

Decision No. 82764

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all highway carriers relating to the transportation of sand, rock, gravel and related items (commodities for which rates are provided in Minimum Rate Tariff 17-A).

Case No. 5437
Petition for Modification
No. 253
(Filed October 9, 1973)

E. O. Blackman, for California Dump Truck Owners Association, petitioner.
Harry W. McMahan and Robert L. Lynch, for themselves, respondents.
Wade Austin and G. Ralph Grago, for Associated Independent Owner-Operators, Inc.; Herbert W. Hughes, Richard W. Smith, and Arlo D. Poe, for California Trucking Association; and Harry C. Phelan, for California Asphalt Pavement Association; interested parties.
Raymond Toohey and George L. Hunt, for the Commission staff.

O P I N I O N

Minimum Rate Tariff 17-A (MRT 17-A) names minimum rates and rules for transportation by dump truck carriers of property including rock, sand, and gravel. These rates include zone rates which apply from defined production areas (origins) to designated delivery zones described in Southern California Production Area and Delivery Zone Directory 1. By this petition California Dump Truck Owners Association (CDTOA) seeks to increase from 7 cents to 15 cents per ton the additional rate provided in Item 120 of

MRT 17-A when transportation service is performed by truck-and-transfer-trailer combinations (transfer vehicles) from San Diego County origins.^{1/}

Public hearing was held before Examiner Norman Haley in Los Angeles on February 11, 1974. Evidence was presented by the general manager of CDTOA and by two dump truck carrier representatives. The matter was submitted.

The San Diego County rock, sand, and gravel zone rates were established in MRT 17 (now MRT 17-A) by Decision No. 77204 (1970) in Petition No. 121, Case No. 5437.^{2/} Those rates reflect transportation performed by use of bottom dump vehicles.^{3/} The 7-cent per ton additive was established in San Diego County for transfer vehicles because of higher terminal end costs for such equipment.^{4/} The petition states that subsequent to the cost

^{1/} Item 120 of MRT 17-A reads as follows: "APPLICATION OF TARIFF -- RATES -- SAN DIEGO COUNTY ORIGINS. When the transportation service is performed by 2-axle or 3-axle truck with transfer type pull trailer the rate shall be seven (7¢) cents per ton more than the rate provided for transportation which is performed at the rates in Section 8 in this tariff or at rates which are combined with Section 8 rates."

^{2/} The San Diego County zone rates have been subject to subsequent cost offset adjustments, the last pursuant to Decision No. 82263 (1973) in Petition No. 245, Case No. 5437.

^{3/} Zone rates in MRT 17-A from origins in counties other than San Diego County were based upon a blend of costs derived 70 percent from transfer vehicles and 30 percent from bottom dump vehicles. Therefore, no additional rate is provided in MRT 17-A when transportation is performed by transfer vehicles from origins in those counties.

^{4/} Terminal end costs are the combined allowance for the cost of loading equipment at origins and unloading at destinations. Terminal end costs are comprised of time costs per ton and mileage costs per ton.

study in Petition No. 121 (Exhibit 121-21), there have been substantial increases in the cost of transfer vehicles due to operational problems and increased terminal end time.^{5/}

No one opposed the increase from 7 to 15 cents per ton in the additional rate for transfer equipment in San Diego County. The staff argued, however, that Item 120 should be changed so that the additional rate would apply only when the use of such equipment is specifically requested. The staff is concerned that under the required additional rate in Item 120 transfer vehicles may be unable to compete at points where deliveries can be made with lower-rated bottom dump vehicles. The staff referred to Decision No. 82061 (1973) in Case No. 5437, Order Setting Hearing 213, wherein at page 14 of the printed pamphlet copy we stated in connection with distance tonnage rates "It is true that the added charges which the rate witness recommended could be avoided quite simply. On the other hand, if specific rates for individual types of vehicles are prescribed, the rates per ton for the small equipment would be significantly higher. Under these conditions, the carrier who operates only the small equipment would be precluded from competing on an equal footing with carriers who operate the large equipment. This would result in unreasonable minimum rates and discrimination between carriers."^{6/} The staff pointed out that Item 270, paragraph (a), of MRT 7-A and Item 140, paragraph (b),

^{5/} Terminal end time is the time allowance for in-plant movement, loading, weighing, dumping, and turning at the point of delivery. Terminal end time is the principal element underlying terminal end costs.

