

ORIGINALDecision No. 69557

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 cement and related products (commodi-
 ties for which rates are provided in
 Minimum Rate Tariff No. 10).

Case No. 5440
 Petition for Modification
 No. 23
 (Filed July 20, 1964)

(Appearances are listed in Appendix A)

O P I N I O N

By this petition California Portland Cement Company and American Cement Corporation seek the establishment in Minimum Rate Tariff No. 10 (transportation of cement) of rules governing payments to subhaulers and leasing of equipment.

Public hearing was held before Examiner Turpen at San Francisco on September 21 and 22, 1964. The parties were granted permission to file briefs, if desired, due fifteen days after filing of the transcript. No briefs were filed and the petition was taken under submission as of October 30, 1964.

Pursuant to Order Setting Hearing dated May 16, 1961, in Case No. 5330, and twelve other minimum rate cases, including Case No. 5440, hearings have been held to consider proposed tariff rules involving relations between shippers and carriers intended to eliminate practices and devices leading to rebates. That proceeding is not yet under submission. Petitioners herein ask that their proposed rules be considered for Minimum Rate Tariff No. 10 in lieu of those under consideration in the Case No. 5330, et al. proceeding.

Officials of the two petitioning cement companies testified that the transportation situation in the cement industry has been in a turmoil for the past five or six years and that many new carriers have entered the field. As a result, they said, the cement companies and many truckers fostered legislation which resulted in the establishment of cement carrier and cement contract carrier as new highway carrier classifications. One of these witnesses said that recent hearings before this Commission on various applications for cement carrier certificates and cement contract carrier permits developed records that, he claimed, demonstrate that certain carriers of cement have been obtaining and controlling traffic by leasing trailing vehicles from others, frequently consignees of cement, and paying excessive rentals therefor. He also said that some carriers own little or no equipment and use subhaulers entirely so that such carriers are actually no more than brokers. These circumstances, according to the witness, led petitioners to file this petition proposing tariff rules to provide that subhaulers be paid 100 percent of the minimum rates and that restrictions be placed on the leasing of equipment.

An official of a cement carrier introduced into evidence, on behalf of himself and five other cement carriers, the proposed rules to be put into the tariff. The proposals as to leasing of equipment would provide that payment for leasing trailing equipment could not exceed 9 percent of the freight revenues unless different arrangements are approved by the Commission, and that leases of power equipment or combinations of power and trailer equipment may not be leased on the basis of percentage

of gross revenue. The rules would further provide that no lease could be for a term of less than 30 days. This witness also cited several instances where leasing arrangements of trailers between carriers and consignees of cement appeared, in his opinion, to constitute a method of rebating. He said that adoption of the proposed rules would help to eliminate these practices.

The assistant director of the California Trucking Association's Division of Transportation Economics testified in regard to a study he made which showed that 9 percent was a reasonable maximum amount to use for the trailing equipment lease charge. He explained that he took the last cost study (dated 1952) for the transportation of cement prepared by the Commission's staff and from this developed the costs attributable to the trailers and computed it as a percentage of total costs. The figures were developed for distances of 80 and 175 miles, separately for Southern and Northern California. The percentages ranged from 8.1 to 9.0. The witness further explained that although overall costs have increased since the study was made, most of the increase is in labor costs, which are not involved in the trailer portion. He said that such increase would have the effect of slightly reducing the percentage of trailer cost in relation to total cost.

Counsel for the California Trucking Association stated that his organization is in favor of the objectives sought by petitioners and specifically supports the proposal of paying 100 percent of the minimum rate to subhaulers and the 9 percent limit on lease of trailing equipment. In regard to the latter, however, he said that the Association feels that the limitation should not apply to leases between carriers.

Three carriers appeared and testified in opposition to the proposed rules. It was developed on the record that two of these carriers use subhaulers and pay them 95 percent of the revenue. However, most of these subhaulers provide a tractor only and lease the trailers from the prime carrier or an affiliate at charges of from 25 to 35 percent of the revenues. Also, one of these carriers had sold trailers to a consignee on a monthly payment basis and immediately leased them back at a much greater charge. The third carrier, according to the record, leases trailers from a consignee at a charge of 35 percent of the revenue, which amounts to between \$500 and \$1,000 per month.

