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Decision No. 68543

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. 48, Filed December 22, 1958 Order Setting Hearing Dated March 24, 1959

(Appearances are listed in Appendix A)

O P I N I O N

At issue in these matters are the rates, rules and regulations in Minimum Rate Tariff No. 7 which the Commission has prescribed as minimum rates, rules and regulations for the transportation, by for-hire highway carriers, of rock, sand and gravel in dump truck equipment from designated production areas to defined delivery zones and destinations in portions of Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara and Ventura Counties. Also involved are the minimum rates which apply from certain production areas in Orange County to certain delivery zones and destinations in San Diego County.

During the year 1963 thirty-six days of public hearing were held before Examiner Abernathy at Los Angeles on the question of what changes, if any, should be made in said rates, rules

and regulations.[1] Evidence and recommendations were submitted by representatives of the Transportation Division of the Commission's staff, by representatives of the California Dump Truck Owners Association and by a representative of the Southern California Rock Products Association. The record was closed with the filing of a brief by the Southern California Rock Products Association. Thereafter, a report of the Examiner was issued upon direction of the Commission. Exceptions to said report and replies to the exceptions have been filed. The issues involved are ready for decision.

The evidence and proposals of the several parties are discussed at length in the Examiner's report. On the basis of said evidence and proposals the Examiner recommended that the rates, rules and regulations in question be revised substantially. In general the Examiner recommended that a new tariff be established, separate from Minimum Rate Tariff No. 7, to set forth a new system of zone rates for the transportation of rock, sand and gravel within and/or between the portions of Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara,

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[1] Also considered were what changes, if any, should be made in the rates, rules and regulations in Minimum Rate Tariff No. 7 for the transportation of asphaltic concrete, cold road oil mixture and decomposed granite. The matters bearing on said rates will be considered subsequently.

San Diego and Ventura Counties under consideration;[2] that the rates be based mainly on time, distance and cost data which were presented by an engineer of the Commission's staff; and that with the establishment of the new tariff the zone rates (including special rates known as area-to-point rates) which are now applicable within much of the same area be canceled. The Examiner's recommended findings and conclusions, as taken from his report, are set forth in Appendix B attached hereto.

Exceptions to the Examiner's recommendations were filed by the Commission's staff, by the California Dump Truck Owners Association, Inc., by the Southern California Rock Products Association, by the California Trucking Association and by the California Asphalt Plant Association.[3]

The Commission's staff excepted to the Examiner's recommendation that the area-to-point rates be canceled, and to a recommendation concerning a reduction in rates to reflect a

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[2] Said portions of Los Angeles, Orange, Riverside, San Bernardino, Santa Barbara and Ventura Counties will be referred to at times as the Expanded Core Area.

[3] For brevity the following designations will be used at times in referring to the organizations indicated:

CDTOA	-	California Dump Truck Owners Association, Inc.
RPA	-	Southern California Rock Products Association
CTA	-	California Trucking Associations
CAPA	-	California Asphalt Plant Association

recent reduction in income taxes. The staff urged that the area-to-point bases of rates be retained at a level three cents a ton below the zone rates which are prescribed, and that a greater reduction in rates be made for the reduction in income taxes than that recommended by the Examiner.

The CDTOA excepted to the Examiner's recommendations that the area-to-point rates be canceled; that a composite of labor costs of carriers operating fleets of dump truck equipment and of carriers operating only single units of equipment be used in the construction of the rates to be established; that the territorial scope of rules which were proposed by the CDTOA be limited in application to the Expanded Core Area and not extended into San Diego County and parts of the Antelope Valley and Mojave Desert portions of Los Angeles, San Bernardino and Kern Counties; that the prescribed rates be inapplicable to services of one underlying carrier for another underlying carrier; that an alternating basis of hourly and zone-distance rates be retained; that an equality of charges be established for services provided in connection with the disposition of refused C.O.D. shipments and other refused shipments; that a modification be made in certain rates from Orange County to San Diego County; that a reduction in rates be made because of the reduction in income taxes, and that the recommended tariff set forth initially only the minimum rates, rules and regulations which would apply within the Expanded Core Area.

The RPA also took exception to the Examiner's recommendations that the area-to-point rates be canceled. In addition, it pointed out a duplication in a cost factor used by the Examiner, and it commented briefly on the form of shipping document to be prescribed.

The CTA took exception to the Examiner's recommendations that labor costs be computed on a composite basis as between fleet operators and owner-driver operators; that the rates to be prescribed reflect the reduction in income tax rates, and that amendment of the rates in the future to incorporate provision for new production areas be largely on the basis of computer processing of the time, distance and cost data developed in connection with the matters now under consideration.

The CAPA excepted to a recommendation of the Examiner that would prohibit the application of hourly rates to the transportation of rock, sand and gravel in instances where zone rates for said transportation have been provided.

The various exceptions and the replies thereto have been considered in connection with the Examiner's recommendations. Discussion thereof and our findings and conclusions with respect thereto follow:

Differences in Costs

The exceptions of the CDTOA and of the CTA to certain of the costs which the Examiner recommended be adopted for rate making purposes are directed against the Examiner's proposal that the drivers' wage costs which were developed by the Commission engineer be found reasonable. As stated in the

Examiner's report, the engineer developed a composite wage cost figure which was weighted according to the carriers who are owner-operators and to those who are fleet operators. For the wage costs of drivers who are employees of fleet operators the engineer computed said costs under the wage rates specified in the applicable union contracts, plus the applicable "fringe" benefits, plus certain payroll charges. The engineer computed wage costs of the owner-operator at the same wage rates specified in the union contracts, but he did not include like allowances for all of the "fringe" benefits and payroll charges. In general, certain of these allowances were not made for the reason that, insofar as the owner-operators are concerned, they are not subject to the same direct outlays that fleet operators are.

