

**ORIGINAL**Decision No. 72020

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 Tariffs Nos. 7 and 17).

Case No. 5437

Petition No. 123  
Filed January 4, 1966

(Appearances are listed in Appendix "A")

O P I N I O N

Petitioner, Payan Trucking, Inc., is engaged in the business of transporting rock, sand, gravel and allied materials by dump truck-and-trailer equipment as a for-hire highway carrier. It operates mainly within Orange County and from Orange County to adjacent counties. By this petition it seeks

- a. Increases of 15 percent in the zone rates in Minimum Rate Tariff No. 17 which apply from Orange County production areas;
- b. Amendment of Item No. 460 of Minimum Rate Tariff No. 17 to require that payments to subhaulers by overlying carriers shall be computed on the basis of 100 percent of the charges under the minimum rates instead of 95 percent as at present.

- c. The establishment of a charge of 10 cents a ton for spreading services performed in connection with the transportation of rock, sand and gravel -- also, cement in dry mixtures with rock, sand and gravel -- when a carrier is required to pull or push a spreader box in connection with said spreading services.

Public hearings on the petition were held before Examiner Abernathy over a period of 14 days during the time from February 9, 1966, to June 2, 1966. Evidence was presented by witnesses for petitioner, for the California Dump Truck Owners Association (CDTOA), for the Associated Independent Owner-Operators, Inc. (AIOO), for the California Trucking Association (CTA), for several carriers individually, and for the Transportation Division of the Commission's staff. The matter was taken under submission with the receipt of closing statements on July 25, 1966.

Proposed Increases of 15 Percent in Zone Rates  
from Orange County Production Areas

Petitioner's proposals in this respect stem from changes which were made in the minimum rates for the transportation of rock, sand and gravel in and about Orange County and adjacent counties on October 1, 1965. Zone rates which had applied until that time for the transportation of rock, sand and gravel, and which had been set forth in the Commission's Minimum Rate Tariff No. 7, were superseded by zone rates published in the Commission's Minimum Rate Tariff No. 17.

Petitioner alleges that the level of the zone rates which now apply from Orange County production areas is about 15 percent below that of the rates which formerly applied under Minimum Rate Tariff No. 7, and is about 20 percent less than the level of the hourly rates in Minimum Rate Tariff No. 7 which also apply as reasonable minimum rates for the transportation of rock, sand and gravel. Petitioner further alleges that under the former zone rates carriers were barely earning a net of 7 percent of their gross revenues, and that it is doubtful that they can do as well under the present rates.

As support for its allegation that the present zone rates from Orange County production areas are about 15 percent less, on the average, than the former rates, petitioner presented the results of a comparison which it had made of present and former rates from Orange County production area A (the production area from which it principally operates) to 36 of the 98 delivery zones in Orange County. According to this comparison, the present rates range from one percent above to 29 percent below the former rates, and they average about 13 percent below the former rates.

Petitioner also submitted comparisons of revenues earned from certain hauls under present zone rates and the revenues that would have been earned had the charges been computed on the basis of the hourly rates which are set forth in Minimum Rate Tariff No. 7. These comparisons show that the total revenues which were earned from said hauls under the zone rates amounted to \$383.74 whereas had the hourly rates been assessed the total revenues would have been \$540.30.

Petitioner's allegation that revenues under the zone rates are about 20 percent less than those under the hourly rates was made mainly on the foregoing comparison of revenues under the zone and hourly rates. The comparison was also presented as a basis for the establishment of a charge for pulling or pushing spreader boxes. The latter aspect of the comparison will be touched on below.

Through other evidence petitioner undertook to show that the operating costs of the carriers have risen above those which were considered when the rates were established. Such evidence was to the effect that the carriers' insurance and tax costs have increased by about 1.0 percent; that fuel costs have increased by about 17 percent, and that wage costs for drivers have increased by 10.8 percent. However, to a large extent the sought increases were urged irrespective of these cost increases. The premise upon which petitioner mainly relied to justify the rate increases which it seeks is that zone rates should return about the same revenues as those which would be produced by the same hauls under the hourly rates. Also, petitioner asserted that the zone rates should be adjusted to eliminate any effect thereon of the costs of service by tractor, semitrailer-and-trailer equipment. Petitioner's position in this respect is that the rates should be based on the costs of service by truck-and-transfer-trailer equipment only and that any weighting of the costs to reflect lower costs of service by tractor, semitrailer-and-trailer equipment results in rates

which are unduly low for service performed by truck and transfer trailer.<sup>1</sup>

Petitioner's request for increases in the zone rates from Orange County production areas was opposed by RPA and by an individual producer of rock, sand and gravel. It was supported in principle by the CDTOA and AIOO. The CTA took no position with respect thereto.

The RPA presented evidence to show that rate increases which are limited to rates from Orange County production areas would be prejudicial against efforts of Orange County rock products producers to compete with other producers who ship rock, sand and gravel from other production areas both to delivery zones inside of and outside of Orange County. RPA moved for dismissal of the requested increases on the grounds that petitioner's presentation does not provide sufficient basis for prescribing said increases. The individual rock producer presented an exhibit in which it undertook to show the extent that the establishment of Minimum Rate Tariff No. 17 had resulted in changes in rates from Orange County production area G to all of the delivery zones in Orange County. According to this exhibit, rates to 58 zones were increased; rates were decreased to 33 zones, and no change was made in the rates to seven zones.<sup>2</sup>

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<sup>1</sup> The present zone rates in Minimum Rate Tariff No. 17 are based on composite cost data which are made up of 70 percent of the costs of operating truck-and-transfer-trailer equipment and 30 percent of the costs of operating tractor, semitrailer-and-trailer equipment.

