

ORIGINAL

Decision No. 66200

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. 81
Filed January 16, 1962
Amended January 17, 1963

N. H. Smedegaard and Cromwell Warner, for
Burris Sand Pit, petitioner.

H. Randall Stoke, Don Reining, and C. Fred
Imhof, for Southern California
Rock Products Association, protestant.

W. F. Webster, for Rodeffer Industries, Inc.,
protestant.

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

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

R. J. Carberry and Carl B. Blaubach, for the
Commission's staff.

O P I N I O N

Burris Sand Pit, the petitioner in this matter, is a co-partnership engaged in the business of producing and selling sand, gravel and aggregates at a location in Orange County in the vicinity of the City of Anaheim. By this petition it seeks to have a rock and sand pit and related processing facilities which it maintains and operates at this location designated as a production area within the

meaning of that term as used in Minimum Rate Tariff No. 7. It also seeks to have zone rates established in Minimum Rate Tariff No. 7 for the transportation of its products from said production area by for-hire dump truck carriers to various Orange County destinations.

At the present time the properties of Burris Sand Pit lie partly inside of and partly outside of an area which is defined and designated in Minimum Rate Tariff No. 7 as Production Area "M". Shipments of petitioner's products from the portion of its properties within Production Area "M" are subject to the zone rates that apply under the tariff for the transportation of rock and sand from that area. The remainder of petitioner's shipments are subject to distance or hourly rates which are also named in the tariff. Petitioner alleges that the different bases of rates that apply to its shipments adversely affect the marketing of its products. By its proposals it seeks to have zone rates made applicable uniformly to all of its shipments. The sought rates are lower in some instances, and higher in other instances, than those that apply at present from Production Area "M".

Public hearing on the petition was held before Examiner Abernathy at Los Angeles on April 30, 1963. Evidence in support of the petition was presented by petitioner and by representatives of the California Dump Truck Owners Association. Representatives of the Southern California Rock Products Association and of Rodeffer Industries, Inc., opposed the petition. A representative of the California Trucking Association and members of the Transportation Division of the Commission's staff participated in the

development of the record. The matter was taken under submission subject to the filing of specified citations on or before May 15, 1963.

In general, extensions of the zone system of rates in Minimum Rate Tariff No. 7 to apply to production facilities not covered thereby have been made heretofore when it appeared that to do so would provide said facilities with rates of the same kind and character as those already available from established competing plants of production in the same general area. There was no suggestion by any of the parties to this matter that a different course should be followed in this instance.