It is clear from the record that there are practices engaged in between carriers and between carriers and consignees that are, at the least, questionable. It is also clear that if leases between carriers were to be exempted, a loophole would exist which could nullify the results entirely. The Commission finds that the proposed rules set forth in Exhibit 23-1 relating to payments to subhaulers and leasing of equipment involved in the transportation of cement are reasonable and necessary in the enforcement of the minimum rates and that 9 percent of the charges for transportation is reasonable as a maximum amount to be paid for leasing of trailing equipment, except in special cases upon application by carrier to the Commission and a showing by the carrier and a finding by the Commission that such higher rental is reasonable. We conclude that Minimum Rate Tariff No. 10 should be amended by incorporating therein the rules set forth in Exhibit 23-1.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff No. 10 (Appendix A of Decision No. 44633, as amended) is further amended by incorporating therein,

to become effective October 9, 1965, the revised pages attached ✓
hereto and listed in Appendix B, also attached hereto, which pages
and appendix are made a part hereof by this reference.

2. Tariff publications required to be made by common car-
riers as a result of the order herein may be made effective not
earlier than the tenth day after the effective date of this order
on not less than ten days' notice to the Commission and to the
public and shall be made effective not later than October 9, ✓
1965.

3. In all other respects, said Decision No. 44633, 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
17th day of AUGUST, 1965.

Fredrick B. Holdoff
President
George T. Hoover
Commissioners
William A. Beaud

Appendix A

List of Appearances

Wallace K. Downey, for California Portland Cement Company, and Lauren M. Wright of O'Melveny & Myers, for American Cement Corporation, petitioners.

Russell & Schureman, by R. Y. Schureman, for Max Binswanger Trucking, Matich Transportation Co., Daniel Lohnes Trucking Co., Valley Transportation Co., Phillips Trucking and More Truck Lines; Ray S. Bruton for Miles & Son's Trucking Service; James Bozeman, for Sul Trucking, Inc., respondents.

Phil Jacobson, for Ignazio Intravaia, L. R. Denney, Inc., William H. Shatto, Inc., J & H Transportation, Link Richmond & Sons Trucking, and Harrison-Nichols Co., Ltd., respondents and protestants.

Arlo D. Poe, J. C. Kaspar and H. F. Kolmyer, for California Trucking Association, E. O. Blackman, for California Dump Truck Owners Association, George B. Shannon, for Southwestern Portland Cement Company, Joseph T. Enright of Enright, Elliott & Betz, and Waldo A. Gillette, for Monolith Portland Cement Company, Walter G. Herrigel, for Ideal Cement Company, Eugene A. Feise, for Calaveras Cement Company, E. J. Bertana, for Pacific Cement & Aggregates, Inc., Kenneth M. Robinson and Bert Ferre, for Kaiser Cement & Gypsum Corporation, interested parties.

Theodore H. Peceimer, for the Commission staff.

Appendix B to Decision No. 69557

List of Revised Pages to Minimum Rate Tariff No. 10

Authorized by Said Decision

Ninth Revised Page 2

Thirteenth Revised Page 4

Original Page 4-A

Fifteenth Revised Page 5

Original Page 9-A

Original Page 9-B

(END OF APPENDIX B LIST)

Ninth Revised Page 2

 Cancels

Eighth Revised Page 2

MINIMUM RATE TARIFF NO. 10

ARRANGEMENT OF TARIFF

This is a loose-leaf tariff arranged as follows:

