

Decision No. 80481

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 (commod-)
ities for which rates are provided)
in Minimum Rate Tariff 7).

Case No. 5437

Petitions for Modification
Nos. 212 and 214

(Filed August 31, 1971)

(Appearances, see Appendix A)

INTERIM OPINION

By Petition No. 214 the California Trucking Association (CTA) seeks immediate increases of 10 percent in all of the rates and charges in Minimum Rate Tariff 7 (MRT 7). Said rates and charges are those which the Commission has heretofore prescribed as minimum rates and charges for the transportation of rock products in bulk in dump truck equipment by radial highway common carriers, highway contract carriers and dump truck carriers.^{1/}

^{1/} The term "rock products" is here used to designate such materials as rock, sand, gravel, asphaltic concrete and earth. Depending upon the rates involved, it also includes such commodities as debris from street or highway maintenance, dry oilwell drilling mud, fodder, salt cake, slag and talc.

Petitioner CTA, also asks that "all common carriers be authorized and directed to establish in their respective tariffs all such increases as may be prescribed by any and all orders made herein; that common carriers be authorized to depart from the provisions of Article XII, Section 21, of the Constitution of the State of California, and Section 460 of the Public Utilities Code, to the extent necessary to carry into effect such increases ..."

The rate increases which petitioner, CTA, seeks are requested 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 certain of the rates in said tariff in accordance with recommendations of the Commission's staff. With respect to other items of the tariff petitioner, CTA, asks that the Commission's staff be directed to expand its studies to include all provisions of MRT 7 and to present evidence toward necessary revisions thereof.

Public hearings on Petition No. 214 were held before Examiner Abernathy at Los Angeles on November 22 and 23, 1971, and at San Francisco on January 27 and 28, 1972. Said hearings were consolidated for record purposes with hearings initiated earlier on OSH 213 and on a petition of the California Dump Truck Owners Association (CDTOA), Petition for Modification No. 212,

also seeking interim increases in the rates in MRT 7.^{2/} The hearings on Petition No. 214, were limited, pursuant to petitioner's request, to consideration of the increases which petitioner seeks to have effected in the rates in MRT 7. Consideration of CTA's request that the Commission's staff be directed to present evidence regarding other revisions of MRT 7 was deferred to a later date.

2/ The requests of the CDTOA for increases in rates in MRT 7 were as follows:

EITHER:

That all rates in MRT 7 be increased 10 percent with the exception of (a) the distance rates in Southern Territory (in general, the area south of the Tehachapi Mountains) insofar as said distance rates apply to the transportation of loads of not less than 24 tons transported in 5-axle bottom dump truck units of equipment and (b) the rates in MRT 7 as they apply to public works jobs on which bids were opened on or before July 22, 1971.

OR:

That the rates be increased by the adoption, on an interim basis, of recommendations of the Commission's staff in OSH 213, to wit: that the hourly rates be increased by about 8 to 35 percent; that the distance rates for the transportation of rock, sand and gravel within Northern Territory (in general the area north of the Tehachapi Mountains) be increased by about 20 to 55 percent, and that the rates for the transportation of rock, sand, gravel, earth and asphaltic concrete within Southern Territory be decreased by up to about 10 percent.

On February 1, 1972, the Commission issued its Interim Decision No. 79674 on Petition No. 212 of the CDTOA, partially granting said petition by prescribing increases of 5½ percent in certain of the rates in MRT 7. The rates so increased are (a) the Northern Territory distance rates for rock, sand, gravel and other commodities named in Items 130, 148 and 148.1 of MRT 7, and (b) the hourly rates named in Items 360, 361, 365 and 366.

Petitions for reconsideration of Decision No. 79674 were subsequently filed by the California Asphalt Pavement Association (CAPA), by the Associated General Contractors of California (AGC), and by the CTA. The CTA asked in its petition that

"the Commission reconsider its Decision No. 79674 and thereafter issue its order granting the full 10% surcharge as prayed for in Petition No. 212; that the Commission include in such reconsideration the evidence offered in Petition No. 214; that the Commission alternatively issue its immediate order in Petition No. 214 granting that portion of the relief prayed for therein not granted by Decision No. 79674 pursuant to Petition No. 212; ..."

The petitions for reconsideration of Decision No. 79674 were denied by the Commission by Decision No. 79963 dated April 18, 1972. The rate increases which had been prescribed by Decision No. 79674 thereafter became effective on April 22, 1972.

Inasmuch as Interim Decision No. 79674 partially granted, in effect, the rate increases which petitioner, CTA, requested by its Petition No. 214, there remains to be considered what further increases, if any, should be made in the rates in MRT 7 as a result of CTA's petition and further consideration of CDTOA's Petition No. 212.

CTA's Petition No. 214 ✓

In undertaking to justify the full amount of the rate increases which it seeks, petitioner presented evidence through a cost and rate witness of its own staff and through five carrier witnesses. The cost and rate witness submitted and explained exhibits to show that various of the rates in MRT 7 -- particularly those for the transportation of lightweight aggregates -- have not been increased for ten years or longer; that during this period the carriers have experienced very substantial increases in almost all forms of their operating costs, and that some of these costs have more than doubled during the past ten years. The cost and rate witness also submitted and discussed three exhibits to show the financial operating results of dump truck carriers under present minimum rates for dump truck transportation. One of such exhibits was compiled from financial reports of Class I and Class II carriers filing annual reports with the Commission for the years 1969, 1970 and 1971. Assertedly, a preponderance of the transportation performed by these carriers was transportation by dump truck equipment. The cost and rate witness reported that the financial operating results of these carriers, as a group, were as represented by the following operating ratios:

<u>Year</u>	<u>Operating Ratio</u>
1968	98.5%
1969	99.2%
1970	102.9%

Another of the exhibits which the witness submitted to show the operating results of dump truck carriers under present minimum rates was compiled from the financial reports to the Commission of a number of carriers whose operations were reviewed in connection with studies of the Commission's staff for the presentation of evidence in Order Setting Hearing No. 213 in this general proceeding, Case No. 5437. According to this exhibit the operating results of the group of carriers involved for the years 1968, 1969 and 1970 were as shown by the following operating ratios:

<u>Year</u>	<u>Operating Ratio</u>
1968	98.35%
1969	97.02%
1970	100.33%

The third financial exhibit which the cost and rate witness presented was designed to show the financial operating results of a number of carriers who are mainly operators of single units of dump truck equipment. Revenue and expense data as reflected on the carriers' books of account were obtained from said carriers. Adjustments were made in the data to include provision for the services of the carrier (and of members of his family) where appropriate provision therefor was not already included. The operating results for these carriers, as thus developed, are shown to be those represented by an operating ratio of 118.0 percent.

The five carrier witnesses who submitted evidence for petitioner are:

- a. The owner of a large carrier specializing in dump truck transportation which is involved in highway construction work in California and Oregon.
- b. The owners of two carriers engaged mainly in dump truck interplant transportation.
- c. Two individuals engaged in dump truck transportation as owner-operators.

The owner of the carrier specializing in highway construction work testified that such work has constituted the largest part of his company's total services during the past three to five years; that the work is performed pursuant to bid; that the bidding process is complex; that the costs of performing a particular job are affected by a wide range of circumstances which may or may not be dependent upon the actual transportation involved; that during the past ten years his company has experienced substantial increases in operating costs; that the rates which his company is assessing are 15 to 20 percent more than the minimum rates; that had its charges been at the level of the minimum hourly rates, it would have experienced a loss of 9.76 percent from the use of its own equipment during 1970 and a loss of 10.9 percent during 1971; that in the performance of its services his company utilizes subhaulers to supplement its own employees and vehicular fleet; that it may employ as many as 100 subhaulers for a single project; that its payments to the subhaulers are at the level of the minimum rates; that it rents trailers to the subhaulers for use in connection with their services; and that the trailer rental which his company charges the subhaulers is 25 percent of the charges which would

apply under the minimum rates for the transportation performed. Regarding the increases in rates which petitioner is here seeking, the witness asserted that said increases are essential to the survival of the subhaulers.

The owners of the two carriers who are engaged in the interplant transportation of rock products submitted evidence to the effect that the distance rates in MRT 7 which apply in Northern Territory are unduly low. The representative of the larger of the two carriers presented and explained an exhibit setting forth the results of a study which he had made of the costs of performing five principal hauls of rock products in which his company is engaged. As reported in this exhibit the costs of these hauls and the then applicable distance rates are as follows:

<u>Haul</u>	<u>Cost per Ton*</u>	<u>MRT 7 Distance Rate per Ton</u>
A	\$4.175	\$3.12
B	3.147	2.28
C	1.005	.92
D	1.968	1.36
E	2.227	1.47

*Exclusive of any provision for profit.

The witness said that in order to overcome operating losses from these hauls he had undertaken to assess higher rates than the distance rates, but that his shippers had refused to accept his increased charges on the grounds that the distance rates in MRT 7 are reasonable for the transportation, inasmuch as they had been designated as reasonable rates by the Commission. He said that an alternative course of action which he is following as a consequence is to withdraw from dump truck carrier operations. Pursuant to this course, he is now maintaining 18 sets of trailers inoperative.

As a general proposition, the witness advocated the complete cancellation of the Northern Territory distance rates in favor of the hourly rates. He asserted that the distance rates are so completely outdated that it will be years before they can be restored to a compensatory level under present procedures. The hourly rates, he said, are barely compensatory.^{3/}

The owner of the other carrier engaged in interplant hauling testified that his hauls consist mainly of the transportation of lime rock for the sugar industry; that he is also engaged in off-highway transportation (not subject to minimum rate regulation); that for the transportation of lime rock he assesses the interplant minimum rates in MRT 7; that his revenues from said transportation are about \$13.00 an hour; that his operating costs have increased materially over the past ten years; that he has undertaken to effect all possible economies and efficiencies in order to cope with said cost increases; that his combined operations are profitable, and that his earnings during the years 1968, 1969 and 1970 have been those as represented by operating ratios of 98 percent, 96 percent and 96 percent, respectively.

^{3/} The witness's exhibit shows that the hauls identified therein as hauls A and B are performed at the distance rates. The revenues from these hauls, converted to an hourly basis on the average hours per haul, are \$14.09 and \$12.40 per hour, respectively. The other three hauls -- those identified as C, D and E -- are performed at zone rates. It appears that the revenues from these hauls, converted to an hourly basis, are \$15.57, \$12.20 and \$11.39 per hour, respectively.

The minimum hourly rate in MRT 7 for driver and the type of equipment used in the transportation involved is \$16.77 plus a surcharge of $5\frac{1}{2}$ percent. The rate of \$16.77 was established on November 15, 1970. The surcharge became applicable on April 22, 1972, pursuant to Decision No. 79674.

The witness stated that he did not have any figures to show the operating results of his on-highway and off-highway services separately. He expressed the view, nevertheless, that the off-highway services are profitable and do, in fact, sustain his services as a whole. He supported the rate increases which petitioner is here seeking. He said, however, that the rate increases should be greater in order to place his interplant services on a sufficiently compensatory basis.

