

ORIGINALDecision No. 71612

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 relat-)
 ing 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. 135
 (Filed July 13, 1966)

E. J. Blackman, for California Dump
 Truck Owners Association, petitioner.
Richard W. Smith, H. F. Kollmyer, and
J. C. Kaspar, for California Trucking
 Association, interested party.
G. Ralph Grago, for Associated Inde-
 pendent Owner-Operators, Inc.,
 interested party.
Karl K. Roos and Harry C. Phelan, Jr.,
 for California Asphalt Pavement
 Association, protestant.
Fred Imhof, for Southern California
 Rock Products Association, interested
 party.
Norman Haley and Fred Hughes, for the
 Transportation Division of the
 Commission's staff.

OPINION AND ORDER UPON MOTION TO DENY PETITION

Petitioner, the California Dump Truck Owners Association, seeks cancellation of zone and distance rates in Minimum Rate Tariff No. 7 which apply for the transportation of asphaltic concrete within southern California.

Public hearing on the petition was held before Examiner Abernathy at Los Angeles on September 21, 1966.

Petitioner's general manager presented testimony to the effect that the zone rates have not been adjusted since February 1, 1960, and that the distance rates have not been adjusted since June 16, 1953. On the other hand, hourly rates which also apply under the provisions of Minimum Rate Tariff No. 7 for the transportation of asphaltic concrete have since been increased several times. Assertedly, the hourly rates are reasonably current in relation to present costs of service, whereas the zone and distance rates are not. Hence, until the zone and distance rates are revised, the hourly rates constitute the only reasonable basis of rates for the transportation of asphaltic concrete in southern California.

As a result of action initiated by petitioner in 1959 the Commission undertook studies and hearings toward revision of the zone rates for asphaltic concrete. By Decision No. 70569, dated April 12, 1966, revised rates were prescribed pursuant to said studies and hearings. However, the effective date of the rates has been stayed pending rehearing on certain aspects of the decision.

Petitioner's witness predicted that the ultimate disposition of the matters to be considered upon rehearing of Decision No. 70569 will require an extensive period of time. He asserted that in the meantime the carriers are in urgent need of additional revenues to compensate them reasonably for their services in transporting asphaltic concrete. He said that the carriers' need for additional revenues to meet present operating costs is self-evident in that the hourly rates have

been increased since the establishment of the present zone and distance rates. Also the need is further evident from the Commission's findings upon which Decision No. 70569 was based.

Cancellation of the zone and distance rates as sought by petitioner was opposed by the California Trucking Association, by the Associated Independent Owner-Operators, Inc., by the California Asphalt Pavement Association and by representatives of the Transportation Division of the Commission's staff. In general, the position of these parties was that if the zone and distance rates are no longer reasonable in relation to the costs of the services to which they apply, said rates should be adjusted instead of canceled.¹ The California Asphalt Pavement Association moved for denial of the petition on the grounds that petitioner's showing itself does not provide sufficient basis for cancellation of the rates. The motion of the California Asphalt Pavement Association was supported by the California Trucking Association, and by Associated Independent Owner-Operators, Inc.

¹ The California Trucking Association asserted that the Commission has already held that the fact that rates do not reflect present costs of service and may be difficult to adjust is not sufficient reason for cancellation of the rates. It moved for dismissal of the petition on the grounds of res adjudicata, citing Decision No. 69567, dated August 17, 1965, in Case No. 5437. The motion for dismissal was denied by the Examiner on the basis that res adjudicata did not necessarily govern, and that disposition of the matter should be in light of the circumstances shown. Compare Decision No. 67934, dated September 30, 1964, in Case No. 5437 whereby zone rates for transportation by dump truck in San Diego County were canceled on allegations that the rates no longer reflected the conditions in which the transportation is performed.

The motion of the California Asphalt Pavement Association should be granted. Essentially, the reason upon which petitioner relies to justify cancellation of the zone and distance rates is that the level of said rates is unreasonably low. Even if it were to be concluded that the level of the zone and distance rates is unreasonably low, as alleged, such fact of itself does not warrant the cancellation of the rates. Consideration must be given also to the shippers' needs with respect to the form of the rates to be assessed. Zone rates have been established heretofore to meet marketing requirements of the shippers.² It does not appear from petitioner's showing how the zone (and distance) rates could be cancelled without serious disruption of long-established marketing practices of the shippers of asphaltic concrete. In the circumstances we find that the action which petitioner seeks has not been shown to be reasonable.

Since petitioner had completed its direct presentation prior to the motion of the California Asphalt Pavement Association, and in view of our findings and conclusions hereinabove expressed, it appears that there is no necessity for continuation of the hearing in this matter for the receipt of evidence from the other parties involved.

² For a discussion of reasons for zone rates, see Decision No. 56044, dated January 7, 1958, in Case No. 5437, re establishment of minimum zone rates for dump truck transportation within Antelope Valley.

Therefore, IT IS ORDERED that Petition No. 135 in Case No. 5437 is denied, and that the proceeding on this phase of Case No. 5437 is terminated.

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

Dated at San Francisco, California, this 29th day of NOVEMBER, 1966.

George T. Grover President
Frederick B. Hill
Stallman W. Bennett
Angela Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.