The exceptions of the CDTOA to the composite costs thus developed are on the grounds that such costs discriminate against a fleet operator because they do not reflect the fleet operator's full labor costs; that they discriminate against the owner-operators because they do not provide for medical and other "fringe" costs which confront the owner-operator, and that disregard of such costs is contrary to decisions of the Commission heretofore.

The CTA asserts that the owner-operator incurs wage costs corresponding to prevailing hourly wages of driver employees of fleet operators; that it is illogical to assume that the labor of the owner-operator is less than the fleet operator, and that it is unsound and contrary to the public interest to

eliminate any of the costs necessarily incurred by carriers who employ drivers.

The question to be resolved is whether any distinction should be made in the fixing of the rates involved herein between the wage costs of fleet operators and those of owner-operators. Previous decisions of the Commission which were cited by the CDTOA do not bear directly upon this question insofar as zone rates are concerned. However, official notice may be taken of the fact that where wage rates have been treated heretofore as a separate factor in the prescription of minimum rates for dump truck carriers, wage costs based on prevailing wage rates have been used. We are of the opinion that the same principle applies with equal force to the wage costs for zone rate purposes. We find that on this record the drivers' wage costs of fleet operators should be deemed as representative of the prevailing wage scales. The recommendations of the CDTOA and of the CTA that said costs be used in the development of zone rates will be adopted.

Territorial Scope of Proposed Rules

The Examiner's recommendation against adoption of certain rule changes which were proposed by the CDTOA was made on the grounds that the proposed changes are beyond the territorial scope of the matters under consideration. The changes in question would affect rates in Minimum Rate Tariff No. 7 which apply for the transportation of rock products in San Diego County and in parts of the Antelope Valley and Mojave Desert portions

of Los Angeles, San Bernardino and Kern counties. In excepting to this recommendation, the CDTOA points out that the Order Setting Hearing of March 24, 1959, in Case No. 5437, under which hearings in these matters were held, is sufficiently broad to encompass the proposed changes. The CDTOA asserts that the reasons which the Examiner found as justifying the rule changes in question within the Expanded Core Area are equally applicable in San Diego County and in the Antelope Valley and Mojave Desert areas. The CDTOA also asserts that, in the interests of administrative efficiency, the rule changes should be made so as to consolidate all zone rates and rules in one tariff as rapidly as possible.

The scope of the Order Setting Hearing of March 24, 1959, in Case No. 5437, is sufficiently broad to include the rule changes in question. Nevertheless, as pointed out by the Examiner, the bearing of the rule changes upon the rates for the Antelope Valley and Mojave Desert areas and for San Diego County was not considered in the present phases of this general proceeding. The rule changes which were proposed by the CDTOA would, in total, result in substantial revisions in the application of the rates in question.

We hold that the Examiner concluded correctly that in practical effect the proposed changes are outside of the scope of the matters under consideration in connection with revision of the minimum zone rates, rules and regulations to apply within the Expanded Core Area. Before the changes which were proposed by the CDTOA are extended to transportation outside of the

Expanded Core Area ample and specific notice thereof should be given to the parties likely to be affected and opportunity should be granted to said parties to make their views known to the Commission. If the CDTOA wishes to pursue this aspect of its proposals further it may do so by an appropriate filing.

Application of Minimum Rates to Underlying Carriers

The Examiner's recommendations against a proposal of the CDTOA that the provisions of Minimum Rate Tariff No. 7 be made applicable to services which one underlying carrier (a sub-subhauler) performs for another underlying carrier (a subhauler) are based on the premise that the rates, rules and regulations in Minimum Rate Tariff No. 7 apply for the entire services of transporting shipments from points of origin to points of destination. Hence, the rates are not necessarily reasonable minimum rates for lesser services which constitute only a segment of the total transportation involved, and which are performed by a sub-subhauler for a subhauler.

The position of the CDTOA is that the sub-subhauler performs the same services that the subhauler contracts to perform for an overlying (or principal) carrier, and that the sub-subhauler should, therefore, receive the same compensation that the subhauler is entitled to receive. Under the provisions of Minimum Rate Tariff No. 7 such compensation consists of not less than 95 per cent of the charges under the rates in said tariff, less the gross revenue taxes applicable and required to be paid by the overlying carrier.

Where a sub-subhauler performs the same services that the subhauler contracts to perform for an overlying carrier, we agree that the sub-subhauler should receive substantially the same compensation as that which the subhauler would have received had it performed the same services. However, we do not agree that the compensation of the sub-subhauler should be precisely the same as that due the subhauler. Were such to be the case the subhauler will be left without any provision for compensation for such responsibilities and risks it assumes, and services it performs, in engaging the sub-subhauler.

In employing a sub-subhauler, a subhauler enters into a relationship with the sub-subhauler which is similar to that between the overlying carrier and the subhauler. We have heretofore determined that where rock products are transported under a subhauling arrangement between an overlying carrier and a subhauler, the subhauler should be paid not less than 95 per cent of the applicable transportation charges under the minimum rates. Where the same transportation is performed under a sub-subhauling arrangement, a similar division of the applicable transportation charges should apply as between the subhauler and the sub-subhauler in order to provide a reasonable minimum basis of compensation for the subhauler and the sub-subhauler, respectively. We find that in such circumstances the sub-subhauler should be paid not less than 95 per cent of the charges due, under the minimum rates, to the subhauler from the overlying carrier (exclusive of allowances for liquidated

debts of the subhauler to the overlying carrier.) To this extent the recommendations of the CDTOA concerning the level of the payments of subhaulers to sub-subhaulers will be adopted.

