

Decision No. 70088

ORIGINAL

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 for Modification
No. 113
(Filed March 8, 1965)

Vaughan, Paul & Lyons, by John G. Lyons, for
petitioner.
Ralph Hubbard, for California Farm Bureau
Federation; J. P. Hellmann, for Allied
Chemical Corporation; E. O. Blackman, for
California Dump Truck Owners Association;
Arlo D. Poe, J. C. Kaspar, H. F. Kollmyer, for
California Trucking Association, interested
parties.
W. J. Kane and Joseph C. Matson, for the
Commission staff.

O P I N I O N

The California Fertilizer Association requests Minimum Rate Tariff No. 7 be amended by the deletion of the reference to "fertilizer" and "manure" from the list of commodities set forth in Item 320 of the tariff. Elimination of these commodities from Item 320 would remove the existing application of the hourly dump truck rates on movements of bulk fertilizers and manures.

By the Commission's Order Amending Decision No. 69567 and Denying Rehearing, dated September 21, 1965, in Case No. 5437 (Decision No. 69709 in Order Setting Hearing dated April 21, 1964 and Petition for Modification No. 108) the hourly rates named in Item 365 (Southern Territory) of the tariff were temporarily exempted from applying to movements of fertilizers and manures,

pending the Commission's determination of the related issues contained in Petition for Modification No. 113. Such temporary exemption, for all practical purposes, restores the historical application of the rates in effect immediately prior to Decision No. 69567.

Public hearings were held before Examiner Gagnon on June 10 and 11, 1965, at San Francisco, and on September 1 and 2, 1965, at Los Angeles. The matter was submitted for decision on the latter date. The California Farm Bureau Federation supports the position of petitioner. The California Trucking Association, while not unalterably opposed to the suggested tariff revision, steadfastly objects to petitioner's efforts to demonstrate for the record that the establishment of minimum rates for the transportation of fertilizers and manures would not serve any economic purpose. The California Dump Truck Owners Association opposed the granting of the subject petition and moved that it be denied on the grounds that, once minimum rates are established under Section 3662 of the Public Utilities Code, such rates may not be canceled. The Commission's Transportation Division staff also participated in the proceeding. Direct evidence was presented only by the petitioner.

Minimum Rate Tariff No. 7 names rates for the transportation of specified commodities, in bulk, in dump truck equipment. Item 10 of the tariff defines the term "dump truck equipment" as "any motor vehicle...which discharges its load by gravity either (a) in conjunction with mechanical means that are an integral part of the vehicle, or (b) by opening all or a portion of the bottom, sides or end or (c) any combination of (a) and (b)...." The aforesaid definition of dump truck equipment also includes covered hopper equipment unloaded by pneumatic means when such pneumatic

equipment is part of the motor vehicle which unloads by gravity assisted by the induction of air.^{1/} Section 4 of the tariff names hourly rates for the transportation of certain bulk commodities listed in Item 320 of the tariff. The list of commodities presently includes reference to "fertilizer" and "manure". The hourly rates apply between points in California located within the Southern Territory and/or the Northern Territory as defined in Item 100 and Item 110, respectively, of the tariff.

The alternative application of the aforementioned hourly rates, in lieu of otherwise applicable minimum distance or zone rates, is also subject to a tariff provision (recently amended by Decision No. 69567 as further modified effective October 16, 1965, by Decision No. 69709) pertinent portions of which are hereinafter set forth:

1. "Rates in this Section will not apply to transportation for which rates are specifically provided in Section No. 3 of this tariff and Sections...of Minimum Rate Tariff 17...."
2. "Rates in this Section will not apply when a distance rate notice as specified in Item No. 93 has been executed."
3. "Rates in Item No. 365 will not apply to the transportation of Fertilizer and Manure." (Expires July 1, 1966)

Under the foregoing amended tariff provisions (disregarding the exemption which expires July 1, 1966), the hourly dump truck rates for both Southern and Northern Territories do not apply when a notice in writing has been given to the carrier, before the