<sup>2</sup> The average change, percentagewise, was an increase of about two percent.

The CDTOA and the AIOO concurred with petitioner that the carriers are in need of increased rates. The CDTOA pointed out, however, that by another petition (Petition No. 118) it has sought increases in all of the zone rates in Minimum Rate Tariff No. 17 instead of those which apply from Orange County production areas only. The AIOO expressed the opinion that in view of the fact that the establishment of Minimum Rate Tariff No. 17 resulted in rate increases as well as decreases, and in view of the fact that the rates have been increased by Decision No. 70759 to offset the increases in drivers' wages which occurred in January of this year, further rate increases of 15 percent as requested by petitioner are not realistically related to rate increases which the carriers actually need.

The motion of RPA for dismissal of petitioner's request for increases in the zone rates should be granted. The comparisons of zone rates upon which petitioner relied to establish a need for the sought increases have no significance in demonstrating that the present rates are unduly low in relation to the costs of the services involved. The rates which formerly applied pursuant to Minimum Rate Tariff No. 7 were based mainly on the costs of transporting 12-ton loads of rock, sand and gravel in 3-axle dump truck equipment under traffic conditions which prevailed in about 1946. The present rates in Minimum Rate Tariff No. 17 were developed to reflect the circumstances in which rock, sand and gravel are now being transported, namely, in loads of about 25 tons in truck and trailer equipment under present traffic conditions. Clearly, in view of the magnitude of the changes which have occurred in the

underlying transportation conditions since the zone rates in Minimum Rate Tariff No. 7 were established, said rates cannot be used reasonably as a measure of the adequacy or inadequacy of rates which were developed to reflect the costs of the services which are now being performed.

The comparison which petitioner made of revenues under present zone rates from Orange County production area A with revenues which would have accrued under the hourly rates in Minimum Rate Tariff No. 7 for the same hauls also does not establish that the zone rates are unduly low in relation to the costs of the services provided thereunder. Two of the revenue comparisons were developed in part on spreading operations by the use of a spreader box. Such spreading services are beyond those for which provision is made in the zone rates. The other comparison was developed on a haul which involved a substantial detour from the route normally applicable. A comparison of this kind does not provide an appropriate means for evaluating rates for hauls performed in reasonably representative circumstances.

In undertaking to measure the adequacy of revenues under the zone rates by revenues under the hourly rates, petitioner also has apparently disregarded the fact that the zone rates are rates which have been designed to reflect the specific transportation circumstances in which rock, sand and gravel is transported from production areas to delivery zones within that portion of southern California where the rates apply. The hourly rates, on the other hand, are more general in application. They apply throughout southern California instead of within a limited area. They apply

not only for the transportation of rock, sand and gravel but for other commodities such as volcanic ash, clay, debris from the demolition of buildings and structures, fodder, ore, salt cake, and talc. The fact that rates which are specifically designed for certain transportation services are lower than rates of more general application does not establish that the lower rates are unreasonable.

With regard to allegations which petitioner made that carriers in Orange County are not able to operate profitably under the present zone rates, such allegations were not supported by specific showings of what the carriers' operating results under the zone rates actually are. In this connection the evidence shows, moreover, that the carriers' operations during the latter part of 1965 and the early part of 1966 were hampered by adverse weather conditions. It would appear that any operating losses which the carriers may have experienced during that period could be attributable in part, at least, to the effect of the adverse weather.

Petitioner's showing in other respects, namely, that concerning increases in the carriers' operating costs since the zone rates were established, would lend some support to increases in the rates. However, as has been previously stated herein, adjustments have been made already in the rates to compensate for increases in the wage rates of drivers. Cost comparisons which petitioner otherwise presented indicate that some increases have occurred in the carriers' costs of insurance, taxes and fuel. Nevertheless, since the rate increases which petitioner seeks to



compensate for these increases in costs would apply to the transportation of rock, sand and gravel from Orange County production areas only, and since it appears that the cost increases also apply in connection with like transportation from other production areas in the vicinity of Orange County, we are of the opinion that the prescription of increased rates as sought without corresponding action with respect to the other transportation affected by the cost increases would be unduly discriminatory against the former and would be unduly preferential toward the latter.<sup>3</sup>

We find that the sought increases in zone rates have not been justified. The request for said increases will be denied.

Amendment of Item No. 460 of Minimum Rate Tariff No. 17 to require that payments to subhaulers by overlying carriers shall be computed on the basis of 100 percent of the minimum rates instead of 95 percent of the minimum rates.

Item No. 460 of Minimum Rate Tariff No. 17 reads (in part) as follows:

"Charges paid by any overlying carrier to an underlying carrier and collected by the latter carrier from the former for the service of said underlying carrier shall be not less than 95 percent of the charges applicable under the minimum rates prescribed in this tariff, less the gross revenue taxes applicable and required to be paid by an overlying carrier in connection with said charges."

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<sup>3</sup>The same conclusions apply in connection with petitioner's proposals that the rates from Orange County production areas be adjusted to the basis of the costs of service by truck-and-transfer-trailer equipment.

The term "overlying carrier" is defined in Item No. 21 of the tariff as follows:

"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 an underlying carrier (independent-contractor subhauler), to perform that service."

"Underlying carrier" is defined in Item No. 22 of the tariff as follows:

"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 result is accomplished."

