

Decision No. 80625

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 any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff 2).

Case No. 5432 OSH 700  
(Filed May 2, 1972)

(For Appearances see Appendix A)

OPINION AND ORDER  
RULING ON MOTIONS

Order Setting Hearing 700 was issued in this proceeding for the receipt of evidence with respect to a proposal of the Commission's Transportation Division Staff that Minimum Rate Tariff 2 (MRT 2) be amended to include therein minimum commodity rates on salt (sodium chloride) in bulk from points in Los Angeles County to destinations within 110 constructive miles from point of origin.

OSH 700 was consolidated for hearing with Application No. 53182 filed by West Coast Warehouse Corporation. Hearing was held before Examiner Mallory on May 10 and 11 and June 7, 1972 in Los Angeles. Application No. 53182 was submitted, and OSH 700 was temporarily removed from the calendar in order to rule on motions made by Bulk Freightways (Bulk), California Trucking Association (CTA), and Pacific Salt & Chemical (Pacific Salt).

### Historical Background

By Decision No. 78264, dated February 2, 1971, in Case No. 6322, Minimum Rate Tariff 5 (MRT 5) was cancelled, and the class and commodity rates named therein were replaced by the rates in MRT 2. The hourly rates formerly contained in MRT 5, applicable between points in Los Angeles and Orange Counties, were modified and transferred to Minimum Rate Tariff 15 (MRT 15). The hourly rates in MRT 5 were applicable to all types of trucking equipment. The revised hourly rates in MRT 15 were established on the same format as vehicle unit rates maintained in said tariff; that is, the rates vary as to the type and size of equipment unit furnished. There are no vehicle unit rates in MRT 15 for an equipment unit consisting of a dump truck and transfer-trailer nor for pneumatic hopper-type equipment.<sup>1/</sup>

Several carriers engaged in the transportation of salt in bulk had applied the hourly rates in MRT 5 before they were cancelled. The hourly rates established in MRT 15 could not be assessed because the carriers were using dump truck and transfer-trailer units or pneumatic equipment to transport the salt in bulk. The carriers filed applications seeking authority to deviate from the minimum rates on behalf of several shippers of salt.<sup>2/</sup> Said applications were granted on a temporary basis, pending the outcome

1/ Pneumatic equipment discharges the cargo by means of air pressure.

2/ The following carriers had been granted less-than-minimum rate authority to transport salt under hourly rates at the time of the initial hearing:

<u>Carrier</u>	<u>Shipper</u>
West Coast Warehouse Corp.	- Ocean Salt Co.
Tom Utsuki Trucking, Inc.	- (Ocean Salt Co.
Bulk Freightways	- (Leslie Salt Co.
	(Western Salt Co.

The authority granted to Lloyd H. Wood expired December 29, 1971.

of a request to reestablish the format and levels of hourly rates formerly published in MRT 5. Decision No. 79451, dated December 14, 1971, in Case No. 7783, Petition No. 41 denied said request.

Staff Evidence in OSH 700

A rate expert from the Commission's Transportation Division proposed that a specific commodities rate on a constructive mileage basis be established on bulk salt in MRT 2, to apply from points of origin in Los Angeles County. The staff witness testified that the current truckload class rates based on a classification rating of Class 35.3, minimum weight 45,000 pounds, as set forth in Item 880 of Exception Ratings Tariff 1, is too high to move salt in bulk. The witness pointed out that salt has a very low value and a relatively high density in pounds per cubic foot.

The rates developed by the staff witness were determined by converting the hourly rates assessed under the rate deviations granted to the involved carriers to rates in cents per 100 pounds. The proposed rates were designed to produce essentially the same total revenues as the hourly rates.

The evidence shows that three shippers of bulk salt are located in Los Angeles County, Ocean Salt (Long Beach), Leslie Salt (Los Angeles) and Western Salt (Los Angeles). Pacific Salt & Chemical Company is located at Trona (San Bernardino County).