^{1/} See Informal Ruling No. 162 of the Commission's Transportation Division, made in response to questions propounded by the public and indicating what is deemed by the Division to be the correct application and interpretation of the tariff. The ruling is made in the absence of formal decision upon the subject by the Commission.

transportation commences, of the shipper's intention to ship under the distance rates named in Section 2 of the tariff. Immediately prior to the aforementioned tariff amendments, the Southern Territory hourly rates (Item 365) applied only when carrier was notified of shipper's intention to ship under such rates in lieu of the otherwise applicable distance rates. The Northern Territory hourly rates, on the other hand, historically applied in the absence of shipper's written selection to utilize the distance factor rates. Since the distance and zone rates are not applicable to shipments of fertilizers and manures, movements of bulk fertilizers and manures from or between points within the Southern Territory were, for all practical purposes, totally exempted from Minimum Rate Tariff No. 7. Additionally, since fertilizers and manures are totally exempted from the statewide provisions of Minimum Rate Tariff No. 2, distance hauling of such bulk commodities in dump truck equipment, not otherwise subject to the Northern Territory hourly rates of Minimum Rate Tariff No. 7, is not subject to any of the Commission's outstanding minimum rate orders.

The California Fertilizer Association alleges that its members and agricultural growers, to whom the members of petitioner sell fertilizers and manures, have for many years had such commodities transported in California intrastate commerce by radial highway common carriers and highway contract carriers; that such movements have always been performed at negotiated rates without regard to any minimum rates of the Commission. It is petitioner's contention that its members, agricultural growers and the carriers transporting fertilizers and manures have acted in good faith in the belief that the transportation of this traffic, whether in bags or in bulk, was exempt from the Commission's minimum rate orders. In this

connection, petitioner refers to certain Commission Transportation Division staff minimum rate enforcement activity during the Fall of 1964 as the first and only occasion known to petitioner where the staff considered the transportation of bulk fertilizers and manures subject to the hourly rates named in Minimum Rate Tariff No. 7.

Several traffic representatives of shippers and highway carriers of bulk fertilizers and manures testified in support of the instant petition. The cumulative effect of such testimony was assertedly intended to emphasize the following salient contentions of petitioner:

1. Shippers and carriers of bulk fertilizer and manure were not aware of the fact that the transportation of such commodities in dump truck equipment was subject to the minimum hourly rates named in Minimum Rate Tariff No. 7 until recent minimum rate enforcement action taken by the Commission's Transportation Division staff.
2. The "going rates" for the highway movement of bulk fertilizers and manures are negotiated rates.
3. The existing minimum hourly rates are unrealistic, infeasible and generally unresponsive to the transportation characteristics surrounding the movement of bulk fertilizers and manures.
4. The methods required to determine freight charges under the hourly rates completely frustrate the for-hire carriage of fertilizers and manures.
5. The freight charges resulting under the application of the minimum hourly rates are unrealistically high in the light of comparable minimum distance class rates.
6. The existing negotiated "going rates" are generally based on distance traversed and expressed in cents per 100 pounds, per ton or per yard.
7. Flexible arrangements to meet unforeseen transportation conditions or required accessorial services, generally developed through shipper-carrier negotiations, are not available under the existing minimum hourly rate structure.

8. The existing unrestricted exemption of bulk or sack fertilizers and manures from the provisions of Minimum Rate Tariff No. 2 and the concurrent partial exemption of such traffic under the provisions of Minimum Rate Tariff No. 7 constitute a confusing and generally unsatisfactory transportation environment that should be eliminated.
9. The carriers of bulk fertilizers and manures have been able to operate profitably under negotiated rates.
10. Minimum rates for the highway transportation of bulk fertilizers and manures serve no economic purpose.