The above-quoted provisions of Minimum Rate Tariff No. 17 were established substantially in their present form in Minimum Rate Tariff No. 7 (the predecessor to Minimum Rate Tariff No. 17) by Decision No. 40724 dated September 16, 1947 (47 Cal. P.U.C. 447). Considerations which led to the establishment of said provisions are cited in the decision as follows:

"Carrier testimony shows that a substantial amount of the aggregate for-hire dump truck operations in southern California is conducted under so-called 'subhauling' arrangements. The 'overlying carrier', the carrier dealing with the shipper, arranges to provide the service but does so by employing other carriers to move the materials. The 'underlying carriers', or 'subhaulers', the carriers actually transporting the cargo, are for the most part one-truck or two-truck operators. Ordinarily settlement between the carriers is made on a percentage basis."

"Witnesses, including carriers engaged in extensive operations as 'overlying' carriers, testified that experience in these operations has indicated that 5 percent of the transportation charges collected from shippers is a reasonable basis of settlement. On the basis of such settlement, the witnesses said, reasonable provisions are made for the service of the overlying carrier such as soliciting the business, billing, dispatching, and proper effect is given to the lower costs experienced by the 'underlying' carrier as a result of being relieved from incurring these expenses directly."

In seeking to have the subhaulers' share of the transportation charges increased to 100 percent of the charges applicable under the minimum rates, petitioner alleges that subhaulers do not realize any benefits of consequence from their relationships with overlying carriers, and that the deduction of 5 percent of the transportation charges which is made by overlying carriers is an unjustified reduction of the revenues which a subhauler should earn from his services.

As basis for its allegations petitioner presented evidence to the effect that for approximately 10 years prior to February 1, 1966, it worked directly for a rock products producer in Orange County -- Blue Diamond Company; that about the middle of January, 1966, Blue Diamond posted a notice that effective February 1, 1966, all transportation from its plant would be performed through a Walker Brown, an overlying carrier; that since February 1, 1966, petitioner has sent its freight bills to Walker Brown instead of to Blue Diamond; and that in all other respects

petitioner has conducted its operations in the same manner as it did prior to February 1, 1966.<sup>4</sup> Petitioner asserted that the real beneficiaries of any services which the overlying carriers provide are the rock products producers, and that the compensation of the overlying carriers should be derived from the rock products producers instead of from the subhaulers.

The transportation manager of the Blue Diamond Company also presented testimony concerning the circumstances which led up to the company's action in placing its transportation from its Orange County plant through an overlying carrier.<sup>5</sup> According to the testimony of this witness, Blue Diamond had previously followed the practice of employing carriers directly to transport its rock, sand and gravel. Soon after October 1, 1965, when Minimum Rate Tariff No. 17 became effective, the company began to experience difficulty in obtaining all of the carriers needed for its hauls.

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<sup>4</sup> As part of the change to working through Walker Brown, petitioner was required to sign a purported contract with Walker Brown which states, in part, that

"In accordance with the provisions of Section 4 of Minimum Rate Tariff No. 7 of the California Public Utilities Commission, notice is hereby given ... by the undersigned prime carrier, that charges for dump truck transportation will be at hourly or tonnage zone rates as prescribed by the Public Utilities Commission.

"This agreement will operate as a continuing contract to cover transportation service to be performed by Sub Hauler for Prime Carrier, from time to time as required by Prime Carrier."

<sup>5</sup> The transportation manager of Blue Diamond was called on behalf of RPA.

This difficulty was encountered particularly in connection with hauls of about eight miles or less. The carriers complained that the rates for such hauls were unduly low, and on various occasions they refused to perform the hauling requested. On such occasions Blue Diamond utilized trucking equipment of its own to transport the materials needed by its customers. It refused to make concessions to the carriers by the payment of increased rates for such hauls, its policy being that it will not pay more than the applicable minimum rates for the transportation of its materials.<sup>6</sup>

In order to overcome the difficulties which it was thus experiencing, Blue Diamond arranged to have its transportation handled through an overlying carrier, Walker Brown. Since the employment of said overlying carrier Blue Diamond has not had any problems in obtaining sufficient carriers to meet its transportation needs.

The CDTOA, the RPA, the AIOO, and various carriers individually all opposed increasing the payments to subhaulers to 100 percent of the charges under the minimum rates. The position of the CDTOA was that overlying carriers perform a valuable and necessary function in the transportation of rock, sand and gravel in that they coordinate the services of individual dump truck carriers with the transportation needs of rock products producers. A collateral benefit is that they enable individual

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<sup>6</sup> The transportation manager conceded that the rates for the hauls involved are low, and he indicated that he would be reluctant to operate Blue Diamond's own equipment regularly for such rates.

dump truck carriers to participate in hauls that otherwise would gravitate to carriers operating fleets of vehicles. In providing these services, overlying carriers necessarily incur expenses. The tariff provisions governing the settlement of charges between overlying carriers and subhaulers should be retained in order that the overlying carriers be compensated for their services.

Overlying carriers whom the CDTOA called as witnesses presented testimony describing their services. In general they stated that they are in daily contact with the rock products producers; that each afternoon they receive calls from the producers concerning the dump truck equipment needs of said producers for the following day; that upon receipt of this information they call the number of truckers needed for the day's operations and inform the truckers where and when to report for work. By thus relating the needs of the jobs to the number of truckers called, inefficient usage of carrier facilities through "overtrucking", i.e., the supplying of more equipment than is needed for the job, is minimized or avoided. Furthermore, the contacts of the overlying carrier with the rock products producers may include several plants of a producer. Hence, as jobs are completed at one plant during the course of a day, the overlying carrier may dispatch the individual carriers or subhaulers to other plants, thereby enabling the carriers to enjoy more work during the day than would be the case otherwise. The overlying carriers asserted that the services which they provide not only directly benefit the subhaulers, but they benefit the rock products producers as well in that they provide a means whereby the producers can readily and

efficiently recruit the transportation facilities needed for their day-to-day operations.

