

Decision No. 80964

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 common carriers, highway carriers
and city carriers relating to the
transportation of sand, rock, gravel
and related items (commodities for
which rates are provided in Minimum
Rate Tariff No. 17-A).

Case No. 5437
Petition for Modification
No. 221

(Filed April 4, 1972)

E. O. Blackman, for California Dump
Truck Owners Association, petitioner.
Karl K. Roos, Attorney at Law, for
Sully-Miller Contracting Company,
protestant.

Harry C. Phelan, Jr., for California
Asphalt Pavement Association, inter-
ested party.

R. W. Smith, Attorney at Law, A. D. Poe,
Attorney at Law, and H. F. Kollmyer,
for California Trucking Association,
interested party.

Ernest E. Gallego, Attorney at Law, for
Southern California Rock Products
Association, interested party.

G. Ralph Grago, for Associated Independent
Owner-Operators, Inc., interested party.

Ralph Staunton, for the Commission staff.

O P I N I O N

Petitioner, the California Dump Truck Owners Association (CDTOA), seeks enlargement of the boundaries of Los Angeles County Production Area FF as defined in Southern California Production Area and Delivery Zone Directory 1. Such enlargement would, in

effect, extend the territorial application of zone rates which are set forth in Minimum Rate Tariff 17-A (MRT 17-A) as minimum rates for the transportation of asphaltic concrete in dump truck equipment from Production Area FF.

Petitioner also asks that the Commission "establish criteria for the adoption and promulgation of Production Areas and zone rates for Asphaltic Concrete in the Los Angeles basin area."^{1/}

Public hearing on the petition was held before Examiner C. S. Abernathy at Los Angeles on June 26, 1972. Evidence in support of the petition was presented by petitioner's general manager. Evidence in opposition to the petition was presented by Sully-Miller through the administrative assistant to that company's vice-president of plant operations. Representatives of the California Asphalt Pavement Association, of the California Trucking Association, of the Southern California Rock Products Association, of the Associated Independent Owner-Operators, Inc., and of the Commission's staff participated in the development of the record.

The enlargement of Los Angeles County Production Area FF, as petitioner seeks, would make that area include an asphaltic concrete plant of Sully-Miller which is located on the east side of the present eastern boundary of Production Area FF. Production Area FF was originally established in order that zone rates might

^{1/} Petitioner also requested that hearing on this petition be set concurrently on a common record with hearing on Petition No. 217 in Case No. 5437 whereby the Sully-Miller Contracting Company (Sully-Miller) seeks the designation of one of its asphaltic concrete producing plants in Orange County as a production area and the establishment of zone rates therefrom. However, hearings on Petition No. 217 were held on May 2 and June 15, 1972, and decision thereon was issued November 21, 1972 (Decision No. 80756).

apply from an asphaltic concrete plant of Vernon Paving Materials Co. (Vernon Paving), which plant is located on the west side of the present eastern boundary of the production area. The plants of Vernon Paving and of Sully-Miller are about a tenth of a mile apart.

Petitioner does not propose any changes in the zone rates along with enlargement of the area. Hence, under petitioner's proposals the same rates which now apply to the shipments of Vernon Paving would also apply to those of Sully-Miller.

According to the evidence of petitioner's witness, the shipments of asphaltic concrete from Sully-Miller's plant move over the same routes as those from Vernon Paving's plant and the distances and vehicle transit times which are involved in either case are virtually identical. Petitioner's position is that in these circumstances the same rates should apply from both plants.

Petitioner's request that the Commission "establish criteria for the adoption and promulgation of Production Areas and zone rates for Asphaltic Concrete in the Los Angeles basin area" is prompted by the fact that the zone rates in MRT 17-A for the transportation of asphaltic concrete are specific and do not apply except in connection with transportation from production areas for which the rates are provided. Distance rates and hourly rates which are set forth in Minimum Rate Tariff 7 (MRT 7) apply to that transportation of asphaltic concrete which is not subject to zone rates. The zone rates in MRT 17-A apply to the transportation of asphaltic concrete from most of, but not all of, the asphaltic concrete producing plants in the Los Angeles basin area. Petitioner asserts that the rates from all of the asphaltic concrete producing plants should be on the same basis--preferably a zone basis.