Area-to-Point Rates

The Examiner's recommendation that the area-to-point rates be canceled stems from an asserted insufficiency of the cost data to justify the establishment of area-to-point rates which would be 3 cents per ton less than the zone rates that would otherwise apply. The Examiner's report is clear, however, that in arriving at this recommendation the Examiner did not take into account evidence bearing on the costs of area-to-point service which was presented by a witness for the RPA. Such evidence, together with that which was presented by a Commission engineer, substantiates the 3-cent differential which was proposed. We find area-to-point rates, which would be 3 cents per ton less than the corresponding zone rates, to be reasonable and justified.

As part of their exceptions to the Examiner's recommendation that the area-to-point rates be canceled, the CDTOA and the RPA both urged the adoption of a proposal which they had made at the hearings in this matter that the area-to-point rates be expanded to apply to deliveries to designated classes of consignees (concrete producing plants, commercial rock producing plants, concrete articles factories and asphaltic concrete plants) instead of deliveries to named consignees as at present.

The area-to-point rates were originally established to reflect economies attained in transportation performed under

certain defined conditions. In seeking to have the area-to-point rates made applicable to deliveries to the classes of consignees specified, the CDTOA and the RPA assert that the conditions under which rock, sand and gravel are delivered to said consignees conform to the conditions upon which the area-to-point rates are based.

Were this proposal of the CDTOA and of the RPA to be adopted, some consignees, such as certain distributing yards, would be excluded from using the area-to-point rates even though the Commission has found heretofore that the circumstances in which rock, sand and gravel are delivered to said yards justify the application of area-to-point rates to the transportation performed. On the other hand, other consignees would receive the benefit of the area-to-point rates notwithstanding the fact that the Commission has hitherto reviewed the circumstances in which rock, sand and gravel are delivered to said other consignees and has concluded that on the showings made in connection therewith the application of area-to-point rates to the transportation involved was not justified.[4]

The proposals of the CDTOA and of the RPA rest largely upon the opinions and judgment of the CDTOA's and RPA's representatives through whom the proposals were submitted. We are not persuaded that the proposals are sufficiently definitive that area-to-point rates thereunder could be applied without discrimination in circumstances where application of the rates is justified and yet exclude the applicability of the rates where

[4] Decision No. 62295, dated July 18, 1961, in Case No. 5437, Petition No. 68.

not justified. The present basis of publication of the area-to-point rates will be retained subject to minor changes such as some corrections in names and addresses.

It is noted from testimony of the associate executive secretary of the RPA that, in general, the concrete producing plants, commercial rock producing plants, concrete articles factories and asphaltic concrete plants that are located within the area under consideration herein are already included among the consignees whose shipments are, and would be, subject to area-to-point rates. If there are other of such consignees who may be eligible for the area-to-point rates, they may seek extension of said rates to include their shipments by the filing of appropriate petitions.

Rates for Transportation Beyond a System of Delivery Zones

Under the Examiner's recommendations in this respect the present basis of determining rates for transportation to points beyond a system of delivery zones would be retained with the exception that a charge of 10 cents per ton per mile of distance traversed outside a system of delivery zones would be limited in application to transportation to points not farther than 10 miles from the system of zones involved.

In its exceptions the CDTOA assails this recommendation on the grounds that a "highly undesirable alternation of rates is continued," and it asserts that "alternative distance or hourly rates ... are not necessarily reasonable for a zone rate system." The CDTOA urges the adoption of a rule which

would make all transportation from any production area in a system of zones to any point in California outside of the same system of zones subject to the charge of 10 cents per ton per mile without any alternative.

Except where zone rates have been established for transportation within a system of zones and except for the special area-to-point rates, the basic rates in Minimum Rate Tariff No. 7 are hourly and distance rates. As the Examiner pointed out in his report, the adoption of the proposal of the CDTOA would result in the supersedure of the hourly and distance rates for all transportation which originates within production areas and which is delivered outside of the system of delivery zones involved. The proposal of the CDTOA is based on an assumption that the deliveries outside of the system of zones would be made into mountainous areas for which the charge of 10 cents per ton per mile assertedly is reasonable. However, the proposal is not so limited.

We are not pursuaded, nor can we find on this record, that the charge of 10 cents per ton per mile would be reasonable for all deliveries beyond a system of zones. The proposal of the CDTOA will not be adopted. In view of the evidence of record the charge of 10 cents per ton per mile will be canceled, leaving the basic hourly and distance rates to apply.

Rates for Diverted or Returned Shipments

The exceptions of the CDTOA to the Examiner's recommendation concerning rates for diverted or returned shipments are

directed against the Examiner's conclusions (a) that the applicable distances should be computed over the route traversed instead of the shortest legal route, and (b) that charges for the return of refused C.O.D. shipments should be the same as those for the return of other refused shipments. The CDTOA asserts that the most equitable rule for the computation of charges is the shortest legal route. It asserts, furthermore, that no change should be made in the present tariff provisions regarding the return of refused C.O.D. shipments.

The Examiner's rejection of the proposed use of the shortest legal route as a basis of charges stems, in part, from assumed difficulties in determining what would constitute the shortest legal route in any specific situation. In light of the evidence that the shortest legal route can be determined in each instance without undue difficulty the proposal to use the shortest legal route for the computation of charges will be accepted.

In excepting to the Examiner's recommendation concerning what rates should be assessed for the return of C.O.D. shipments, the CDTOA relies upon allegations of record that the return of C.O.D. shipments involves longer delays by the carrier at the point where the shipment is refused than are involved in connection with other refused shipments. The CDTOA also alleges that greater record keeping responsibility is required of the carriers for C.O.D. shipments than is required for other shipments.