Section No. 1 - Rules and Regulations

Section No. 2 - Rates

Section No. 3 - Form of Shipping Document

TABLE OF CONTENTS	Item Number Except as Shown (Inclusive)
Correction Number Checking Sheet	Page 1
Form of Shipping Document	210
Rates	200, 220
Rules and Regulations:	
Accessorial Charges Not To Be Offset by Transportation	
Charges	195
Accessorial Services	100
Accessorial Services Not Included in Common Carrier Rates	170
Alternative Application of Common Carrier Rates	150
Alternative Application of Combinations with Common	
Carrier Rates	160
Application of Rates	20
Application of Tariff - Carriers	30
Application of Tariff - Commodities	40
Application of Tariff - Territorial	70
Collection of Charges	115
Collect on Delivery (C.O.D.) Shipments	110-112
Computation of Charges - Weights	60
Computation of Distances	50
Computation of Distances - Exceptions	55, 56, 58
Definitions	10, *11
Diverted Shipments	110
Issuance of Shipping Documents	180
Minimum Charge	90
Mixed Shipments	65
*Payments to Underlying Carriers	163
References to Items and other Tariffs	135
*Regulation of Leasing Practices	165
Returned Shipments	120
Shipments Transported in Multiple Lots	115
Split Delivery	130
Territorial Descriptions	80
Units of Measurement to be Observed	190

∅ Change) Decision No. 69557
 * Addition)

EFFECTIVE OCTOBER 9, 1965

Issued by the Public Utilities Commission of the State of California,
 San Francisco, California.

Correction No. 79

SECTION NO. 1 - RULES AND REGULATIONS (Continued)	Item No.
DEFINITIONS (Items Nos. 10 and 11)	
<p>CARRIER means a carrier, as defined in the City Carriers' Act, or a radial highway common carrier, a highway contract carrier or a cement contract carrier, as defined in the Highway Carriers' Act.</p>	
<p>COMMISSION means the Public Utilities Commission of the State of California.</p>	
<p>COMMON CARRIER RATE means any intrastate rate or rates of any common carrier, or common carriers, as defined in the Public Utilities Act, lawfully on file with the Commission and in effect at time of shipment; any interstate rate or foreign rate or rates of any common carrier railroad or railroads applying between points in California by an interstate or foreign route, lawfully in effect at time of shipment; also any interstate or foreign rate or rates of any common carrier or common carriers, as defined in the Public Utilities Act, applying between points in California and in effect at time of shipment and covering transportation exempt from rate regulation of the Interstate Commerce Commission under Section 203(b)(8) of Part II of the Interstate Commerce Act.</p>	§10
<p>DISTANCE TABLE means Distance Table No. 5.</p>	
<p>EXCEPTION RATINGS TARIFF means Exception Ratings Tariff No. 1 issued by the Commission.</p>	
<p>GOVERNING CLASSIFICATION means National Motor Freight Classification A-8 (CAL) as governed by National Motor Freight Classification A-8.</p>	
**	
<p>MOTOR VEHICLE means any motor truck, tractor or other self-propelled highway vehicle used for transportation of property over the public highways, and any trailer, semi-trailer, dolly or other vehicle drawn thereby.</p>	
<p>*OVERLYING CARRIER (principal carrier) means a carrier which contracts with a shipper to provide transportation service for the latter, but which carrier in turn employs another carrier, known as the underlying carrier (independent-contractor subhauler), to perform that service.</p>	

PALLETS means second-hand (used) pallets as described in and subject to the provisions of Item No. 320 of the Exception Ratings Tariff. It also means pallets which are returned or shipped in exchange for identical pallets.

POINT OF DESTINATION means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent, except that (1) all locations within a radius of 50 feet from a single point, and (2) all locations on the property of a single consignee within a radius of 300 feet from a single point will be considered as one point of destination.

POINT OF ORIGIN means the precise location at which property is physically delivered by the consignor or his agent into the custody of the carrier for transportation, except that (1) all locations within a radius of 50 feet from a single point, and (2) all locations on the property of a single consignor within a radius of 300 feet from a single point will be considered as one point of origin.

(Continued in Item No. 11)

(1) Except as otherwise indicated, definitions formerly shown on this page transferred to Original Page 4-A.

