

Decision No. 85918

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of sand, rock, gravel and related items in bulk, in dump truck equipment between points in California as provided in Minimum Rate Tariff 7-A and the revisions or reissues thereof.

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of rock, sand, gravel and related items in bulk, in dump truck equipment in Southern California as provided in Minimum Rate Tariff 17-A and Southern California Production Area and Delivery Zone Directory 1, and the revisions or reissues thereof.

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of rock, sand and gravel in bulk, in dump truck equipment in Northern California as provided in Minimum Rate Tariff 20 and Northern California Production Area and Delivery Zone Directory 2, and the revisions and reissues thereof.

Case No. 5437
Order Setting Hearing 238
(Filed January 16, 1973)
Petition for Modification
No. 240
(Filed February 9, 1973;
amended February 4, 1975)
Petition for Modification
No. 285
(Filed February 28, 1975;
amended May 27, 1975)

Case No. 9819
Petition for Modification
No. 4
(Filed February 4, 1975)
Petition for Modification
No. 7
(Filed February 28, 1975;
amended May 27, 1975)

Case No. 9820
Petition for Modification
No. 1
(Filed February 4, 1975)
Petition for Modification
No. 3
(Filed February 28, 1975;
amended May 27, 1975)

(Appearances are shown in Appendix A to
Proposed Report of Examiner J. W. Mallory.)

O P I N I O N

The Proposed Report of Examiner J. W. Mallory was issued in these proceedings on November 13, 1975. The matters were submitted upon filing of replies to exceptions to the proposed report on February 2, 1976.

A copy of the proposed report is attached. The statement of the nature of the proceeding, the summary of evidence adduced, and the outline of the positions of the several parties as set out in the proposed report are adopted and need not be repeated herein.

The proposed report contains 36 recommended findings of fact and 4 conclusions of law. Exceptions to certain of the examiner's recommended findings and all of his recommended conclusions were made.^{1/}

Generally, each party's exceptions and replies strongly support its position taken during the course of the hearing. CDTOA and the staff urge that the Commission adopt the findings that support the establishment of divisions of revenues between overlying and underlying carriers, and oppose those findings which indicate the reasons that further division of such revenues are inappropriate. Conversely, Overlying Carriers and CTA oppose those findings leading to the establishment of divisions of revenues between underlying and overlying carriers and support those findings which are contrary thereto.

^{1/} Exceptions were filed by California Trucking Association (CTA), California Dump Truck Owners Association (CDTOA), Northern and Southern California Overlying Carrier Chapters of California Dump Truck Owners Association (Overlying Carriers), and the Commission staff. Replies to exceptions were filed by CDTOA, Overlying Carriers, and the staff. No exceptions or replies were filed by petitioner, Associated Independent Owner-Operators, Inc. (AIOO).

Many of the exceptions and replies reiterate the interpretation of the evidence (or lack thereof) taken by the parties at the hearing and need not be restated. Several arguments again raised in the exceptions and replies had been laid to rest in Decision No. 83672 dated October 29, 1974 in Case No. 5437 (OSH 238), (Decision No. 83852 dated December 17, 1974, denied rehearing of Decision No. 83672). However, certain points raised in the exceptions and replies require additional amplification and discussion beyond that contained in the proposed report.

Summary of Recommended Findings

The key to the issues raised by the staff in OSH 238 and by petitioners CDTOA and AIOO in related proceedings is the so-called 95 percent rule in MRTs 7-A, 17-A, and 20. Under that rule, revenues under the minimum rates in those tariffs are divided 95 percent to underlying carriers and 5 percent to overlying carriers. As pointed out in prior Commission decisions, the 5 percent allocated to overlying carriers is intended to cover the so-called brokerage services provided by such carriers on behalf of underlying carriers employed by them. Decision No. 78965 (involving the same issues as raised herein) found the tariff provisions allocating minimum rate revenues between carriers never were tested by studies which include specific cost data relating to services performed by overlying carriers for underlying carriers (Recommended Finding 8). The staff cost studies underlying MRT 7-A are based on the operation of a full unit of carrier equipment by a carrier serving a shipper directly who neither operates as a subhauler nor as an overlying carrier (Recommended Finding 4).

Overlying carriers engaged in performance of work on construction projects consider the 5 percent allocated to them to be insufficient to cover the services performed by them on behalf of the

contractor and the subhaulers on the construction projects^{2/} (Recommended Finding 25). Trailer rental fees (the subject of these proceedings) are used by overlying carriers to recoup the additional revenues they believe are necessary to cover their expenses which are in excess of the amounts provided by the present 5 percent brokerage fee (Recommended Finding 26). That finding states that the trailer rental fees assessed are greater than necessary to cover the reasonable expenses associated with the furnishing of trailing equipment to pullers.