The record, however, is not convincing that any difference in delay time is of such consequence as to justify the charging of substantially higher rates for the return of refused C.O.D. shipments than for the return of other shipments. As to the differences in record keeping responsibility, the greater responsibility is incurred in the handling of all C.O.D. shipments, not refused C.O.D. shipments alone. If any charge for this reason is to be made, it should not be limited to refused C.O.D. shipments.

We find to be reasonable the Examiner's recommendation that the same charges apply for the return of refused C.O.D. shipments as for the return of other shipments. Said recommendation will be adopted.

Minimum Rate Per Shipment

The Examiner recommended the adoption of a rate of 30 cents a ton as the minimum zone rate to be established in this matter for the transportation of rock, sand and gravel. However, he failed to include this recommendation in his "Recommended Findings". The CDTOA noted this omission in its exceptions, and urged that the rate be established.

We find that said rate is reasonable. It will be adopted.

Rates From Orange County Production Areas to San Diego County Delivery Zones

The CDTOA excepted to the Examiner's recommendation that a reduction be made in present zone rates that apply from Orange County production areas to delivery zones located in San Diego County. It asserts that the recommended reductions are not supported by evidence.

The Examiner's report is clear that the reductions are designed to maintain reasonable and nondiscriminatory relationships between the rates that apply from Orange County production areas to San Diego County delivery zones, on the one hand, and to intermediate Orange County delivery zones, on the other hand. It appears that the proposed reductions are intended to reflect the level of costs shown by the record to apply to the portions of the hauls to the San Diego County delivery zones that lie within Orange County.

We find that the rate reductions are reasonable and justified for the purposes indicated. The Examiner's recommendation will be adopted.[5]

Non-Alternation of Zone and Related Rates with Other Minimum Rates for the Transportation of Rock

The Examiner recommended that such zone rates as are established in these matters apply to the exclusion of other minimum rates in Minimum Rate Tariff No. 7. The main effect of this recommendation would be that shippers would be denied an opportunity which they now have of shipping under hourly rates if they so desire. This recommendation was made in the light of allegations by the CDTOA that the alternate availability of hourly rates results in enforcement problems. The Examiner concluded, also, that the applicability of the hourly rates as alternatives to the zone rates

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[5] As pointed out in the Examiner's report, changes which will be made in Orange County zone boundaries as part of the revisions to be made in these matters will result in minor changes in the territorial application of rates which apply from certain San Diego County Production Areas. We find that said changes are reasonable and justified.

would be incompatible with the maintenance of zone rates at their established level.

CAPA (the California Asphalt Plant Association) excepted to this recommendation on the grounds that the proposed limitation is unreasonable, since the hourly rates themselves are reasonable minimum rates. It alleges that the Examiner's reasons for the limitation are not of sufficient force to justify the recommended action and that, furthermore, the hourly rates provide a basis of reasonable charges when changes in highway conditions permit transportation to be performed in substantially lesser times than those times reflected in the traverse time data upon which the zone rates would be based.

The zone rates are rates which are designed to give precise effect to time and distance costs applicable to any particular haul. On the other hand, charges under hourly rates vary directly with the time required per haul and, as a consequence, give lesser effect to distance costs. We do not agree with CAPA that differences between the charges under the zone and hourly rates respectively for the same transportation are negligible. If the more precise approach to rate making which is represented by the zone rates is to apply reasonably, the zone rates should apply to all hauls.

Of greater consequence is an argument of CAPA that the alternate application of the hourly rates should be retained in order to provide a basis of reasonable charges when the zone rates do not reflect substantial changes in highway routes. Notwithstanding such contingency, we are of the opinion that the

alternation of the hourly and zone rates should not be permitted. Although the alternate use of the hourly rates may be one avenue to reasonable transportation charges when highway route conditions have changed materially, another remedy is the prompt adjustment of the zone rates to reflect the changes. As changes of material consequence come to the attention of the parties, said parties may initiate action on their own part to bring about the corrective rate adjustments. As such changes are brought to its attention, the Commission will endeavor to make corresponding adjustments in the zone rates as soon as it can do so practicably. This course, we believe, is preferable to that urged by CAPA. The recommendation of CAPA will not be adopted.

Form of Tariff

The Examiner recommended that all zone rates for the transportation of rock, sand and gravel which are established to apply from production areas within the Expanded Core Area be incorporated in a tariff which is separate from Minimum Rate Tariff No. 7, and that other zone rates for rock, sand and gravel -- those which would apply for transportation within the Antelope Valley and Mojave Desert portions of Los Angeles, San Bernardino and Kern Counties and those which apply within San Diego County -- be retained in Minimum Rate Tariff No. 7.

In its exceptions the CDTOA urges that all of the zone rates be incorporated at this time in a separate tariff.

The recommendation of the CDTOA may represent a desirable objective to be attained in the future. However, the

unification of all of the zone rates, rules and regulations in a single tariff should not be accomplished without first undertaking to consolidate the various provisions. The steps to be taken in this regard should be considered further at a later date. In the meantime the zone rates, rules and regulations applicable to the transportation of rock within the Antelope Valley and Mojave Desert areas and within San Diego County should be retained in Minimum Rate Tariff No. 7.

Income Taxes

The CDTOA and the CTA both took exception to a reduction in rates which the Examiner recommended be made to reflect reductions in Federal income taxes since the close of the record in these matters. They claim that the reductions are not justified nor supported by the record. On the other hand, the Commission's staff asserts that the recommended reductions are inadequate and should be increased.[6/]

We do not agree with the CDTOA that the reduction in income taxes should not be taken into account. The level of profit which was advocated in these matters was developed and recommended while the former tax rates were in effect and included allowance for the then applicable taxes. With the reduction in tax rates it follows that an offsetting reduction in the rates should be made to reflect the reduction in carriers' costs.