Motion of Bulk Freightways

Bulk Freightways filed, on May 25, 1972, a motion to discontinue OSH 700. The motion pointed out that Decision No. 80049, dated May 16, 1972, revised the definition of "hopper equipment" in MRT 15 so that the definition would include equipment capable of unloading both by gravity and by pneumatic means, thus permitting hourly rates to apply to pneumatic equipment.

Decision No. 80232, dated July 11, 1972, granted rehearing of Decision No. 80049, limited to further proceedings in regard to Item 451(6) of MRT 15 for the purpose of determining the application of the hourly rate to be applied to hopper vehicles that can be unloaded by gravity or by pneumatic means. Such rehearing was held after submission of this proceeding for rulings on motions, and a decision has not been issued therein.

The reason advanced by Bulk Freightways for discontinuing OSH 700 is not valid, inasmuch as rehearing has been granted with respect to the decision relied upon by Bulk Freightways. Therefore, said motion should be denied.

Motion of California Trucking Association

In its motion filed June 7, 1972, CTA requests that the Commission staff be directed forthwith:

1. To supplement the record in this proceeding by developing appropriate exhibits setting forth hourly costs and proposed hourly rates for transportation in dump and pneumatic equipment, such hourly rates to apply within the territory embraced by Section 4-A of Minimum Rate Tariff 15; and
2. To distribute to all parties of record, exhibits setting forth such costs and proposals and to introduce such exhibits at future hearings in this proceeding.

CTA urged that the motion be granted for the following reasons: The Commission's staff did not introduce evidence relating to hourly costs of dump or pneumatic equipment in the earlier proceedings (Case 6322). However, with the general exception of historical equipment costs, the same cost elements now underlying hourly rates in Section 4-A (MRT 15) apply to movements in dump and pneumatic equipment. Additionally, CTA believes that the staff has available, through its Data Bank,

necessary historical equipment costs for this type of equipment and, further, that such costs can readily be adapted for insertion into the cost base underlying present hourly rates by substituting for the equipment factors presently reflected.

CTA also states in support of its motion that it believes it is the general consensus of shippers and carriers that while the staff's efforts are meritorious as they relate to the objective of providing certainty and a measure of permanency in the transportation of bulk salt, the proposals do not fully consider intricate marketing and competitive circumstances involved in the production, sale and distribution of this product. Accordingly, CTA urged that the proposals to establish a scale of rates in cents per hundred pounds, as set forth in Exhibit 700-1, are generally unacceptable to the parties. For such reasons, CTA believes it is desirable and is a general reflection of shipper and carrier sentiment that the record in this proceeding be supplemented by the addition of other data that can appropriately form the basis for a Commission decision to establish an hourly scale of rates applicable to the transportation of commodities in dump and pneumatic equipment.

Morton Salt Company advised the parties and the Commission, in a letter dated July 17, 1972, that it is in favor of the CTA motion, in that rates that were previously established in MRT 5 should be reinstated, thus placing the competitive position of salt companies in the same relative position as in the past.

Tom Utsuki Trucking, Inc., in its reply brief, took the position that the application of hourly rates on the same levels as set forth in the present rate deviation authority granted to it is an adequate, reasonable, and a completely satisfactory solution for the transportation of salt in Los Angeles and Orange Counties. Therefore, to the extent that the present hourly scale of rates might be continued in MRT 15, Utsuki has no objection to OSH 700 being broadened for the purpose only of establishing hourly rates relative to the transportation of salt by dump truck equipment within Los Angeles and Orange Counties.

