

ORIGINAL

Decision No. 63303

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 No. 82
Filed January 26, 1962

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

H. Randall Stoke, for Sully Miller Contracting Company and Southern California Rock Products Association, interested parties.

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

William F. Webster, for Rodeffer Industries, Inc., interested party.

R. A. Lubich and R. J. Staunton, for the Commission's staff.

O P I N I O N

This matter deals with the rates that are prescribed in Minimum Rate Tariff No. 7 for the transportation of rock products in dump truck equipment by for-hire highway carriers from defined production areas to specified destinations in Southern California. Petitioner herein, the California Dump Truck Owners Association, Inc., seeks to have said rates, which are referred to as area-to-point rates, made applicable to the transportation of rock from Orange County Production Area "F" (situated about 6 miles east of

the City of Orange) to rock or asphaltic concrete plants of Sully Miller Contracting Company at the following locations:

Irvine Boulevard near Lambert Road,
(El Toro area)

7221 Ellis Avenue, Huntington Beach,

1500 West 7th Street, Long Beach.

At the present time this transportation is subject to zone rates in Minimum Rate Tariff No. 7 which are higher than the area-to-point rates which petitioner seeks to have prescribed therefor.

Public hearing on petitioner's proposals was held before Examiner C. S. Abernathy at Los Angeles on April 9, 1962. Evidence in support of the petition was submitted by the vice president and by a manager's assistant of Sully Miller Contracting Company, by a carrier which is performing certain of the transportation involved, and by petitioner's general manager. Representatives of the California Trucking Associations, Inc., of Rodeffer Industries, Inc., of the Southern California Rock Products Association and of the Commission's staff participated in the examination of the witnesses. The matter was taken under submission upon receipt of an amendment to the petition on April 23, 1962.

According to the testimony of the vice president of Sully Miller Contracting Company, said company is a producer of aggregates and asphaltic concrete. It operates plants for the production of these materials at various locations in Los Angeles and Orange Counties. The principal source of rock products for its plants at El Toro and Huntington Beach is located in Orange County Production Area "F", where the company maintains and operates a rock crushing facility. Shipments of crushed rock from this

facility to the plants at El Toro and Huntington Beach are being made at a rate in excess of 50,000 tons a year. The plant at Long Beach is not now in operation. However, the company plans to reactivate this plant in the near future, at which time said plant will also be supplied with rock from Orange County Production Area "F".

The vice president testified that much of the rock which has been moved heretofore from Sully Miller's facility at Orange County Production Area "F" to the El Toro and Huntington Beach plants has been transported by for-hire carriers. He said, however, that whether the company will continue the use of for-hire carriage for such transportation is largely contingent upon the granting of this petition. He declared that if the petition is denied Sully Miller will probably undertake to meet its transportation needs with trucking facilities of its own. He said that investigations which he has made along this line indicate that such a course would permit a saving of about 10 percent of the charges that Sully Miller is now paying for the transportation involved. The vice president said, furthermore, that another factor which would prompt the use of proprietary facilities if the petition is denied is the necessity of meeting competition. He explained that there are numerous other rock products producers in Los Angeles and Orange Counties with whom Sully Miller competes. He said that the competition is such that only a small difference in price affects the award of a contract for rock products. He pointed out that under present provisions of Minimum Rate Tariff No. 7 most of the competing producers already have available to them the advantage of being able to ship under the area-to-point rates.

The carrier witness who presented evidence in support of the petition testified that he has been transporting rock products for Sully Miller for about 6 years; that his services have included the transportation of rock from Orange County Production Area "F" to the Huntington Beach plant and also like transportation from an adjacent production area, Orange County Production Area "A"; that in comparison to the transportation from Production Area "A" (for which area-to-point rates are provided in Minimum Rate Tariff No. 7) the transportation from Production Area "F" is performed in circumstances which permit the vehicles to be loaded particularly expeditiously; and that as a consequence of the savings in time in the loading processes an additional load can be transported per day, thereby permitting greater daily earnings than can be realized from like transportation services from Production Area "A". The witness supported the granting of the petition as a measure to assure the continuance of his participation in the transportation in question.

Petitioner's general manager pointed out in his testimony that the issue is not whether the circumstances in which the transportation is performed conform to those for which the area-to-point rates have been established. Orange County Production Areas "F", the origin of the shipments, is already an established production area. The fact that delivery conditions at the three destinations involved meet the criteria for area-to-point rates has been determined in an earlier phase of this proceeding which resulted in the establishment of area-to-point rates to these same destinations from certain production areas other than Production Area "F".¹

¹ Decision No. 62295, July 18, 1961, in Petition No. 68, Case No. 5437.

