

Decision No. 79674

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 highway carriers relating to the transportation of sand, rock, gravel and related items (commodities for which rates are provided in Minimum Rate Tariff 7).

Case No. 5437

Petition for Modification No. 212

(Filed August 4, 1971; amended September 10, 1971)

(Appearances, see Appendix A)

INTERIM OPINION AND ORDER

By this petition the California Dump Truck Owners Association (CDTOA) seeks immediate increases in a number of the rates in Minimum Rate Tariffs 7 and 17 (MRT 7 and 17) which apply as minimum for the transportation of property in dump truck equipment by for-hire highway carriers. The increases are sought as an interim action pending the completion of proceedings pursuant to the Commission's Order Setting Hearing No. 213 (OSH 213) dated August 10, 1971, in Case No. 5437 relative to adjustment of various of the rates in said tariffs in accordance with recommendations of the Commission's staff.

Public hearings on Petition No. 212 and on OSH 213 were held on a consolidated record before Examiner Abernathy at Los Angeles on October 6 and 7, 1971, at San Francisco on

October 13 and 14, 1971, and at Los Angeles on November 22, 23, 29 and 30, and December 1, 1971.^{1/} The petition was taken under submission upon the filing of briefs on December 22, 1971. In other respects further hearings on the matters involved were scheduled for later dates.

The requests of the CDTOA for increases in rates in MRT 7 and 17 are as follows:

EITHER:

Interim adoption of the recommendations of the Commission's staff in OSH 213.

In general, the results of such action would be increases of about 8 to 35 percent in hourly rates; increases of about 20 to 55 percent in distance rates for the transportation of rock, sand, gravel and earth within Northern Territory; decreases of up to about 10 percent in distance rates for transportation of rock, sand, gravel, earth and asphaltic concrete within Southern Territory.^{2/}

OR:

Increases of 10 percent in all rates in MRT 7 and in hourly rates in MRT 17, except in

- a. Distance rates in Southern Territory when the transportation is performed in 5-axle bottom dump truck units of equipment hauling a minimum load of 24 tons.

^{1/} Evidence was also received on the same record on Petition No. 214 whereby the California Trucking Association (CTA) also seeks interim increases in rates in MRT 7 and 17.

^{2/} Southern Territory is defined in MRT 7 as including the counties of Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, San Bernardino, Inyo and Mono. The term "Northern Territory" means all other counties.

- b. Rates applicable to public works jobs on which bids were opened on or before July 22, 1971. For purposes of this exception 'public works jobs' are defined as work for which contract awards are made as a result of public bids to federal, state, county and municipal governments or to subdivisions thereof.

The CDTOA submitted evidence in support of its petition through its general manager and through five carrier witnesses. The carrier witnesses testified in effect that the costs of conducting dump truck transportation have increased substantially in recent years. They declared that in relation to the increased costs their revenues under present rates are unreasonably low and that increases in rates are needed to sustain their services. However, financial data which the carriers submitted to show financial results of their own operations for the year 1970 show excesses of revenues over expenses.^{3/} One carrier was uncertain as to what the results of his transportation operations were.

The showing of petitioner's witnesses did not extend to measurement of the magnitude of the rate increases deemed to be needed to compensate for the increases in operating costs. In this respect petitioner's manager relied on cost and rate studies which were presented and explained by Commission staff witnesses in OSH 213. In urging need for interim rate increases pending conclusion of the proceedings on OSH 213, petitioner's manager declared that

"History has proved that such proposals (involving general revisions in the rates) precipitate lengthy cross examination, opposing testimony and extensive argument. In the meantime, concern among dump truck carriers about needed rate increases has turned to bitterness and desperation."

^{3/} Similar evidence was presented by the Associated Independent Owner-Operators (AIOO).