The two owner-operators who were called as witnesses by petitioner presented evidence to the effect that they have been engaged in dump truck transportation for ten and seven years, respectively; that they operate 3-axle dump truck equipment; and that their operations are conducted almost wholly at the level of the minimum hourly rates in MRT 7. Both submitted and explained financial data to show their revenues and most of (but not all) their expenses for the years 1968, 1969 and 1970, respectively. The following sets forth a summary of said data and the indicated net operating results:

Wesley Bassett Trucking

	<u>1968</u>	<u>1969</u>	<u>1970</u>
Revenues	\$23,592	\$23,154	\$22,755
Expenses*	<u>13,816</u>	<u>12,076</u>	<u>12,565</u>
Net Revenues	\$ 9,776	\$11,078	\$10,190

Lew Shelley Trucking

	<u>1968</u>	<u>1969</u>	<u>1970</u>
Revenues	\$23,758	\$23,398	\$22,049
Expenses*	<u>15,271</u>	<u>16,498</u>	<u>18,914</u>
Net Revenues	\$ 8,487	\$ 6,900	\$ 3,135

*Exclusive of provision of owner's services for driving, vehicle maintenance and other services performed in connection with operations.

The witnesses testified that they have experienced substantial increases in their operating costs over the past several years. Witness Bassett stated that his present operating costs are 115 percent of what they were in 1962. He also indicated that in 1970 (and in 1971 also) there was a reduction in the amount of business available for dump truck operations, and that, moreover, a strike during 1970 caused a reduction in his operating revenues.^{4/} Both witnesses declared that rate increases of the full amount sought by petitioner in this matter are essential to the maintenance of their operations.

Discussion

What petitioner has undertaken to establish by its showing in this matter may be summarized as follows:

1. Those carriers who are engaged in providing transportation services subject to the rates and charges in MRT 7 have experienced very substantial increases in their operating costs during the past 10 years.

2. The rates in MRT 7 do not include compensation for said cost increases.

3. The rates in MRT 7 fall so short of returning the costs of the services performed thereunder that the carriers are in dire need of additional revenues to sustain their operations.

4. The carriers' need for additional revenues to compensate for the cost increases is so urgent that the carriers cannot await ordinary procedures to provide the needed relief.

^{4/} The reduction in amount of business was attributed to a lessening of need for dump truck transportation on the part of the Bay Area Rapid Transit.

5. The full amounts of the rate increases which petitioner seeks over the rate increases heretofore granted by Decision No. 79674 are the absolute minima necessary to ensure that financially sound dump truck carriers remain available to serve the public pending final resolution of OSH 213.

6. Said increases in the rates and charges in MRT 7 should be prescribed forthwith.

Although each of petitioner's witnesses submitted evidence to show that the carriers have experienced substantial increases in their operating costs during the past decade, the record is clear that the evidence upon which petitioner mainly relies to justify the immediate prescription of the sought rate increases is that which was presented to establish that the carriers are either realizing meager earnings under present rates or that they are actually incurring substantial losses from their operations.

A showing of this kind undeniably suggests that increases in the rates should be prescribed in order that the carriers may be able to meet their operating costs. However, since in this matter the rates which are in issue are minimum rates, an excess of operating expenses over revenues does not necessarily support a finding that compensating increases should be made in the rates in order that the rates be maintained at a just and reasonable level.

A purpose of regulation under the Highway Carriers' Act is to secure to the people just and reasonable rates for transportation by carriers operating over the public highways.^{5/} Where minimum rates are the rates in issue, the rates should be set at the lowest level within the range of reasonableness. In prescribing minimum rates pursuant to the Highway Carriers' Act the Commission has undertaken to base such rates on the lowest costs of transportation services performed in reasonably efficient circumstances.^{6/}

The financial operating results of carriers performing transportation under the minimum rates may afford a test of the reasonableness or sufficiency of the rates. However, if such a test is to have probative value, it is obvious that said value is dependent upon the extent that the operating results are shown to be reflective of the type and nature of the transportation for which the rates were designed.

^{5/} "The use of the public highways for the transportation of property for compensation is a business affected with a public interest. It is the purpose of this chapter ... to secure to the people just and reasonable rates for transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of rates of all transportation agencies so that adequate and dependable service by all necessary transportation agencies shall be maintained ..."

Section 3502, Highway Carriers' Act

^{6/} An extensive discussion of the Commission's rate making procedures is set forth in Decision No. 46912, 51 Cal. P.U.C. 586 (1952) In re Rates of Property Transportation Carriers. Said decision was reviewed by the Supreme Court of the State of California in California Manufacturers Assn. vs. Public Utilities Commission, 42 Cal. 2d., 530 (1954).

In this instance it appears that the principal exhibit upon which petitioner relies to show the financial results of carriers under the rates in issue in this matter is that which summarizes the operating results of Class I and Class II carriers for the years 1968 through 1970. However, it also appears that said operating results reflect revenues and expenses in unspecified amounts applicable to other transportation services which the carriers perform. Petitioner presented no information as to whether or to what extent said services are being performed profitably or unprofitably. In the absence of such information the record does not provide a basis for evaluating the revenue and expense data in relation to the carriers' dump truck transportation only. Hence the record in this respect does not justify a conclusion that the carriers' dump truck transportation services are as unprofitable as alleged.

Another circumstance which materially diminishes any probative value which might be accorded petitioner's showing of carrier operating results is the fact that the carriers' expenses which were reported in this connection are no more than a compilation of said expenses as set forth in the carriers' annual reports to the Commission. Petitioner did not undertake to show the extent that the costs or expenses which it set forth in its report correspond to, or differ from, the lowest costs of performing the services involved in reasonably efficient circumstances. Without evidence in this respect the record does not provide a measure for evaluating the reported expenses in relation to the standards upon which the minimum rates are promulgated. More particularly, the report does not establish that the claimed insufficiency of the carriers' earnings is due to such insufficiency of the minimum rates that immediate increases in the rates are required as sought.^{7/}

^{7/} Like comments also apply to the showings of petitioner's cost and rate witness relative to the operating results of selected dump truck carriers.