2/ The proposed report describes such services as follows:

1. Obtaining work through bidding of jobs. This purportedly involves the surveying of potential construction projects; determining the trucking requirements for the project; preparing the trucking portion of the contractor's bid; and advising the contractor on rates, sources of materials, and other factors.
2. Servicing the contractor, by determining the daily number of vehicles required, placing trucking supervisors at loading and discharge points, and advising contractors concerning the daily work accomplished.
3. Preparation of freight bills for underlying carriers and advising them concerning rates.
4. Supplying capital to contractors and underlying carriers by paying the latter for their services in advance of the receipt of payment from contractors.
5. Furnishing fuel, tires, and repairs to underlying carriers at cost, based on volume discounts or credit arrangements accorded to the overlying carrier by its suppliers.
6. Providing parking for subhaulers' equipment at or near jobsite without cost.
7. Providing liability insurance for trailer equipment owned by the overlying carrier under limits in excess of that available to subhaulers operating single units.

The cost and other evidence adduced show that the combined operations of an overlying carrier and a tractor-only subhauler for transportation on construction projects produce total costs in excess of the costs which underlie the present rates in MRT 7-A; no division of the present minimum rates in MRT 7-A between a tractor-only subhauler and an overlying carrier for services on construction projects can be equitable to both (Recommended Finding 31).

Staff Exceptions

While purporting to except to the findings recited above the Commission staff confirms them in the following statements extracted from the staff replies to exceptions:

"The staff agrees that the costs upon which the present minimum rates were developed represent full unit carrier costs. . . . The conclusion that the 5 percent fails to compensate the overlying carriers for their 'brokerage services' is an improper conclusion based on a misunderstanding as to what services are included in the rates in MRT 7-A.

"The costs for full units of equipment upon which the present minimum rates were established do not include all of the following services by the overlying carriers:

- "(a) Obtaining work through bidding of jobs. This purportedly involves the surveying of potential construction projects; determining the trucking requirements for the project; preparing the trucking portion of the contractor's bid; and advising the contractor on rates, sources of materials, and other factors.
- "(b) Servicing the contractor, by determining the daily number of vehicles required, placing trucking supervisors at loading and discharge points, and advising contractors concerning the daily work accomplished.
- "(c) Supplying capital to contractors and underlying carriers by paying the latter for their services in advance of the receipt of payment from contractors."

The staff reply to exceptions goes on to say:

"The functions set forth above are not transportation services nor can they be categorized as accessorial services. They may well be the functions of a Motor Transportation Broker. These functions are not part of the transportation service of a reasonably efficient carrier and have no place in the scheme of minimum rate regulation. If the overlying carriers are not Motor Transportation Brokers and wish to perform such services then they should recapture these costs by assessing a rate or charge higher than the minimum rate. With the removal of the above services from the costs of performing the transportation service the minimum rates then will return to the carriers their full costs. Therefore, the application of the 95% rule is reasonable and the Commission should find for an equitable division of rates in MRT 7-A."

It follows from the above statements of the staff that if the overlying carrier on a construction project is not, in fact, a carrier and is some other entity not subject to the provisions of MRT 7-A, the minimum rates in that tariff would apply to the subhauler (rather than the overlying carrier) and the so-called 95 percent rule would not be invoked.^{3/} A motor transportation broker may assess any charge to the carrier for the service of arranging the transportation

^{3/} Motor transportation brokers are regulated under Chapter 5 of Division 2 of the Public Utilities Code (§§ 4801-4880). Motor Transportation Brokers act as intermediaries between the public and highway carriers of property for compensation, and negotiate or sell transportation services. A license is required to operate as a motor transportation broker (§ 4832). The Commission may regulate the rates, charges, contracts, operations, and practices of a motor transportation broker (§ 4871).

service absent the establishment of rules governing its rates.^{4/} The carrier must, of course, charge the shipper not less than the applicable minimum rate. If present overlying carriers are regulated as transportation brokers, and present underlying carriers assess the minimum rates, but are free to negotiate with brokers for charges, the situation would be very little different from the existing situation where the overlying carrier (broker) negotiates its fee through assessment of trailer rental charges in excess of the fair rental value of the trailers furnished to subhaulers.