With respect to the proposed exemption of public works projects from the sought interim increases, petitioner's manager stated that petitioner is of the opinion that contractors who have made public works construction commitments under present rates should have some protection from increases in transportation costs applicable to the construction projects involved. He said, moreover, that if some relief from the rate increases is not granted said projects, the carriers would be under heavy pressure from the contractors to haul for the rates reflected in the contracts instead of for the higher minimum rates. As to the duration of the proposed exemption, the manager recommended that the exemption terminate with the Commission's subsequent issuance of decision on OSH 213.

The granting of petitioner's request for immediate interim increases in rates in MRT 7 and 17 was supported by the CTA and by AIOO. However, the CTA opposed any exemption of transportation for public works jobs from increases in the rates. It asserted that such exemption has no basis in law and would be in violation of anti-discrimination provisions of Article XII, Section 21, of the State Constitution and would be contrary to decisions heretofore of the Commission rejecting minimum rate exemptions for transportation in connection with public works (Decision No. 63917, 60 Cal. P.U.C. 10, Decision No. 71662, 66 Cal. P.U.C. 551).

A carrier who appeared on its own behalf opposed increases in rates as great as those recommended by the Commission's staff in OSH 213 and urged as interim rates by the CDTOA. The carrier's representative recognized that dump truck carriers have experienced increases in operating costs in recent years which are not reflected in the minimum rates. He argued,

however, that the carriers' problems are such that they cannot all be cured by rate increases, that the biggest single problem at present is insufficient work to sustain the carriers, and that increases of the magnitude proposed would only compound the carriers' problems. He recommended that for the present any increases in the rates be limited to about 5 percent. He also recommended that public works projects on which contractors have not had reasonable notice of the rate increases proposed by the Commission's staff be exempted from said increases. He also expressed the view, however, that contractors on such projects could absorb rate increases as much as 5 percent without undue hardship.

Opposition to the sought interim rate increases was also registered by the California Asphalt Pavement Association (CAPA) and by the Associated General Contractors of California (AGC). Both of these organizations asserted through their representatives that petitioner's showing falls short of that needed to justify interim rate increases. Notwithstanding the presentations which the carrier witnesses made to illustrate increases in operating costs which the carriers have experienced, the positions of CAPA and the AGC are that the cost increases in themselves do not establish a need for interim rate relief and that the presentations in other respects do not show that the carriers are in such dire straits that they cannot await ordinary procedures in completion of the proceedings on OSH 213 and decision thereon.

Discussion

It is evident from the record in this matter that the premises upon which petitioner is relying to justify the sought interim rate increases are substantially as follows:

- a. Operations of for-hire dump truck carriers are being conducted under levels of increased costs which are not reflected in present rates in MRT 7 and 17.
- b. Carriers' revenues under present rates are not sufficient to meet the increased operating costs; as a consequence the carriers are in critical need for increases in rates to sustain their operations.

That present costs of dump truck transportation include costs which are not reflected in the rates cannot be disputed. With the exception of zone rates in southern California the rates otherwise are, in general, based on equipment costs and some other costs which were in effect more than a decade ago. Also, with the exception of the hourly rates, the rates, for the most part, do not include provision for increases in labor costs which have occurred. The record herein is clear that various of said costs have increased substantially during the past ten years. Moreover, that there have been increases in costs is a matter which is within the Commission's own knowledge as a result of other proceedings in recent years involving rates for and costs of dump truck transportation.

Although the record is thus clear that increases in costs have occurred, the record is less clear as to the extent that increases in the minimum rates should be effected to compensate for the cost increases. We do not accept the showing

of the five carrier witnesses for petitioner as establishing that the sought interim rate increases are required to meet critical needs for increased revenues by the carriers generally. Even as to the five carriers themselves, the showings do not establish what revenue increases, if any, are needed to result in reasonable earnings for said carriers. Another consideration is that, notwithstanding assertions of petitioner's manager that the operating experience of the five carriers is representative of that of dump truck carriers generally, we are of the opinion that a finding to this effect may not be made reasonably on the record before us. Moreover, as has been pointed out on occasion heretofore, minimum rates, by design, are not intended to be sufficiently high to assure reasonable remuneration to a cross section of carriers of all kinds. Minimum rates will not be based upon average operating statements which disregard the nature and extent of the services performed, but upon specific rate considerations including the cost of performing particular services by efficient means.^{4/}

