

Decision No. 75251

**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 relating to )  
the transportation of sand, rock, )  
gravel and related items (commodities )  
for which rates are provided in )  
Minimum Rate Tariff No. 7). )

Case No. 5437  
Petition for Modification  
No. 169  
Filed October 30, 1968

E. O. Blackman, James H. Rogers and Robert R. Hill, for California Dump Truck Owners Association, petitioner.  
Francis A. Dutra, for Dutra Trucking, respondent.  
Richard W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association, interested party.  
Henry Frank, for the Commission staff.

O P I N I O N

Minimum Rate Tariff No. 7 (MRT 7) contains hourly rates for the transportation of described commodities in dump truck equipment in Northern Territory and in Southern Territory.<sup>1/</sup> In this petition, California Dump Truck Owners Association (CDTOA) seeks the establishment in MRT 7 of extra charges for service in excess of eight hours in any one shift during the normal Monday through Friday workweek.<sup>2/</sup> The proposed extra (or overtime) charges are to apply in the eight northernmost Counties included in Northern Territory.<sup>3/</sup>

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- <sup>1/</sup> Southern Territory consists of the counties of Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, San Bernardino, Inyo and Mono. Northern Territory consists of all other counties in the State.
  - <sup>2/</sup> The tariff now contains extra charges applicable for service on Saturdays, Sundays and described holidays.
  - <sup>3/</sup> Said counties are Del Norte, Humboldt, Lassen, Modoc, Shasta, Siskiyou, Tehama and Trinity.

CDTOA also seeks, in connection with Northern Territory hourly rates, to delete Admission Day (September 9) from the list of holidays for which overtime rates must be paid, and to include in said list the Friday after Thanksgiving.

A duly noticed public hearing was held before Examiner Mallory and the matter submitted on December 2, 1968 at San Francisco. Four witnesses appearing for CDTOA presented oral testimony in support of the relief sought in the petition. California Trucking Association (CTA) concurred in the proposed change in the description of holidays, but opposed the establishment of the Monday through Friday overtime provisions proposed in the petition. The Commission staff took no position in this matter.

Three of the witnesses appearing for CDTOA are carriers engaged in performing dump truck service under hourly rates in the eight Northern Counties hereunder consideration. They testified that the extreme weather conditions generally encountered in the eight counties in the late fall, winter and early spring of each year prohibit the operations of dump truck equipment on most construction and road work. Thus, the work on construction and road projects in the eight counties is carried on only during periods of good weather, i.e. between May and October of most years. In order to complete these types of projects during good weather, dump truck equipment is often operated more than eight hours on normal working days.

Two of the three carriers operate several units of equipment and employ drivers under local teamster wage contracts. These witnesses testified that carriers which hire drivers to operate their dump truck equipment are required, on federal and state government

projects, to pay their drivers overtime wages at the rate of one and one-half times the basic wage scale for all hours over eight in any one shift. Because of the locations of many projects, it is not possible to make relief drivers available at the end of a shift. As the minimum rates do not now provide for the assessment of overtime pay, contractors have refused to pay for the overtime wages incurred.

One of said carriers owns and operates a single unit of dump truck equipment, and is often employed as an independent contractor subhauler. He testified that the use factor of his equipment is about 1400 hours per year, which is low in relationship to operations elsewhere in the State. The witness explained that he is required to absorb travel time and subsistence whenever away from his base of operations in Redding. Many construction projects require travel of more than 20 miles from said base of operations. Because of the low use factor per year and the necessity to absorb travel time and subsistence payments, the witness felt that independent contractor subhaulers operating in the northernmost eight counties also are entitled to payment for excess hours during the normal week.

The Secretary-Manager of CDTOA testified that the proposal concerning overtime provisions in the eight counties had the support and approval of his association, including its Board of Directors and the membership of chapters located in said counties. He testified that the proposal concerning the change in designation of holidays in Northern Territory is to reflect the most recent change in labor contracts applicable to Northern Territory operations.

Counsel for CTA stated that his organization opposes the proposed overtime provisions on three grounds: (1) the proposal would result in a fragmentary treatment of a general problem, and that there

is no compelling reason for setting rates in a small portion of a given territory; (2) CTA feels that the adoption of the proposal would discourage optimum use of carriers' equipment because employers could discontinue use of the equipment after eight hours rather than pay the overtime rates; and (3) CTA opposes the proposed overtime rates because it believes said provisions would encourage the employers of dump truck equipment to avoid payment in situations permissible under tariff rules, such as requiring the furnishing of relief drivers or additional vehicles.

Discussion, Findings and Conclusions

The record clearly indicates that carriers who hire drivers are incurring overtime wage costs not compensable under minimum rates, and that in many instances shippers have refused to pay such overtime wages. There is nothing in the record that would support the contentions of CTA that if the proposed overtime rates are established, said rates would be avoided. The proposals herein are similar to those applicable in Southern Territory which have been in effect for some time. The Commission has not been advised that problems of the nature contemplated by CTA exist in connection with Southern Territory overtime rates.

Based on the record herein, the Commission finds that:

1. Carriers operating dump truck equipment in the eight northernmost counties of this state are required, under applicable labor contracts, to pay overtime wages to employed drivers for service in excess of eight hours in any one shift during normal working days.
2. The current hourly rates do not provide for the assessment of overtime rates under the conditions specified in finding 1.

3. In some cases carriers have been unable to collect from shippers for the overtime costs incurred by employed drivers of dump truck equipment in said counties.

4. The proposal to establish overtime provisions in MRT 7, as set forth in the petition herein, will result in just, reasonable and nondiscriminatory minimum rates.