In connection with the testimony of the overlying carriers one of said carriers (Harrison-Nichols Co., Ltd.) presented and explained a copy of a contract which he enters into with the subhaulers using his services. A similar contract assertedly is used by the other subhaulers who testified. Features of the contract which should be mentioned as pertinent for consideration herein are set forth in the margin below.<sup>7</sup> The representative of Harrison-Nichols Co., Ltd., stated that insofar as the operations of his company are concerned, the contract is in the process of being revised. He did not, however, submit for consideration a copy of the revised contract nor did he state what the revised provisions would be.

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The overlying carrier shall notify the subhauler of material to be transported and of the time and location of the place to load said material within a reasonable time prior to the required delivery time. The overlying carrier will pay the subhauler at 95 percent of the minimum rates unless other arrangements are agreed to in writing. The overlying carrier will pay subhauler in accordance with the credit rule established in the Commission's Minimum Rate Tariff No. 7. The subhauler will indemnify and hold overlying carrier harmless from any and all claims or demands of any kind except the payment of compensation due the subhauler for hauling. If any claims arising out of the employment of the subhauler are made against the overlying carrier, the overlying carrier may withhold any moneys due the subhauler until such claims are adjusted by the subhauler to the satisfaction of the overlying carrier. The overlying carrier will issue a statement of earnings to the subhauler on the 25th day of the month following that in which the transportation provided by the subhauler was performed. The subhauler will submit its bills and signed copies of the shipping documents to the overlying carrier on a daily basis. Any bills received by the overlying carrier after the second of the month following that month in which the hauling was performed will be paid as though the hauling was performed in the month when the bills were received.

Evidence which was presented by RPA relative to the sought increases in payments to subhaulers was submitted through a vice-president of a rock products producer. This witness testified that the transportation practices of his company are to employ individual carriers both directly and through an overlying carrier. He said that his company has experienced no difficulty under this procedure in obtaining sufficient transportation to meet its needs. He favored retention of the present level of payments to overlying carriers as a means of preserving the functions of said carriers in providing a convenient method for recruiting individual for-hire carriers as needed.

Four carrier witnesses, who appeared in response to subpoena by the AIOO presented testimony. The testimony of these witnesses in substance is that they are employed as subhaulers by Harrison-Nichols Co.; that Harrison-Nichols Co. is the overlying carrier which serves the plants of the rock products producer, Consolidated Rock Co.; that certain carriers are employed by Harrison-Nichols Co. as regularly as the available work permits; and that said carriers (designated as "regulars") are called first when work becomes available. Each of the four carrier witnesses testified that he operates as a "regular" and that he had acquired "regular" status through purchase of a "spot" or position in the group of regulars. Two of the witnesses stated that they had bought a total of three "spots" from other carriers for \$1,300, \$2,000 and \$2,000, respectively. The other two each acquired a "spot" in connection with the purchase of trucking equipment from Harrison-Nichols for \$1,800 and \$1,300. In the latter instances



the "spots", not the equipment, were the principal considerations insofar as the carriers were concerned. In one instance the carrier was not able to use the equipment so acquired except the parts thereof. In the other instance the carrier never came into possession of the vehicle. After completing payments therefor to Harrison-Nichols, he endorsed the certificate of ownership back to Harrison-Nichols without further consideration than the "spot" originally acquired with the so-called equipment purchase.

In other respects the subhaulers whom the AIOO called as witnesses testified that the work assignments which they receive from the overlying carrier usually specify only the place (the rock products plant) and the time for reporting for the first load of the day. As to subsequent loads, the subhaulers work under the direction of the plant dispatcher. The subhaulers are directed by the overlying carrier to report to a rock producer's plant each day, and, in the event work is not available, to wait for any jobs that might be received during the day. Also, if they finish their assigned jobs early in the day, they are required to stand by and be available for other jobs which may develop. Jobs that they receive and perform as a result of stand-by services which they thus provide are billed through the overlying carrier the same as jobs received directly through the overlying carrier.

One of the subhaulers testified concerning hauling which he had been directed to perform under such adverse circumstances that he was unable to meet his operating costs at the rate which

was being charged.<sup>8</sup> He said that he had sought a higher rate from the overlying carrier but his efforts along this line had not been successful.

Other subhaulers who testified in their own behalf supported the retention of the present tariff provisions which state in effect that the overlying carrier's compensation shall be 5 percent of the applicable charges under the minimum rates in Minimum Rate Tariff No. 17.

In seeking increases in the payments to subhaulers for services performed for overlying carriers, petitioner is motivated primarily by a desire or need for additional revenues for the subhauling services which it provides. However, the issues which are presented by petitioner's request for increases in the payments to subhaulers extend beyond the revenue aspects of the matters involved. Since petitioner is asking that the payments to subhaulers be set at 100 percent of the charges under the minimum rates, the granting of the increases which are sought would leave Minimum Rate Tariff No. 17 without any provision for compensating overlying carriers for such services as they do provide.

Petitioner's proposals are mainly premised on its belief that subhaulers receive relatively few benefits from the services of overlying carriers, and that the principal beneficiaries

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<sup>8</sup> He reported that mud at the job site was so deep that it was necessary for his equipment to be pulled to and from the locations where the material which he was transporting was dumped.

are the rock products producers; hence, if any payments are to be made to the overlying carriers to compensate them for their services, said payments should be made by the rock products producers apart from the payments which the producers make under the present minimum rate provisions.