We disagree also with the claim of the CTA that the record is insufficient to make a specific reduction in the rates

6 The Examiner recommended that reductions of one-half of one percent be made in the rates. The Commission's staff states that the reductions should be one and one-half percent.

to give effect to the reduction in income taxes. Within the framework upon which the rates were determined are the elements of the carriers' operating costs upon which the carriers' earnings can be projected and applicable tax determinations for rate purposes can be made both under former taxes and under the taxes which will prevail in the near future.

Upon consideration of the evidence and of the tax rates involved, we are of the opinion that a tax rate of one and one-half percent will give reasonable effect to the tax rates that apply. The recommendation of the Commission's staff in this respect will be adopted.

Procedure for the Establishment of New Production Areas and Delivery Zones

The exception of the CTA to a procedure recommended by the Examiner for the addition of new production areas and delivery zones to the zone system under consideration herein was on the basis that the procedure would deny interested shippers and carriers opportunity to examine the method by which rates from the new production areas and/or delivery zones would be calculated. Briefly, the Examiner recommended that after the filing of basic time and distance data necessary to the calculation of zone rates from new production areas to new delivery zones, the actual calculation of the rates be performed by the Commission's staff and that the rates be established in conformity with such calculations.

The CTA asserts that the procedure would result in a delegation of rate making authority to the Commission's transportation staff, and that interested shippers and carriers would not

be able to question the staff's judgment in programming the data for computer processing to arrive at the rates.

It is clear from the Examiner's report that the objective of the Examiner's recommendation is the transfer to the Commission's staff of the burden of rate calculation which, due to the multiplicity of calculations to be made, may be well beyond the practical capacity of a petitioner to perform on his behalf. The proposed procedure does not, nor is it intended to, impinge upon or lessen the rights of interested parties to examine the procedures followed in the development of the rates to be established. Essentially the process is one which has been employed on numerous occasions heretofore. The Examiner's recommendation is reasonable and will be adopted.

Form of Shipping Document

The exceptions of the CDTOA and of the RPA to the shipping document forms which were recommended by the Examiner apparently stem from the belief that by such forms the Examiner is proposing revisions in present documentation of shipments. It is evident, however, that the proposed forms are intended to be illustrative of forms which would elicit information that is listed elsewhere in the Examiner's report as requisite for each shipment transported. The recommendations of the Examiner in

the latter respect follow proposals of the CDTOA, which proposals were supported by the RPA.[7] Modification or elimination of the forms is unnecessary.

Adjustment of Indirect Costs

The duplication of a cost factor to which the RPA called attention in its exceptions appears to be a fact. The Examiner's recommendations regarding the cost factors to be used in the development of zone rates reflect a partial duplication of gross revenue expenses. The necessary correction will be made.

Miscellaneous

The establishment of a new tariff for the transportation of rock, sand and gravel within the Expanded Core Area (or from said area to delivery zones in San Diego County) will require various changes in Minimum Rate Tariff No. 7 to remove the application of the provisions of said tariff from transportation which would be subject to the new tariff. Among the changes in Minimum Rate Tariff No. 7 to be made for such purposes are the cancellation of the zone rates that apply within the Expanded Core Area, the cancellation of area-to-point rates and such amendments of other

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[7] The CDTOA and RPA apparently oppose any change in present documentation procedures. It should be pointed out, however, that a change in documentation procedure will result nevertheless from a change in the definition of "shipment" which was proposed by the CDTOA and supported by the RPA. The proposed definition narrows the term "shipment" to "a quantity of freight ... transported at one time in one unit of equipment." Under the present definition the quantity which comprises a shipment is not confined to that which is "transported at one time in one unit of equipment." Both the present and proposed shipping document provisions state that a carrier shall issue a shipping document to a shipper "for each shipment received for transportation."

provisions of the tariff as necessary to limit the tariff to the remaining transportation that would be subject thereto. We find such changes to be justified.

Another group of changes which should be made in Minimum Rate Tariff No. 7 involve area-to-point rates which would have no counterpart in the new tariff. The record shows that since the establishment of area-to-point rates in Minimum Rate Tariff No. 7, a number of the plants to which the area-to-point rates have been or were established have discontinued operations for one reason or another. In the circumstances the continuance of the area-to-point rates involved is neither necessary nor warranted by transportation circumstances. We find that the cancellation of area-to-point rates to said plants is justified.

As stated at the outset of this decision, the hearings in the present phases of Case No. 5437 began in 1963. The studies which were made to develop the data presented at the hearings extended over a period of some years prior to 1963. When initiated, the proposals which have been adduced in these matters were intended to embrace all movements of rock, sand and gravel for which the area-to-point and zone rates are designed. As the studies progressed, however, new production areas were established and additional area-to-point rates were prescribed.[8] It was not practicable to amend the studies while in the process of being considered at the hearings to incorporate provision for the new areas and rates.

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8 See Decisions Nos. 65480 and 67848 for examples of new production areas which have been established since the studies by which the data of record were developed.

However, said areas and rates should be reflected in the new tariff. The data which were developed in the studies, plus data which were submitted as bases for the additional areas and rates, are sufficient to incorporate in the new tariff appropriate provision for said additional areas and rates. We find such action is justified. It will be taken.

Upon consideration of the evidence of record, the Examiner's Proposed Report, the exceptions to said report, the replies to the exceptions, and the brief which was filed by the RPA, the Commission finds that the Examiner's Recommended Findings should be modified in the following respects:

1. Finding 4a(1) should be amended to read:

> The labor costs to be used should be those as developed in Table No. 2 of Exhibit A-22 for fleet operators. Said costs should be increased to reflect the increases in corresponding labor costs represented in Exhibit A-56.

