

ORIGINAL

Decision No. 73514

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 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
Petition for Modification
No. 141
(Filed November 10, 1966,
Amended November 6, 1967)

E. O. Blackman, for California Dump Truck Owners Association, petitioner.
Karl D. Roos and Harry C. Phelan, Jr., for California Asphalt Pavement Association;
G. Ralph Grago, for Associated Independent Owner Operators, Inc.; Richard W. Smith,
H. F. Kollmyer, and A. D. Poe, for California Trucking Association; and Scott J. Wilcott, for Southern California Rock Products Association, interested parties.
Ralph J. Staunton and R. J. Carberry, for the Commission staff.

OPINION AND ORDER ON MOTIONS TO DISMISS

Petition No. 141 was filed on November 10, 1966, by the California Dump Truck Owners Association (CDTOA). The petition seeks increases of 25 percent in the zone rates and 35 percent in the mileage rates for the transportation of asphaltic concrete and cold road oil mixture between points in Southern territory, as set forth in Minimum Rate Tariff No. 7 (MRT 7).

On November 18, 1966, California Asphalt Pavement Association (CAPA) filed a motion to dismiss Petition No. 141 on the basis that the petition raises no new or additional issues not then under consideration by the Commission in other proceedings. The proceeding alleged to encompass the same issues as Petition No. 141 was the rehearing of Decision No. 70569 in Case No. 5437, Order Setting Hearing dated March 24, 1959 and Petitions Nos. 48, 65, 80

C. 5437, Pet. 141 bem

and 90. Decision No. 70569 would have established asphaltic concrete zone rates in Minimum Rate Tariff No. 17 (MRT 17). Said rehearing of Decision No. 70569 was held and thereafter Decision No. 71874 was issued, which affirmed the results of Decision No. 70569 in all major respects. Decision No. 71874 was stayed pending consideration by the California Supreme Court of a petition for writ of review filed by CAPA. Said petition was denied October 11, 1967.

Without acting on CAPA's motion to dismiss, Petition No. 141 was set for hearing on a common record with Petition No. 140, filed by CAPA. Petition No. 140 sought a 10 percent increase in the zone rates in MRT 7 on asphaltic concrete. At the hearing October 5, 1967, CAPA stated it had no evidence to present in support of its petition and requested dismissal. CDTOA and California Trucking Association presented evidence in support of Petition No. 141. Following this presentation CAPA made a further motion to dismiss Petition No. 141 for the reason that the petition was not supported by competent evidence. Said motion was taken under submission and the matter was adjourned to October 26, 1967, for receipt of evidence from CAPA. Following notice that the Supreme Court had denied the petition of CAPA for review of Decision No. 71874, CDTOA requested that Petition No. 141 be temporarily taken off the calendar.

On November 6, 1967, Petition No. 141 was amended to seek increases in rates for transportation outside the area covered by MRT 17. The petition was again placed on the calendar for January 3, 1968, on the advice of CAPA that it desired to present evidence in opposition to the relief sought.

On November 21, 1967, the Commission received a letter from counsel for CAPA stating that the Commission had not acted on

either of CAPA's motions for dismissal of Petition No. 141 and requesting that it do so prior to the scheduled hearing on January 3, 1968.

We have carefully considered both motions and conclude that the issues embraced in Petition No. 141, as amended, are not involved in any other proceeding before the Commission, and that the amended petition should be heard. Therefore, the motions of CAPA to dismiss Petition No. 141 should be denied.

IT IS ORDERED that motions to dismiss Petition No. 141 filed by California Asphalt Pavement Association are hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 19th day of DECEMBER, 1967.

[Signature]
President

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Commissioners