^{6/} The record shows that transfer vehicles and bottom dump vehicles legally can carry approximately the same load. The transfer vehicle generally has a somewhat lesser net capacity due to greater tare weight.

of MRT 20 provide additional rates for transfer equipment only when use of such equipment is specifically requested.^{7/}

The general manager of CDTOA introduced Exhibit 1 for the purpose of showing that terminal end times and costs of transfer vehicles in recent studies underlying MRT 7-A and MRT 20 were higher than they were in the earlier San Diego cost study, and also were relatively higher in relation to bottom dump vehicles than they were in the San Diego study. The higher terminal end times for transfer vehicles in Exhibit 1, which the witness calculated from the three cost studies referred to, and the resulting additional rates for such equipment, are shown below:

<u>Case No. 5437 Proceeding</u>	<u>Cost Exhibit</u>	<u>Additional Transfer Vehicle Minutes</u>	<u>Additional Transfer Vehicle Rate</u>	<u>Tariff Reference</u>
Petition 121 (San Diego)	121-21 (1970)	5.12	7 cents	MRT 17-A Item 120
Order Setting Hearing 226 (San Francisco Area)	226-2 Table 6 (1972)	9.9	15 cents	MRT 20 Item 140 para. (b)
Order Setting Hearing 213 (Statewide)	213-93 Table 19 (1973)	18.0 ⁽¹⁾	20 cents	MRT 7-A Item 270 para. (a)

(1) Exhibit 213-93, Table 24, developed the total costs per ton at 100 operating ratio at seven specific distances up to 150 miles for both types of vehicles in Southern Territory. At all distances the costs for transfer vehicles centered around 19 cents per ton more than for bottom dump vehicles.

^{7/} MRT 7-A applies to a number of commodities transported in dump truck equipment throughout the State. However, it does not apply to transportation of rock, sand, and gravel from origins for which rates are provided in MRT 17-A. MRT 20 applies to transportation of rock, sand, and gravel in 4- and 5-axle dump truck equipment in the San Francisco Bay Area.

According to the general manager of CDIOA dump truck carriers in San Diego County have experienced increased terminal end time when transporting rock, sand, and gravel by transfer equipment for several reasons. He stated that the 1972 state law which makes it illegal for a weighmaster to authenticate a scale ticket if the gross weight of the vehicle and contents exceeds the maximum weight permissible on the highways,^{8/} has caused increased terminal end time and cost particularly for transfer vehicles. The witness explained that in order to obtain a weighmaster's certificate any excess lading first must be removed. Because of the nature of the transfer vehicle the removal of excess material takes more time than with bottom dump vehicles which can perform partial unloading through the bottom. The witness stated that the law encourages more accurate loading which also is more time consuming.

The general manager testified that bottom dump vehicles are used for the most part to windrow material along a hard surfaced highway or prospective roadway alignment, or to make deliveries into pits (grizzlies) at industrial plants. Bottom dump vehicles cannot dump in a pile on the surface of the ground. As development has taken place in San Diego County deliveries can be made to more places with bottom dump vehicles. The result has been that transfer vehicles are now making deliveries to a greater number of places where the transfer operation is relatively complicated. Transfer vehicles are used where it is necessary to unload in a pile, which frequently is at an off-highway construction site. On some construction jobs transfer vehicles are used exclusively. A number of deliveries are made in hilly areas where connected 5-axle vehicle units cannot unload. Such deliveries require transfer vehicles with the transfer operation being performed some distance away from the delivery point. These conditions also contribute to the longer unloading times being encountered by transfer vehicles.

^{8/} Section 12762.1 of the Business and Professions Code.

The general manager testified in opposition to the staff request that Item 120 of MRT 17-A be changed so that the additional rate would apply only when a transfer vehicle is requested. He moved that this issue be ruled beyond the scope of the proceeding. The motion was supported by the California Trucking Association. The general manager asserted that such a change would result in a reduction rather than an increase because some shippers would easily find ways of avoiding the additional rate. He gave examples of how a shipper could obtain use of transfer equipment as needed without making a specific request for it. He stated that it was the unanimous opinion of the San Diego Chapter of CDTOA that the 15-cent additional rate should be required for transfer equipment. He asserted that the record shows that the additional charge is cost-justified and therefore under the provisions of Section 3662 of the Public Utilities Code it should be required. The witness stated that transfer vehicles must earn more money than bottom dump vehicles to break even. He said the proposal was discussed with the San Diego County Rock Producers Association and that there was no objection. He pointed out that in counties to the north of San Diego volume receivers named in MRT 17-A enjoy a level of rates based on lower terminal end costs, and that all other receivers are required to pay 3 cents per ton more.^{9/} He stated that this requirement has worked well. He said that the optional rule suggested by the staff would make the additional rate unforeseeable and unenforceable.

The two carrier witnesses transport rock, sand, and gravel in transfer vehicles and other dump truck equipment from San Diego County origins. They also transport other commodities in dump trucks in San Diego County. The witnesses are familiar

^{9/} Area-To-Point Rates, Item 3030, MRT 17-A, Section 3.

with the types of truck equipment utilized, job requirements, and operating conditions in San Diego County. They supported the testimony of the general manager. They testified in addition that transfer vehicles are used on the more difficult jobs, such as water and sewer line sites, roadway corners and edges, and where grades are steep. They stated that there are many hillside developments in western San Diego County, requiring relatively more hillside deliveries by transfer vehicles than in Orange and Los Angeles Counties. Bottom dump vehicles frequently cannot make delivery at these locations.