∅ Change)	
* Addition)	
** Definition of Independent-Contractor)	Decision No. 69557
Subhauler Eliminated)	

EFFECTIVE OCTOBER 9, 1965

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.

Correction No. 80

SECTION NO. 1 - RULES AND REGULATIONS (Continued)	Item No.
<p style="text-align: center;">DEFINITIONS (Concluded) (Items Nos. 10 and 11)</p> <p>POWER EQUIPMENT means any gasoline, diesel, electric or gas driven equipment including, without limitation, conveyor belts, electric powered cranes and lift truck equipment.</p> <p>RAILHEAD means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from, rail cars or vessels.</p> <p>RATE includes charge and, also, the ratings, minimum weight, rules and regulations governing, and the accessorial charges applying in connection therewith.</p> <p>SAME TRANSPORTATION means transportation of the same kind and quantity of property between the same points, and subject to the same limitations, conditions and privileges, but not necessarily in an identical type of equipment.</p> <p>SHIPMENT means a quantity of property tendered for transportation to one carrier at one time on one shipping document by:</p> <ol style="list-style-type: none"> 1. one shipper at one point of origin for one consignee at one point of destination; or 2. one shipper at one point of origin for one consignee at more than one point of destination, or for more than one consignee at one or more points of destination (split delivery). <p>*UNDERLYING CARRIER (independent-contractor sub-hauler) means any carrier who renders service for an overlying carrier (principal carrier), for a specified recompense, for a specified result, under the control of the overlying carrier as to the result of the work only and not as to the means by which such result is accomplished.</p> <p>UNIT OF EQUIPMENT means one or more motor vehicles (as herein defined) physically connected so as to form a complete unit.</p>	<p>*11</p>
<p>(1) Except as otherwise indicated, definitions formerly appeared on Twelfth Revised Page 4.</p> <p>* Addition, Decision No. 69557</p>	
<p>EFFECTIVE OCTOBER 9, 1965</p>	
<p>Issued by the Public Utilities Commission of the State of California, San Francisco, California.</p>	
<p>Correction No. 81</p>	

SECTION NO. 1 - RULES AND REGULATIONS (Continued)	Item No.
<p style="text-align: center;">APPLICATION OF RATES</p> <p>Rates provided in this tariff apply for the transportation of shipments from point of origin to point of destination, and include the services of the driver only for loading into and unloading from carrier's motor vehicle (See Note).</p> <p>NOTE.--Rates do not apply to the transportation of:</p> <ul style="list-style-type: none">(a) Property of the United States or property transported under an agreement whereby the United States contracted for the carrier's services.(b) Disaster Supplies, i.e., those commodities which are allocated to provide relief during a state of extreme emergency or state of disaster; and those commodities which are transported for a civil defense or disaster organization established and functioning in accordance with the California Disaster Act to ultimate point of storage or use prior to or during a state of disaster or state of extreme emergency.	20
<p style="text-align: center;">APPLICATION OF TARIFF-CARRIERS</p> <p>Rates provided in this tariff are minimum rates, established pursuant to the City Carriers' Act, and the Highway Carriers' Act. They apply for the transportation of property by carriers as defined in said City Carriers' Act, and radial highway common carriers, highway contract carriers and cement contract carriers, as defined in said Highway Carriers' Act.</p> <p>When property in continuous through movement is transported by two or more such carriers, the rates (including minimum charges) provided herein shall be the minimum rates for the combined transportation.</p> <p style="text-align: center;">**</p>	30
<p style="text-align: center;">APPLICATION OF TARIFF-COMMODITIES</p> <p>Rates in this tariff apply for the transportation of Cement, hydraulic, masonry, natural or Portland, in bulk or in packages (subject to Item No. 65).</p> <p>Rates in this tariff apply also to the following commodities when shipped in mixed shipments with cement in packages and when the shipments originate in Northern Territory as defined in Item No. 80:</p> <ul style="list-style-type: none">Lime, common, including magnesium lime, hydrated or hydraulic, quick or slaked, in packages;Cement flue dust, in packages; and/orLimestone, powdered, in packages. <p>Except as otherwise provided in Item No. 220, rates in this tariff do not apply to shipments of empty pallets.</p>	40

COMPUTATION OF DISTANCES

Subject to the exceptions provided in Items Nos. 55, 56 and 58, distances to be used in connection with distance rates named herein shall be the shortest resulting mileage via any public highway route computed in accordance with the method provided in Distance Table No. 5.