With reference to the presentations of the carrier witnesses who appeared in petitioner's behalf, it is noted that the witness for the carrier whose services are performed mainly in connection with highway construction stressed in his testimony that the minimum rates are insufficient for his services. It is also noted that he stressed that numerous complexities are inherent in the kind of transportation which he performs -- complexities which cause him to assess rates 15 to 20 percent more than those set forth in MRT 7. Viewed in this perspective, the validity of his contentions that the rates in MRT 7 are unreasonably low and insufficient must be regarded as unproved.

Minimum rates are not designed to provide minimum reasonable compensation for every transportation circumstance to which they may apply. Minimum rate regulation, by its nature, contemplates that carriers will adjust their charges to circumstances which are particularly difficult or adverse. Conversely, where the circumstances are particularly favorable, carriers may obtain authority to charge lesser rates than the minimum rates.^{8/}

^{8/} Highway common carriers may obtain authority to deviate from the minimum rates under provisions of Section 452 of the Public Utilities Code. Other highway carriers may obtain relief from the minimum rates under Section 3666 of the Public Utilities Code.

In this instance it appears that the alleged insufficiency of the minimum rates for the highway construction work in which petitioner's witness is engaged is attributable to the fact that much of said work is performed in circumstances independent of the transportation involved or which may lie outside of the range of circumstances for which the rates were constructed. The insufficiency of the rates under operating conditions of this kind does not establish that the rates are insufficient for the circumstances for which they are designed.

That the minimum rates are unreasonable and insufficient is also not established by the allegations of this same witness that said rates do not adequately compensate subhaulers whom he, as an overlying carrier, engages for highway construction projects. The witness's testimony in this respect shows that in no event does he pay the subhaulers a higher level of compensation than that under the minimum rates, irrespective of the difficulties of the work performed. It may be true undeniably that the minimum rates do not adequately compensate such subhaulers. However, if the work is of such difficulty that it is not such for which the rates were designed (as so indicated by the testimony of the witness concerning complexities of the work) it again follows that an insufficiency of the rates in these circumstances does not demonstrate an insufficiency of the rates for transportation for which the rates were designed.

Another consideration which operates against acceptance of the witness's statements that the minimum rates insufficiently compensate the subhaulers whom he employs arises out of his practice of renting vehicular trailing equipment to the subhaulers for use in the services which they perform for his account. His rental charges are 25 percent of the minimum rates for the transportation performed with said equipment. It is obvious that under

this rental arrangement the rentals have a direct bearing upon the amounts that remain as net compensation for the subhaulers for their services. If the rentals are excessive, the insufficiency of the subhaulers' compensation may be largely attributable to that fact, rather than to the level of the minimum rates. Whether the rental charges are excessive, or whether they are consistent with those that might be deemed reasonable, from a minimum rate standpoint, cannot be determined from the data of record. On these grounds also, the allegations of the witness that the minimum rates are insufficient compensation for subhaulers must be regarded as unsubstantiated.

Our comments above relative to the probative value of the showing of petitioner's cost and rate witness concerning the financial operating results of groups of carriers also apply to the showings of the two owner-operators who submitted the financial operating results of their own services. It is evident that the expense showings of both of these witnesses either include charges in excess of those which may be considered reasonable for minimum rate purposes or they include items which are not properly chargeable as operating costs.^{9/} For these reasons, neither of the showings constitute an acceptable standard for proper evaluation of the minimum rates.

^{9/} It appears that the expense listings of both witnesses include charges to depreciation expense which are excessive by minimum rate standards; that the expenses improperly include interest expense as an operating expense; that the 1970 expense listing of witness Shelley includes a charge of \$1,278 for sales tax which should have been capitalized; and that the same listing includes a charge of \$1,106 warehouse rent for truck, the propriety of which was not established for minimum rate purposes.

It appears, moreover, that the earnings of one, if not both, of the two witnesses were adversely affected during 1970 by strike and by reduced public need for dump truck transportation. An insufficiency of carrier earnings stemming from a temporary interruption of operations by strike is not valid basis for a subsequent establishment of increased minimum rates for the future.

As to the bearing of the reduced public need for dump truck transportation upon such increases in minimum rates as may be ordered in this matter, it should be noted that the maintenance of necessary transportation agencies is also one of the purposes of regulation which are specified in the above-quoted portion of Section 3502 of the Highway Carriers' Act. Thus the public's need for the transportation services in issue is an element to be taken into account in determining the level of the minimum rates to be set for said services. The establishment of rates at a level sufficient to maintain transportation services which are not necessary clearly is not in consonance with the purposes of the Highway Carriers' Act. Accordingly, any reduction in earnings which either or both witnesses experienced as a result of a reduction in public need for their services is not a basis upon which increases in the minimum rates should be prescribed.

It appears that the cost showing of one of the carriers engaged in interplant transportation, together with labor cost comparisons submitted by petitioner's cost and rate witness, constitute the principal evidence in this matter upon which any increases in the rates in MRT 7 may be found justified. The record shows that throughout his cost study the carrier utilized data which reflect a conservative development of costs. Moreover, the record shows that this carrier maintains a close surveillance

over his operating costs and strives to keep them at a lowest possible level. In result it appears that with the exception noted below the presentation of this witness sets forth an acceptable portrayal of lowest costs of transportation performed in reasonably efficient circumstances.

The exception deals with the loading and unloading costs which were shown for the hauls identified as hauls A and B. The evidence shows that the loading and unloading costs of these hauls are substantially more than those of the other three hauls for which costs were submitted. The higher loading and unloading costs of hauls A and B is due to the fact that much more loading and unloading time is required for these hauls than for the other three hauls. The differences between the loading and unloading times is shown in the following tabulation:

<u>Haul</u>	<u>Loading and Unloading Time</u>	
	<u>In Hours</u>	<u>In Minutes</u>
A	1.138	68.28
B	1.363	81.78
C	.345	20.70
D	.521	31.26
E	.716	42.96

It may be calculated from the witness's cost showing that the loading and unloading costs, exclusive of any provision for profit, are about \$0.0073 per ton per minute.^{10/} Hence, the

10/

The cost figure of \$0.0073 per ton per minute represents the labor and fixed costs applicable for the time spent in the loading and unloading operations plus an expansion factor for indirect and gross revenue costs.

loading and unloading costs of each of these hauls is as follows:

<u>Haul</u>	<u>Loading and Unloading Costs per Ton</u>
A	.50
B	.60
C	.15
D	.23
E	.31

The witness said that the longer loading and unloading times for hauls A and B were due mainly to the fact that the receiver's facilities were such that they did not permit expeditious unloading of shipments. In this connection he recognized that minimum rates should not be necessarily set at a level to compensate for material unloading delays caused by inadequate or inefficient receiving facilities.