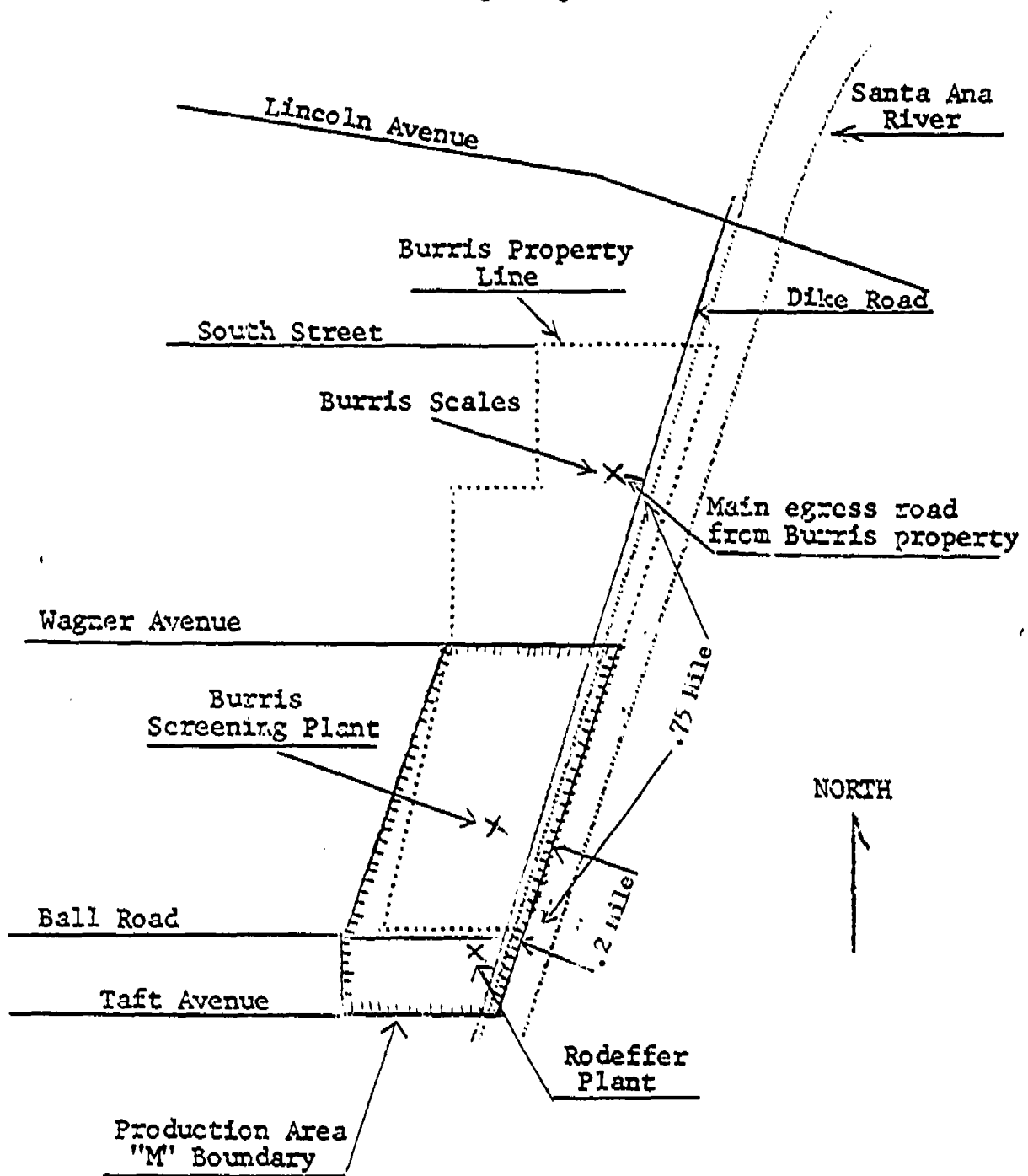
The opposition of Southern California Rock Products Association and of Rodeffer Industries, Inc. to petitioner's proposals was confined to the question of whether the zone rates for petitioner's shipments and for shipments from Production Area "M" should be the same. Protestants assert that the rates should be the same because the transportation in either case is performed under essentially the same conditions. Protestants point out, furthermore, that Rodeffer Industries, Inc., maintains and operates a plant in Production Area "M" at which it produces and sells rock products in direct competition to Burriss Sand Pit. They allege that were different rates to be established for petitioner's shipments than for Rodeffer's shipments, the differences in rates would be unreasonable and unreasonably discriminatory.

On the other hand the position of petitioner and of the California Dump Truck Owners Association is that from both a time

and mileage standpoint the conditions under which petitioner's shipments are transported differ materially from those applicable to the transportation of Rodeffer's shipments. They assert that the differences justify the establishment of a different scale of rates for petitioner's shipments, as proposed. They further assert that reasonable and nondiscriminatory rates for petitioner's shipments will not be provided unless said rates reflect the transportation circumstances which underlie the services involved.

The differences in position between petitioner and the California Dump Truck Owners Association on the one hand and protestants on the other hand stem mainly from differences in viewpoint as to what transportation conditions should be considered in determining whether a different scale of rates should be established for petitioner's shipments. Petitioner's calculations were developed with the assistance of the California Dump Truck Owners Association on the premise that the controlling consideration should be the time and distance factors that apply to the transportation involved between petitioner's scales and the points of delivery of petitioner's shipments. Protestants' position is that the controlling consideration in this matter should be the total services which the carriers are required to provide in the transportation of petitioner's shipments -- services which include the so-called terminal end services and which consist of or are incidental to the loading and weighing of the shipments.

