

**ORIGINAL**Decision No. 76122

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 and highway )  
 carriers relating to the transpor- )  
 tation of cement and related )  
 products (commodities for which )  
 rates are provided in Minimum Rate )  
 Tariff No. 10).

Case No. 5440  
 Petition for Modification  
 No. 62

Handler, Baker & Greene by Daniel W. Baker, for  
 Universal Transport System, Inc., petitioner.  
William W. Applegate, for Applegate Drayage Company;  
Ray S. Bruton, for Miles & Sons Trucking Service;  
George B. Shannon, for Southwestern Portland Cement  
 Company; S. A. Moore, for Kaiser Cement & Gypsum  
 Corporation; Eugene A. Feise, for Calaveras Cement,  
 Division of The Flintkote Company; E. J. Bertana and  
Don Weeks, for Pacific Cement & Aggregates; Walter G.  
 Herrigel, for Ideal Cement Company; William Mitze,  
 for Riverside Division, American Cement Corporation;  
J. C. Kaspar, Arlo D. Poe and H. F. Kollmyer, for  
 California Trucking Association; Eugene R. Rhodes,  
 for Monolith Portland Cement Company; interested  
 parties.  
Joseph C. Matson and William Roe, for the Commission  
 staff.

O P I N I O N

This matter was heard and submitted July 2, 1969 before  
 Examiner Thompson at San Francisco. Copies of the petition were  
 served and notice of hearing was given in accordance with the  
 Commission's procedural rules.

Universal Transport System, Inc. is a highway common  
 carrier of cement in bulk between points in San Francisco Territory  
 and is a cement carrier in northern and central California. It also  
 transports aggregates as a highway contract carrier. It here seeks

authority to increase its rates on cement for distances over 55 miles and to establish factors for converting actual miles to constructive miles for service to and from points not located on the system of highways set forth in the maps of the governing distance table. In connection with the latter, petitioner's tariff presently provides that for transportation performed to or from points in Northern Mountain Territory not located on the distance table maps the rate shall be determined by a combination of the local rate to or from the last point on the highway system and a distance rate for the actual miles traversed off the highway system. The proposal to establish through rates based upon constructive mileages between origins and destinations will in most instances result in reduction in charges in Northern Mountain Territory. Such charges, however, will be not less than the charges applicable under the minimum rates established by the Commission for the transportation of cement. Although this matter was docketed as a petition in Case No. 5440, the proposals would have no effect whatever upon the minimum rates.

Exhibits presented by petitioner show the results of operations for 1968 and an estimate of results of such operations had the proposed rates and certain increases in expense been in effect. A summary of those results follows:

RESULTS OF OPERATIONS FOR 1968 WITH  
ADJUSTMENTS FOR PROPOSED RATES AND  
CURRENT EXPENSES

	<u>1968 Recorded</u>	<u>Adjustments (See Notes)</u>	<u>1969 Pro Forma</u>
Gross Revenues	\$1,145,209	\$89,450 (1)	\$1,234,659
Operating Expenses	1,153,929	22,611 (2)	1,176,540
Income (Loss)	(8,720)		58,119
Operating Ratio	100.8%		95.3%

- Notes: (1) Includes \$65,907 estimated additional revenue from the increases in rates proposed herein, and \$23,543 additional revenue from increases in rates for highway contract carrier transportation of aggregates.
- (2) Includes estimated increases in labor expense of \$18,204, fuel expenses of \$3,417 and \$990 in taxes.

Petitioner presented an analysis of the cost to it of transporting cement in bulk. According to said analysis its present rates are compensatory for distances up to 83 constructive miles; after that distance the costs exceed the rates at ratios that increase with the distance.

Other parties to the proceeding did not offer evidence. California Trucking Association does not support or oppose the granting of the authorities sought; it requests that the Commission make two findings: (1) the rate proposal of petitioner, if granted, would have no effect whatever upon the minimum rates established by the Commission for the transportation of cement, and (2) the costs presented by petitioner in its analysis are understated because the performance factors utilized by petitioner reflect its experience on the basis of actual miles rather than upon constructive miles. Its cross-examination of petitioner's witness disclosed facts which support those requested findings.