Petitioner's evident expectations are that the establishment of criteria "for the adoption and promulgation of Production Areas and zone rates for Asphaltic Concrete in the Los Angeles basin area" will facilitate procedures by which such areas and rates can be established at the instance of either an interested shipper or carrier. In practice heretofore the matter of whether a production facility should remain outside of, or be brought within, a zone system of rates has been dealt with as a prerogative of the shipper involved. Petitioner plainly seeks to have this prerogative brought within the province of carriers also. However, petitioner's ultimate purposes extend further. Petitioner asserts in effect that the maintenance of a nondiscriminatory rate structure requires that, where circumstances warrant, a production facility should be brought within a zone rate system irrespective of the desires of either the shipper or of a specific carrier that serves the facility.

Sully-Miller opposes the sought enlargement of the boundaries of Production Area FF mainly because of resulting increases which it would experience in the rates for the transportation of its shipments of asphaltic concrete from its producing facility immediately adjacent to the present production area. The rates which Sully-Miller is now paying are the distance rates in MRT 7. The witness for Sully-Miller presented evidence to show that the zone rates which would apply for representative hauls are 9 to 36 percent higher than the applicable distance rates for the same hauls.

Other parties to this proceeding were in general agreement that there are problems of rate differences between competing plants which require resolution because of differences between the zone and distance rates. However, they pointed

out that the problems are not confined to the transportation of asphaltic concrete, but are present also in connection with the transportation of rock, sand, and gravel. Accordingly, they urged that corrective action be taken on a general basis instead of on an individual plant basis as would be a result under petitioner's proposals in this matter.^{2/} As an initial step toward this end they advocated that the Commission first establish the criteria which petitioner requests. They asserted, however, that the evidence which petitioner presented does not justify such action in this instance.

Discussion

The underlying issue in this matter is whether the differences between the rates that apply for the transportation of asphaltic concrete from the plant of Vernon Paving, on the one hand, and those that apply from the plant of Sully-Miller, on the other hand, are unduly discriminatory. Inasmuch as the evidence shows that the transportation from either plant is performed in virtually identical transportation circumstances, it appears that the differences in rates are attributable mainly to the form of the rates -- to the fact that the rates which apply from Vernon Paving's plant are zone rates whereas those which apply from Sully-Miller's plant are distance rates.

The fact that there are differences between the zone and distance rates for like transportation does not of itself establish that the differences are unduly discriminatory.

^{2/} A representative of the California Trucking Association declared that a shipper should not be brought under a zone system of rates against its will.

Zone and distance rates by their structure give different effect to the cost and other factors that make up the rates, and are not the same for all lengths of haul. However, if the differences between the rates are to be nondiscriminatory, the rates in either case should reasonably reflect, amongst other things, the costs of the transportation performed. In this instance it appears that they do not.

The zone rates in MRT 17-A were first established in a preceding tariff, Minimum Rate Tariff 17, on October 1, 1965, on the basis of, and after extensive studies of, the then current costs of service. They have been subsequently increased to give effect to increases in costs which have since occurred. In contrast the distance rates in MRT 7 which apply for the transportation of asphaltic concrete within the Los Angeles basin area were established on July 6, 1953, and have not been increased since.

In the interval from July 6, 1953, the costs of dump truck transportation have increased materially. A measure of the extent of the cost increases lies in the hourly rates which also apply as minimum rates for the transportation of asphaltic concrete within the Los Angeles basin area. During the period from January 15, 1955, to January 1, 1970, the hourly rates for the transportation of asphaltic concrete in three-axle dump truck equipment -- that used in the movement of Sully-Miller's shipments -- were increased from \$6.95 per hour to \$12.50 per hour (an increase of almost 80 percent) because of increases in the costs of performing the transportation involved.