It was explained that transfer vehicles normally are not used where bottom dump vehicles can be used because transfer vehicles are slower and more expensive to operate. Bottom dump vehicles can make more trips in the same length of time. This is particularly true where the hauls are short because of the substantially greater terminal end time for transfer vehicles. Although the number of transfer vehicles has remained relatively stable for some time in the San Diego area the number of bottom dump vehicles has increased substantially. The carrier witnesses indicated, however, that there is little or no competition between transfer vehicles and bottom dump vehicles in the area. They said that the required additional 7-cent rate had not placed transfer vehicles at a disadvantage. They were of the opinion that the proposed 15-cent rate would not create any problem.

It is clear that the additional rate of 7 cents per ton for use of transfer equipment in Item 120 of MRT 17-A does not reflect current costs for such equipment performing similar dump truck work in San Diego County. A rate of 15 cents per ton in Item 120 of MRT 17-A (in lieu of 7 cents) will result in just, reasonable, and nondiscriminatory minimum rates for transportation to which said rate would apply.

In view of the testimony we cannot subscribe to the staff argument that Item 120 of MRT 17-A should be changed so that the additional rate now required for transfer vehicles would apply only when such equipment is specifically requested. The record shows that in San Diego County carriers have had no difficulty in collecting the extra 7 cents per ton for transfer equipment. Carriers anticipate no problem collecting the proposed 15-cent additional rate. Current costs of transfer vehicles performing similar work in Southern Territory exceed costs of bottom dump vehicles by more than that amount. It is not always advantageous for similar tariff rules in different tariffs to be made uniform. We recently commented on this in Decision No. 81070 (1973), Case No. 5437, Petition No. 227, et al., at page 3 of the printed pamphlet copy. The staff suggestion concerning Item 120 of MRT 17-A will not be adopted. The 15-cent rate should be collected whenever transfer vehicles are used to transport rock, sand, or gravel from San Diego County origins. No ruling on the motion of the CDTOA general manager is required.

Findings

1. Zone rates in Section 8 of MRT 17-A for transportation of rock, sand, and gravel from San Diego County origins were established by Decision No. 77204 (1970) in Petition No. 121, as amended in Case No. 5437, based upon cost data reflecting operation of the 5-axle bottom dump vehicle, the predominant and ratemaking vehicle.
2. Item 120 of MRT 17-A requires the addition of 7 cents per ton to zone rates from San Diego County origins when service is performed by transfer vehicles due to higher terminal end costs than for bottom dump vehicles.
3. MRT 17-A does not provide for an additional rate when transportation of rock, sand, and gravel is performed by transfer

vehicles from other than San Diego County origins because zone rates from origins in Orange, Los Angeles, Riverside, San Bernardino, and Ventura Counties were based upon a blend of costs derived 70 percent from transfer vehicles and 30 percent from bottom dump vehicles.

4. Exhibit 1 shows that terminal end times and costs for operation of transfer vehicles in Southern Territory under MRT 7-A (Exhibit 213-93, Table 19, Order Setting Hearing No. 213, Case No. 5437) are substantially greater in relation to terminal end times and costs for bottom dump vehicles, than reflected in the earlier cost study that underlies the San Diego County zone rates in MRT 17-A established by Decision No. 77204 (Exhibit 121-21, Petition No. 121, Case No. 5437).

5. The net differences in terminal end times and costs between transfer vehicles and bottom dump vehicles (Exhibit 213-93, Tables 19 and 24) resulted in an additional Southern Territory rate of 20 cents per ton in Item 270, paragraph (3) of MRT 7-A, effective December 1, 1973, when service is requested to be performed by transfer vehicles.

6. An increase from 7 to 15 cents per ton in the additional rate in Item 120 of MRT 17-A when transportation service is performed by transfer vehicles from San Diego County origins is justified.

7. The record shows that the requirement in Item 120 of MRT 17-A that an additional rate be added whenever transfer vehicles are utilized from San Diego County origins has worked satisfactorily and has not been productive of unreasonable results.

8. The procedures of the Commission provided for reasonable opportunity for participation by all interested persons or their representatives. Copies of the petition and notice of hearing were sent to known carrier and shipper organizations and to the State of California Department of Public Works. No objection to the granting of the petition was received, other than the issue

of rule construction raised by the Transportation Division. The petition states that the San Diego County Rock Producers Association, which represents all or nearly all of the shippers involved, has authorized CDTOA to state that they are in accord with and support the petition.

