

ORIGINALDecision No. 71423

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
 (commodities for which rates are
 provided in Minimum Rate Tariff
 No. 10).

Case No. 5440
 Petition for Modification No. 33
 (Filed April 11, 1966,
 amended June 8, 1966)

Arlo D. Poe, J. C. Kaspar and H. F. Kollmyer,
 for California Trucking Association, petitioner.
Phil Jacobson, for J & H Transportation Co.,
 Harrison-Nicols Co. and Link-Richmond & Sons,
 protestants.
George B. Shannon, for Southwestern Portland Cement
 Co.; Lynn M. Watwood, Jr. and John P. Rohrer,
 for Kaiser Cement & Gypsum Corp.; Walter G.
Herrigel, for Ideal Cement Co.; and Waldo A.
Gillette, for Monolith Portland Cement Co.,
 interested parties.
T. H. Peceimer and R. W. Stich, for the Commission
 staff.

O P I N I O N

Minimum Rate Tariff No. 10 (MRT 10) contains minimum rates and rules governing the truckload transportation of cement in bulk and in packages between points in California.

By this petition, as amended, California Trucking Association (CTA) seeks the establishment in said tariff of a new rule governing the furnishing of transfer storage facilities by cement contract carriers; that all common carriers be authorized to establish in their respective tariffs all such modifications as may be prescribed in connection with MRT 10; and that said common carriers be authorized to depart from the long- and short-haul provisions of the Constitution and Public Utilities Code to the extent necessary to publish said tariff provisions.

Public hearing was held and the matter submitted before Examiner Mallory on August 4, 1966 at San Francisco. Evidence to support the requested tariff provisions was presented by petitioner's director of its Transportation Research Division. Evidence in opposition to the proposal was presented by an owner-partner of a cement carrier. Interested parties and the Commission staff participated in the development of the record.

The evidence presented by petitioner's witness is summarized below:

Beginning about two years ago carriers engaged in the transportation of cement to highway (freeway) construction sites began the practice of purchasing portable bulk storage tanks and placing them at said job sites. Said tanks are moved on their own wheels. Because of their size and weight the portable tanks require permit authority to be moved over public highways. At the job site the portable tanks are placed adjacent to batch-plant storage facilities provided by the paving contractor. The capacity of the contractor's storage facility generally is in the neighborhood of 150,000 pounds (three truckloads). The portable tanks furnished by carriers have a capacity of approximately 300,000 pounds (six truckloads).

The practice of furnishing portable bulk storage facilities has grown so that about 20 such units are now in operation by cement carriers, principally in Southern California. Additional units are expected to be purchased by carriers. Certain cement mills also own portable units.

At the present time, such units are being furnished to shippers or receivers of bulk cement without charge. A tariff filing on behalf of the major group of cement carriers (common carriers), providing for the furnishing of portable storage units

by said carriers without charge, was rejected by the Commission, on the basis that such tariff provisions would be incompatible with the provisions and requirements of MRT 10. Subsequently, the tariff bureau docketed the matter for the purpose of arriving at a proposal satisfactory to carriers and shippers for inclusion in MRT 10. The proposal herein is the result.

CTA proposes that charges be established as follows:

- (a) For transporting, establishing and removing each transfer storage facility, a single charge of \$100;
- (b) For each week, or fraction thereof, the storage facility is in use a charge of \$100; and
- (c) For each day in which cement is physically transferred from said facility, a charge of \$5.00.

The above charges, however, would be inapplicable if the total volume of cement tendered the carrier furnishing the facility and delivered to the facility by said carrier exceeds 6.5 million pounds in a period of 30 calendar days. In the course of a freeway construction project of the type on which the use of transfer storage facilities would be feasible and practical, the 6.5 million-pound requirement usually would be met within a period of five to six days; therefore, under ordinary circumstances, charges to be provided in the new tariff item never would be assessed. The witness stated that charges are proposed to be established only for the unusual circumstance when the contractor does not make full use of the portable unit. The witness asserted, however, when full use is made of the unit, the resulting savings to the carrier in its usage of trucking equipment more than offset the costs of furnishing the portable unit. No study was made or presented to support this contention.

Because the use of the portable storage tanks by highway carriers is of relatively recent origin, insufficient data are

available to accurately determine costs of operation for such units. The proposed charges were developed by making certain assumptions concerning the use factor, service lives, and other elements of costs. For example, the cost of a unit was determined to be approximately \$25,000, based upon the price of the most recent model available; service life was estimated at 5 years; salvage value at 10 percent; and annual usage at 8 months (2/3 year). Said annual usage, when more units become available, is estimated to drop to 6 months (1/2 year).

Installation costs were developed by estimating that the equipment would be moved for distances of 30 to 150 miles one way; that a diesel tractor and driver with operating costs of \$8.00 per hour would be used; that the jobsite would be prepared by the contractor without cost; that one full day for one man at an hourly cost of \$4.50 to \$5.00 would be required to set up and dismantle a unit at the jobsite. Assertedly these cost factors fall within the range of actual costs experienced by carriers, but limited observations do not permit more accurate figures.

The witness stated that the majority of cement shippers and carriers to whom this proposal was presented indicated their approval and support to CTA.