Comparison of the witness's cost data with the minimum distance and zone rates which were in effect immediately prior to establishment of the 5½ percent surcharge prescribed by Decision No. 79674 shows that increases of 9.2 percent to 51.5 percent would be necessary to bring the rates to the level of the reported costs, exclusive of profit. If the loading and unloading costs for hauls A and B are adjusted to the level of the average of the unloading costs for hauls C, D and E, the resulting costs and the increases necessary to bring the rates to the level of the corresponding costs would be as follows:

<u>Haul</u>	<u>Adjusted Costs per Ton</u>	<u>Rate per Ton</u>	<u>Increase in Rate Needed to Return Adjusted Cost</u>
A	\$3.905	\$3.12	25.2%
B	2.777	2.28	21.8%
C	1.005	.92	9.2%
D	1.968	1.36	44.7%
E	2.227	1.47	51.5%

On the other hand, if all of the loading and unloading costs are adjusted to the level of the least costs of any of hauls -- that for haul C -- the resulting costs and the increases necessary to bring the rates to the level of the corresponding costs would be as follows:

<u>Haul</u>	<u>Adjusted Costs per Ton</u>	<u>Rate per Ton</u>	<u>Increase in Rate Needed to Return Adjusted Cost</u>
A	\$3.825	\$3.12	22.6%
B	2.697	2.28	18.3
C	1.005	.92	9.2
D	1.888	1.36	38.8
E	2.067	1.47	40.6

Inasmuch as the costs which are shown in the foregoing tabulations are exclusive of provision for profit, it is clear from comparison of the rates with the costs that even with a 10 percent increase in the rates, the rates would continue to fall short of returning costs except with respect to haul C, and that the return for haul C would barely exceed the costs thereof. In the circumstances it appears that interim increases of 10 percent in the distance and zone rates are justified and should be prescribed.^{11/}

^{11/} Our conclusions concerning increases that should be effected in the distance and zone rates do not extend to the distance and zone rates which apply in Southern Territory. Also, at this point they do not extend to the interplant distance rates in MRT 7 which apply for the transportation of light-weight aggregates. All of these rates will be considered subsequently hereinbelow.

The increase of 10 percent which is specified would include the 5½ percent surcharge prescribed by Decision No. 79674.

This conclusion is fortified by changes which have been made in the hourly rates in MRT 7 since the distance rates were established at their present level (exclusive of the surcharge which became applicable on April 22, 1972). Except for the surcharge, the distance rates have been in effect since December 5, 1960. The corresponding hourly rates have been increased approximately 35 to 50 percent since December 5, 1960, mainly to offset increases in labor costs.^{12/} Inasmuch as the hourly and distance rates may be assessed alternatively for the same transportation, it is obvious that about the same level of earnings should accrue under either form of rates if the earnings in both instances are to be deemed reasonable for the services involved. It is evident from the increases which have been made in the hourly rates that any equality in overall earnings which initially existed between the hourly and distance rates no longer prevails. It is also evident from the circumstances which have prompted the increases in the hourly rates that the distance rates have not kept pace with changes in the costs of service, and that as a result said distance rates are unduly low and insufficient in relation to present costs. From this standpoint also interim increases of 10 percent in the distance rates are justified and should be prescribed.

^{12/} These percentages of increase do not give effect to the surcharges prescribed by Decision No. 79674. Also, they do not give effect to further increases in the hourly rates which have been prescribed by Decision No. 80308, dated July 25, 1972, to become effective September 2, 1972. Inasmuch as Decisions Nos. 79674 and 80308 both became effective since this matter was taken under submission for decision, the increased rates which have been prescribed thereby have not been taken into account in the various rate comparisons herein.

No change should be made in the distance and zone rates which apply in Southern Territory. The record shows that petitioner's proposal to increase the distance rates by 10 percent stems from a misconception of the basis on which the rates were constructed, and that as a result of said misconception the proposal does not take into account productivity gains which the carriers have achieved in their operations under said rates.^{13/}

The zone rates in Southern Territory which would principally be affected by petitioner's proposals are those rates which apply within the Antelope Valley portion of Los Angeles, Kern and San Bernardino Counties. Other zone rates which also would be affected apply within San Diego County and between San Diego and Orange Counties. The evidence which petitioner presented was related only remotely, if at all, to transportation under any of these rates, and accordingly does not provide grounds for ordering the increases in said rates which petitioner seeks.

^{13/} The productivity gains have been achieved through the use of vehicles which carry greater loads than the vehicles for which the distance rates in Southern Territory were originally established. On the basis of these productivity gains the Commission's staff, in its presentation in OSH 213, has recommended that the distance rates in Southern Territory be reduced. Public hearings on the staff's recommendations have not been concluded, and hence no decision has been reached thereon. However, pending further consideration of the extent, if any, that increases in the carriers' costs have been offset by productivity gains, increases in the Southern Territory distance rates should be deferred.

Increases of 10 percent should be prescribed in the interplant distance rates which apply for the transportation of lightweight aggregates. The interplant distance rates for said transportation within Northern Territory were first established on May 15, 1956, by Decision No. 52952. They were increased 10 percent in December 1960 (Decisions Nos. 60623 and 60957) and, as so increased, have been continued at the same level to the present time. On June 8, 1960, by Decision No. 59983, the interplant rates for Southern Territory were established at the same level as those then in effect in Northern Territory, and have continued unchanged since.

