

62293

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules and regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432
Petition No. 214

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 property in Los Angeles and Orange Counties (transportation for which rates are provided in City Carriers' Tariff No. 4—Highway Carriers' Tariff No. 5).

Case No. 5435
Petition No. 24

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 property within San Diego County (including transportation for which rates are provided in Minimum Rate Tariff No. 9-A).

Case No. 5439
Petition No. 11

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 property in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma.

Case No. 5441
Petition No. 47

Joseph T. Enright and Ashley M. Levy, for
Rodeffer Industries, Inc., petitioner.

Anthony J. Konichi, for Pacific Motor Trucking
Company, respondent.

Arlo D. Poe, J. C. Kaspar, and James Quintrall, for
California Trucking Associations, Inc.,
protestant.

E. O. Blackman, for California Dump Truck Owners
Association, Inc., protestant.

Waldo A. Gillette, for Monolith Portland
Cement Company, interested party.

John B. Nance and Leonard Diamond, for the
Commission staff.

O P I N I O N

By these petitions, filed March 3, 1961, Rodeffer Industries, Inc., asks that the transportation of the ingredients of concrete -- cement, sand, aggregates and water -- be exempted from minimum rate regulation when said ingredients are transported, in bulk, in nylon-corded rubber bags. The sought exemption is the same as that which applies to concrete when transported in motor vehicles equipped for mechanical mixing in transit. Allegedly, the concrete which is represented by the materials transported in the rubber and nylon bags is sold in direct competition with concrete that moves in transit-mix vehicles, and the subjection of the former to minimum rate regulation while the latter is exempt therefrom constitutes unjust and undue discrimination against the former.

Public hearing on the petitions was held before Examiner C. S. Abernathy at Los Angeles on May 8, 1961. Evidence was submitted by petitioner's president and by its sales manager.

The California Trucking Associations, Inc., and the California Dump Truck Owners Association, Inc., appeared as protestants to granting of the petitions. Members of the Commission's staff also participated in the development of the record.

According to the showing which was made in these matters, petitioner Rodeffer Industries, Inc., is a producer and distributor of sand, aggregates and concrete. Its principal field of operations is located in the Metropolitan Los Angeles Area and in adjacent portions of Los Angeles, Orange, and San Bernardino Counties. In the production and distribution of concrete it operates concrete batch plants at various locations throughout its marketing area. At these plants cement, sand and aggregates are proportioned and loaded, together with necessary water, into transit-mix vehicles, and are subsequently mixed into concrete while being transported to job sites.

Recently petitioner has developed an alternative method for the distribution of concrete -- that which utilizes the re-usable rubber and nylon bags which are involved herein. Said bags are about six feet high and four feet in diameter. When filled, they hold about $1\frac{1}{2}$ cubic yards or about 6,000 pounds of material for concrete. They are divided into two compartments, an outer compartment into which sand, aggregates and water are loaded, and a smaller and separately scaled inner compartment into which cement is loaded. As thus filled, the bags are transported by dump trucks or other vehicles to job sites where they may be stockpiled and subsequently drawn upon. In the final step of the process, the materials in the bags are emptied into mixers and mixed into concrete according to need.

Assertedly, this alternative method of distributing concrete possesses several important advantages over the distribution of concrete in transit-mix vehicles. Foremost amongst such advantages are economies to be attained through centralization of concrete batching facilities. Under present transit-mix methods of distribution the operation of transit-mix vehicles is confined mainly to areas that, from a time standpoint, are not more than 45 to 60 minutes distant from the batch plants where the transit-mix vehicles are loaded. These time limitations mark the periods within which concrete must be poured after water has been added to other ingredients of the concrete mix and the ensuing chemical reactions commence. Because of such time limitations, the utilization of the transit-mix method of distributing concrete throughout an area as large as the Los Angeles Metropolitan Area and adjacent areas necessarily requires the operation of concrete batching plants which are dispersed throughout the area. Since, however, the actual mixing of the concrete is not accomplished under petitioner's method of distribution until after delivery of the ingredients at job site, the time limits for pouring mixed concrete do not limit the distances over which the unmixed ingredients in the bags may be transported. Hence, batching facilities may be concentrated at optimum sites such as locations where rock and sand needed for the batching operations are produced. Concurrently, the use of batch plants at less favorable locations may be discontinued, thus permitting savings in capital investment, in costs of plant operation and in costs of transporting materials to and from such plants. Other principal advantages

which are claimed for the distribution of concrete by means of the rubber and nylon bags are improved handling of materials, better usage of batch plant facilities, and more positive control over the quality of the concrete delivered.