50

∅ Change)
** Eliminated) Decision No. 69557

EFFECTIVE OCTOBER 9, 1965

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 82

SECTION NO. 1 - RULES AND REGULATIONS (Continued)	Item No.
<p style="text-align: center;">PAYMENTS TO UNDERLYING CARRIERS</p> <p><i>Charges paid by any overlying carrier to an underlying carrier</i> and collected by the latter from the former for services of said underlying carrier shall be 100 percent of the charges applicable under minimum rates prescribed in this tariff, less the gross revenue taxes applicable and required to be paid by the overlying carrier. (Subject to Notes 1 and 2 below.)</p> <p>NOTE 1.--As used in this item, the term "gross revenue taxes" means the California transportation taxes payable to the California Board of Equalization and the tax payable to the California Public Utilities Commission under the Transportation Rate Fund Act.</p> <p>NOTE 2.--Nothing herein contained shall prevent an overlying carrier in paying such charges in deducting therefrom such legitimate liquidated amounts as may be due from the underlying carrier to the overlying carrier (except amounts for bookkeeping, administration or sales services provided by the overlying carrier in connection with the transportation involved), providing such deductions have been authorized in writing by the underlying carrier. Any overlying carrier electing to employ this procedure shall itemize such amounts and maintain for the Commission's inspection all documents involved in the transaction. Upon demand by the Commission, the overlying carrier shall substantiate that there has been full, fair and adequate consideration for each item so deducted.</p>	*163
<p>* Addition, Decision No. 69557</p>	
<p>EFFECTIVE OCTOBER 9, 1965</p>	
<p style="text-align: center;">Issued by the Public Utilities Commission of the State of California, San Francisco, California.</p> <p>Correction No. 83</p>	

SECTION NO. 1 - RULES AND REGULATIONS (Continued)

Item No.

REGULATION OF LEASING PRACTICES

1. No lease of trailer equipment shall provide for the payment of rental in excess of 9 percent of the charges applicable under minimum rates prescribed in this tariff to the transportation performed in said trailer equipment, except in special cases upon application by a carrier to the Commission and a showing by the carrier and a finding by the Commission that such higher rental is reasonable. Authorization to charge rental higher than 9 percent must be secured from the Commission before the parties enter into a lease arrangement.

As used in this item, the term "trailer equipment" includes a semitrailer, full trailer or any combination thereof which lawfully may be pulled over public highways of the State of California by one power unit.

2. Each freight bill or other shipping document issued by the carrier with respect to transportation performed in whole or in part by leased trailer equipment shall identify thereon the leased trailer equipment so utilized. In addition, the carrier shall maintain for the Commission's inspection records reflecting all payments made to lessors of trailer equipment including substantiating documents therefor.

3. No lease of trailer equipment shall be for a term of less than thirty (30) days.

4. No carrier shall lease any power equipment, or combination of power and trailer equipment, for a period of less than thirty (30) days.

5. No power or combination of power and trailer equipment shall be leased on the basis of percentage of gross revenue applicable to transportation provided by such leased equipment and all persons engaged in operating such motor vehicle equipment for the carrier shall be employees of the carrier.

6. Every carrier leasing equipment as provided in paragraphs 3 and 4 hereof, shall retain and preserve for the Commission's inspection an executed copy of each such equipment lease for a period of not less than three years from the date of execution of the document. A true copy of each such equipment lease shall also be carried with the leased equipment at all times during the term of the lease.

*165

* Addition, Decision No. 69557

EFFECTIVE OCTOBER 9, 1965

Issued by the Public Utilities Commission of the State of California, San Francisco, California.

Correction No. 84