Discussion, Findings and Conclusions

The record discloses that both shippers and carriers have erroneously assumed that, in view of the unrestricted exemption contained in Minimum Rate Tariff No. 2, none of the Commission's minimum rate tariffs applied to the distance hauling of bulk fertilizers and manures. This erroneous assumption is, however, without merit and may not be used to justify the relief sought by petitioner. Also the mere assertion that the Commission has not issued specific decisions respecting the transportation here in issue is in no way indicative that the Commission has failed to make its position known. All parties of record are responsible for making themselves fully aware of the Commission's various established minimum rate tariffs. Fertilizer and manure have been ratable under the hourly rates named in Section 4 of Minimum Rate Tariff No. 7 ever since the inception of the tariff in 1940.

The California Trucking Association (C.T.A.) concedes that the minimum hourly dump truck rates are impractical for determining charges in connection with distance hauling of bulk fertilizer and manure and that the absence of minimum distance rates for movements of fertilizer and manure in Minimum Rate Tariff No. 7 is a deficiency fatal to the preservation of the hourly rates. As to the narrow

issues of Petition 113, the C.T.A. further recognizes its opposition cannot be justified. However, the C.T.A. strongly objects to any allegation by petitioner that minimum rates per se for the highway transportation of fertilizer and manure would not serve any useful purpose. The C.T.A. argues that such an assertion by petitioner is not germane to a determination of the issues presented in Petition 113. We concur in this latter contention of the trucking association. Petitioner stated that "All we are asking is the deletion of fertilizer and manure from Minimum Rate Tariff No. 7. We are opposed to the establishment of any minimum rates on bulk fertilizer and if the California Trucking Association or anybody else proposes minimum rates for that transportation, we are prepared to oppose that proposal. We will cross that bridge when we get to it." (R.T., p.5.)

The Commission's current minimum rate program constitutes an important segment of the overall transportation policy of the State of California, as enunciated in the various related constitutional and statutory provisions set forth in the Public Utilities Code. However, determination of what specific minimum rates should be established for the transportation of fertilizers and manures within California is not possible within the narrow framework of the issues presented in Petition 113. Moreover, it is not necessary to reach such a determination here in order to put to rest the comparatively limited issues of the instant petition.

The granting of the California Dump Truck Owners Association motion would, in effect, preclude a determination of the matter by the Commission based on all the evidence of record. Section 3662 of the Public Utilities Code provides that "The Commission shall...establish or approve just, reasonable and

nondiscriminatory...minimum rates...." Minimum rates thus established may subsequently become unjust, unreasonable or discriminatory once they become outmoded or cease to reflect the current transportation characteristics surrounding the particular traffic governed thereby. It is incumbent upon the Commission, therefore, to keep its minimum rate program responsive to current transportation conditions. When it becomes necessary to remove outmoded minimum rates, a just, reasonable and nondiscriminatory minimum rate structure should be established in lieu thereof upon the receipt of current and conclusive information.^{2/} Such information, with respect to the bulk movement of fertilizer and manure, was not presented in Petition 113 by any of the parties most likely to have knowledge of it.

The aforesaid motion of the California Dump Truck Owners Association is denied.

Upon careful consideration of all the facts of record, we find that:

1. The minimum hourly rates named in Section 4 of Minimum Rate Tariff No. 7 for the distance hauling of fertilizer and manure, under current transportation conditions, are unrealistic, infeasible and generally nonresponsive to the transportation requirements of such commodities.
2. Application of the hourly dump truck rates to the movements of bulk fertilizer and manure generally results in freight charges not justified nor reasonable under existing transportation conditions.
3. From the evidence of record, no conclusive information is available from which a determination may be made as to what minimum rates would be suitable and proper or otherwise just,

^{2/} Decision No. 57406, dated September 29, 1958, in Case No. 5432 (56 Cal. P.U.C. 574, 577, 578).

reasonable and nondiscriminatory for the transportation involved herein.

4. Petitioner's testimony relative to its overall opposition to the establishment of minimum rates for the highway transportation of fertilizer and manure is not germane to the disposition of Petition 113.

