparent that what applicant desires to do is to assess 43 cents per ton for the transportation of material from the Brighton pit to all points on the construction project as called for under the contract of August 10, 1960.

In order to show the reasonableness of the 43-cent rate, applicant submitted an analysis of the transportation already performed on the job. During the period July 18, 1960 to November 2, 1960, applicant transported 5,592 loads of material. Considering the work performed by one truck during one day as a truck-day, there were 536 truck days during that period. At 25 tons per load and at 43 cents per ton, it was developed that the applicant received revenue equivalent to \$14.20 per hour. The vehicles used by applicant are of 18 to 20 yards capacity. The minimum hourly rates for transportation of sand, gravel and crushed stone from a commercial producing plant in Sacramento County to other points in Upper Northern District in dump trucks having a capacity of 20 yards is \$12.11 per hour.

According to the testimony, the hauling by Lindeman Bros. is about 50 percent completed. There are 800 tons to be transported a distance of 8.3 miles and the balance to be moved between 5.0 and 6.7 miles. Only the transportation of the 800 tons is governed by a minimum rate greater than the 43-cent rate proposed by applicant.

The controller of Gordon E. Ball, Inc., testified that the contractor had made inquiries as to whether there is a provision under its contract with the State which would enable it to recover increases in expenses resulting from the increases in minimum rates which became effective during performance of the contract. He was advised that no recovery could be made in that Ball's contract calls for the furnishing of base material and sub-base material and not for transportation.

California Trucking Associations, Inc., did not oppose the application. It was pointed out that applicant desires to do that which CTA proposed all dump truckers be authorized to do in Petition No. 51 in Case No. 5437.

California Dump Truck Owners Association opposed the granting of the authority sought. Its secretary-manager stated that the record shows that applicant quoted a lesser rate than the minimum rate to the contractor before the job commenced, and thereafter contracted to perform transportation at less than the minimum rates in violation of Section 3664 of the Public Utilities Code. He urged the Commission not to condone a violation of its minimum rates by granting the authority herein sought. He further pointed out that out of approximately 90,000 tons of material to be transported, only 800 tons are involved herein.<sup>2/</sup>

While one could reasonably surmise that some of the transportation already performed involved distances of more than eight miles and thereby applicant probably assessed a rate of 43 cents per ton for those hauls, such rates being lower than the established minimum rate per ton for transportation of rock, sand and gravel for distances exceeding eight miles, the record herein does not show that applicant, in fact, did transport property in excess of eight miles on that construction project. On this record we are unable to find as a fact that applicant charged or collected rates less than the established minimum in violation of Section 3664. In this proceeding we are concerned with the transportation to be performed in the future and not what has been performed in the past. Our findings herein, therefore, cannot be construed as condoning any violations occurring as a result of transportation already performed, if violations, in fact, did occur.

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<sup>2/</sup> The difference between the sought rate of 43 cents and the minimum rate of 49 cents on the 800 tons would amount to \$48.00.

Upon consideration of all of the facts of record, we find that a rate of 43 cents per ton is reasonable for the movement of some 80,000 or more tons of sand, gravel and stone from the Brighton sand and gravel pit located at Manlove Road and Jackson Road, Sacramento County to points and places on and along Project III-Sac-4-B-Sac (South Sacramento Freeway), Sacramento County, subject to the following conditions:

1. That shipper (contractor) shall tender 80,000 tons or more to the carrier of which not more than 900 tons shall be transported for distances not exceeding nine miles and the balance shall be transported for distances not exceeding seven miles.
2. That the minimum charge per unit of equipment per calendar day shall be the number of loads transported times \$10.75.

In all other respects, applicant has not shown the proposed rate to be reasonable.

In view of the evidence of record, we believe it proper to remind applicant, for purposes of bidding on construction jobs in the future, that the provisions of Item No. 130 of Minimum Rate Tariff No. 7 require the rates to be assessed for each load at the rate applicable to the distance actually traversed and do not authorize the assessing of a rate applicable to the average of the distances traversed for several hauls. Additionally, the rates in said Item 130 subject to a minimum weight of 23 tons are applicable to a minimum weight of 23 tons for each load and not to an average weight of 23 tons for all loads hauled during one day or on the project. The provisions of said item are clear and a carrier who charges or collects rates applied to an average of distances or to an average of weights per truckload risks incurring the penalties and forfeitures provided by law for violation of the established minimum rates.

Winter weather conditions have interrupted work on the construction project. It was testified that work will resume as soon as the project site is sufficiently dry to permit the regular movement of trucks and heavy machinery. In the circumstances, the order will be made effective this date.

O R D E R

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

IT IS ORDERED:

1. That Lindeman Bros., a corporation, is authorized to charge and collect rates and charges no lower in volume and effect than the rates and charges set forth in Appendix A, attached hereto and by this reference made a part hereof, for the transportation of sand, stone and gravel, known as base material and sub-base material, for Gordon H. Ball, Inc., on Project III-Sac-4-B-Sac (South Sacramento Freeway).

2. That the authority granted herein shall expire July 1, 1961 unless sooner canceled, modified or extended by order of the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 14th day of MARCH, 1961.

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

-6-Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

Schedule of Minimum Rates for the  
Transportation of Property for  
Gordon H. Ball, Inc.

Section 1

Item 10. Application of Rates - General

To the extent that Minimum Rate Tariff No. 7 prescribes minimum rates for the transportation of property, said minimum rates, rules and regulations are applicable to all shipments except as specifically provided in Section 2.

Section 2

Item 20. Application of Rates - Territorial

Rates in this section shall apply to the transportation of property from the Brighton sand and gravel pit at Manlove Road and Jackson Road, Sacramento County, to points and places on and along the construction site of the South Sacramento Freeway, designated as Project III-Sac-4-B-Sac, subject to Item 40.

Item 30. Application of Rates - Commodities

Rates in this section apply to the transportation by dump truck of sand, gravel and stone in such mixture as to meet the specifications of the State of California for sub-base material and base material for Project III-Sac-4-B-Sac.

Item 40. Application of Rates - Limitations

Rates in this section are subject to the condition that shipper (contractor) shall tender a minimum of 80,000 tons of which not more than 900 tons shall be transported for distances not exceeding nine (9) miles and the balance shall be transported for distances not exceeding seven (7) miles.

Item 50. Minimum Charge

The minimum charge per unit of equipment per day shall be the number of loads transported per unit of equipment per day times \$10.75.

Item 60. Rate

The rate shall be 43 cents per ton subject to Item 50.

Note. Expires July 1, 1961, unless sooner canceled, modified or extended.