The manager asserted that the issue to be disposed of is that of the discrimination arising out of the fact that the transportation in question is subject to higher rates than those that apply to like transportation for competing producers of Sully Miller in the same general area. He said petitioner, the California Dump Truck Owners Association, is concerned with elimination of this discrimination in order to avoid diversion of Sully Miller's traffic from for-hire dump truck carriers.

The representative of the Southern California Rock Products Association also urged that the petition be granted in order to remove rate discrimination against Sully Miller's shipments. On the other hand the representative of the California Trucking Associations, Inc., questioned whether the record provides a sufficient basis for prescribing the specific rate adjustments which are sought. The showing of the carrier witness, he said does not establish whether the carrier's operations would be profitable under the sought rates. He asserted that although the vice president of Sully Miller testified that the company could provide its own transportation at costs which are about 10 per cent below the rates it is now paying, the vice president's testimony lacks probative value because substantiating details were not supplied. He said, moreover, that the sought area-to-point rates to Sully Miller's plant at Long Beach should not be established because that plant is not in operation.

It is clear from the record herein that the transportation services which are the subject of this petition, and which consist of the movement of rock products from Production Area "F" to Sully Miller's plants at El Toro, Huntington Beach and Long Beach, are the same in all essential respects as those for which area-to-point rates have been prescribed heretofore. It is also clear that the present bases of rates disadvantage Sully Miller in its efforts to meet the competition of other rock products producers, inasmuch as the rates which apply to Sully Miller's shipments are higher than those which apply to like shipments of competing producers in the same general areas. In the circumstances here shown we find that the differences in rates are unjustified and unduly discriminatory. The discrimination will be removed by extending the application of the lower area-to-point rates to the aforesaid transportation for Sully Miller. This action will be taken notwithstanding the arguments of the representative of the California Trucking Associations, Inc., that the record does not show whether the lower rates would be profitable. We are persuaded that the rates will be reasonably profitable for the specific services to which they will apply. The fact that Sully Miller's plant at Long Beach is not now in operation likewise is not sufficient grounds for refusing to extend the area-to-point basis of rates to shipments of rock products from Orange County Production Area "F" to that plant. Although operations at said plant have been under suspension, it appears that their resumption is projected for the near future. The area-to-point rates should be extended as sought in this respect in order that nondiscriminatory rates may be assessed when movements of rock products to the Long Beach plant are resumed.

ORDER

Based on the evidence and on the findings contained 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 July 28, 1962, Third Revised Page 38-U-12, which page is attached hereto and by this reference is made a part hereof.

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

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

Dated at San Francisco, California, this 12th day of June, 1962.

[Signature]
President

[Signature]

[Signature]

[Signature]

[Signature]
Commissioners

Cancels

SECTION NO. 3-A - RATES FROM PRODUCTION AREAS
TO DELIVERY POINTS (Continued)

DELIVERY TIME PER ROUND TRIP (in minutes)

TO: Delivery Point	FROM: Orange County Production Area (1)				
	A	B	*F	G	L
Industrial Asphalt Materials 8182 Katella Ave. Stanton	81	148			
Laguna Ready Mixed 21812 Laguna Canyon Road Laguna Beach	84	84			
Norwalk Asphaltic Concrete, Inc. 12438 Bloomfield Avenue Santa Fe Springs					84
Rohl Rock & Sand Lawrence Canyon $\frac{1}{2}$ mile West of Hill St. Oceanside		131			
San Gabriel Ready Mix of Santa Ana 1120 E. Washington St. Santa Ana				82	
Santa Ana Ready-Mix 312 N. Townsend Santa Ana		115			
Spaulding Materials & Concrete Co. 1523 So. Hill Oceanside		138			
Spaulding Materials & Concrete Co. River Road, $\frac{1}{2}$ Mile East of Del Mar Race Track Solano Beach		177			
Stanton Ready-Mixed Concrete 8122 Katella Ave. Stanton	81				

Sully Miller Contracting Co. 7221 Ellis Huntington Beach	107	141	112
Sully Miller Contracting Co. 1500 W. 7th St. Long Beach	138		143
Sully Miller Contracting Co. Irvine Blvd. near Lambert Road Orange County (El Toro area)	79		86
Welch Ready-Mixed Concrete 135 Commercial Way Costa Mesa	91	129	
Welch Ready-Mixed Concrete 1740 Florida Ave. Huntington Beach	102	143	
Welch Ready-Mixed Concrete 2609 W. Chapman Ave. Orange		116	
Welch Ready-Mixed Concrete 460 S. Walnut Ave. Placentia	78	140	
Welch Ready-Mixed Concrete 7566 Trask Ave. Westminster	84	148	
Western Concrete 14528 Edward St. Westminster		153	

(1) For descriptions of Orange County Production Areas, see Pages 33-A and 33-A-1.

* Addition, Decision No. **63803**

EFFECTIVE JULY 28, 1962

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 952