2. Finding 7c should be amended to read:

> Add to the time and distance cost per trip developed under subparagraphs a and b, above, the composite terminal end costs per ton found reasonable in paragraph 6, above, and expand the resultant sum by dividing it by 92.38 per cent to include provision for income taxes and profit totaling 7.5 per cent and the gross revenue taxes applicable thereto.

3. Finding 7d should be amended to read:

> Reduce the figures resulting under subparagraph 7c to the nearest full cent (fractional amounts of .5 cents or more, increase to the next full cent; fractional amounts of less than .5 cents, omit). The resultant figures are the rates to be used except when less than 30 cents per ton, in which event the rates to be established shall be 30 cents a ton.

4. Finding 11 should be amended to read:

The rules and regulations which are set forth in the proposed tariff attached to the Examiner's Report as Appendix D, should be amended to the extent specified in subparagraphs a, b, c, d(1), d(2), d(3) and e below.

a. Item No. 11(o) should be amended to read:

UNDERLYING CARRIER (Independent-Contractor Subhauler) means any carrier who renders service for another carrier, for a specified recompense, for a specified result, under the control of the other carrier as to the result of the work only and not as to the means by which such result is accomplished.

b. Item No. 60(c) should be amended to read:

(Applies when shipment is diverted to point of destination outside of the system of zones in which the original point of destination is located.) The applicable charge shall be computed at the rate from point of origin to the original point of destination shown on the shipping document, plus 5 cents per ton for each mile (or fraction thereof) from original point of destination via the shortest legal route to the point of departure from the system of zones, plus 10 cents per ton for each mile (or fraction thereof) via the shortest legal route from said point of departure to final point of destination.

c. Item No. 70 -- Computation of Charges for Shipments to Destinations Outside of the System of Delivery Zones -- Cancel.

d.(1) A section should be added to the tariff to set forth (a) area-to-point rates for the transportation of rock, sand, and/or gravel from the production areas to the delivery points listed in Appendix A of Exhibit A-36 in Case No. 5437, Order Setting Hearing of March 24, 1959, and (b) area-to-point rates

From Los Angeles County Production Area A to plant of Consolidated Rock Products Co. at 6029 Vineyard, Saticoy;

From the same production areas in Ventura County to the same delivery points in Ventura and Santa Barbara Counties as those from which and to which area-to-point rates are now provided in Minimum Rate Tariff No. 7; and

From Orange County Production Area B to Rohl Rock & Sand, Lawrence Canyon, ½ mile west of Hill Street, Oceanside.

For transportation for which area-to-point rates have been established in Minimum Rate Tariff No. 7 since January 1, 1963.

NOTE: In establishing area-to-point rates between the points specified in division (a) of this sub-paragraph d(1) the name Rodeffer Industries, Inc., should be substituted for San Gabriel Ready Mix (Inglewood) and for San Gabriel Ready Mix of Santa Ana.

d.(2) The area-to-point rates to be established from production areas to delivery zones specified in sub-paragraph d.(1) above should be three cents per ton less than the zone rates which will otherwise apply from the same production areas to the same delivery zones.

d.(3) The area-to-point rates which are established pursuant to this paragraph should apply to the exclusion of the zone rates for the same transportation.

e. Item No. 120 -- Payments to Underlying Carriers -- should be amended by the addition of the following as a second paragraph:

Charges paid by an underlying carrier (a sub-hauler) to another underlying carrier (a sub-subhauler), and collected by the latter for services performed for the former, shall be not less than 95 percent of the charges due by the former from the overlying carrier (exclusive of allowances for liquidated debts of the subhauler to the overlying carrier) under the minimum rates prescribed in this tariff.

We find that the Examiner's recommended findings, modified to the extent specified hereinabove, are reasonable. We hereby adopt said findings, as so modified, as our own. We also find that the Examiner's recommended conclusions, modified to the extent specified hereinabove, are reasonable, and adopt said conclusions, as so modified, as our own.

On the basis of our findings and conclusions herein, revised minimum rates, rules and regulations for the transportation

of rock, sand and gravel in dump truck equipment by for-hire carriers will be prescribed by the Order which follows. Amendment of Minimum Rate Tariff No. 7 (together with related amendments of Minimum Rate Tariffs Nos. 2 and 5) to the extent necessary to carry out the effect of the Order will be prescribed also.

The calculation of the numerous rates to be prescribed together with the preparation of the tariff and directory to be established, and the related tariff amendments to be made, are tasks of considerable magnitude. The distribution of said tariff, directory, and tariff amendments will be accomplished by further order as soon as practicable. The effective date of the rates, rules, regulations and tariff amendments which are prescribed below will be as specified by the further order.

O R D E R

IT IS ORDERED that:

1. Minimum rates, rules and regulations, including production area and delivery zone descriptions for the transportation of rock, sand, and/or gravel (also cement with rock, sand, gravel, in batches) shall be established in conformity with the findings and conclusions set forth above;

2. To the extent said minimum rates, rules and regulations be made applicable, they shall supersede present provisions of Minimum Rate Tariff No. 7 which apply to the same transportation;

3. Amendments shall be made in Minimum Rate Tariffs Nos. 7, 5 and 2 to the extent necessary to give effect to this order;

4. The issuance and distribution of the tariff, tariff amendments and directory setting forth the rates, rules and regulations prescribed herein shall be accomplished by Further Order.

