

Decision No. 73038

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 (commod-)
 ities for which rates are provided)
 in Minimum Rate Tariff No. 7).

Case No. 5437
 Order Setting Hearing dated
 March 22, 1966

(Appearances are shown in Appendix A)

OPINION AND ORDER DISCONTINUING PROCEEDING

On March 22, 1966, the Commission issued an Order Setting Hearing in Case No. 5437, for the receipt of evidence relative to the adjustments and/or establishment of minimum rates, rules and regulations in Minimum Rate Tariff No. 7 (MRT 7) for the following transportation of property in dump trucks:

1. Statewide distance and hourly rates.
2. Zone rates in Northern Territory for which minimum rates are currently provided in Items Nos. 294, 294.3 and 294.6.
3. Statewide rates for transportation by a carrier who provides a driver and power unit of equipment without trailing equipment, and rules necessary to implement such rates which may specify the limits of arrangements with persons furnishing trailing equipment.

Twenty-seven days of hearing were held before Examiner Mallory at San Francisco and Los Angeles on various dates between June 8, 1966 and June 14, 1967. The instant phase of Case No. 5437 was consolidated for hearing with Petition No. 112, filed by the

California Dump Truck Owners Association. Petition No. 112, as originally filed, sought relief substantially similar to that described in paragraph 3 of the Order Setting Hearing herein.

Two interim orders have been issued in the Order Setting Hearing. Decision No. 71517, dated November 9, 1966, amended MRT 7 to incorporate "cement treated base" as an article for which the hourly rates are applicable. Decision No. 72223, dated March 28, 1967, changed the unit of measurement on which hourly rates are computed from the capacity of the equipment in cubic yards to the legal carrying capacity of the equipment in tons. These changes were made at the request of California Trucking Association and were concurred in by the other principal carrier associations represented in these proceedings. Evidence concerning these changes was introduced by the staff and other parties.

Except with respect to the matters decided in the interim orders, all the evidence presented in this proceeding was that produced by the Commission staff. A transportation engineer introduced 12 cost exhibits. Four supplemental exhibits were presented which brought the basic cost studies up-to-date to reflect current wage scales. Two additional exhibits were presented by the staff cost witness, at the request of California Trucking Association, which contained background information for the basic cost exhibits. Extensive cross-examination concerning the staff cost exhibits was conducted by California Trucking Association (CTA) and California Dump Truck Owners Association (CDTOA).

A staff transportation rate expert presented in evidence two exhibits relating to studies of carrier operations under the rates in MRT 7 and recommendations relating to revised rate levels, rules and regulations.

On April 14, 1967, CTA, Rock, Sand and Gravel Producers Association of Northern California, Inc., and Northern California Ready Mix Concrete and Materials Association filed a joint pleading entitled "Motion to Suspend Hearings on Revision of Items Nos. 148 and 294 of Minimum Rate Tariff No. 7, and Petition for the Institution of a Current Study of Certain Transportation by Dump Truck in Northern California and for Establishment of a New Tariff Covering Such Transportation." (The petition portion of this pleading was docketed as Petition No. 146 in Case No. 5437.) The motion was later amended to embrace also the revision of Item No. 130 of MRT 7, insofar as that item contains rates for movements in Northern Territory.^{1/} Argument on the motion was heard on June 13, 1967 and the motion was submitted.

The argument presented by CTA with respect to the joint motion was the following. CTA representatives met with representatives of the Rock, Sand and Gravel Producers Association of Northern California and the Northern California Ready Mix Concrete

1/ Item No. 148 is entitled "Northern Territory Interplant Distance Rates." It contains rates, insofar as pertinent herein, on gravel, cold road oil mix, sand and stone (concrete aggregates) from (a) a commercial producing plant to a railhead, hot plant, batching plant, sewage disposal plant, concrete article factory or a distributing yard, or (b) from a hot plant to a stockpile in a distributing yard. The rates do not apply to any location at which grading, excavating, paving or construction activity is in progress.

Item No. 294 series is entitled "Rates From Production Areas to Delivery Zones." Rates apply on the same articles as described above in connection with Item No. 148. Rates named in Item No. 294 series apply from Production Areas in Alameda, Contra Costa, Santa Cruz, Sacramento and Yolo Counties to Delivery Zones in Alameda, Contra Costa, Santa Clara, San Mateo, Placer, Sacramento and Yolo Counties.