Notwithstanding the infirmities of petitioner's showing, we are of the opinion, nevertheless, that some increases in rates in MRT 7 and 17 are warranted. As was indicated earlier herein, the Commission's staff, in its presentation in OSH 213 has recommended increases of about 8 to 35 percent in hourly rates and of about 20 to 55 percent in distance rates for transportation within Northern Territory. These recommendations assertedly were reached on the basis of costs of transportation performed in reasonably

^{4/} Compare Decision No. 46912, 51 Cal. P.U.C. 586, 601, 602 (1952); Decision No. 47123, dated May 5, 1952, in Case No. 4808; Decision No. 51582, 54 Cal. P.U.C. 233, 239 (1955). For other discussion of this subject, see the decision of the Supreme Court of the State of California in California Manufacturers Assn. vs. Public Utilities Commission, 42 Cal. 2d., 530 (1954).

efficient circumstances. The record with respect to the staff's recommendations in OSH 213 has not been fully developed inasmuch as cross-examination testing the validity of the recommended increases has not been completed. Nevertheless, even though cross-examination should subsequently disclose that the staff's recommendations should be discounted, we are persuaded that the record will clearly show that increases in certain of the rates in MRT 7 are reasonable and justified, and should be prescribed to compensate for increases in operating costs which have not been offset by productivity gains.^{5/} In order to provide some immediate relief for the carriers from the cost increases until a more definitive determination can be made of what rate increases in full are necessary to compensate for the increases in costs, interim increases of 5-1/2 percent should be prescribed in those rates in MRT 7 and 17 which would be increased under the staff's recommendations.^{6/} Said increases should be subject to modification should further consideration show that such action is required.

^{5/} The staff's recommendations that decreases be effected in distance rates within Southern Territory are made on the basis that productivity gains have more than offset the increases in costs which the carriers have experienced. These productivity gains have been achieved through the use of vehicles which carry greater loads than those vehicles for which the distance rates in Southern Territory were originally established.

^{6/} Although the record as thus far developed does not show a financial urgency which is usually considered as a requisite for interim increases in rates, the record indicates that final disposition of the proceedings in OSH 213 may be delayed several months until sufficient copies of Distance Table 7 (now in short supply) can be available as a basis for such rates as may be prescribed in accordance with the staff's recommendations. In the circumstances interim action herein is justified.

The exemption from the increases which petitioner proposed in connection with transportation to public projects should not be granted. The question of rate exemption in connection with such transportation has been decided in the proceedings which resulted in Decisions Nos. 63917 and 71662, supra. These decisions were reached after hearings specifically for extensive consideration of the matters involved. Further consideration of this question on this record is not appropriate.

Findings

Upon consideration of the facts and circumstances of record, the Commission finds that:

1. For-hire highway carriers who are engaged in transportation services subject to the provisions of MRT 7 and 17 have experienced increases in operating costs which are not reflected in the rates in said tariffs.
2. In relation to the carriers' costs of service, as increased, certain of the rates in MRT 7 and 17 are unreasonably low and insufficient.
3. Pending further hearings and decision on the matters involved, increases in said rates as hereinafter prescribed should be made in order to temper the effect of the increases in costs upon the carriers' operations.
4. Pending further hearings and decision on the matters involved, the increased rates and charges which are prescribed in the following order have been shown to be justified.
5. Pending such modifications and changes as may ensue as a consequence of further hearings on the matters involved, the increased rates and charges are, and will be, just, reasonable and nondiscriminatory minimum rates and charges for the services to which they will apply.

Conclusions

The Commission concludes that Petition for Modification No. 212 in Case No. 5437 should be granted to the extent hereinafter provided. MRT 7 and 17 should be amended accordingly. The increases granted will not contribute to inflationary expectations and are the minimum rates necessary to assure continued and adequate service. Therefore, they fall within the guidelines established pursuant to the Federal Government's economic stabilization program, as more specifically set forth in certificate appended.