Concurrently with the establishment of the interplant distance rates for the transportation of lightweight aggregates in Northern and Southern Territories, the hourly rates for said territories were extended to apply also to lightweight aggregates. They have applied as an alternative basis of charges from June, 1960, to the present time for the transportation of lightweight aggregates in Southern Territory. In Northern Territory they applied as an alternative basis of charges from May 15, 1956, to January 27, 1968, when MRT 7 was amended by Decision No. 73544 so as to exclude the application of hourly rates to the transportation of lightweight aggregates, thereby making the interplant distance rates the governing minimum rates for said transportation.

According to a comparison of labor costs which was presented by petitioner's cost and rate witness the labor costs applicable to the transportation of lightweight aggregates in Southern Territory were \$3.16 per hour as of July 1, 1960, and \$6.077 per hour as of June 1, 1971. On a percentage basis the indicated increase is 92.3 percent.

This showing of labor cost increases was not extended by the rate and cost witness to measure the impact of the increases upon the total costs of transporting lightweight aggregates within Southern Territory. However, the applicable hourly rates for Southern Territory were about \$13.00 per hour when the distance rates were established. The present rates are \$15.63 per hour, not including the surcharge of $5\frac{1}{2}$ percent. On a percentage basis the indicated increase is 37.8 percent. Thus it appears that partial effect has been given in the hourly rates to the labor cost increases reported by petitioner's cost and rate witness.

For the reasons hereinbefore set forth in connection with the distance rates for aggregates generally (those other than lightweight) it further appears that the recognition which has been given in the Southern Territory hourly rates to the labor cost increases demonstrates that increases should be made also in the interplant distance rates for the transportation of lightweight aggregates in Southern Territory. In view of the extent that the hourly rates have been increased, we are of the opinion that the increases of 10 percent which petitioner seeks to have made in the Southern Territory interplant distance rates are justified.

Inasmuch as the Northern Territory hourly rates no longer are an alternative basis of charges for lightweight aggregates, they do not provide the same standard of direct measurement of the distance rates as they formerly did. However, during the period that they could be assessed as an alternative to the present distance rates, they were increased by about 14 percent, and have been since increased by an additional 16 percent. Thus, even under a limited comparison with the increases totaling 14 percent, it is evident that an increase of 10 percent

in the Northern Territory interplant distance rates for lightweight aggregates is within the range in the increases in rates which have been prescribed in recognition of increases in costs applicable to the transportation involved. Accordingly, we conclude that an increase of 10 percent in the aforesaid distance rates is justified.

No increases should be made in the hourly rates. As has been pointed out earlier herein, the hourly rates have been increased repeatedly during the past 10 years whereas the distance and zone rates have not. Petitioner's showing in this matter does not justify increases in the hourly rates in addition to the increases heretofore made, including the 5-1/2 percent surcharge prescribed by Decision No. 79674.^{14/}

The remaining rates to be considered are the statewide distance rates which are prescribed in MRT 7 for the transportation of fodder. Said rates were established September 16, 1961. They have not been increased since. However, during the years the distance rates have been in effect, increases of about 36 to 43 percent (surcharge excluded) have been made in the alternatively applicable hourly rates. In view of the cost increases which have been recognized through the increases in the hourly rates, the increase of 10 percent which petitioner asks be made in the distance rates is justified.

The increases in rates which are hereinafter prescribed are based on the evidence submitted in support of Petitions Nos. 212 and 214. They are interim increases until more definitive determinations can be made of what further increases or other changes in the rates should be made as a result of the proceedings

^{14/} The increases in hourly rates prescribed by Decision No. 79674 did not apply to the hourly rates in Item 367 and 368 of MRT 7 for the transportation of debris from the demolition of buildings. Petitioner's showing in this matter does not warrant increases in said rates. None should be made on this record.

in OSB 213. Accordingly, the increases hereinafter granted are subject to modification should further consideration show that such action is required.

No action need be taken on CTA's request "that all common carriers be authorized and directed to establish in their separate tariffs all such increases as may be prescribed ... that common carriers be authorized to depart from the provisions of Article XII, Section 21 of the Constitution of the State of California, and Section 460 of the Public Utilities Code, to the extent necessary to carry into effect such increases ..." The minimum rates and rules in MRT 7 were established, and are maintained, pursuant to the Highway Carriers' Act. They do not apply to carriers operating under the Public Utilities Act -- carriers who are required by said act to file tariffs. In other respects CTA's showing does not indicate what departures from the provisions of Article XII, Section 21, of the State Constitution are involved and why they should be authorized.

Findings

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

1. With the exception of the 5-1/2 percent surcharges prescribed by Decision No. 79674, various of the distance and zone rates in MRT 7 are the same now as they were about 10 years ago.
2. During the years that have since passed, for-hire highway carriers engaged in providing transportation service subject to said rates have experienced increases in their operating costs.
3. The evidence in this matter relative to the financial operating results of the carrier engaged mainly in interplant hauling under present distance and zone rates affords a valid measure of the present costs of said hauling services and of the revenues produced under present rates.
4. The costs of said carrier, adjusted to eliminate costs stemming from excessive times spent in loading and unloading of the carrier's vehicles, reasonably portray the lowest costs of performing the transportation involved in reasonably efficient circumstances.

5. Comparison of said adjusted costs with the revenues received under present rates shows that with one exception the costs (exclusive of any provision for profit and assuming all vehicle loading and unloading in the most favorable of the reported circumstances) exceed the revenues received by 9.2 to 40.6 percent.