The record indicates that in the day-to-day task of arranging for the volume of for-hire carriage needed for the transportation of their materials, the producers of rock products are not willing to subject themselves to the expense and uncertainties of dealing individually with carriers who operate only one or two vehicles, and that as a matter of policy they prefer to deal with carriers who can meet their transportation needs on an over-all basis; i.e., fleet operations or overlying carriers who approximate fleet operations through use of underlying carriers.

As to petitioner's contention that any payments to the overlying carriers should be borne directly by the rock products producers, the record shows that the producers will not pay more for transportation services obtained through an overlying carrier than they would pay for the same services obtained through a fleet operator.

The underlying carriers who testified in favor of the present allowance stated the overlying carriers provide necessary and valuable services, such as:

- (1) Job solicitation.
- (2) Minimizing of over-trucking.
- (3) Money advances.

- (4) Loan of tools and repair equipment.
- (5) Assistance in purchase of parts and supplies.
- (6) Bookkeeping.
- (7) Billing.
- (8) Other clerical services.

This seems a far cry from the language of Decision No. 40724 in 1947 which established the existing 95%-5% relationship and in which the Commission viewed such settlement as being reasonable for the services of overlying carriers such as "soliciting of business, billing, dispatching."

In the testimony which was presented in support of retention of the present division of charges, for example, much stress was placed on the solicitation services of the overlying carriers and the value thereof to the underlying carriers. What solicitation the overlying carriers actually provided, however, was not clearly established. What solicitation, for example, is provided the underlying by the overlying carrier, Walker Brown, in the instance where the rock products producer, Blue Diamond Company, selects said overlying carrier and requires the transportation of its materials by underlying carriers to be handled through Walker Brown? Inasmuch as the rock products producers are having their materials transported under what appears to be exclusive arrangements with certain overlying carriers, it likewise appears that

said overlying carriers themselves may perform relatively little service in the way of actual solicitation.<sup>9</sup> To the extent that the record shows that solicitation services are actually being performed, the record also shows that some of this may actually be performed by the underlying carrier when as a requirement of the overlying carrier he must provide stand-by service to the rock products producers without compensation.

Much of the service of the overlying carriers which various witnesses designated as "solicitation" could perhaps be more properly identified as "dispatching", since it seems to consist mainly of the assignment of the underlying carriers to specific jobs as a consequence of the receipt by the overlying carriers of equipment orders from the rock products producers for the ensuing day's work. The record shows that in this area also -- the area of dispatching -- a substantial portion of the applicable costs may be borne by the underlying carriers either as a result of their telephoning, at their own expense, to the overlying carrier for their job assignments or as a result of their following standing instructions of the overlying carriers to report for work daily to the plants of the rock products producers even though jobs are not immediately available.

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Kenneth Harrison, the vice-president of the overlying carrier, Harrison-Nichols Company, testified that in soliciting business his contacts were with the presidents or vice-presidents of shippers. However, as of April 5, 1966, he could not cite an instance during 1966 to that date where he had made such a contact for business solicitation purposes.

In the matter of billing, the record shows that the underlying carriers perform about the same billing functions in connection with their services for overlying carriers as they would provide were they serving the rock products producers directly.

Based on the foregoing, we find that petitioner has not on this record shown that the proposed increase in allowance for the compensation of underlying carriers which is contained in the minimum rate provisions is justified, and to this extent the petition will be denied.

We are of the opinion, however, that some inquiry into the entire relationship between overlying and underlying carriers, including nature of and justification for fees paid to overlying carriers, is justified on this record and should be made in the public interest with all interested parties having an opportunity to be heard.

A further factor which should be taken into account in connection with an examination into the payments to subhaulers is the risk of loss which applies to the subhaulers' operations in contrast to those which apply to the operations of the overlying carriers. Since the transportation which is involved herein is actually performed by the underlying carriers and not by the overlying carriers, it is possible that adverse transportation

conditions beyond the control of the underlying carrier would produce revenues (exclusive of the payments to the overlying carriers) insufficient to return the costs of the services performed, and the resulting losses would fall directly upon the subhaulers. The overlying carriers, on the other hand, receive 5 percent of the gross revenues from each haul, irrespective of the sufficiency of the revenues to return the costs of the transportation services performed.<sup>10</sup>

Other matters which undoubtedly should be considered in a full evaluation of the overlying carriers' services and the payments to be made therefor are what the record indicates to be practices of overlying carriers in selling "spots" to the subhaulers, as hereinbefore discussed, in engaging in fictitious sales of equipment to subhaulers, and in selling equipment at inflated prices to the subhaulers. These practices, and similar activities, appear to be devices by which various overlying carriers undertake to exact greater revenues from the subhaulers than those which have been determined by the Commission to be reasonable for the services which the overlying carriers provide. Furthermore, there appears to be a need for re-examination of, and restatement of, the definitions and functions of

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The evident inferior risk position of the subhaulers is worsened by requirements of the overlying carriers upon the subhaulers to perform service at no more than the minimum rates even though the minimum rates may be plainly inadequate for the services provided.

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"overlying carrier" and "underlying carrier (independent-contractor subhauler)" as set forth and/or described in Minimum Rate Tariff No. 17. The record indicates that in their present operations the overlying carriers and subhaulers either do not conform to, or they depart from, the tariff specifications in various respects, thus giving rise to the question whether the specifications should be revised, or whether the departures should be corrected.