Therefore, IT IS ORDERED that:

1. Minimum Rate Tariff 7 (Appendix A of Decision No. 32566, as amended) is hereby further amended by incorporating therein, to become effective February 26, 1972, Supplement No. 33 attached hereto, which supplement is made a part hereof by this reference.
2. In all other respects said Decision No. 32566, as amended, shall remain in full force and effect.
3. Minimum Rate Tariff 17 (Appendix B to Decision No. 69469, as amended) is hereby further amended by incorporating therein, to become effective February 26, 1972, Supplement No. 12, attached hereto, which supplement is made a part hereof by this reference.

4. In all other respects said Decision No. 69469, as amended, shall remain in full force and effect.

The effective date of this order shall be February 18, 1972.

Dated at San Francisco, California, this 18th day of FEBRUARY, 1972.

William J. ... Chairman
[Signature]
[Signature]
[Signature] Commissioners

I dissent
[Signature], Chairman

APPENDIX A
Page 1 of 2

APPEARANCES

FOR PETITIONERS & INTERESTED PARTIES:

E. O. Blackman, Leonard B. Ortiz and Casimir J. Wood, for California Dump Truck Owners Association, petitioner in Petition No. 212; interested party in Petition No. 214 and OSH 213.

Richard W. Smith, A. D. Poe and William T. Meinhold, Attorneys at Law, and H. F. Kollmyer, for California Trucking Association, petitioner in Petition No. 214; interested party in Petition No. 212 and OSH 213.

FOR PROTESTANTS & INTERESTED PARTIES:

Karl K. Roos, Attorney at Law, and Harry C. Phelan, Jr., for California Asphalt Pavement Association, protestant in Petitions Nos. 212 and 214; interested party in OSH 213.

R. M. Hinkley, for Interpace Corporation, protestant in OSH 213; interested party in Petitions Nos. 212 and 214.

Francis J. Spellman, Jacob Franzen and Paul S. Henson, for Associated General Contractors of California, protestant in Petitions Nos. 212 and 214; interested party in OSH 213.

RESPONDENTS:

Henry Fabri, for Construction Materials Trucking;
Les Calkins, for Les Calkins Trucking, Inc.;
Roy D. Rhodes, for HEC Trucking.

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INTERESTED PARTIES:

Bill T. Farris, for Los Angeles County; T. W. Anderson, for Pacific Western Industries, Inc.; George B. Shannon, for Southwestern Portland Cement Company; William Mitze, for American Cement Corporation, Riverside Division; Henry Tucey, for Bob Bartley Trucking; LaFay Lindeman, for Lindeman Bros., Inc.; Ernest E. Gallego, Attorney at Law, for Southern California Rock Products Association; C. Fred Imhof, for Industrial Asphalt, Inc.; W. A. Bowdidge, for Guy F. Atkinson Company; G. Ralph Grago and James R. Foote, for Associated Independent Owner-Operators; William D. McCullough, for Sully-Miller Contracting; Albert Joe Kelly, for Kelly Trucking Company; Louis Marietta, for Tri-County Truck Company; Donald L. Denney, for L. R. Denney, Inc.; Ralph Hubbard, for California Farm Bureau Federation; Steve Wilcox, for Kaiser Sand & Gravel; E. J. Bertana, for Lone Star Industries, Inc., Northern California Division; Jack Cedarblade, by E. J. Bertana, for Northern California Ready Mixed Concrete & Material Association; R. A. Lubich, for himself and for San Diego County Rock Producers Association; Joseph F. Ross, for Bird & Son, Inc. of Massachusetts; John J. Wynne, for Owens Illinois, Inc.

FOR THE COMMISSION'S STAFF:

Eugene O. Carmody, Norman Haley and Robert W. Stich.