It must be concluded that the differences between the zone rates from Vernon Paving's plant in Production Area FF and the distance rates from Sully-Miller's plant immediately adjacent to Production Area FF are largely due to the fact that the zone rates from Production Area FF more nearly represent present costs

of service than do the distance rates. In view of the magnitude of the differences, it must be also concluded that the distance rates grant Sully-Miller an undue advantage over Vernon Paving in that they enable Sully-Miller to have its shipments transported for materially lesser charges than those which apply for the transportation of Vernon Paving's shipments in virtually the same circumstances. From the carriers' point of view the distance rates are prejudicial in that the carriers serving Sully-Miller receive materially less compensation than they do for like services which they perform under the zone rates for Vernon Paving. The enlargement of Production Area FF to include Sully-Miller's plant, as petitioner proposes, appears to be a reasonable action to take to correct these preferential and prejudicial differences. In this respect the petition should be granted.

Petitioner's request for the establishment of criteria for the adoption of production areas and zone rates for asphaltic concrete in the Los Angeles basin area should be denied. The record does not provide sufficient basis for a designation of what criteria should apply. Moreover, we question whether all asphaltic concrete plants in the Los Angeles basin area should be required to be on a same rate basis -- preferably a zone basis. The zone and distance rates are designed to meet different needs. Providing both types of rates are reasonable and reasonably related, and do not result in undue preference or prejudice either to shippers or carriers operating thereunder, there does not appear to be any compelling reason for requiring all asphaltic concrete plants in

the Los Angeles basin area to operate under a common basis of rates.^{3/}

Where, however, the zone and distance rates are either not reasonable or not reasonably related, as apparently is the case in this instance, appropriate corrective steps should be taken. In this connection it is noted that pursuant to Order Setting Hearing No. 213 in Case No. 5437 hearings have been held and evidence has been received towards updating both the distance and the hourly rates in MRT 7.^{4/} However, action on petitioner's request with respect to the enlargement of Production Area FF should not be deferred until the problems emanating from the undue differences between the zone and distance rates which have been pointed out in this matter can be resolved on a general basis as suggested by some of the parties.

^{3/} This conclusion presumes that all shipments of a producer of asphaltic concrete will be transported under the same basis of rates. Inherent in all rate structures are features which are more desirable than others. A selection of rate structures according to the most desirable features of any one structure would tend to break down the reasonableness of the rates in the situation in which they are being applied.

^{4/} Hearings on the distance and hourly rate aspects of Order Setting Hearing No. 213 in Case No. 5437 were concluded on November 15, 1972.

Findings

On the basis of the record in this matter the Commission finds as a fact that:

1. Sully-Miller is a processor and shipper of asphaltic concrete at an asphaltic concrete plant which is located in the immediate vicinity of Los Angeles County Production Area FF.
2. Vernon Paving is a processor and shipper of asphaltic concrete at an asphaltic concrete plant which is located within Los Angeles County Production Area FF.
3. Sully-Miller's shipments are being transported under distance rates which are set forth in MRT 7.
4. Vernon Paving's shipments are being transported under zone rates which are set forth in MRT 17-A.
5. The applicable zone rates are about 9 to 36 percent higher than the distance rates for like hauls.
6. The distance rates have been in effect at their present level since July 6, 1953.
7. The zone rates were first established on October 1, 1965, on the basis of the then applicable costs, and have been since increased to offset certain increases in carrier operating costs.
8. Hourly rates which are named in MRT 7 apply as minimum rates, in addition to the distance rates, for the transportation of Sully-Miller's shipments of asphaltic concrete.
9. The hourly rates provide a measure of the extent that costs of dump truck transportation have increased over the years.
10. During the period from January 15, 1955, to January 1, 1970, inclusive, the hourly rates which apply for the transportation of asphaltic concrete in 3-axle dump truck equipment have been increased almost 80 percent to offset increases which have occurred in the costs of the transportation.