5. The aforesaid tariff, tariff amendments and directory shall be made effective as specified in the Further Order.

6. In seeking the establishment of further production areas and delivery points, together with rates from and to said areas and points, respectively, petitioners shall be relieved of the requirement that they set forth in their petitions the precise rates which they seek to have established. This waiver does not relieve petitioners from furnishing, in support of their petitions, such time and distance data and territorial descriptions as necessary to the integration of the additional production areas and delivery points which are involved into the rate structure established by this order or amendments thereto.

7. Common carriers are authorized to depart from the provisions of Article XII, Section 21, of the Constitution of the State of California to the extent necessary to assess or otherwise to apply the minimum rates, rules and regulations to be established pursuant to this order.

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

Dated at San Francisco, California, this 3rd day of FEBRUARY, 1965.

Frederick B. Holoboff
President

George G. Grover

Commissioners

APPENDIX A

APPEARANCES

Petitioner in Petition No. 48; also interested party in Order Setting Hearing of March 24, 1959.

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Respondents

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Los Angeles 19, California — Self

Warren Goodman
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Leonard F. Schempp
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Interested Parties

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APPENDIX A

APPEARANCES
(Continued)

Interested Parties (Continued)

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For the Transportation Division of the Commission's Staff

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California Public Utilities Commission
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APPENDIX B

Examiner's Recommended Findings and Conclusions

A. Recommended Findings

1. Subject to modification to give effect to the exception herein specified, the round-trip times which are shown in Exhibits Nos. A-39, A-40 and A-52 (Case No. 5437, Order Setting Hearing of March 24, 1959) as the times required per round trip in the transportation of rock, sand and gravel in dump truck equipment in quantities of about 25 tons per load from the respective production areas to the delivery zones listed in connection with said round-trip times are reasonable times for the purposes of computing costs and developing minimum rates for the transportation of rock, sand, gravel (also cement, with rock, sand, gravel, in batches) from said production areas to said delivery zones.

   EXCEPTION: The round-trip times should be reduced to the extent necessary to exclude therefrom provision for terminal end times. (The resultant times would be round-trip vehicle running times.)

2. The one-way distances which are shown in Exhibits Nos. A-39, A-40 and A-52 (Case No. 5437, Order Setting Hearing of March 24, 1959) as the one-way distances between the production areas and delivery zones listed in connection with said distances are reasonable distances for the purposes of computing costs and developing minimum rates for the transportation of rock, sand, gravel (also cement, with rock, sand, gravel, in batches) from said production areas to said delivery zones.

3. The total terminal end times of 31.3 minutes and 19.2 minutes for truck and trailer combinations and for tractor, semitrailer and trailer combinations, respectively, which are shown in Table No. 1 of Exhibit No. A-22 in the phase of Case No. 5437 covered by Order Setting Hearing of March 24, 1959, in connection with the transportation of rock and sand under zone rates are reasonable terminal end times for said vehicle combinations.

4. Subject to the modifications listed below, the time and mileage costs per ton which are

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set forth in TablesNos. 8 and 9 of the aforesaid Exhibit No. A-22 are reasonable costs for the transportation of rock and sand by the vehicles to which the time and mileage costs apply.

a. The time costs should be modified to give effect to changes in the components of said costs as follows:

(1) The labor costs should be increased to reflect the increases in labor costs represented in Exhibit No. A-56.

(2) Compensation insurance for drivers for fleet operators of dump truck vehicles should be computed at the rate of 4.7 percent.

(3) Premium pay both for owner-driver-operators and for drivers for fleet operators should be computed at the rate of 2 percent.

(4) The use factor to be used in the development of the time costs should be 1,970 hours per year.

b. The mileage costs should be reduced to exclude the provision therein included for terminal end mileage.

5. Terminal and costs per ton, computed in the following manner, are reasonable:

Add to the time costs
(calculated by multiplying the time costs which are found reasonable in Paragraph 4 above for the vehicle combination involved by the terminal end times found reasonable in Paragraph 3 above for the same vehicle combination),

the applicable mileage costs
(calculated by multiplying the mileage costs which are found reasonable in Paragraph 4 above for the vehicle combination involved by .45 miles).

6. Composite running time, mileage and terminal end costs, computed in the following manner, are reasonable costs for the transportation of rock, sand, gravel (also cement, with rock, sand, gravel, in batches), in truck and trailer combinations and in tractor, semitrailer and trailer combinations:

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Utilizing the time and mileage costs per ton found reasonable in Paragraph 4 above and the terminal end costs per ton found reasonable in Paragraph 5 above, multiply each of said costs for the truck and trailer combinations by a factor of 70 percent; multiply each of said costs for the tractor, semi-trailer and trailer combinations by a factor of 30 percent, and combine the products to obtain, respectively, the composite time, mileage and terminal end costs in cents per ton.

7. With the exception of rates from Orange County Production Areas 30-A, 30-B and 30-D to San Diego Delivery Zones 29 through 89, inclusive, rates in cents per ton, computed in the following manner, are and will be reasonable zone rates for the transportation to which the rates would apply:

   a. Selecting from the round-trip running times found reasonable in Paragraph 1, above, the running time which applies between the production area and delivery zone for which the rate is to be calculated, multiply said running time by the composite time costs per ton found reasonable in Paragraph 6, above. (The product is the time costs in cents per ton for the trip involved.)

   b. Selecting from the one-way distances found reasonable in Paragraph 2, above, the distance which applies between the production area and delivery zone for which the rate is to be calculated, multiply said distance by the composite mileage costs per ton found reasonable in Paragraph 6, above. (The product is the distance costs in cents per ton for the trip involved.)

   c. Add to the time and distance costs per trip developed under sub-paragraphs a and b, above, the composite terminal end costs per ton found reasonable in Paragraph 6, above, and expand the resultant sum by dividing by 89.83 percent to include provision for gross revenue costs totaling 1.67 percent and income taxes and profit totaling 8.5 percent.