Kaiser Cement and Gypsum Corporation opposes the granting of the authority. It contends that although it will not willingly engage petitioner for transportation at the higher rates, trade custom and the present shortage of bulk cement carrier equipment is such that the publication of higher rates by petitioner will have a serious adverse effect upon the marketing of cement by Kaiser. Briefly summarized its contentions are: it is the custom and practice of Kaiser and other cement producers to absorb part or all of the cost of transporting cement to the delivery point and the minimum rates established by the Commission for the transportation of cement in large part determine the delivered price of cement; time of delivery is an important consideration in the marketing of cement; there is presently a shortage of equipment to accommodate the demand for transportation of bulk cement; and, by reason of the foregoing, Kaiser and other cement producers will be confronted with the situation of making sales of cement in bulk at delivered prices based upon transportation at the minimum rates and because of delivery commitment and insistence of the customer petitioner's services will be engaged to deliver the cement to meet that commitment. In such situation the price of the cement could well not cover its delivered cost.

While such situation might be disruptive of Kaiser's marketing practices it is not left without means or avenues to protect its prices. Assuming arguendo that the situation described would occur so frequently that Kaiser would incur such losses as to jeopardize its existence, the decision of the Commission to grant or deny a rate increase must be in accordance with law. Petitioner showed an operating loss for 1968. It has shown that without a

rate increase it will incur an operating loss for 1969. It has shown that for distances exceeding 33 constructive miles the present rates are below the cost of providing the service. Insofar as petitioner's operations are concerned it is plain that its present cement rates are insufficient. The proposed rates will not provide petitioner with excessive earnings. The proposed rates reasonably reflect the cost of providing the service. There is no indication whatever that undue preference or unjust discrimination among customers or localities served will result from the proposed rates. There is no indication whatever that the service performed by petitioner is unsatisfactory or inadequate. Under the law a highway common carrier or a cement carrier is entitled an opportunity to recover all reasonable expenses and a fair return for reasonable services rendered. The failure by a State regulatory agency to allow such common carrier that opportunity has been held to be an unjust confiscation of its property.

We find that:

1. Petitioner is a highway common carrier of cement in bulk between points in San Francisco Territory and is a cement carrier between points located in northern and central California.

2. Petitioner's present rates for the transportation of cement are generally equivalent to the minimum rates established by the Commission except that when transportation is performed in Mountain Territory to or from points not located on the system of highways shown in maps of the governing distance table the rates maintained by petitioner for through service are combinations of local rates over the last point traversed located on such system of highways; and such combination of local rates results in rates higher than the minimum rates.

3. By petition herein petitioner seeks authority to increase its mileage rates for distances over 55 miles and to publish a rule providing for factors converting actual miles to constructive miles to or from points located off of the system of highways to permit the application of the through rate to or from points in Mountain Territory.

4. The proposed rule will not result in any increase in rates and will not provide rates lower than the minimum rates established by the Commission.

5. Petitioner seeks authority to establish said rates and rule on ten days' notice to the Commission and to the public.

6. The proposed rates and rule, if authorized, will have no effect whatever upon the minimum rates established by the Commission for the transportation of cement.

7. Petitioner conducted operations at a loss for the year 1968.

8. Petitioner's present rates for the transportation of cement for distances exceeding 83 miles are below its cost of providing the transportation service.

9. The costs presented by petitioner in its analysis are understated to the extent that the performance factors used reflect experience based on actual miles rather than constructive miles.

10. Giving due consideration to increases in rates for highway contract carrier transportation performed and to increases in labor expenses and fuel costs the proposed increases in cement rates will provide petitioner with earnings before income taxes of not more than \$58,119 (95.3% operating ratio) which earnings and operating results are not excessive for this carrier.

11. The proposed increased rates reasonably reflect the cost of providing the transportation service and the increases that will result from the establishment of said rates are justified.

12. There are no known circumstances where the establishment of the proposed rates will result in petitioner charging or receiving any greater compensation for the transportation of cement in bulk for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance.

We conclude that petitioner should be authorized to establish the proposed rates on not less than ten days' notice to the Commission and to the public and that the authority requested to depart from the long- and short-haul provisions of the Constitution and the Public Utilities Code should be denied.

O R D E R

IT IS ORDERED that:

1. Universal Transport System, Inc. is authorized to establish the rates and rules proposed in Petition for Modification No. 62 in Case No. 5440. Tariff publications authorized to be made as a result of the order herein may be made effective not earlier than ten days after the effective date hereof on not less than ten days' notice to the Commission and to the public.
2. The authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

3. The request for authority to depart from the long- and short-haul provisions of the Constitution and the Public Utilities Code is denied.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 3rd day of SEPTEMBER, 1969.

William S. ...  
President  
...  
...  
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.