

Decision No. 80699

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of DONALD COWAN, dba COWAN )  
 TRUCKING CO. and JAMES E. COREY, dba )  
 COREY TRUCKING COMPANY, for authority )  
 to depart from the minimum rates, rules )  
 and regulations of Minimum Rate Tariff )  
 17, pursuant to the provisions of )  
 Section 3666 of the Public Utilities )  
 Code, for transportation of rock and )  
 sand for NELSON & SLOAN. }

Application No. 53128  
 (Filed February 7, 1972)

INTERIM OPINION

Donald Cowan, doing business as Cowan Trucking Co., and James E. Corey, doing business as Corey Trucking Company hold dump truck carrier permits. In this application Cowan and Corey seek authority, under Section 3666 of the Public Utilities Code, to transport pit-run unprocessed sand and gravel from the Birch Pit of Nelson & Sloan in Otay (within Production Area 37NN), located approximately five miles east of the junction of Interstate 805 and Otay Valley Road to the Nelson & Sloan Main Plant, located at the intersection of Broadway and Main Streets in Otay (within Delivery Zone 37925) at rates which differ from those set forth in Minimum Rate Tariff 17.

The applicable minimum rate for this transportation is 55 cents per ton set forth in MRT 17 from Production Area 37NN to Delivery Zone 37925. The application asserts that the tonnage rate in MRT 17 would produce carrier revenue for this particular haul far in excess of the reasonable revenue required to adequately compensate a carrier for performing the transportation service. Applicants seek to apply a rate of \$17.00 per hour, but not less than the applicable hourly rate in effect at the time of movement as set forth in MRT 7, subject to the rules of MRT 7.

The application states that Nelson & Sloan has performed the transportation service on a proprietary basis and will continue

to do so unless applicants obtain authority to deviate from MRT 17. Nelson & Sloan assertedly has advised applicants that it would engage their services for a substantial portion of the described hauling at the rates proposed in the application.

Test runs conducted by applicants demonstrate that the applicable minimum tonnage rate produces revenues which exceed the revenues under the proposed hourly rates by an average of \$67.42 per day, or \$7.93 per hour.

The application states that unusually favorable operating conditions exist which permit applicants to be adequately compensated for their services at the proposed hourly rate.

Applicants propose to use subhaulers to perform the transportation service. Said subhaulers have been advised of the request of applicants to deviate from the minimum tonnage rate in MRT 17 and to apply an hourly rate as proposed herein. The application lists the names of the subhaulers who consent to the use of hourly rates and urge that the application be granted.

Applicants request ex parte interim authority to conduct the transportation service at the proposed hourly rate, pending hearing. The Commission's Transportation Division concurs in this request. California Dump Truck Owners Association objects to ex parte action and requests a hearing on the basis that hourly rates will be increased substantially as a result of the proceeding in Case No. 5437, Order Setting Hearing 213. That proceeding is still on the Commission's hearing calendar and will not be decided for some time. Action on applicants' request should not be withheld pending conclusion of OSH 213 in Case No. 5437. No other interested party opposed applicants' request for an interim ex parte order.

Subject to further review upon consideration of evidence, which may be adduced at a public hearing, it appears, and the Commission finds, that the proposed rates are reasonable. Under the provisions of MRT 7, subhaulers are required to be paid 95 percent

of the minimum hourly rate, less liquidated amounts. The order herein will require applicants to limit use of subhaulers to those listed in Exhibits A and B to the application, and to pay those subhaulers not less than 95 percent of the rate authorized herein, less liquidated amounts.

In view of the existing conditions, the Commission concludes that applicant should be granted interim authority for a period of six months to the extent indicated in the order. A future hearing will be scheduled in this proceeding.

INTERIM ORDER

IT IS ORDERED that:

1. Donald Cowan, doing business as Cowan Trucking Co., and James E. Corey, doing business as Corey Trucking Company, are authorized to deviate from the minimum rates set forth in Minimum Rate Tariff 17, by assessing a rate of \$17.00 per hour, but not less than the applicable minimum hourly rate set forth in Minimum Rate Tariff 7 subject to the rules and regulations in that tariff, for the transportation of pit-run unprocessed sand and gravel for Nelson & Sloan from its Birch Pit (Production Area 37 NN) to its Main Plant, located at Broadway and Main Streets in Otay (Delivery Zone 37925).

2. If subhaulers are used by applicants to perform the transportation service described in Ordering Paragraph 1, only those subhaulers listed in Exhibits A and B to the application herein shall be employed, and those subhaulers shall be paid by applicants on the basis of not less than 95 percent of the rates authorized in Ordering Paragraph 1, less liquidated amounts.

3. The authority granted herein shall expire six months after the effective date of this order unless sooner canceled, modified or extended by order of the Commission.

4. A public hearing shall be scheduled in this proceeding for the receipt of evidence on the application and full disposition thereof.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 8<sup>th</sup>  
day of NOVEMBER, 1972.

Vernon L. Sturgeon  
President  
William Lyons Jr.  
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Commissioners

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

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.