Item No. 130 contains distance rates on a wide range of commodities, including concrete aggregates, in Northern Territory.

and Materials Association (hereinafter referred to as the Shipper Groups) at their request. The purpose of said meeting was to discuss and arrive at agreements concerning a mutual approach of the CTA and the Shipper Groups concerning revision of the rates on concrete aggregates in Northern Territory in MRT 7. The conclusion reached at such meeting was that the present tariff is not responsive to the needs of shippers and carriers, in that the format of the tariff does not lend itself to the types of services needed by shippers and that rate levels for interplant movements currently are too high. The staff proposals in the instant proceeding would not change the format of the tariff, but would further increase the interplant rate levels. The effect of the last adjustment in interplant rates was to raise the rates to a level which encouraged shippers to substantially increase their proprietary operations. Examples were given. Shippers of concrete aggregates operate trucking equipment for services within their plants or for movement of commodities not involved herein; therefore, such shippers are able to increase their proprietary trucking operations without difficulty. The staff proposals do not fit the current needs of the portion of the trucking industry engaged in for-hire transportation of concrete aggregates in Northern Territory. CTA and the Shipper Groups request that further complete and new studies of this transportation be conducted by the staff which would result in the development of a new tariff for such transportation.

CTA also argued that the cost studies underlying the rate proposals with respect to Items Nos. 130, 148 and 294 reflect performance data of about 1963, and thus are too old to be relevant under current transportation conditions. ✓

As a further consideration, CTA argued that the cost studies presented in this proceeding relating to interplant and distance movements in Northern Territory do not correct the anomalous situations which resulted from the adoption of staff recommendations presented on the proceeding leading to Decision No. 68232, dated November 17, 1964, in Case No. 5437, Order Setting Hearing dated March 24, 1959. In that proceeding the staff presented a cost study (Exhibit B-1) that indicated that the rates for interplant movements under Items Nos. 148 and 294 series should be higher than the general distance rates in Item No. 130; no costs were furnished in that proceeding for movements under Item No. 130. The background data used in Exhibit B-1 reflect field studies of carrier operations conducted in 1963 or prior thereto. Decision No. 68232 adopted the rate levels proposed by the staff for Items Nos. 148 and 294 series and commented as follows:

" . . . the record in this phase of Case No. 5437 should be continued for further hearings for the purpose of receiving evidence on whether adjustment should be made in the Northern Territory distance rates in Item No. 130 of Minimum Rate Tariff No. 7 in conformity with present costs and the interplant distance and interplant zone rates. . . . The Commission's staff should undertake to present evidence for the purposes indicated and to the end that the rates to be ultimately prescribed may be determined with due consideration to the interrelationships between the general distance, the interplant distance and the interplant zone rates, as was done when said rates were originally established."

Ordering Paragraph 2 of the decision also ordered that:

" . . . this phase of Case No. 5437 be continued for further hearings for the purposes set forth in the above opinion."

CTA asserts that the testimony of the staff witnesses in the instant proceeding indicates that the reason for the above

critical comment by the Commission has not been removed from the current staff proposals. The current costs for interplant movements were developed by updating Exhibit B-1; no new performance studies were made. A current study was presented of costs for movements under the general distance rates. CTA asserts that most of the field studies underlying the current staff proposal are as remote in time as that underlying Exhibit B-1; thus, it is impossible for the staff, as directed by Ordering Paragraph 2 of Decision No. 68232, to have given "due consideration to the interrelationships between the general distance, the interplant distance and the interplant zone rates, as was done when said rates were originally established."

CTA also pointed out that the current exhibit which was developed by updating Exhibit B-1 carries forward the situation wherein interplant distance costs are lower than corresponding costs for movements from production areas to delivery zones in Northern Territory. This upsets the traditional relationship between such costs; in former developments the costs for zone movements were less than for movements under distance rates. CTA pointed out that the witness who presented the updated costs in this proceeding was not the same engineer who initially developed such costs, and the witness did not have sufficient background information available to him to explain why such cost differences occurred, or to satisfy himself that such cost differences were proper.

The Secretary-Manager of CDIOA argued that separation of a portion of the matters under consideration in this proceeding, as requested in the joint motion of CTA and Shipper Groups, would result in fragmentation of the proceeding. For that reason he urged that the joint motion of the CTA and Shipper Groups be denied. He stated,

however, that the balance of the staff studies presented herein suffer from the same type of defects as do those relating to Items Nos. 130, 148 and 294 series; therefore, should the Commission contemplate discontinuance of any portion of the proceedings, the entire proceeding should be discontinued. The representative of CDTOA made a motion to this effect. He stated that the Associated Independent Owner Operators, Inc., a dump truck carrier organization, joined in the CDTOA motion. CIA took no position with respect to the CDTOA motion.