It is concluded that Petition No. 253 should be granted.

A minor change not related to the subject matter of the petition will be made in one of the tariff pages herein being revised.^{10/}

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 17-A (Appendix C of Decision No. 80578, as amended) is further amended by incorporating therein to become effective May 24, 1974, Third Revised Page 1-5 and Third Revised Page 1-6, attached hereto and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 80578, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered by this decision.

^{10/} The exception in Item 160 of the tariff will be clarified by amending same to conform with the provisions of Note 3 of Item 65 thereof.

3. Tariff publications required to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order on not less than ten days' notice to the Commission and to the public and shall be made effective not later than May 24, 1974.

4. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects Decision No. 80578, 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 23rd day of APRIL, 1974.

Vernon L. Sturgeon
President
William J. Quinn

[Signature]
[Signature]
Commissioners

I abstain

[Signature], Commissioner

SECTION 1--RULES (CONTINUED)	ITEM
<p align="center">APPLICATION OF TARIFF--COMMODITIES</p> <p>Rates in this tariff making specific reference to this item apply for the transportation of the following commodity:</p> <p>Decomposed Granite</p>	70
<p align="center">APPLICATION OF TARIFF--COMMODITIES</p> <p>Rates in this tariff making specific reference to this item apply for the transportation of:</p> <p>SLAG, Blast Furnace and Open Hearth, air cooled (not expanded)</p>	75
<p align="center">APPLICATION OF TARIFF--GENERAL</p> <p>Rates in this tariff do not apply to the transportation of:</p> <p>(a) Property of the United States or property transported under an agreement whereby the United States contracted for the carrier's service.</p> <p>(b) Disaster Supplies, i.e., those commodities which are allocated to provide relief during a state of extreme emergency or state of disaster; and those commodities which are transported for a civil defense or disaster organization established and functioning in accordance with the California Disaster Act to ultimate point of storage or use prior to or during a state of disaster or state of extreme emergency.</p>	80
<p align="center">APPLICATION OF TARIFF--RATES</p> <p>Except as otherwise provided, the rates in this tariff are zone rates and area-to-point rates. The rates apply from all points of origin within the designated production areas to all points of destination within the designated delivery zones, and to specifically named delivery points.</p> <p>If any portion of a shipment is physically delivered into or beyond more than one delivery zone, the minimum rate for the entire shipment shall be that rate from point of origin to the highest rated point where physical delivery is made. (See Exception)</p> <p>EXCEPTION.--When any portion of a shipment is delivered into more than one zone, and when no portion of such shipment is physically delivered beyond the boundaries of streets which are the boundaries between the zones involved, the minimum rate for the entire shipment shall be the lower or the lowest of the applicable rates between point of origin and the zones into which delivery is made.</p>	100
<p align="center">APPLICATION OF TARIFF--RATES--SAN DIEGO COUNTY ORIGINS</p> <p>When the transportation service is performed by 2-axle or 3-axle truck with transfer type pull trailer the rate shall be fifteen (15¢) cents per ton more than the rate provided for transportation which is performed at the rates in Section 8 in this tariff or at rates which are combined with Section 8 rates.</p>	0120
<p>◊ Increase, Decision No. 82764</p>	
EFFECTIVE	
<p align="center">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	

ITEM	SECTION 1--RULES (CONTINUED)
140	<p style="text-align: center;">APPLICATION OF TARIFF--TERRITORIES</p> <p>Rates in this tariff apply for transportation from all points within the production areas to all points within the delivery zones described in Southern California Production Area and Delivery Zone Directory 1, and to specifically named delivery points as provided in Section 3 of this tariff. They apply also, to the extent specified elsewhere herein, for transportation from all points within said production areas to points outside of said delivery zones.</p>
160	<p style="text-align: center;">APPLICATION OF OTHER MINIMUM RATE TARIFFS</p> <p>Except as otherwise provided, the rates in this tariff supersede, and apply to the exclusion of, rates applicable to the same transportation under other minimum rate tariffs of the Commission. (See Exception)</p> <p>EXCEPTION.--The transportation charges for commodities described in Item 65, when transported in trucks with trailing equipment or tractors with trailers, shall be performed at the hourly rates and rules in Minimum Rate Tariff 7-A.</p> <p>For rates for the transportation of commodities in dump truck equipment, other than as provided in this tariff, see Minimum Rate Tariff 2, 7-A or 9-B as the case may be.</p>
180	<p style="text-align: center;">ACCESSORIAL CHARGES</p> <p>In addition to the charges provided under Sections 8, 11, 12, 13, 14 and 15, accessorial charges shall be assessed as provided in Item 90 of Minimum Rate Tariff 7-A.</p>
<p>Change, Decision No. 82764</p>	
EFFECTIVE	
<p style="text-align: center;">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	