

ORIGINAL

Decision No. 63917

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
 (Petitions Nos. 51 & 53)

Appearances on Rehearing

William D. Campbell and E. O. Blackman, for California
 Dump Truck Owners Association, petitioner for
 rehearing.

Arlo D. Poe, James Quintrall and J. C. Kaspar, for
 California Trucking Associations, Inc., petitioner
 in Petition No. 51.

Johnson & Stanton, by Thomas E. Stanton, Jr., and
Marshall A. Staunton, for Northern and Central
 California Chapter, A.G.C., petitioner in Petition
 No. 53.

Sol F. Burke and Ralph B. Young, for Teamsters Local
 #684, protestant.

E. H. Griffiths, for Riley Trucking, Scaffone Trucking
 Service and W.S.P., Inc., Clair V. Logue, for
 Contractors Dump Truck Service Co., Finis J. Clark,
 respondents.

E. H. Griffiths, for MacDonalD Dorsa Transportation Co.
 and Building Materials and Construction Teamsters
 Local 216, interested parties.

R. J. Carberry, Leonard Diamond and Edward E. Tanner,
 for the Commission's staff.

OPINION ON REHEARING

By Petition No. 51, the California Trucking Associations,
 Inc., sought 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.

By Petition No. 53, the Northern and Central California Chapter of the Associated General Contractors of America, hereinafter called A.G.C., sought with certain exceptions, the exemption from minimum rates of transportation performed by dump truck on any construction project under a written contract entered into between a 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.

Following extensive public hearings, the examiner issued a proposed report to which exceptions and replies were filed. Decision No. 60698, dated September 6, 1960, was then issued. By that decision, Petition No. 51 was denied. With respect to Petition No. 53, the decision found justified, and ordered, an exclusion from the minimum rates of 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; the decision provided, however, that if any underlying carrier is engaged in such transportation, the charges paid him by the overlying carrier shall be not less than 95 percent of the otherwise applicable minimum hourly rates.

Petitions for rehearing, filed in time to stay the effective date of Decision No. 60698, were filed by California Dump Truck Owners Association, Inc., and by The Construction Teamsters Committee of Northern California. Both petitions sought rehearing only with respect to the tariff provisions established in response to Petition No. 53. By order dated October 25, 1960, rehearing was granted.

Rehearing was held before Examiner William E. Turpen at Los Angeles on May 11, 1961, and at San Francisco on July 27 and 28, 1961. The matter was submitted with the filing of concurrent briefs and replies thereto on January 30, 1962.

The record on rehearing is silent with respect to Petition No. 51; the denial of that petition is not in issue, and the order which follows will reaffirm that denial.

Decision No. 60698 contains a full discussion of all the conditions which prompted A.G.C. to seek the minimum rate exemption involved in Petition No. 53, together with a full discussion of the reasons why a different exemption was authorized. It does not appear necessary to repeat such discussion herein. It should be noted that Decision No. 60698 found that the minimum rates should be maintained except to the limited extent specified therein. Petitioners for rehearing contend that the exemption authorized in the decision involved new proposals and problems which were not introduced or considered at the original hearing, and concerning which no evidence was then taken; they also contend that such exemption would entail the abolishment of minimum rates with respect to a large volume of dump truck hauling.

The evidence on rehearing clearly shows that the transportation involved herein amounts to a large part of the total dump truck traffic; it is much more than the "limited" amount contemplated in Decision No. 60698.

The testimony also establishes that under the exemption set forth in the decision, a contractor could engage as many independent owner-operators as he desired without observing the minimum rates. Such a situation could only lead to conditions similar to those existing prior to the establishment of minimum rates in 1935, as pointed out in Decision No. 60698, and the smaller carriers would again be subjected to destructive competition.

If, on the other hand, several prime carriers were engaged, and if they in turn hired subhaulers, then the contractor would not

have to observe the minimum rates in dealing with the prime carriers, but the prime carriers would be required to pay 95 percent of the minimum rates to the subhaulers. The possibility of financial loss would thus merely be shifted from the contractor to the prime carriers. A number of dump truck operators who do most of their work as prime carriers testified that they could not continue in business under these conditions.

Suggestions were offered to the effect that the exemption be limited to those cases where the contractor engages only a single prime carrier, and also that it be limited to projects where the cost of transportation exceeds \$50,000. The proposed limitation to a single prime carrier is subject to the objection just noted that the risk involved is merely shifted from a contractor to a carrier. Such a limitation would also tend to encourage large fleet operations by such a prime carrier at the expense of the smaller operators who presently perform much of this carriage as subhaulers. The testimony shows that the suggested money limitation would eliminate the exemption from a large percentage of projects and could thus lead to discrimination. Also, several witnesses testified, and we find, that it often would be impossible to determine in advance whether the transportation costs would be over or under \$50,000.

The record on rehearing is clear that, although the exemption from minimum rates would be of benefit to public works contractors in some instances, it would have a severe adverse effect on most of the dump truck operators. We find that the minimum rate exemption set forth in Decision No. 60698 would not be in the public interest. Petition No. 53 will be denied.

California Dump Truck Owners Association has renewed its motion for dismissal of Petition No. 53 on the ground that the

Commission does not have authority to cancel minimum rates. In view of the conclusions reached herein, action on this motion is unnecessary.

O R D E R

Rehearing having been held,

IT IS ORDERED that Petitions for Modification Nos. 51 and 53 in this proceeding are hereby denied.

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

Dated at San Francisco, California, this 10th day of July, 1962.

George G. Trover
President
John L. ...
E. J. Fox

Commissioners

*I dissent
Gust ...
Commissioner*