

ORIGINAL

Decision No. 63412

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 (commodi-
ties for which rates are provided
in Minimum Rate Tariff No. 7).

Case No. 5437

Petition No. 76
Filed August 15, 1961

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

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

H. Randall Stoke, H. G. Feraud, and C. F. Imhoff,
for the Southern California Rock Products
Association, interested party.

R. A. Lubich and Ralph J. Staunton, for the Com-
mission's staff.

O P I N I O N

Petitioner in this matter seeks amendment of the rates, rules and regulations in Minimum Rate Tariff No. 7 that apply for the transportation of rock products in dump truck equipment by for-hire highway carriers. More specifically, petitioner seeks extension of the area-to-point basis of rates in the tariff so as to apply to the transportation of rock and sand from a rock products production area near San Juan Capistrano to an asphaltic concrete plant near Carlsbad.

Public hearing on the petition was held before Examiner C. S. Abernathy at Los Angeles on October 6, 1961. Evidence in support of the petition was submitted by a representative of the producer of the rock products involved, and by petitioner's general manager. Representatives of the California Trucking Associations, Inc., and of the Southern California Rock Products Association, and members of the Commission's staff participated in the development of the record.

The minimum rates which apply at present to the transportation involved herein are hourly rates and zone rates. Charges under the hourly rates vary with the capacities of the vehicles used and the number of hours for which the vehicles are engaged. The zone rates apply between defined production areas and delivery zones; charges thereunder vary with the tons of material transported and with the production areas and delivery zones between which the transportation is performed. The area-to-point rates that petitioner seeks to have extended to the aforesaid transportation are rates which are limited in application to transportation that is performed under specified conditions between designated areas and points in Los Angeles, Orange and San Diego Counties. When initially established, the area-to-point rates were constructed by converting the hourly rates then applicable into equivalent tonnage rates according to the time required per delivery per round trip (Decision No. 57675, dated December 2, 1958, Case No. 5437). The hourly rates have since been increased by 83 cents per hour to compensate for increases in operating costs which the carriers have experienced. However, corresponding adjustments have not been made

in the area-to-point rates. Consequently, the level of said rates is now lower than that of the hourly rates.

Extension of the area-to-point rates as sought is urged by petitioner as a measure to avoid rate discrimination against the asphaltic concrete plant near Carlsbad. Petitioner points out that Minimum Rate Tariff No. 7 provides area-to-point rates for the transportation of rock products from Orange County Production Area "B" (the production area near San Juan Capistrano) to asphaltic concrete plants at Oceanside, about 5 miles north of Carlsbad. Petitioner states that such plants compete with the Carlsbad plant. Petitioner further states that the movement of rock and sand from Orange County Production Area "B" is performed under the same transportation conditions as those upon which the area-to-point rates were established. Evidence to this effect was submitted by the witnesses who testified in support of the petition.

Other evidence which petitioner's witnesses submitted deals with the time required per round trip in the delivery of rock and sand from Orange County Production Area "B" to the Carlsbad plant and with the rates that are being paid for said deliveries. A representative of the rock products company that supplies the Carlsbad plant from Production Area "B" testified that his company is paying the applicable hourly rates for the transportation involved, and that no problems are being experienced in the use of such rates. He was unable to say whether the granting of this petition would affect the price to the Carlsbad plant of the rock products delivered thereto.

Discussion, Findings and Conclusions

Petitioner's proposals in this matter are based on the claim that the asphaltic concrete plant near Carlsbad is being subjected to undue discrimination because of differences between the rates that apply for the transportation of rock products between Orange County Production Area "B" and the Carlsbad plant, on the one hand, and between said production area and the asphaltic concrete plants at Oceanside, on the other hand. This conclusion is not supported by the record. Although it appears that substantially the same transportation services are involved in each instance, and that the rates that apply on the shipments to Carlsbad differ materially from those for the shipments to Oceanside, it does not appear that in their respective operations either the asphaltic concrete plant near Carlsbad or the plants at Oceanside are being unduly advantaged or disadvantaged by the differences in rates. Petitioner did not undertake to show that the Carlsbad plant is being limited in its ability to compete with the Oceanside plants because of the availability of area-to-point rates for the transportation of rock products to the Oceanside plants. Neither was there any showing that the rock products producer whose plant is located in Orange County Production Area "B" is being hindered by said area-to-point rates in sales of its products to the Carlsbad plant. In the circumstances we find and conclude that neither the Carlsbad plant nor the producer in Production Area "B" is being subjected to undue disadvantage by the application of the hourly rates to shipments of rock products thereto.