6. The hourly rates in MRT 7 are another valid measure of the sufficiency of the present distance rates for transportation alternatively subject to the hourly rates or the distance rates. The extent that the hourly rates have been increased without corresponding increases in the distance rates shows that the distance rates fall substantially short of returning the overall costs of the services provided thereunder.^{15/}

7. Since the level of the present distance rates for Northern Territory was first established, the level of the alternatively applicable hourly rates has increased about 35 to 50 percent. Since the level of the present interplant distance rates for the transportation of lightweight aggregates in Northern Territory was first established, the level of the hourly rates which were alternatively applicable to January 27, 1968, increased 14 percent. Since the level of the present interplant distance rates for the transportation of lightweight

^{15/} This finding should not be construed as implying that where increases have been made in the hourly rates, increases of like amounts in components of an alternatively applicable rate scale are automatically warranted. Ordinarily, increases in components of a rate scale should be consistent with the impact of cost increases upon the costs of services to which said components apply. In this matter, however, our considerations are mainly directed to what increases should be made in the rates, on an interim basis, toward meeting present costs of service until a more definitive determination can be made of the increases that should ultimately be prescribed.

aggregates in Southern Territory was first established, the level of the alternatively applicable hourly rates has increased about 33 percent. Since the level of the present distance rates for the transportation of fodder were established on September 16, 1961, the level of the alternatively applicable hourly rates has increased about 36 to 43 percent.^{16/}

8. Increases of 10 percent in the distance and interplant rates for Northern Territory, in the Northern Territory interplant distance rates for lightweight aggregates, in the Southern Territory interplant distance rates for lightweight aggregates, and in the distance rates for fodder which were all in effect prior to the 5-1/2 percent surcharge prescribed by Decision No. 79674 are justified.

9. Increases in other of the rates named in MRT 7 have not been shown to be justified.

10. Pursuant to Rule 23.1 of the Commission's Rules of Procedure:

- a. The increases in rates which are ordered herein apply to rates which the Commission 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.
- b. Said increases range from 4-1/2 to 10 percent.
- c. Said rate increases are cost-justified and do not reflect future inflationary expectations.
- d. Said rate increases are the minimum required to assure continued, adequate and safe service by carriers engaged in for-hire highway transportation by dump-truck equipment within California.
- e. The dollar amount of the increased revenue which the increases in rates are expected to provide the carriers collectively is about \$2,393,000.

^{16/} None of these percentages of increase in rates take into account the surcharges prescribed by Decision No. 79674 or the increases in rates prescribed by Decision No. 80308.

f. That said rate increases:

- (1) Will not result in an increase in earnings which the Commission has heretofore determined to be the minimum required to maintain adequate and safe transportation for the public.
- (2) Will not increase the carriers' overall rate of return on capital.

g. The evidence does not establish that there are other carriers available who are willing and capable of providing service at the existing rates.

Conclusions

The Commission concludes that the interim increases in rates sought by Petitions for Modification Nos. 212 and 214 in Case No. 5437 should be granted to the extent hereinafter provided. MRT 7 should be amended accordingly. The other interim increases in rates which petitioners seek should be denied.

INTERIM ORDER

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 October 21, 1972, Supplement No. 38 and Ninth Revised Page 42-D, attached hereto, which supplement and revised page are 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. Except as is otherwise provided by this order, the interim increases which petitioner seeks in Petition for Modification No. 214 in Case No. 5437 are denied.

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

Dated at San Francisco, California, this 12th day of September, 1972.

Vernon L. Sturgeon
President
William J. Simon, Jr.
Alvin Karp
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A
Page 1 of 4

APPEARANCES

FOR PETITIONER:

Richard W. Smith, A. D. Poe and William T. Meinhold, Attorneys at Law, and H. F. Kollmyer, for California Trucking Association, petitioner.

FOR PROTESTANTS:

Karl K. Roos, Attorney at Law, and Harry C. Phelan, Jr., for California Asphalt Pavement Association, protestant.

R. A. Lubich, Jacob Franzen and Paul S. Henson, for Associated General Contractors of California, protestant.

RESPONDENTS:

Daniel Arias, for Arias Trucking; Vincent W. Bagala, Jr., for Vince Bagala Trucking; Pasquale C. Barker, for M. A. Barker; Herman L. Bell, for Herman Bell Trucking; Eddie M. Blair, for Eddie M. Blair Trucking; James B. Bonsteel, for Bonsteel Trucking Co.; Albert M. Boss, for A. M. Boss Trucking; Ken Brown, for Ken Brown Trucking; Olen R. Brown, for O. R. Brown Trucking; Dennis Brunken, for Foothill Sand & Gravel; Robert L. Buletti, for Buletti Trucking; Ortwin L. Burger, for Arts' Transfer Trucking; Les Calkins, for Les Calkins Trucking, Inc.; Samuel K. Casperson, for Casperson Trucking; Dale Carlin, for Carlin Trucking; Norman R. Chretien, for Norman R. Chretien Trucking; Keith H. Clark, for Clark Trucking; C. Dale Clingman, for C. Dale Clingman Trucking; Victor L. Conley, for Victor L. Conley Trucking; Ken Cooper, for Cooper Trucking; J. Edward Covarrubias, for J. Edward Covarrubias Trucking Service;