The Commission staff argued that it is not appropriate for the Commission to delegate its duties of resolving the appropriateness, validity, value and import of the evidence to parties who have special or different interests. No evidence has been presented by CIA to indicate that the basis for the studies sought by it would be any more appropriate than the current staff proposals. The staff urged that the Commission consider the staff studies and rate proposals and not withhold rate adjustments until some unforeseeable time.

Discussion

The staff cost and rate studies presented in this proceeding were subjected to thorough, searching cross-examination. The result thereof indicates that such studies should not serve as a basis for a current adjustment of rates in MRT 7.

With respect to the cost studies developed for Northern Territory, the staff engineer who presented said studies was not the engineer (Owen Stanley) who developed the basic data used in the studies. This unfortunate situation resulted from the resignation from state employment of the engineer who developed such data just

prior to the initial hearing in this proceeding. Because of this, the record regarding the Northern Territory is not clear as to the previously mentioned deficiencies in the cost development for inter-plant movements in that territory. In addition, it is obvious the judgment Mr. Stanley exercised in the development of elements of cost in key areas of other Northern Territory exhibits could not be tested adequately.

The cost studies covering operations for a driver and power unit without trailing equipment (paragraph 3 of the Order Setting Hearing herein) were based on assumptions rather than the actual carrier operations of this type. This material was either available or could have been determined readily.

The Commission finds as follows:

1. Because of a Commission personnel change and other reasons set forth in the preceding opinion, the staff cost studies in this proceeding are inapplicable as a basis for adjustment of rates in Minimum Rate Tariff No. 7.

2. The motion of CDTOA to discontinue the proceeding should be granted; the motion of CTA should be denied.

3. Further studies involving Minimum Rate Tariff No. 7 should be conducted by the staff.

The Commission concludes that the proceeding initiated by Order Setting Hearing dated March 22, 1966 should be discontinued.

IT IS ORDERED that the proceeding instituted by Order Setting Hearing dated March 22, 1966 is hereby discontinued; motions consistent therewith are granted; other motions are denied.

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

Dated at San Francisco, California, this 12th day of SEPTEMBER, 1967.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner Fred P. Morrissey
present but not voting.

APPENDIX A

LIST OF APPEARANCES

RESPONDENTS: Edward L. Allen, for Heidelberg Transportation Co.; Dana Exum, for Miles & Sons Trucking Service; Fred Godwin, in his own behalf; Edwin F. Holland, in his own behalf; Charles F. Gagliasso, for Charles F. Gagliasso Trucking, Inc.; Bertha Payan, for Payan Trucking Inc.; and Don D. Tobey, for Dispatch Trucking.

INTERESTED PARTIES: E. O. Blackman, for California Dump Truck Owners Association; E. J. Dunne, by Allen Paulsen, for Shell Oil Company; W. J. Haener, for Shell Chemical Co.; Brundage & Hackler, by Daniel Feins, and Lawrence Enbody, for Western Conference of Teamsters; G. Ralph Grago, for Associated Independent Owner-Operators, Inc.; David K. Graham and A. E. Ferre, for Kaiser Cement and Gypsum Corp.; Fred Imhoff, for Southern California Rock Products Association; William R. Kinnaird, for American Transfer Co.; Frank Loughran and Edward J. Hegarty, for Tariff No. 7 Committee; Harry C. Phelan, for California Asphalt Plant Association; George H. Roe, for California Portland Cement Co.; Richard W. Smith, H. F. Kollmyer and J. C. Kaspar, for California Trucking Association; William R. Walker and Alex O. Swanson, for San Diego Rock Producers Association; W. F. Webster, for Rodeffer Industries, Inc.; E. J. Bertana, for Pacific Cement & Aggregates; Arnold Arbott, for Kaiser Sand & Gravel; C. R. Rebbock, by William F. Robertson, for California Fertilizer Association; James H. Rogers, for Upper California Dump Truckers Association; and J. R. Cedarblade, for Northern California Ready Mix Concrete and Materials Association.

COMMISSION STAFF: R. A. Lubich, Robert E. Walker, Dale R. Whitehead, and R. J. Carberry.