The Establishment of a Charge of  
10 Cents a Ton for Spreading  
Services When Carrier Is Required  
to Pull or Push a Spreader Box  
in Rendering Said Services

The record shows that as part of the services which the carriers provide in the transportation of rock, sand, gravel and related materials, the carriers, on occasion, are also required to provide a spreading service involving the use of spreader boxes. The carriers dump their loads into a spreader box and then either pull or push the box along the job site until the loads are discharged through adjustable gates or apertures in the box. The box is used for the purpose of metering the flow of the materials in the unloading and spreading processes more precisely than is generally possible when the unloading and spreading is performed directly from the carriers' vehicles. The metering of the materials in this manner is usually



in response to requirements in the job specifications that the materials be laid or spread at a stated thickness or depth. The use of the spreader box for spreading is a service which is usually performed for the contractors of the jobs involved, rather than for the rock products producers for whom the carriers' services otherwise are performed.

Neither the rules in Minimum Rate Tariff No. 17 nor those in the preceding tariff, Minimum Rate Tariff No. 7, make (or made) provision for a charge by the carrier for spreading services involving the pulling or pushing of spreader boxes. In seeking the establishment of a charge of 10 cents a ton for the spreading of materials in this manner, petitioner alleges that such spreading services impose additional costs upon the carrier for which the carrier should be compensated.

The evidence which petitioner submitted in support of the sought charge is to the effect that more time is required for the unloading and spreading operations when performed by use of a push or pull spreader box than when said operations are performed directly by the carriers' equipment; also, the pushing or pulling of the spreader box results in damage to the carriers' equipment which requires additional repair costs for the carrier.

To show the time required for unloading and spreading with such a spreader, petitioner submitted a tabulation showing the time it had spent in the unloading and spreading of 15 loads.

According to this tabulation, the times spent per load were as follows:

15 minutes	50 minutes
15 minutes	50 minutes
20 minutes	55 minutes
20 minutes	65 minutes
20 minutes	70 minutes
20 minutes	75 minutes
25 minutes	75 minutes
25 minutes	

Average unloading and spreading  
time per load . . . . 40 minutes

Regarding the damage to carriers' equipment which allegedly is incurred in pushing or pulling spreader boxes, petitioner's president testified that such damage consists mainly of wheel damage and damage to mud flaps, tail lights and running lights.

Petitioner's request for the establishment of a charge for the pushing or pulling of spreader boxes was supported by the CDTOA, the AIOO and the CTA. It was opposed by the RPA.

A carrier witness who had been called by the AIOO also testified that the pushing or pulling of the spreader boxes results in damage to carrier equipment. The CTA submitted figures to show that irrespective of the extent that the use of the spreader box may require longer time for the unloading and spreading operations than otherwise would be the case, the costs of the unloading services for the vehicles that must be used in connection with the

spreader box are about two cents per ton more than the unloading costs for which provision is now made in the minimum rates.<sup>11</sup>

The RPA also presented results of studies which it had conducted of the time required for truck-and-trailer unloading by pull spreader box. According to these studies, which covered a total of 34 observations, the average time per unloading was 19.5 minutes. The figures of the RPA indicate, furthermore, that a movement of empty spreader boxes from one location to another at job site -- a task which dump truck carriers have also been performing hitherto for the contractors without receiving compensation therefor -- requires about 16 to 20 minutes.

In connection with these data and the sought charge of 10 cents a ton, the RPA pointed out that the charge was proposed only for movements under the zone rates in Minimum Rate Tariff No. 17. It would not apply to movements which are not subject to the zone rates, but which are subject to the distance and hourly rates in Minimum Rate Tariff No. 7. In its closing statement the RPA said that based on its studies and consideration it "would support a charge of 10¢ per ton for dumping into a pull spreader box, if and only if, the rule included all services relating to the dumping operation including pulling the spreader box within the jobsite. Such a rule should as well, of

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<sup>11</sup> The record shows that the loading of a spreader box requires the use of an end-dumping vehicle. Hence, it is not feasible to use a bottom-dumping vehicle (a vehicle which is also extensively used in the transportation of rock, sand and gravel) in connection with spreader box operations. The unloading costs which are reflected in the rates are based upon the use of both the end-dumping and the bottom-dumping vehicles.

course, be applicable to material so dumped pursuant to MRT #7."

The principal question to be decided concerning the charge which petitioner seeks for unloading and spreading by spreader boxes is not whether such a charge should be established. Instead, it is how much the charge should be. Whether a charge should apply is a question that must be answered affirmatively. The towing or pushing of a spreader box is a transportation service for which no provision is made in the present rates in Minimum Rate Tariff No. 17. The performance of such service in conjunction with other services for which rates in Minimum Rate Tariff No. 17 apply constitutes an unauthorized departure from said minimum rates. Moreover, the operating authority of various dump truck carriers is restricted to the transportation of those commodities for which rates are provided in Minimum Rate Tariffs Nos. 7 and 17. Hence, if the commodities transported are not specified in either or both of those tariffs, the transportation of said commodities constitutes unauthorized operations. The record is clear that unloading and spreading by spreader boxes are necessary services. Hence, provision for said services should be made in the minimum rates in order that the carriers may lawfully perform those services when called upon to do so.<sup>12</sup> In this same vein, the record shows that the carriers are also called upon to move empty spreader boxes from one location to another at a job

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<sup>12</sup> The record deals mainly with pull spreader boxes. However, the provision for the spreader services will be made applicable to push spreader boxes also, so that the carriers may lawfully operate said push spreaders as required.

site. Provision should likewise be made in the minimum rates for said moving service.<sup>13, 14</sup>

How much more should be charged when the unloading and spreading services are performed by spreader box instead of directly from carriers' equipment is essentially a question which should be resolved in light of such additional costs as are involved in the spreader box operations. We find that from a time standpoint the unloading and spreading by spreader box require about seven minutes more per truck-and-(transfer) trailer load than is the case when the unloading and spreading services are performed directly by the carriers' equipment.<sup>15</sup> Considering this additional time element and the costs applicable to truck-and-(transfer) trailer operations, we find that a charge of \$1.00 per load is and

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<sup>13</sup> Although the RPA urged that such charge as is established for unloading and spreading by spreader boxes also include the moving of the empty boxes, separate charges should be assessed for the unloading and spreading, on the one hand, and for the moving service, on the other hand, in order that the carriers will be more equitably compensated for the work which they actually perform.