11. The transportation of asphaltic concrete from Vernon Paving's plant in Production Area FF, on the one hand, and from Sully-Miller's plant, on the other hand, is performed in virtually identical circumstances in that the distances and vehicle transit times which are involved in either case are virtually identical.

12. Inasmuch as the distance rates for asphaltic concrete have not been increased since July 6, 1953 whereas the zone rates were established on October 1, 1965 on the basis of then current costs and have been since increased to offset subsequent increases in carriers' operating costs, the zone rates for the transportation of asphaltic concrete from Vernon Paving's plant give more effect to current costs than do the distance rates for like transportation from Sully-Miller's plant.

13. The differences between the rates which apply to Vernon Paving's shipments, on the one hand, and the rates which apply to Sully-Miller's shipments, on the other hand, are not justified by differences between the transportation circumstances in which the transportation of asphaltic concrete from the respective plants is performed.

14. The present distance rates provide an undue preference in transportation charges to Sully-Miller's shipments over those of Vernon Paving, and, in comparison to the zone rates under which the carriers are compensated for like transportation for Vernon Paving, the distance rates are unduly prejudicial to carriers hauling Sully-Miller's shipments.

15. As a measure to correct the undue preference and prejudice resulting from the assessing of distance rates for the transportation of Sully-Miller's shipments and zone rates for the transportation of Vernon Paving's shipments, the enlargement of Los Angeles County Production Area FF to include Sully-Miller's plant is justified.

16. The increases resulting from this order will not affect the revenue of individual carriers significantly. Rule 23.1 (this Commission's Rules of Practice and Procedure) findings are not required as provided in paragraph (E)(2)(a) of that rule.

Conclusion

The petition of California Dump Truck Owners Association for enlargement of Los Angeles County Production Area FF as proposed should be granted.

O R D E R

IT IS ORDERED that:

1. Directory 1 (Appendix A of Decision No. 69469, as amended) is amended by incorporating therein, to become effective February 24, 1973, First Revised Page 17 and First Revised Page 18, attached hereto and made a part hereof by this reference.

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

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

Dated at San Francisco, California,
this 16th day of JANUARY, 1973.

Vernon L. Sturgeon
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

SECTION 2--LOS ANGELES COUNTY PRODUCTION AREAS AND
 DELIVERY ZONES (Continued)

| LOS ANGELES COUNTY PRODUCTION AREAS | AREA |
|---|-------|
| Beginning at the intersection of Firestone Boulevard and Garfield Avenue; thence southerly on Garfield Avenue to Southern Avenue; westerly on Southern Avenue to the Los Angeles River; northerly along the Los Angeles River to Firestone Boulevard; easterly on Firestone Boulevard to the point of beginning. | 19-C |
| The southwest quarter of Section 18, Township 4 North, Range 15 West, San Bernardino Base and Meridian. | 19-CC |
| Beginning at the intersection of Hawthorne Boulevard and Redondo Beach Boulevard; westerly along Redondo Beach Boulevard to The Atchison, Topeka and Santa Fe Railway right-of-way; southerly along The Atchison, Topeka and Santa Fe Railway right-of-way to 182nd Street; easterly along 182nd Street to Hawthorne Boulevard; northerly along Hawthorne Boulevard to the point of beginning. | 19-D |
| Beginning at the intersection of Bloomfield Avenue and Imperial Highway; thence easterly along Imperial Highway to Shoemaker Avenue; thence north along Shoemaker Avenue to Sunshine Avenue; thence west along a direct line to Bloomfield Avenue; thence south along Bloomfield Avenue to the point of beginning. | 19-DD |
| Beginning at the intersection of New York Drive and Sierra Madre Villa Avenue; northerly and westerly along New York Drive to the intersection of the northerly prolongation of Rose Avenue; southerly along the prolongation of Rose Avenue and Rose Avenue to Cooley Place; easterly along a direct line to the point of beginning. | 19-E |
| Beginning at the intersection of Greenvalley Road and Skyline Drive; thence due west to the northwest corner of Production Area QA; thence westerly in a direct line to the intersection of Calle Juela Drive and Hazen Drive; northerly along Hazen Drive and Briarcrest Lane to Mulholland Drive; easterly along Mulholland Drive to the intersection of upper Fryman Road; thence southerly along a direct line to the point of beginning. | 19-EE |

