

ORIGINALDecision No. 73399

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of sand, rock, gravel and related items (commodities for which rates are provided in Minimum Rate Tariffs Nos. 7 & 17.)

Case No. 5437
(Order Setting Hearing
dated May 23, 1967)

and related matters.

Cases Nos. 5432, 5435,
5439 and 5441.

Robert E. Walker and R. J. Carberry, for the Commission staff.

Wade & Wade, by James W. Wade, and W. F. Webster, for Owl Rock Products Company; E. O. Blackman, for California Dump Truck Owners Association; Richard W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association; Brundage & Hackler, by Daniel Feins, for Western Conference of Teamsters; Ralph Grago, by E. O. Blackman for Associated Independent Owner Operator Association; Donald L. Denny, for L. R. Denny, Inc.; R. Herman Ohs, for Consolidated Rock Products Company; and Scott J. Wilcott, for Southern California Rock Products Association; interested parties.

ORDER AMENDING ORDER SETTING HEARING

Decision No. 72470, dated May 23, 1967, in Case No. 5437, ordered that a hearing be held for the purpose of receiving evidence relative to "the utilization of pneumatic hopper trailing equipment and the definition of 'Dump Truck Equipment' in connection with the rates and rules set forth in Minimum Rate Tariffs Nos. 7 and 17."

At the hearing held on October 3, 1967, before Examiner Mallory at Los Angeles, evidence was adduced by the Commission staff. The staff presented alternative proposals in the form of two exhibits. Exhibit 1 would incorporate in Minimum Rate Tariffs Nos. 7 and 17 (MRT 7 and MRT 17), the substance of Transportation Division Informal

Ruling No. 162. ^{1/} Exhibit 2 would cancel the definition of "Dump Truck Equipment" in the two tariffs, permitting the commodities for which rates are named therein to be transported under the minimum rates in the two tariffs, without regard to the type of equipment used. ^{2/} The staff evidence indicated that under its proposal movements in flat-bed equipment, as well as in dump trucks or pneumatic hopper equipment, would be covered by the rates in MRT 7 and MRT 17.

The proceeding was removed from the calendar in order to rule on the following motions:

1. The motion of California Trucking Association (CTA) to strike Exhibit 2 for the following reasons:

- (a) the proposals therein are not supported by the evidence, as there was no cost showing to justify the rate proposals,

1/ The following amendment of Tariffs 7 and 17 was proposed in Exhibit 1:

"Dump Truck Equipment means any motor vehicle (including component trailing equipment), as defined in the Highway Carriers' Act and City Carriers' Act, which discharges its load by gravity either (a) in conjunction with mechanical or pneumatic (induction of air used to speed gravitation) means that are an integral part of the vehicle, or (b) by opening all or a portion of the bottom sides or end, or (c) by combination of (a) and (b). It does not include a motor vehicle engaged in the transportation of concrete mechanically mixed in transit or equipment which is unloaded by air pressure in defiance of gravity."

(Informal Rulings are made by the Commission's Transportation Division in response to questions propounded by the public. These rulings are tentative and provisional and are made in the absence of formal decisions upon the subjects by the Commission.)

2/ The staff proposed an additional charge of \$10 per load when pneumatic hopper equipment is used.

- (b) the scope of the proceeding as outlined in the Order Setting Hearing (Decision No. 72470) is not broad enough to include the rate changes the staff proposes, in that the proposal will change rate levels for units or equipment other than pneumatic hopper trailing equipment.

2. The motion of CTA to discontinue the proceeding, if Exhibit 2 is not stricken from the record, because of lack of proper notice of the scope of the proceeding, insofar as it pertains to equipment other than pneumatic hopper equipment.

3. The motion of Owl Rock Products Company to strike Exhibit 1 because the evidence presented does not support such exhibit.

The record shows that the staff proposals set forth in Exhibit 2 require amendment of minimum rate tariffs other than MRT 7 and MRT 17.^{3/} Procedural due process requires that Order Setting Hearing of May 23, 1967 be amended to include the continuing minimum rate proceedings in which such other minimum rate tariffs are issued.^{4/}

3/ Exhibit 2 proposes the amendment of the following tariffs:

City Carriers' Tariff No. 1-A (San Francisco Drayage)
Minimum Rate Tariff No. 1-B (East Bay Drayage)
Minimum Rate Tariff No. 2 (General Commodities - Statewide)
Minimum Rate Tariff No. 5 (Los Angeles Drayage)
Minimum Rate Tariff No. 9-B (San Diego Drayage).

4/ Cases Nos. 5432, 5435, 5439 and 5441.

The Commission finds that the motions to strike Exhibits 1 and 2 should be denied, as these exhibits are supported by competent evidence. The Commission also finds that the Order Setting Hearing issued pursuant to Decision No. 72470 should be amended as set forth in the order which follows.

IT IS ORDERED that:

1. Order Setting Hearing in Case No. 5437 dated May 23, 1967, is amended to read as follows:

"A hearing in Cases Nos. 5432, 5435, 5437, 5439 and 5441 shall be held before Commissioner Symons and/or Examiner Mallory at a time and place to be set, for the purpose of receiving evidence (a) with respect to the establishment or revisions of minimum rates and rules applicable to commodities currently described in Minimum Rate Tariffs Nos. 7 and/or 17 when transported in bulk, in pneumatic hopper equipment and, (b) to determine whether the rates set forth in Minimum Rate Tariffs Nos. 7 and 17 should be made applicable to the transportation of commodities named therein without regard to the type of equipment furnished for such transportation."

2. The motions to strike Exhibits 1 and 2 in this proceeding are denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 28th day of NOVEMBER, 1967.

Richard E. Mitchell
President

William L. Bennett

Augustus

William Symons

Fred P. M. ...
Commissioners