In the determination of whether the establishment of the zone rates which petitioner seeks would unduly discriminate against Rodeffer Industries, Inc., consideration must necessarily be given to the nature and relationship of the services which would be performed under the sought rates and those which are now being applied to shipments of Rodeffer Industries, Inc., from Production Area "M". The location of petitioner's properties in relation to that of Production Area "M" is shown in the following diagram:



As the diagram shows, petitioner's property lies along the Santa Ana River between South Street and Ball Road, a distance of about one mile. Petitioner's scales are situated in the northern part of the property. To the south of the scales lies petitioner's pit area, an excavated area of some 30 to 70 feet in depth. In the southern portion of the pit are located petitioner's plant facilities for the processing of its products. Virtually all of petitioner's shipments move across its scales. From there they are transported to a road on the dike along the west side of the Santa Ana River and thence either northerly to Lincoln Avenue and points beyond or southerly to Ball Road and points beyond. About 95 per cent of petitioner's shipments move via the northerly route.

As the diagram also shows, the plant of protestant Rodeffer Industries, Inc., is located in the southern portion of Production Area "M" near the Santa Ana River and south of Ball Road. At this plant Rodeffer screens sand and makes and blends untreated rock base. All of Rodeffer's shipments originate at the plant and are transported to various destinations in the surrounding areas by the available roads, including the dike road along the Santa Ana River. The loading and weighing of Rodeffer's shipments are performed as a consolidated operation in that the loading and weighing points at Rodeffer's plant are the same with the consequence that the carriers' vehicles are loaded while on the scales.

It is clear from the foregoing that petitioner's scales are closer than those of Rodeffer to the marketing areas which are

served northward via the dike road to Lincoln Avenue. Hence were rates to be established on the shorter distances from petitioner's scales, it would follow that lower rates would be provided for petitioner's shipments. On the other hand it is also clear that in the loading and weighing of petitioner's shipments the carriers are called upon to provide substantially more service than is required in the case of shipments from Rodeffer's plant. Whereas Rodeffer's shipments are loaded and weighed in a combined operation, the loading and weighing of petitioner's shipments first require the movement of the carriers' vehicles to the loading locations. Thereafter, there is a further movement of the vehicles to the scales. In such movements the carriers may traverse a distance of a mile or more within petitioner's property. Such movements may also require the descent of the carriers' vehicles into petitioner's pit area for loading and the subsequent return of the loaded vehicles to highway level. Although the carriers' costs of service from petitioner's scales to the northerly destinations via the dike road may be less than for corresponding service from Rodeffer's plant, it appears that these differences in costs in favor of petitioner's shipments would be largely offset by the additional costs incurred in the loading and the weighing of said shipments. We do not agree with arguments which were

advanced on behalf of the California Dump Truck Owners Association that the costs of the loading and weighing services should not be considered.¹ We find that on this record the establishment of lower rates for petitioner's shipments than the rates which apply to the same destination zones from Production Area "M" have not been justified from a cost standpoint.

In the absence of a clear showing of cost justification the record otherwise does not support a conclusion that the rates which petitioner seeks may be established without unduly discriminating against the traffic of Rodeffer Industries, Inc. We find that the evidence shows that Rodeffer's plant in Production Area "M" and petitioner's property are in the same general area; that petitioner and Rodeffer are in direct competition with each other; that the service which the carriers are called upon to provide in connection with about 95 per cent of petitioner's shipments is substantially the same as that required in connection with the transportation of like shipments of Rodeffer to the same delivery zones; and that as to petitioner's remaining shipments the service requirements of petitioner are substantially the same as, or more than, those of Rodeffer for like shipments.

¹ On this point the representative of the California Dump Truck Owners Association argued that provision for the loading and weighing costs are included in the allowances which are included in the rates for the so-called terminal end services; that such allowances are based on average conditions, and that the specific loading and weighing conditions at individual plants should not be considered separately unless a review were to be made of the average conditions generally. We are of the opinion that in a matter such as this, in which discrimination between shippers in the same general area is an issue, consideration must necessarily be given to all of the transportation services that are involved.

Upon consideration of the record in this matter we find and conclude that the designation of petitioner's property as a production area separate from Production Area "M" and the establishment of the rates which petitioner seeks to have made applicable from the proposed production area would be unduly discriminatory against traffic originating in the remaining portion of Production Area "M". The petition should be denied.

O R D E R

IT IS ORDERED that Petition No. 81 in Case No. 5437 be, and it hereby is, denied.

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

Dated at San Francisco, California, this 22nd day of October, 1963.

[Signature] President
[Signature]
George H. Grover
Fredrick B. Halbach Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.