

Decision No. 74047**ORIGINAL**

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 and 17).

Case No. 5437
 Petition No. 112
 (Filed December 17, 1964;
 Amended May 23, 1967 and
 March 11, 1968)

E. O. Blackman, for California Dump Truck Owners Association, petitioner.
G. Ralph Grago, for Associated Independent Owner Operators, Inc.; Harry G. Phelan, by G. Ralph Grago, for California Asphalt Pavement Association; Richard W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association; Scott J. Wilcott, for Southern California Rock Products Association; Howard E. Meyers, for Freight Advisory Service; Daniel Feins, by Paul Crost, for Western Conference of Teamsters; interested parties.
Dan Tobey, for Dispatch Trucking; Edward L. Allen, for Heidlebaugh Trucking Company, Inc., respondents.
John C. Gilman, Counsel, Robert W. Stich and Robert E. Walker, for the Commission staff.

OPINION ON MOTION TO DISMISS
 FIRST AMENDED PETITION

California Dump Truck Owners Association (CDTOA) filed Petition No. 112 on December 17, 1964; First Amended Petition No. 112 was filed on May 23, 1967, and Second Amended Petition No. 112 was filed March 11, 1968.

Two days of public hearing were held on First Amended Petition No. 112 before Examiner Mallory at Los Angeles on December 12 and 13, 1967, at which two witnesses appeared for CDTOA. The hearing was continued to January 16, 1968. At petitioner's

request the matter was removed from the calendar on January 10, 1968, so that petitioner could amend its petition. Thereafter, the Second Amended Petition was filed.

California Trucking Association (CTA), on March 25, 1968, filed a motion requesting that First Amended Petition No. 112 be dismissed with prejudice and that Second Amended Petition No. 112 be received as a new petition in Case No. 5437.

By a letter dated March 28, 1968, from its General Manager, CDTOA opposes the motion of CTA.

In the First Amended Petition CDTOA requested that the following rules be incorporated in Minimum Rate Tariffs Nos. 7 and 17 governing for-hire dump truck operations in California:

- "A. 'Unless otherwise specifically provided in this tariff, any contract or agreement, written or oral, entered into between a carrier and a consignee, consignor or shipper whereby anything of value passes from the carrier to the said consignee, consignor or shipper (or to an agent or employee of the consignee, consignor or shipper) in connection with any transaction of carriage involving said carrier and said consignee, consignor or shipper, is hereby declared to be presumptively a rebate, and the burden rests upon the carrier to prove by a preponderance of evidence that said contract or agreement does not provide for such a rebate. This rule is not to be construed as approving or authorizing any contract or agreement between a carrier and a consignor, consignee or shipper except as provided for in said tariff of which this rule is a part.'
- "B. 'Any contract or agreement, written or oral, entered into between carriers, or a carrier and a motor transportation broker, whereby the carrier operating a power vehicle or vehicles uses said power vehicle or vehicles to pull dump truck trailer and/or semi-trailer equipment which is the subject of said contract or agreement, shall provide that the compensation to be charged and collected by the power equipment operator from the carrier or motor transportation broker shall be not less than 70% of the minimum rates applicable to the operation of such units

of dump truck equipment, and shall further provide that maintenance of such trailing equipment shall be at the expense of the trailing equipment owner. (See Note 1)
Note 1: Any allowance authorized an overlying carrier and otherwise applicable under this tariff shall not reduce the rate established by this rule."

In Second Amended Petition No. 112, CDTOA seeks the establishment of the following rule in MRT 7 and MRT 17:

"TRUCKS OR TRACTORS PULLING DUMP TRUCK TRAILING EQUIPMENT.

"Whenever a carrier operating a powered vehicle pulls a dump truck trailer and/or semi-trailer equipment owned or controlled by another carrier, a motor transportation broker or a shipper, 75% of the rate otherwise applicable under this tariff shall be assessed and collected.

"Maintenance or other such expense connected with operation of the dump truck trailing equipment shall not reduce the rate established in this item."

In support of its motion CTA states that the relief sought in the Second Amended Petition is different from that sought in the First Amended Petition on which hearings have been held and evidence adduced. CTA argues that the First Amended Petition sought to (1) impose restrictions upon contracts between shippers and carriers and (2) establish a maximum rental on trailing equipment based on a percent of revenue; while Second Amended Petition seeks to establish a fixed minimum rate for tractors and drivers. CTA asserts that petitioner, by filing the Second Amended Petition, has abandoned the relief sought in the First Amended Petition. CTA argues that evidence was adduced by one witness who had been excused, and that the testimony of this witness has no probative value when related to the relief requested in the Second Amended Petition. CTA asserts that evidence and testimony so far received is placed in a questionable status; parties to the proceeding are not fairly apprised whether such evidence will be considered by the Commission in the final disposition of the proceeding.

In reply, CDTOA asserts that CIA's motion is premised on misunderstanding or error. CDTOA's reply states as follows: "Attention is called to Para. 5B of First Amended Petition No. 112 where a rule is proposed by which a rate of 70 percent of the applicable minimum rates for the unit of dump truck equipment must be charged and collected by the separately owned power unit. Second Amended Petition No. 112 proposes a minimum rate of 75 percent instead of 70 percent. It deletes Note 1, contained in First Amended Petition No. 112 which would have abrogated the 95 percent rule and it also deletes the proposal in First Amended Petition No. 112 which referred to shippers, and would clearly make the proposed 75 percent minimum rate applicable to power units pulling dump truck trailing equipment owned by shippers. Second Amended Petition No. 112 was in fact for the purpose of clarifying this point... Because of the Note 1 deletion, the money effect of Second Amended Petition 112 is in fact substantially the same as the proposal in First Amended Petition 112."

The Commission has considered the pleadings filed in this proceeding and the evidence adduced in connection with First Amended Petition No. 112, and finds as follows:

1. The relief sought in First Amended Petition No. 112 (as described in Paragraph A above) relating to contracts or agreements between carriers and shippers, is abandoned in Second Amended Petition No. 112. No evidence was adduced with respect to this proposal.

2. The relief sought in First Amended Petition No. 112 (as described in paragraph B above) related to charges to be assessed for a unit of power equipment with driver; CDTOA did not seek to establish a fixed trailer rental charge, as alleged in the motion filed by CIA. The relief sought in Second Amended Petition No. 112

C. 5437 (Pet. 112) ds

is not inconsistent with the relief sought in Paragraph B of First Amended Petition No. 112.

3. The evidence adduced by CDTOA in First Amended Petition No. 112 with respect to costs of operating dump truck equipment related to costs of operating trailing equipment, not power units.

Based upon the foregoing, the Commission concludes as follows:

1. The motion of CTA to dismiss First Amended Petition No. 112 and to redocket Second Amended Petition No. 112 as a new petition in Case No. 5437 should be denied.


2. The evidence adduced in First Amended Petition No. 112 with respect to operational costs for dump truck trailing equipment has no probative value to establish a cost basis for the operations of a dump truck power unit of equipment.


O R D E R

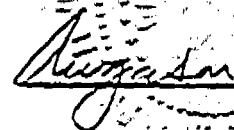
IT IS ORDERED that the motion of California Trucking Association filed on March 25, 1968 in the instant phase of Case No. 5437 is denied.

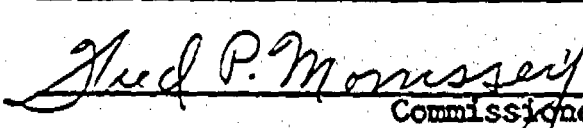
The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 30th day of APRIL, 1968.



President






Commissioners