<sup>14</sup> The conclusions herein expressed concerning the need for minimum rates for unloading and spreading by spreader boxes and for moving the empty boxes apply in connection with Minimum Rate Tariff No. 17. Similar conclusions might be expressed concerning a need for inclusion of like provisions in Minimum Rate Tariff No. 7. However, the rates and rules in the latter tariff are not in issue in this phase of Case No. 5437.

<sup>15</sup> The differential of about seven minutes per load was developed from comparison of the unloading and spreading times upon which the present rates in Minimum Rate Tariff No. 17 were based with the times which were represented by petitioner and by the RPA to be average unloading and spreading times for truck and transfer trailer by spreader box. It appears that the figures of the RPA slightly understate the applicable times. Said figures have been evaluated accordingly.

will be a reasonable minimum charge to compensate for the additional costs which the carriers incur in unloading and spreading rock, sand and gravel by push or pull spreader boxes.<sup>16</sup> Regarding the services which the carriers provide in moving empty spreader boxes from one location to another at job site, we find that a charge of \$3.00 per movement is and will be a reasonable minimum charge for said service. Said charges will be established. They will be made applicable against the party ordering the services involved. In order to achieve definiteness of responsibility for the charges, carriers will be required to obtain written orders for said services before undertaking to perform the services.

We find that said tariff should be amended to provide charges as hereinabove specified,

- (a) For the services of pulling or pushing spreader boxes in connection with the unloading and spreading (from carriers' equipment) of the materials subject to said tariff, and
- (b) For services performed by carriers in moving push or pull spreader boxes from one location to another at a job site.

We further find that the provisions of Minimum Rate Tariff No. 17, as so amended, are, and will be, reasonable and nondiscriminatory minimum rates, charges and rules for the services subject thereto.

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The costs to which reference is made are costs which are set forth in Exhibit 115-6 in Case No. 5437. Said costs are the basis of the present rates in Minimum Rate Tariff No. 17. Decision No. 70759, dated May 24, 1966, which established the present rates finds said costs to be reasonable.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff No. 17 (Appendix B to Decision No. 69469) is hereby amended by incorporating therein, to become effective March 25, 1967, Eighth Revised Page 1-2, First Revised Page 1-3.1 and Original Page 1-22, attached hereto and by this reference made a part hereof.

2. In all other respects said Decision No. 69469 shall remain in full force and effect.

3. Except as is otherwise provided herein, Petition No. 123 in Case No. 5437 is denied.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of FEBRUARY, 1967.

[Signature]  
President  
William C. Beards  
[Signature]  
William Lyons - Jr.  
[Signature]  
Commissioners

APPENDIX A

Appearances

Robert L. Payan and Bertha L. Payan, for Payan Trucking, Inc., petitioner.

Norma L. Coen, for Pyramid Truck & Material; Harold Edmondson, for himself; Rhae E. Foust, Jr., for himself; Kenneth P. Harrison, for Harrison-Nichols, Ltd., respondent; Alfred A. Perret, for Al Perret & Sons Trucking; Ron Pease, for Southern Pacific Milling Co.; John C. Payne, for himself; L. Albrough, for himself; E. O. Blackman, for E. W. Meaders, J. H. Smith, Tomo Mukai, Mack Treadway, and Charles E. Meyer Trucking; Walker Brown, for himself; William Marvin Shatto, for William H. Shatto, Inc.; John Weisz, for Weisz Trucking, Inc.; and Louis Marietta, for Tri-County Truck Co.; respondent carriers.

E. O. Blackman, for California Dump Truck Owners Association; G. Ralph Grago, for Associated Independent Owner-Operators, Inc., interested party; and A. D. Poe, Richard W. Smith, J. C. Kaspar, H. F. Kollmeyer and W. A. Dillon, for the California Trucking Association; interested carrier organizations.

L. A. Wixted, for Blue Diamond Co.; W. F. Webster, for Rodeffer Industries, Inc.; R. H. Ohs, for Consolidated Rock Products; and C. R. Nafie, for Mission Rock Co.; interested shippers.

H. Randall Stoke and Fred Imhoff, for Southern California Rock Products Association; Harry C. Phelan, Jr., for California Asphalt Pavement Association; interested shipper organizations.

R. A. Lubich, Fred P. Hughes, J. M. Jenkins, Norman Haley, and Bill T. Farris, for the Transportation Division of the Commission's staff.

(End of Appendix)



## SECTION 1 - RULES AND REGULATIONS (CONTINUED)

## \*TARIFF PAGES CHECK SHEET

ORIGINAL AND REVISED PAGES AS NAMED BELOW AND SUPPLEMENT 1 CONTAIN ALL CHANGES FROM THE ORIGINAL TARIFF IN EFFECT ON THE DATES SHOWN THEREON.