At the present time the distribution of concrete in the rubber and nylon bags is still in a primary stage, the experimental testing of the bags for this purpose having been only recently completed. According to testimony of petitioner's president, petitioner now proposes to embark on the usage of these bags extensively. Moreover, it proposes to license freely the usage of the bags by other producers of concrete. Insofar as petitioner's immediate operations are concerned, the bags would be used principally in the distribution of concrete to those areas which petitioner may not readily serve by transit-mix vehicles from such of its batch plants that are located at sites where rock and/or sand are produced. Petitioner's president said that for-hire carriers will be utilized in such operations provided that the transportation involved is exempted from minimum rate regulation. He declared that in the event the sought exemptions are not granted, his company will provide its own transportation with its own facilities.

As stated hereinbefore, both the California Trucking Associations, Inc., and the California Dump Truck Owners Association, Inc., appeared in opposition to the granting of these petitions. The opposition of the California Trucking Associations, Inc., was advanced on the grounds that no showing was made, either of costs or of rates, which would justify the exemptions. The Associations' representative assailed the

proposals as measures by which petitioner seeks to have its concrete transported at less than just and reasonable rates. The California Dump Truck Owners Association, Inc., opposed the sought exemptions because of serious damage that allegedly would be caused thereby to for-hire carriers that are engaged in the transportation of rock, sand and related commodities. In this connection the manager for the California Dump Truck Owners Association, Inc., pointed out that for-hire carriers now transport large quantities of rock and sand to concrete batch plants, and that said transportation is subject to minimum rate regulation. He further pointed out that the transportation for which the exemptions are sought would be competitive in effect to such movements. He asserted that in these circumstances the granting of the sought exemptions would result in a situation that would make impossible the continued regulation of rates for the rock and sand movements to the batch plants.

Discussion, Findings and Conclusions:

It should be stated at the outset of this discussion that we conclude that the record which has been made in these matters does not justify the granting of the rate exemptions which petitioner seeks. In alleging that the present minimum rates unduly discriminate against the transportation of the ingredients of concrete in rubber and nylon bags, petitioner relies upon the rate exemptions which apply in connection with the transportation of concrete in transit-mix vehicles as fully providing the basis for rate exemptions for the transportation in bags. Petitioner thus contends in effect that the transportation of the ingredients

of concrete in bags is so similar to that of the transportation of concrete in transit-mix vehicles as to preclude differences in bases of rates between the two.

However, the record does not bear out these contentions insofar as the transportation which is primarily involved in petitioner's proposed plan of operations is concerned. The evidence is clear that the use to which the bags would be put is centered around transportation which cannot be alternatively provided by transit-mix vehicles because of the time limitations upon pouring concrete that limit the area of operations of such vehicles. In the circumstances it does not appear that the transportation with which petitioner is principally concerned is being subjected to undue discrimination as a consequence of the exemption from rate regulation that applies to the transportation of concrete in transit-mix vehicles.

In other respects also we conclude that petitioner has not shown that the transportation of the ingredients of concrete in rubber and nylon bags is subjected to unreasonable discrimination by reason of the applicability of minimum rates thereto. Petitioner did not undertake to show to what extent, if at all, the minimum rate provisions have operated, or would operate, to the undue detriment and disadvantage of said transportation as compared to the exempted transportation of concrete in transit-mix vehicles. In the absence of such a showing it will not be inferred that unlawful discrimination results as a matter of course from the difference in regulatory provisions. Neither will it be

inferred that the broadening of exemptions is the remedy that necessarily should be adopted for any such unlawful discrimination as may exist. The cure for such discrimination may be also attained, either equally or preferably, by further extending the applicability of minimum rate regulations to cover the transportation that is now exempt.

The foregoing conclusions apply mainly in connection with the issues raised by petitioner's allegations of undue discrimination arising out of the present minimum rate exemptions for transit-mixed concrete. For certain reasons in addition it appears that the exemptions which petitioner seeks should not be granted herein.

It is evident that if petitioner's expectations are realized, the utilization of the rubber and nylon bags in the transportation of concrete will result in substantial changes in present techniques of distribution. A number of concrete batch plants which are now being operated will be discontinued or relocated. Present transportation practices involving large movements of sand, aggregates and cement will be revised materially. Clearly, in the establishment of revised rate provisions leading to transitions of such import, reasonable provisions cannot be established without consideration of the bearing thereof upon existing facilities and practices. The record herein does not provide basis for such consideration.

O R D E R

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

IT IS HEREBY ORDERED that the above-numbered petitions in the respective cases in which they are filed be, and they hereby are, denied.

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

Dated at San Francisco, California, this 18th day of July, 1961.

Ernest A. Rasmussen
President
Robert S. Mitchell
S. Lynn Fox
George G. Brewer
Fredrick B. Holmquist
Commissioners