5. The proposed changes in the designation of holidays will conform to current labor contracts and will result in just, reasonable, and nondiscriminatory minimum rates.

The Commission concludes that Petition No. 169 should be granted as provided by the order which follows:

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff No. 7 (Appendix A of Decision No. 32566, as amended) is hereby further amended by incorporating therein, to become effective March 8, 1969, Fourth Revised Page 42-B and Third Revised Page 42-F, attached hereto and by this reference made a part hereof.

2. In all other respects Decision No. 32566, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 28<sup>th</sup> day of JANUARY, 1969.

William J. Moore  
President  
Augustin  
Frederic P. Morrissey  
(M. M. ...)  
Thomas M. ...  
Commissioners

Item No.	SECTION NO. 4--HOURLY RATES (Continued)
<p>ø362</p>	<p>APPLICATION OF RATES NAMED IN ITEMS NOS. 360 and 361</p> <p>COLUMN "A" rates apply where the loading is performed by power loading device, excepting processed sand, gravel or crushed stone in stockpiles at a commercial producing plant, at point of consumption or at intermediate point of transfer. A hopper chute or bunker shall not be deemed to be a power loading device.</p> <p>COLUMN "C" rates apply where transportation or loading is under conditions other than described under application of Column "A" rates.</p> <p>SUBCOLUMN "M" rates apply on all days except the days on which the subcolumn "O" or "P" rates apply.</p> <p>øSUBCOLUMN "O" rates apply on every Sunday and on January 1, February 22, May 30, July 4 **, (1)November 11, December 25, the day each year proclaimed by the President of the United States to be celebrated as Labor Day and the day so proclaimed as Thanksgiving Day, *and the Friday immediately following such Thanksgiving Day.</p> <p>(1) Applies within Lower Northern District only. (See Item No. 315)</p> <p>øSUBCOLUMN "P" rates apply on every Saturday *except as provided in Subcolumn "O" (See Note 1).</p> <p>*NOTE 1.--In Del Norte, Humboldt, Lassen, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, Subcolumn "P" rates shall also apply for all time, except that provided for in Subcolumn "O", during which one driver with one unit of equipment is engaged for service for one shipper in excess of 8 hours in any one shift.</p>
	<p>ø Change )        * Addition )        ø Increase ) Decision No. 75251        ø Reduction )        ** Eliminated )</p>
	<p>EFFECTIVE MARCH 8, 1969</p>
<p>Correction No. 1298</p>	<p>Issued by the Public Utilities Commission of the State of California,        San Francisco, California.</p>

Item No.	SECTION NO. 4 - HOURLY RATES (Concluded)
6368	<p style="text-align: center;">APPLICATION OF RATES NAMED IN ITEM NO. 367</p> <p>SUBCOLUMN "M" rates apply on all days except the days on which the subcolumn "O" or "P" rates apply.</p> <p>oSUBCOLUMN "O" rates apply on every Sunday and on January 1, February 22, May 30, July 4, ** (1) November 11, December 25, the day each year proclaimed by the President of the United States to be celebrated as Labor Day and the day so proclaimed as Thanksgiving Day and the Friday immediately following such Thanksgiving Day.</p> <p>(1) Applies within Lower Northern District only. (See Item No. 315)</p> <p>oSUBCOLUMN "P" rates apply on every Saturday *except as provided in Subcolumn "O". (See Note 3)</p> <p>NOTE 1.--Level capacity of Dump Truck body means the cubical content of the body (including the bodies of all trailers, or semitrailers in the unit of equipment) in cubic yards calculated by multiplying the inside length by the average inside width and the average inside height of the sides of the body, including temporary side boards and end boards, if such boards are used, with no allowance for the crown of the load or for low head board or low tailgate.</p> <p>In the case of a Dump Truck body not constructed for use of a tailgate (such as the so-called "rock body"), the inside length shall be deemed to mean the average of the measurement along the top of the sides from the inside of the head board to the point of the angle where the sides are diverted downward to meet the floor, and the measurement along the floor from the inside of the head board to the end of the body.</p> <p>NOTE 2.--(a) For transportation service furnished under this item on Sundays and/or New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, add to the applicable hourly rate shown above: \$6.61 per hour when the level capacity is less than 25 cubic yards; \$7.07 per hour when the level capacity is 25 cubic yards or more.</p> <p>(b) Except as otherwise provided in paragraph (a) of this note and in the Exception set forth below, for transportation service furnished under this item on Saturdays or during periods in excess of 8 hours in any one shift, add to the applicable hourly rate shown above: \$3.88 per hour when the level capacity is less than 25 cubic yards;</p>

or \$4.23 per hour when the level capacity is 25 cubic yards or more. Subject to Paragraph 3 of Item No. 300, "periods in excess of 8 hours in any one shift" means the time which exceeds 8 hours from the time the driver with dump truck equipment reports for service, during which time said driver is continuously engaged by one shipper or overlying carrier, irrespective of the number of loads transported within the period.

EXCEPTION.--The additional rates set forth in paragraph (b) shall not apply to transportation service performed on days, other than Saturdays, except when service is performed by one driver with dump truck equipment for a period in excess of 8 hours in any one shift.

\*NOTE 3.--In Del Norte, Humboldt, Lassen, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, Subcolumn "P" rates shall also apply for all time, except that provided for in Subcolumn "O", during which one driver with one unit of equipment is engaged for service for one shipper in excess of 8 hours in any one shift.

∅ Change	)	
* Addition	)	
◊ Increase	)	Decision No. 75251
◊ Reduction	)	
** Eliminated	)	

EFFECTIVE MARCH 8, 1969

Issued by the Public Utilities Commission of the State of California,  
San Francisco, California.  
Correction No. 1299