No change on this page, Decision No. 80964

EFFECTIVE

Correction

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
 SAN FRANCISCO, CALIFORNIA.

SECTION 2--LOS ANGELES COUNTY PRODUCTION AREAS AND
 DELIVERY ZONES (Continued)

| LOS ANGELES COUNTY PRODUCTION AREAS | AREA |
|---|--------------------------------------|
| <p>Beginning at the intersection of the prolongation of Denning Avenue with the city limits lines of the City of Duarte and the City of Irwindale; westerly along said common boundary line to Mountain Avenue; southerly along Mountain Avenue to Van Meter Street; westerly along Van Meter Street and its prolongation to California Avenue; southerly along California Avenue and Myrtle Avenue to Live Oak Avenue; thence westerly along Live Oak Avenue to Lynd Avenue; southwesterly along Lynd Avenue to 8th Avenue; thence in a direct line to the intersection of Garypark Avenue and Miloann Street; westerly along Miloann Street to Tyler Avenue; southerly along Tyler Avenue to Lower Azusa Road; easterly along Lower Azusa Road to Cedar Avenue; northerly along Cedar Avenue to Cherrylee Drive; easterly along Cherrylee Drive to Peck Road; northerly along Peck Road to Clark Street; easterly along Clark Street and its prolongation to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Ramona Boulevard; easterly along Ramona Boulevard to Harlan Avenue; northerly along Harlan Avenue to Los Angeles Street; thence in a direct line northeasterly to the intersection of Rivergrade Road and Live Oak Avenue; thence northerly along a direct line to the point of beginning.</p> <p>Beginning at the intersection of Inglewood Avenue and Florence Avenue; northerly along Inglewood Avenue and its prolongation to its intersection with the easterly prolongation of Meadowbrook Lane; westerly along said easterly prolongation, along Meadowbrook Lane, and along its westerly prolongation to its intersection with the northerly prolongation of Oak Street; southerly along the prolongation of Oak Street to Florence Avenue; easterly along Florence Avenue to the point of beginning.</p> <p>Beginning at the intersection of the prolongation of Loren Avenue and 11th Street in the City of Azusa; westerly along 11th Street and its prolongation to its intersection with the Pacific Electric Railway (Glendora line) right-of-way; westerly along the Pacific Electric Railway (Glendora line) right-of-way to its intersection with Fish Canyon Road; southerly along a direct line to the intersection of Arrow Highway and Maine Avenue (Irwindale city limits line); thence variously easterly, southerly, westerly and northerly along the City Limits line of the City of Irwindale to Vincent Avenue; northerly along Vincent Avenue to Gladstone Street; easterly along Gladstone Street to Jackson Avenue; northerly along Jackson Avenue and its prolongation to 3rd Street; westerly along 3rd Street to Coney Avenue; northerly along Coney Avenue and its prolongation to Foothill Boulevard; westerly along Foothill Boulevard to Loren Avenue; northerly along Loren Avenue and its prolongation to the point of beginning.</p> | <p>19-F</p> <p>19-FF</p> <p>19-G</p> |
| <p>Change, Decision No. 80964</p> | |
| EFFECTIVE | |
| <p>Correction</p> <p>ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> | |