Even if it were concluded that the present rates do unduly discriminate against the asphaltic concrete plant near Carlsbad, it would not necessarily follow that the adoption of a lower basis of charges for transportation to said plant is the remedy. Such discrimination in the level of charges could be equally cured by increases in the area-to-point rates that apply for the transportation of rock products from Orange County Production Area "B" to Oceanside. The fact that the hourly rates are at a higher level than the area-to-point rates because of adjustments for increases in carriers' operating costs suggests that the more equitable course to follow may be the inclusion of corresponding increases in the area-to-point rates. However, before steps are taken along this line, further information should be had relative to the relationship, if any, to be maintained in the future between the hourly rates and the area-to-point rates.¹ In this connection it should be stated that the Commission's staff is now engaged in making studies and developing recommendations toward amendment of the provisions of Minimum Rate Tariff No. 7 in order to make said provisions conform to present conditions. Since it does not appear on this record that either the rock products company at Orange County Production Area "B" or the asphaltic concrete plant near Carlsbad are being unduly disadvantaged by the application of the hourly rates to the transportation involved herein, action toward modification of the present rate provisions with respect to said transportation may reasonably

¹ It appears that questions of discrimination and of rate relationship which this matter points up are not confined to the movements involved herein but may be existent also in connection with other movements of rock products in Los Angeles and Orange Counties for which area-to-point rates have been prescribed.

be deferred until after the receipt and consideration of the afore-said studies and recommendations of the Commission's staff and of any related studies and recommendations which may also be submitted by interested parties. The petition in this matter will be denied.

O R D E R

Based on the findings and conclusions contained in the preceding opinion,

IT IS HEREBY ORDERED that the Petition No. 76 in this proceeding be, and it hereby is, denied.

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

Dated at San Francisco, California, this
13th day of March, 1962.

Ernest R. Brown
President

E. L. Fox

George H. Grover

Frederick B. Hallock
Commissioners

*I dissent.
A further explanation
will be filed later.
C. L. Mitchell*

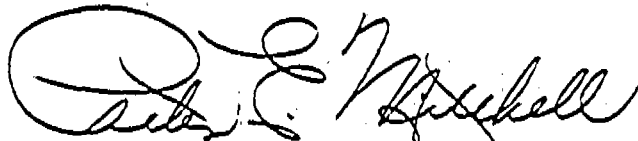
I dissent.

This decision denies a petition which seeks no more than that the existing area-to-point basis of minimum rates be permitted to apply from a certain rock products production area to a specified asphalt concrete plant. By prior decisions, the Commission has found the area-to-point rates to be reasonable for application between numerous other specified points. This basis of rates was first approved by Decision No. 57675, issued on December 2, 1958 (unreported). Therein, the Commission stated that the area-to-point rates were to be applicable to a separate class of service performed under more favorable transportation conditions than those which apply to the transportation of rock products generally. That decision stated categorically that the rates should be made applicable to all whose transportation falls within that class. The criteria identifying the class were then and are now set forth specifically in the minimum rate tariff. (Minimum Rate Tariff No. 7, Item No. 296)

In the instant proceeding, the petitioner has shown that the transportation in issue falls within the established criteria. The decision denies extension of the rates on the grounds: (1) that there is no discrimination (a new criterion) and (2) that the general basis of area-to-point rates may be subject to review in a separate proceeding.

The relief sought in the instant proceeding was proposed by an association of carriers, supported by the affected shipper, and opposed by no one. The Commission having itself established the criteria of a class and stated that the rates should be extended to all in the class, and the petitioner having shown that the transportation met the criteria, the Commission should have granted this petition. Thereafter, if it wished to re-examine the criteria or to

revise the basis of area-to-point rates, it could do so without
subjecting the parties to this petition to selective treatment which
I believe to be unfair and unjustified.

A handwritten signature in dark ink, appearing to read "Peter E. Mitchell". The signature is fluid and cursive, with a large initial "P" and "M".

Peter E. Mitchell,
Commissioner