APPENDIX A
Page 2 of 4

Richard M. Davilla, for Davilla Trucking;
Ray Davis, for Davis Trucking; Frank L. Edmond, for Edmond Trucking; Harry Engelman, for Harry Engelman Trucking (CMT); C. Ralph Eighthy, for C. Ralph Eighthy Trucking;
Robert Raymond Fautz, for Fautz Trucking;
Henry Fabri, for Construction Materials Trucking; Frank G. Flanders, for Flanders Trucking; Don Gemini, for Don Gemini Trucking; Joseph Giannini, for Giannini Trucking; Charles William Gibbins, for W.S.P. Trucking, Inc.; Richard S. Gibbins, for W.B.P. Trucking; Weldon Gilley, for R & W Trucking; Ray Confiotti, for Haul-Rite Trucking; Willie C. Goodwin, for Goodwin & Sons; Ferry Granzotto, for Granzotto Trucking Co., Inc.; Eleanore C. Hallsworth, for Robert F. Hallsworth Trucking; Keith D. Halsrud, for Halsrud Trucking; Harold J. Halvorsen, for H & M Enterprises; G. L. Hasenpflug, for Hasenpflug's Trucking; William A. Hayden, for Fresno Cooperative Trucking, Inc.; Ivan Heidecker, for Montini Heidecker Transport; Peter Hennessey, for Peter Hennessey Trucking; Albert Hiatt, for Al Hiatt Trucking; Clyde H. Hefley, for H & H Trucking; Robert R. Hill, for Robert R. Hill Trucking; William F. Hoefler, for Hoefler Trucking; John S. Jenkins, for Jenkins Trucking; Robert F. Johnson, for Robert F. Johnson Trucking; Russ E. Johnson, for Santa Clara Trans Co.; Peter F. Katawicz, for P.F.K. Trucking; William A. Kircy, for Universal Transport System, Inc.; George Kougiass, for Demo Trucking; Earl Lund, for C.M.T.; Albert J. Maffei, for Albert J. Maffei Trucking; Manuel Mello, for MAC Trucking; L. H. Miller, for L. H. Miller Trucking; Willie D. Miller, for H & M Enterprises; Vernon Moore, for Vernon Moore Trucking; Robert D. Norton, for Norton Trucking; William E. Paden, for Paden Transfer;

APPENDIX A
Page 3 of 4

Rich Piombo, for Astro Trucking; Donald Joe Poulter, for Poulter Trucking; J. R. Rasmussen, for George Maciel Trucking; Roy Rhodes, for HEC Trucking; David J. Rogers, for Fresno Cooperative Trucking, Inc.; Edward H. Rogers, for Lucky "T" Enterprises; Ralph A. Rogers, for Rogers Truck & Equipment, Inc.; Virgil E. Rogers, for himself, L&D Trucking and Hannah Trucking; John A. Rose, for Rose Trucking; Don M. Rounds, for Don Rounds Trucking; John Seago, for Seago Trucking; Dee Sexton, for D.E. Sexton Trucking; Edward L. Shands, for Shands Trucking Company; Gerald Skoff, for Skoff Trucking; Alva R. Smiley, for A R Smiley Trucking; Dennis Robert Sullivan, for Denny Sullivan Trucking; William H. Tucker, for William Tucker Trucking; George L. Watts, for Watts Trucking; John R. Wheeler, for Wheeler Trucking; Ralph H. Whitton, for Whitton Trucking; Gilbert Curtis Wilbon, for Wilbon's Trucking; B. P. Wolfe, for B P Wolfe Trucking; George Antoku; F. A. Blankenship; Donald Gene Bova; Lowell E. Bright; Ralph C. Britton; Calvin M. Case, Jr.; Joseph R. Ceirante, Sr.; Howard Clark; Phil Cowherd; Vincent Davi, Jr.; Greg Dodds; Leo Elrod; Cesar Feliciano; Ron Heller; E. S. Foote; Donald John Gagliasso; Dexter Gillum; Gary Gouker; Robert W. Grossman; Robert F. Hallsworth; Thomas W. Hall; Antonio Hernandez; Thomas Hodge; Anthony J. Huckaba; Vernon K. Ruffer; Paul Hunter; Jarrel L. Johnson; Russell W. Jones; L. J. Lepro; Joseph A. Luis; Woody Lopez; Arthur H. Lacey; Daniel R. Macmillan; Robert Maston, Sr.; Robert Maston, Jr.; Donald A. Meck; Fred W. Morais; Wallace Murelia; Donald S. Morley; Fred Pacheco; John E. Parry, Jr.; R. Pickerill; Walter Lee Roberts; James H. Rogers; Hugh E. Rowley; Ronald L. Rusher; Joseph M. Simas; Arvin A. Sample; G. E. Singleton; Abbas S. Tavayoli; John Anthony Testa; Earl Tunnell;

APPENDIX A
Page 4 of 4

Ray C. Wiand; Russell V. Wilson; Leland E. Wolfenden; William F. Woods; James S. Uski;
in propriae personae, respondents.

INTERESTED PARTIES:

E. O. Blackman, Leonard B. Ortiz and Casimir J. Wood, for California Dump Truck Owners Association; R. M. Hinkley, for Interpace Corporation; 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 Tuey, 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.,
Interested parties.

FOR THE COMMISSION'S STAFF:

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

SPECIAL INCREASE SUPPLEMENT

SUPPLEMENT 38
(Cancels Supplement 37)

(Supplements 27, 29, 32 and 38 Contain All Changes)

TO
MINIMUM RATE TARIFF 7
NAMING
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 127, 130, 138, 138.1, 148, 148.1, 150, 150.1, 294, 294.3, and 294.6 and increase the amount so computed by ten (10) percent dropping fractions of less than one-half cent and increasing fractions of one-half cent or greater to one cent.

♦ Increase, Decision No.

80481

EFFECTIVE

SECTION 4--HOURLY RATES (Continued)	ITEM
<p align="center">APPLICATION OF RATES NAMED IN ITEM 365</p> <p>COLUMN "A" rates apply where the loading is performed by power loading device, excepting processed sand, gravel or crushed stone in stock piles 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>COLUMN "D" rates apply only when specific reference is made hereto (See Item 98).</p> <p>NOTE 1.--</p> <p>§(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: \$7.41 per hour.</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: \$4.31 per hour. Subject to Paragraph 3 of Item 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.</p> <p>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.</p>	<p align="center">#366</p>
<p>§ Change, Decision No. 80481</p>	
EFFECTIVE	
Correction	<p align="center">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA</p>