SUPPLEMENT 33

(Supplements 27, 29, 30, 32 and 33 Contain All Changes)

TO

MINIMUM RATE TARIFF 7

MAKING

MINIMUM RATES AND RULES

FOR THE

TRANSPORTATION OF PROPERTY IN DUMP TRUCK

EQUIPMENT BETWEEN POINTS IN CALIFORNIA

BY

RADIAL HIGHWAY COMMON CARRIERS

HIGHWAY CONTRACT CARRIERS

AND

DUMP TRUCK CARRIERS

APPLICATION OF SURCHARGE

Compute the amount of charges in accordance with the rates and charges in Items 130, 148, 148.1, 360, 361, 365 and 366 and increase the amount so computed by five and one-half (5½) percent, dropping fractions of less than one-half cent and increasing fractions of one-half cent or greater to one cent.

◊ Increase, Decision No. 79674

EFFECTIVE FEBRUARY 26, 1972

Issued by the
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
State Building, Civic Center
San Francisco, California 94102

SPECIAL INCREASE SUPPLEMENT

SUPPLEMENT 12

(SUPPLEMENTS 8, 9, 11 and 12 CONTAIN ALL CHANGES

TO

MINIMUM RATE TARIFF 17

NAMING

MINIMUM ZONE AND

AREA-TO-POINT

RATES AND RULES

FOR THE

TRANSPORTATION OF PROPERTY

IN DUMP TRUCK EQUIPMENT FROM

DEFINED PRODUCTION AREAS TO DESIGNATED DELIVERY

ZONES AND POINTS IN SOUTHERN CALIFORNIA

BY

RADIAL HIGHWAY COMMON CARRIERS

HIGHWAY CONTRACT CARRIERS

AND

DUMP TRUCK CARRIERS

APPLICATION OF SURCHARGE

Compute the amount of charges in accordance with the rates and charges in Section 22 and increase the amount so computed by five and one-half (5½) percent, dropping fractions of less than one-half cent and increasing fractions of one-half cent or greater to one cent.

• Increase, Decision No.

79674

EFFECTIVE FEBRUARY 26, 1972

Issued by the
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
State Building, Civic Center
San Francisco, California 94102

Certificate of the Public Utilities Commission
of the State of California Re Increases in Rates
for Certain Transportation Services Performed by
For-Hire Highway Carriers within California

Pursuant to provisions of Section 300.16 of the Economic Stabilization Act Amendments of 1971, the Public Utilities Commission of the State of California (Cal. P.U.C.) does hereby certify to the Federal Price Commission as follows:

1. That the increases of 5-1/2 percent in rates which are ordered by the Cal. P.U.C. by its Decision No. , dated 1972, copy attached, apply to rates which the Cal. P.U.C. has heretofore established as minimum rates for the transportation of property within California by for-hire highway carriers operating dump truck equipment in reasonably efficient circumstances.
2. That said rate increases are cost-based and do not reflect future inflationary expectations.
3. That said rate increases are the minimum, or are less than the minimum, required to assure continued, adequate and safe service by carriers engaged in for-hire highway transportation by dump truck equipment within California.
4. That the dollar amount of the increased revenue which the increases in rates are expected to provide the carriers collectively is about \$2,900,000.
5. That said rate increases are not sufficient to return to the carriers increases in operating costs which the carriers have experienced and which are not reflected in present minimum rates; hence, said rate increases:
 - a. Will not result in an increase in earnings which the Cal. P.U.C. has heretofore determined to be the minimum required to maintain adequate and safe transportation for the public,
 - b. Will not increase the carriers' overall rate of return on capital.

(Continued)

Certificate of the Public Utilities Commission
of the State of California Re Increases in Rates
for Certain Transportation Services Performed by
For-Hire Highway Carriers within California

6. That with exception of Paragraph 4, above, sufficient evidence was taken at public hearings held before the Cal. P.U.C. in connection with said rate increases to support the certification herein made, and that as to Paragraph 4, the amount therein stated is an estimate inasmuch as more specific information in this respect is not available.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

State Building
350 McAllister Street
San Francisco, California 94102

February 1, 1972.