In its reply brief, the Commission staff opposes the CTA motion insofar as it would interfere with submission of OSH 700, and insofar as it would require the staff to make further studies. The staff also opposes CTA's motion for the following reasons:

- (1) The CTA proposal that studies be made of hourly costs and rates for dump and pneumatic equipment in Los Angeles and Orange counties is not limited to transportation of bulk salt and does not relate to commodity rates. All other commodities transported in dump trucks not covered by Minimum Rate Tariffs 7 and 17 and all commodities transported in pneumatic trucks, are involved in the CTA proposal. Said proposal, therefore, goes beyond the subject of local bulk salt commodity rates from Los Angeles County shipping points.
- (2) Action by the Commission on the proposed commodity rates in the staff's Exhibit 700-1 should not be held up pending consideration of a relatively unrelated broad proposition not certain of accomplishment, particularly in the immediate future.
- (3) It is the view of the Commission staff that hourly rates for solid loads of single commodities are less definite and certain and therefore are relatively difficult to enforce in comparison to rates in cents per 100 pounds as proposed in its Exhibit 700-1.
- (4) The staff's testimony and exhibits show that its rate proposal in Exhibit 700-1 considers marketing and competitive circumstances involved in the production, sale and distribution of bulk salt throughout southern California.

The Commission has considered the foregoing arguments and positions of the parties. The current situation wherein a certain limited number of carriers have rate deviations to transport

salt in bulk forecloses other carriers from engaging in the transportation of bulk salt under the same conditions, thus creating an effective monopoly of this transportation for the carriers authorized to transport salt under the hourly-rate deviations. It is preferable, therefore, that reasonable minimum rates be established which will permit all carriers to compete for the traffic. The shippers and carriers currently engaged in transporting salt in bulk from origins in Los Angeles County apparently prefer to apply hourly rates because of their prior use of such rates and their familiarity therewith. The Commission has recognized in other proceedings the inherent difficulties in enforcing hourly rates because the actual numbers of hours required to perform the transportation service cannot be determined by the staff once the movement is completed. The Commission has been reluctant to establish hourly rates as the sole basis of minimum rates on any commodity for this reason, and because it has found that hourly rates are converted to some other basis (such as a weight basis or per-load basis) to meet the needs of shippers to determine transportation charges in the same unit of measurement as that in which the commodity is sold. While it may be the preference of shippers and carriers at this time for hourly rates, the record herein does not establish that rates in cents per 100 pounds would be unreasonable or unsatisfactory as a unit of measurement, nor discriminatory to shippers or carriers. The allegation in support of CTA's motion, that the staff proposals do not fully consider intricate marketing and competitive circumstances involved in the production, sale and distribution of salt, is not supported by the facts in the record.

Furthermore, as pointed out in the staff brief, the establishment of hourly rates for dump-truck and transfer-trailer equipment, and for pneumatic hopper equipment in Section 4-A of MRT 15, goes

beyond the scope of OSH 700, in that said rates would be applicable to commodities other than salt. If the staff is to undertake the preparation of studies contemplated in CTA's motion herein, said studies should be presented in Case No. 7783.

We conclude, for the foregoing reasons, that CTA's motion should be denied.

Motion of Pacific Salt & Chemical Co.

Pacific Salt & Chemical Co. (Pacific Salt) moved that reduced commodity rates on bulk salt be established from its plant in Trona or, alternatively, that reduced statewide commodity rates on bulk salt be established. Pacific Salt urged that said commodity rates are required, if the rates in Exhibit 700-1 are established, to permit producers not located in Los Angeles County to compete with producers located in said County. It is also the position of Pacific Salt that the present level of mileage rates on bulk salt is too high and that carriers can earn a reasonable profit at a lower level of rates. Not having access to the underlying carrier's records and other data necessary to prove such conclusion, Pacific Salt requests that the Commission staff make studies to develop and present in evidence the necessary facts.

The Commission staff and Tom Utsuki Trucking, Inc. filed replies in opposition to Pacific Salt's motion. CTA, in a letter to the Commission dated June 16, 1972, stated that Pacific Salt's motion raises a new issue which, if the motion is granted, would require an order broadening the scope of OSH 700. CTA urged that



any such order should direct the Commission staff to present evidence adequate to enable consideration of all types or classes of carriers (rail or truck) for the purpose of establishing the lowest lawful rates pursuant to Section 726 of the Public Utilities Code. This request of CTA was not served on parties other than the staff and Pacific Salt. None of the parties responded to the CTA letter.