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d. Reduce the figure resulting under sub-paragraph c to the nearest full cent. (Fractional amounts of .5 cent or more, increase to next full cent; fractional amounts of less than .5 cent, omit.) (The resultant figure is the rate to be used.)

8. Rates in cents per ton from Orange County Production Areas 30-A, 30-B and 30-D to San Diego Delivery Zones 29 through 89, inclusive, computed in the following manner, are and will be reasonable zone rates for the transportation to which the rates would apply:

a. Compute the differentials by which present zone rates from said production areas (now designated as Orange County Production Areas A, B and D) to said delivery zones exceed present corresponding rates from said production areas to present Orange County Delivery Zone No. 23-B.

b. Compute the rates found reasonable under the provisions of Paragraph 7, above, from Orange County Production Areas 30-A, 30-B and 30-D to Orange County Delivery Zone No. 30118 (Orange County Delivery Zone No. 23-B renumbered).

c. Compute the differentials by which present zone rates from said production areas to San Diego Delivery Zones 29 through 89, inclusive, would exceed corresponding rates developed in accordance with the provisions of sub-paragraph b, above, to Orange County Delivery Zone No. 30118.

d. To the extent that the rate differentials developed under sub-paragraph c are greater than the corresponding differentials computed under sub-paragraph a, reduce the present rates to San Diego County Delivery Zones 29 through 89, inclusive, to the end that upon the establishment of rates to Orange County Delivery Zone No. 30118 from Orange County Production Areas 30-A, 30-B and 30-D, under the provisions of Paragraph 7 the same differentials will continue in effect between the rates to said delivery zone and the rates to San Diego County Delivery Zones 29 through 89, inclusive, as

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now applies between Orange County Delivery Zone 23-B and said San Diego County Delivery Zones.

9. No need exists for the continuation of the following production areas and said production areas should be canceled:

Los Angeles County Production Areas AA, BB, and J;
Orange County Production Areas C and E;
San Bernardino County Production Areas J and N;
and
Ventura County Production Area A.

10. The rules and regulations which are set forth in the directory attached hereto as Appendix C are and will be reasonable rules and regulations for use in connection with the production area and delivery zone descriptions to be made part of the said directory.

11. The rules and regulations which are set forth in the proposed tariff attached hereto as Appendix D are and will be reasonable rules and regulations to govern zone rates which are prescribed in this phase of Case No. 5437.

12. The selection which was made by the rate witness for the Commission's Transportation Division of the delivery zones for which zone rates should be established is reasonable.

13. The form of rate publication which is set forth in the attached proposed tariff is reasonable.[1]

B. Recommended Conclusions:

1. Except as otherwise indicated in this paragraph, the descriptions of all production areas located in Los Angeles, Orange, Riverside, San Bernardino and Ventura Counties, which are now set forth in Minimum Rate Tariff No. 7 should be transferred from said tariff to a directory to be known as Southern California Production Area and Delivery Zone Directory No. 1, which directory, as to form, is set forth in Appendix C attached hereto.

EXCEPTIONS: The production areas to which reference is made in Paragraph 9 of the above findings, and

Antelope Valley (Los Angeles County) Production Area A.

[1] For proposed tariff, see the Examiner's Report

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2. The delivery zones heretofore approved by Decisions Nos. 61893 and 62962 should also be incorporated in the aforesaid directory.

3. Zone rates, as herein found reasonable in Paragraph 7 of the above Findings, should be established for the transportation of rock, sand and/or gravel (also cement with rock, sand, gravel, in batches):

   a. For which "R" index numbers are provided in Appendix B to Exhibit No. A-36 (Case No. 5437, Order Setting Hearing of March 24, 1959);

   b. From the production areas (except Ventura County Production Area A) to the delivery zones listed in Exhibit A-52 (Case No. 5437, Order Setting Hearing of March 24, 1959).

4. Zone rates now provided in Minimum Rate Tariff No. 7 for the transportation of rock, sand and/or gravel from Orange County Production Areas A, B and D (also identified as 30-A, 30-B and 30-D) (a) should be modified to the extent indicated in Paragraph 8 d of the above Findings, and (b) should be extended to apply to the transportation of cement with rock, sand, gravel, in batches and (c) should be transferred from Minimum Rate Tariff No. 7 to the minimum rate tariff which is established in this present phase of Case No. 5437.

5. Zone rates, as hereinabove found reasonable in Paragraph 7 of the above Findings, should be established for such transportation of rock, sand and/or gravel (also cement with rock, sand, gravel, in batches) as that (a) which is outside of the purview of Paragraphs 3 and 4 above, and (b) which originates in production areas in Los Angeles County (except the Antelope Valley portion thereof), Orange County, Riverside County, San Bernardino County, and Ventura County, and (c) for which zone rates for rock, sand and/or gravel are now provided in Minimum Rate Tariff No. 7. (See Note.)

   Note: Zone rates established under this paragraph should be limited in application to those delivery zones approved by Decisions Nos. 61893 and 62962 which are located in the same general areas as the zones described in

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Minimum Rate Tariff No. 7 to which the zone rates referred to in this paragraph now apply.

6. The application of the zone rates now provided in Minimum Rate Tariff No. 7 for transportation from San Diego County Production Area I to Orange County Delivery Zones Nos. 19C, 19D, 20A, 20B, 20C, 21, 22, 23A, and 23B should be modified to the extent necessary to make said rates applicable to the corresponding delivery zones in the same general areas which were approved by Decisions Nos. 61893 and 62962 and adopted in this matter.

7. The procedure hereinbefore outlined as an alternative procedure to be followed in the future for incorporating into the minimum rate provisions appropriate provision for new production areas should be approved.