Protestants are cement carriers who do not own or furnish portable transfer storage facilities, but who engage in transportation of cement to freeway construction projects. Their counsel argued that the furnishing of a facility by a carrier to a shipper without charge, or at charges which are less than those which would return the amortized cost of the equipment plus operating costs is a device which results in an illegal rebate of the minimum rates to the shipper. Protestants' witness testified that his company owned

several units of equipment for the hauling of cement in bulk, and that since the practice of furnishing portable transfer storage units was begun by competing carriers, his company had difficulty in obtaining any hauling to freeway construction job sites. The witness explained that there are many carriers who are large enough to provide the necessary trucking equipment, but who do not have sufficient resources to purchase one or more portable storage units. The witness stated that he had reviewed a national publication containing suggested or average prices for leasing of contractor's equipment, and determined therefrom that the usual practice of leasing firms is to assess a monthly rate for portable units equal to 8.40 percent of the sales price of such equipment. Also motors of the type used on such portable units rent for \$38.50 per day. The witness recommended that charges be established to cover the full costs of acquisition and operation of the portable units. The witness stated that in his estimation carriers would realize only minimal savings in costs of their trucking operations through use of portable storage facilities; therefore the charges should apply in all circumstances, irrespective of the amount of cement hauled by the carrier to the job site. He recommended that charges for the use of the equipment (including operation thereof) be set at \$1,000 per month or any part thereof; he also recommended that transportation of the unit to and from the job site be based on distance rates. He had no suggestion with respect to setup and dismantling charges.

The Commission finds as follows:

1. Some cement carriers and some cement contract carriers now own several portable storage units which are used at freeway construction job sites to furnish additional storage of cement at said locations.

2. Said units have been furnished by carriers without cost to shippers or receivers of cement.

3. The furnishing of said units by carriers without cost or at a lesser rate than will return to the carrier the amortized cost of such units plus operating expenses, results in an unlawful rebate of the minimum rates established in MRT 10.

4. Reasonable minimum rates and charges should be established in MRT 10 for the furnishing of portable storage units by carriers.

5. While the record contains estimates of the various elements of cost of furnishing said units, accurate cost determinations have not been made and cannot be made until the units have been operated over a longer period of time.

6. The cost estimates of record will serve as a reasonable basis for the initial establishment of minimum rates and charges, subject to revision when more accurate data is forthcoming.

7. While carriers may experience some savings in operational costs in connection with the transportation of cement because of having supplied additional storage facilities at construction job sites through the use of portable storage units, the record does not disclose the amount of said savings, nor does the record indicate that such savings to the carriers offset the costs of furnishing the portable storage units.

8. The proposals of petitioner, modified as shown below, will result in just, reasonable and non-discriminatory minimum rates and charges for the services to which they apply and should be established in MRT 10.

- (a) The charge for use of the portable, storage unit (paragraph 4(b) of petitioner's proposed tariff item) should be \$135 per week or for any portion thereof.
- (b) No exception to the assessment of charges as proposed by petitioner should be made.

9. To the extent that the rates of common carriers whose operations are subject to MRT 10 are less, in volume or effect, than the rates hereinafter prescribed, the rates of said common carriers are lower than a reasonable and sufficient level and are not justified by transportation conditions, and said common carriers should effect such tariff publications as are necessary to make their rates and charges conform to those hereinafter prescribed.

The Commission concludes that Minimum Rate Tariff No. 10 should be amended as set forth in the order which follows.

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 November 26, 1966, Tenth Revised Page 2 and Original Page 6-B, attached hereto and by this reference made a part hereof.
2. Tariff publications required to be made by common carriers 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 November 26, 1966.
3. Common carriers, in establishing and maintaining the rates authorized hereinabove, are authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this

order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

4. In all other respects the aforesaid Decision No. 44633, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 18th day of OCTOBER, 1966.

John L. Mitchell
President

George T. Grover

Frederick P. Halbach

Augustus

Richard L. Bernard
Commissioners

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

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* Addition, Decision No.

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EFFECTIVE NOVEMBER 26, 1966

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 89

SECTION NO. 1--RULES AND REGULATIONS (Continued)	Item No.
<p style="text-align: center;">FURNISHING OF TRANSFER STORAGE FACILITIES</p> <p>At the written request of consignee, carrier shall, if available, furnish at construction job sites transfer storage facilities with a capacity not exceeding 4200 cubic feet subject to the following conditions and charges:</p> <ol style="list-style-type: none"> 1. Consignee shall provide a suitable site without cost to the carrier for the transfer storage facility with ready access accommodating the type of equipment operated by the carrier; and, carrier must be provided 24-hour access for unloading. <ol style="list-style-type: none"> (a) The transfer storage facility, when placed at a job site, will for the duration of such job, be considered part of consignee's storage facilities and withdrawing or transferring cement from the transfer storage facilities will be the responsibility of the consignee. The rates provided in this tariff do not include carrier operation of such facility. If carrier provides personnel to operate such transfer facilities, charges provided in Item No. 100 must be assessed; and (b) Any fuel required to operate transfer facilities must be furnished by consignee. 2. The transfer storage facility will be maintained and transported by the carrier and moved at the carrier's discretion. Any cement remaining in the transfer storage facility at completion of project must be disposed of by consignee. 3. The use of the transfer storage facility will be limited to the temporary storage of cement transported subject to the rates provided in Section 2 of this tariff, by the carrier furnishing such storage facility, except the carrier furnishing such storage facility may authorize another carrier or carriers to utilize the storage facilities. 4. The following charges shall be made for such service, and shall be paid by the party requesting service: <ol style="list-style-type: none"> (a) For transporting, establishing, and removing each transfer storage facility, a single charge of \$100.00; and 	*118

- (b) For each week, or fraction thereof, beginning with the first delivery of cement to the facility or the date on which the carrier is instructed in the consignee's written request to place the transfer facility at the job site, whichever is first, and ending with delivery of the last load, or the date on which carrier is instructed by the consignee to remove the storage facility, whichever is later, a charge of \$135.00; and
- (c) For each calendar day in which cement is physically transferred from the storage facility, a charge of \$5.00 per day.

* Addition, Decision No. 71423

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San Francisco, California.

Correction No. 90