Utsuki is opposed to Pacific Salt's motion. It points out that the purpose of OSH 700 is to establish commodity rates in Los Angeles and Orange Counties, which historically has had a different level of rates from the balance of the state. Utsuki argued that the motion of Pacific Salt for rates from San Bernardino County would cause complex new problems. Utsuki suggests that if rate relief is required from Pacific Salt's plant at Trona that it be sought under Section 3666.

The Commission staff opposes Pacific Salt's request for the following reasons:

- (1) The request goes beyond the current scope of OSH 700.
- (2) The request would take a relatively long time to accomplish and would raise new broad and complicated issues; thus it would delay submission of OSH 700.
- (3) Pacific Salt, located at Trona, has an inherent competitive disadvantage in marketing salt in the metropolitan Los Angeles area because of its geographic location. Pacific Salt's marketing opportunity in the metropolitan Los Angeles area would not be changed if the staff's rate proposal is adopted, as it merely converts existing less-than-minimum rates on an hourly basis into rates in cents per 100 pounds.

We have considered the facts and arguments presented by the parties and conclude that Pacific Salt's motion would unduly broaden the issues in OSH 700 and delay submission of that proceeding. We also conclude that any new commodity rates established in OSH 700

for movements from origins in Los Angeles County to destinations in Los Angeles and Orange Counties would not materially change the levels of charges resulting from existing rates; therefore, the new rates would not materially affect the current competitive marketing situation of Pacific Salt in Los Angeles and Orange Counties. For these reasons, we conclude that Pacific Salt's motion should be denied.

We also conclude that Order Setting Hearing 700 should be placed on the calendar so that interested parties may complete their presentation of evidence.

IT IS ORDERED that:

(1) The motion of Bulk Freightways, filed in this proceeding on May 25, 1972, is denied.

(2) The motion of California Trucking Association, filed in this proceeding on June 7, 1972, is denied.

(3) The motion of Pacific Salt & Chemical Company, set forth in Exhibit 700-6 in this proceeding is denied.

(4) Order Setting Hearing 700 in Case No. 5432 shall be set for adjourned public hearing at such time and place as hereafter may be designated.

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

Dated at Los Angeles, California, this 17<sup>th</sup> day of OCTOBER, 1972.

Vernon L. Spurgeon  
President  
William J. Spurgeon  
John W. Spurgeon  
John W. Spurgeon  
Commissioners

APPENDIX A

LIST OF APPEARANCES

Commission Staff: Norman B. Haley, Leonard Diamond and Raymond Toohey.

Respondents: Russell & Schureman, by Carl H. Fritze, Attorney at Law, for West Coast Warehouse Corporation; Knapp, Gill, Hibbert & Stevens, by Karl Roos, Attorney at Law, for Bulk Freightways; Roy L. Blake and George C. Blake, for Geo. C. Blake Trucking, Inc.; Richard Reyes, for Russ Phillips Trucking, Inc.; Warren Goodman, for Ventura Transfer Co.; Milton Flack, Attorney at Law, for Tom Utsuki Trucking, Inc.

Protestants: D. Livengood, for West Coast Salt and Milling Co.; Frank A. Riehle, Jr., Attorney at Law, for Pacific Salt & Chemical Co.; R. S. Wilson, for Southwest Salt Co.

Interested Parties: Richard W. Smith and A. D. Poe, Attorneys at Law, and H. F. Kollmyer, for California Trucking Association; Donald R. Swortwood, Attorney at Law, for Western & Long Beach Salt Companies; Chester W. Jenkins, for Ocean Salt Co., Inc.; James S. Blaine, for Leslie Salt Co.; and Thomas E. Carlton, for Morton Salt Company.