PAGE NUMBER	REVISION NUMBER	PAGE NUMBER	REVISION NUMBER	PAGE NUMBER	REVISION NUMBER	PAGE NUMBER	REVISION NUMBER
TITLE	1ST	4	1ST	5-B-1	1ST	7-M	1ST
1	ORIGINAL	4-A	1ST	5-B-2	1ST	7-M-1	1ST
1-1	ORIGINAL	4-A-1	1ST	5-D	1ST	7-M-2	1ST
1-2	8TH	4-A-2	1ST	5-D-1	1ST	8	ORIGINAL
1-2.1	ORIGINAL	4-B	1ST	5-D-2	1ST	9	ORIGINAL
1-3	2ND	4-B-1	1ST	5-D-3	1ST	10	1ST
1-3.1	1ST	4-B-2	1ST	5-F	1ST	10-B	1ST
1-4	1ST	4-CC	1ST	5-G	2ND	10-C	1ST
1-4.1	ORIGINAL	4-CC-1	1ST	5-G-1	ORIGINAL	10-E	1ST
1-5	2ND	4-E	1ST	5-G-2	ORIGINAL	10-G	1ST
1-6	2ND	4-E-1	1ST	5-G-3	ORIGINAL	10-I	1ST
1-7	2ND	4-E-2	1ST	5-G-4	ORIGINAL	10-J	1ST
1-8	1ST	4-F	1ST	5-L	1ST	10-K	1ST
1-9	1ST	4-F-1	1ST	5-L-1	1ST	10-L	1ST
1-10	1ST	4-F-2	1ST	5-M	1ST	10-M	1ST
1-11	ORIGINAL	4-F-3	1ST	5-M-1	1ST	10-N	ORIGINAL
1-12	ORIGINAL	4-G	1ST	5-O	1ST	10-N-1	ORIGINAL
1-13	ORIGINAL	4-G-1	1ST	5-P	1ST	10-O	ORIGINAL
1-14	1ST	4-G-2	1ST	5-P-1	1ST	10-O-1	ORIGINAL
1-15	2ND	4-G-3	1ST	6	1ST	10-P	ORIGINAL
1-16	2ND	4-HH	1ST	6-F	1ST	10-P-1	ORIGINAL
1-17	ORIGINAL	4-HH-1	1ST	6-G	1ST	11	1ST
1-18	ORIGINAL	4-I	1ST	6-G-1	1ST	11-1	1ST
1-19	ORIGINAL	4-II	1ST	7	1ST	11-2	1ST
1-20	ORIGINAL	4-II-1	1ST	7-A	1ST	12	ORIGINAL
1-21	1ST	4-JA	1ST	7-A-1	1ST	13	ORIGINAL
1-22	* ORIGINAL	4-JJ	1ST	7-B	1ST	14	ORIGINAL
2	1ST	4-JJ-1	1ST	7-B-1	1ST	14-A	ORIGINAL
2-1	ORIGINAL	4-L	1ST	7-D	1ST	14-A-1	ORIGINAL
2-2	ORIGINAL	4-L-1	1ST	7-D-1	1ST	14-A-2	ORIGINAL
2-3	ORIGINAL	4-L-2	1ST	7-E	1ST	14-B	ORIGINAL
2-4	ORIGINAL	4-M	1ST	7-E-1	1ST	14-B-1	ORIGINAL
2-5	ORIGINAL	4-M-1	1ST	7-H	1ST	14-B-2	ORIGINAL
2-6	ORIGINAL	4-M-2	1ST	7-H-1	1ST	14-C	ORIGINAL
2-7	ORIGINAL	4-M-3	1ST	7-H-2	1ST	14-C-1	ORIGINAL
2-8	ORIGINAL	5	1ST	7-I	1ST	14-C-2	ORIGINAL
2-9	ORIGINAL	5-A	1ST	7-I-1	1ST	14-CC	ORIGINAL
2-10	ORIGINAL	5-A-1	1ST	7-L	1ST	14-CC-1	ORIGINAL
2-11	ORIGINAL	5-A-2	1ST	7-L-1	1ST	14-D	ORIGINAL
3	ORIGINAL	5-B	1ST	7-L-2	1ST		

(CONTINUED ON ORIGINAL PAGE 1-2.1)

Δ CHANGE )  
\* ADDITION )

DECISION NO. 72020

EFFECTIVE MARCH 25, 1967

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,  
SAN FRANCISCO, CALIFORNIA.  
CORRECTION 261

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* Addition, Decision No. <b>72020</b>	
EFFECTIVE MARCH 25, 1967	
Issued by the Public Utilities Commission of the State of California, San Francisco, California.	
Correction 262	

SECTION 1 - RULES AND REGULATIONS (Continued)	Item
<p style="text-align: center;">UNLOADING AND SPREADING SERVICE</p> <p>When a carrier performs unloading and spreading service by spreader box which the carrier pushes or pulls, a charge of \$1.00 per load, or fraction thereof, shall apply in addition to the charges otherwise applicable under this tariff.</p> <p>When a carrier moves a push or pull spreader box from one location to another at the same job site in a movement which is other than that by which the carrier is concurrently performing an unloading and spreading service, a charge of \$3.00 per movement shall apply in addition to the charges otherwise applicable under this tariff.</p> <p>The carrier shall not perform unloading and spreading service by spreader box which it pushes or pulls, nor shall it otherwise move such a spreader box from one location to another at a job site, unless it has been first given a written order for said services, which order has been signed by the party (or authorized representative) who assumes the responsibility for the payment of the applicable charges.</p>	*500
<p>* Addition )            ◊ Increase )      Decision No.    72020</p>	
EFFECTIVE MARCH 25, 1967	
<p>Issued by the Public Utilities Commission of the State of California,            San Francisco, California.</p> <p>Correction 263</p>	