We conclude that to the extent provided in the order which follows, Petition for Modification No. 113, in Case No. 5437 should be granted and that in all other respects said petition should be denied.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff No. 7 (Appendix "A" of Decision No. 32566, as amended) is further amended by incorporating therein to become effective January 15, 1966, the tariff pages which are attached hereto and by this reference made a part hereof, viz.: Seventh Revised Page 39 and Eleventh Revised Page 41.

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

3. Except as otherwise provided in paragraph 1 hereof, Petition for Modification No. 113 is denied.

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

Dated at San Francisco, California, this 14th day of DECEMBER, 1965.

Fredrick B. Hallock
President
George J. Hoover
William C. Brand
Commissioners

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

SECTION NO. 4

HOURLY RATES

1. Rates in this Section will not apply to transportation for which rates are specifically provided in Section No. 3 of this tariff and Sections Nos. 2, 4, 5, 6, 7 and 10 of Minimum Rate Tariff 17.

Exception:-Does not apply to transportation of asphaltic concrete and cold road oil mixture for which rates are provided in Section No. 3 of this tariff from production areas to delivery zones described in Southern California Production Area and Delivery Zone Directory 1.

2. Rates in this Section will not apply when a distance rate notice as specified in Item No. 93 has been executed.

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** Paragraph 3 eliminated, Decision No. 70088

EFFECTIVE JANUARY 15, 1966

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 1148

Item No.	SECTION NO. 4	HOURLY RATES (Continued)
<p>§320</p>	<p>COMMODITIES</p>	
	<p>Rates in this Section apply to the transportation of the following commodities:</p>	
	<p>Ash, volcanic; Barium, clay or silicate mud compounds, dry, oil-well drilling; Cinders; Clay; Clinker, cement; Concrete, asphaltic (commonly called "Hot Stuff"); Concrete, mortar or plaster: ingredients of, in batches, in nylon-corded rubberized bags; (2) Concrete, premixed, wet; Containers, empty, used, viz.: empty, used, nylon-corded rubberized bags being returned from an outbound trip in which they moved containing batches of the ingredients of concrete, mortar or plaster; (2) Cullet (glass, broken or crushed); Debris: From street or highway maintenance; From demolition of buildings and structures; Dolomite, dead-burned; Earth; ** Fodder: Chopped green corn and sorghum grain plants, including heads, stalks, and leaves; Granite, decomposed; Gravel;</p>	<p>Gypsum rock, crude, not further processed than broken or crushed; Loam; ** Mill scale; Mixture, cold road oil (commonly called "Plant Mix"); Mud, dry, oilwell drilling; Ore; Perlite, expanded; Perlite rock, crude, not further processed than broken, crushed or ground; Pumice; Pyrophyllite, crude, in blocks, pieces or slabs, rough quarried; Salt cake (crude sulphate of soda); Sand; Sand, crushed stone and gravel, mixed dry; Scoria, volcanic; Shale; Slag; Slurry (mixed sand, dust, crushed stone and/or gravel, wet); (1) Soapstone, crude, blocks, pieces or slabs, rough quarried or not further finished than sawed or chipped on four sides; Stone: Crushed, chips, waste; Natural, blocks, pieces or slabs, rough quarried, or sawed, not further finished; Talc, crude, blocks, pieces or slabs, rough quarried or not further finished than sawed or chipped on four sides.</p>
	<p>(1) Applies only in Northern Territory. (2) Subject to Column "A" rates when transportation is performed within or from Northern Territory and to Column "C" rates when transportation is performed within or from Southern Territory.</p>	
	<p>Change } ** Fertilizer and Manure } Decision No. 70088 eliminated }</p>	
<p>EFFECTIVE JANUARY 15, 1966</p>		
<p>Issued by the Public Utilities Commission of the State of California, San Francisco, California. Correction No. 1149</p>		