The staff also overlooks the fact that any full-unit carrier (one who hires no subhaulers) would be required to perform the services outlined in paragraphs (a) and (b) because those services are required in connection with dump truck transportation services on construction projects, irrespective of whether a carrier with its own equipment is employed or an overlying carrier is employed. Not to include those services in the basic cost data for a full-unit operator results in the failure of the staff cost studies to recognize the

^{4/} The leading case with respect to motor transportation brokers is Leonard F. Schempp (1947) 47 CRC 510. Schempp held highway carrier permits. Some hauling was performed with his own equipment, but for the bulk of the hauling for which a license was sought Schempp intended to use subhaulers. The decision states that it is well-established that one who is himself a carrier cannot act as a broker with respect to transportation over his own line. Schempp also held that a broker is an intermediary between the shipper and the carrier; his status is that of an agent, which is clearly distinguishable from a carrier-shipper relationship. Schempp further states that it is not a broker's proper function to issue bills of lading, either as a shipper or carrier, nor to issue, in his own name, freight bills to cover transportation charges, nor to hold himself out as a carrier.

true nature of the dump truck services required and performed on a construction project. The only remedy for such failure is to prepare new cost studies which include factors (a) and (b) in operating costs. It is apparent from evidence adduced by overlying carriers that if provision had been made for those factors in the staff cost studies, the costs for hauling on construction projects would be substantially greater than the costs which underlie the present MRT 7-A minimum rates, and the need for overlying carriers to extract from subhaulers sums greater than the fair rental value of trailers furnished by them would disappear.

Separate findings and conclusions were reached by the examiner with respect to MRTs 7-A, 17-A, and 20. The examiner's findings and conclusions with respect to MRT 7-A concerned dump truck work on construction projects. The staff, in its exceptions, correctly points out that all dump truck transportation covered by MRT 7-A does not involve work performed on construction projects and proposes that the broad findings regarding MRT 7-A be limited to the construction projects defined in Item 260 of MRT 7-A. For the balance of transportation services covered by MRT 7-A a division of revenues between overlying and underlying carriers for trailer rental would be established in the same manner as for MRTs 17-A and 20. Those exceptions of the staff are well-taken and will be adopted.

Exceptions of Overlying Carriers

Overlying Carriers take exception to what they term the explicit finding that there is a need for establishing a division of revenue by imposing fixed limitations upon trailer rental agreements entered into between overlying and underlying carriers, in the absence

of a finding that the current trailer rental practices in the industry are unreasonable and discriminatory or that such a division of revenue is necessary to assure reasonable rates to the general public.

Taking the latter premise first, MRTs 7-A, 17-A, and 20 now provide for divisions of revenues between overlying and underlying carriers. Those tariff provisions were established without a finding that the provisions were needed to assure reasonable rates to the general public. The practice of trailer rental stems from those tariff provisions and began after those tariff provisions were established.

With regard to the first point, Overlying Carriers' witnesses openly and freely testified that trailer rental charges are imposed by them which are greater than the reasonable rental value of the trailers in order that they may recoup costs associated with services performed on construction projects which are in excess of 5 percent of the minimum rates allocated to overlying carriers. The proposed report would establish fixed limitations on trailer rentals on work other than on construction projects, where the present 5 percent brokerage fee appears appropriate and no economic need appears to exist for the assessment of trailer rental charges in excess of the reasonable rental value of the trailers furnished. Recommended Findings 18, 24, 25, 26, 27, 29, 30, 31, and 34 cover the points just described. Those findings, taken together, indicate that present trailer rental charges are unreasonable and discriminatory to the extent that such charges exceed the reasonable rental value of the equipment furnished for all dump truck transportation services, except those services which are conducted on construction projects. An additional finding to that effect will be made herein.

Overlying Carriers also take exception to the establishment of divisions of revenues for trailer rental in MRTs 17-A and 20 without a presentation of cost studies based on the actual cost of an underlying carrier that furnishes only tractor equipment and the costs of an overlying carrier that supplies trailer equipment and services to underlying carriers. We have reviewed the cost and other data of record and find that, taken together, such data are sufficient, adequate, and suitable as a basis for the further division of carrier revenues recommended by the examiner, even though no specific costs have been furnished covering the brokerage services performed by overlying carriers on behalf of underlying carriers. Inclusion of brokerage and trailer rental in the same charge will provide a simplified method of allocating revenue between overlying and underlying carriers. Transportation on construction projects, where subhaulers perform most of the transportation services and trailer rental is the standard practice, will not be affected until further proceedings are completed and the results have been evaluated.

Discussion

If we are to accept the concept (advanced by the staff for the first time in the staff replies to exceptions) that overlying carriers are motor transportation brokers, we either must reopen this proceeding to explore the changes in regulatory practices that result or we must initiate a new proceeding for that purpose. No useful purpose would be served by reopening this proceeding.^{5/} The staff concept should be explored in a separate proceeding in which the Motor Transportation Brokers Act (§§ 4801-4880) is fully explored. The record in this proceeding is not sufficient to reach findings and conclusions on that point.

^{5/} This proceeding has extended over a long period, partly because of unresolved matters pending before the National Labor Relations Board (NLRB) involving the status of subhaulers employed on construction projects.

The order herein will establish divisions of revenues under minimum rates in MRT 17-A and MRT 20 as recommended in the proposed report and also will establish such divisions in MRT 7-A except for work on construction projects. The combined amounts for trailer-rental and brokerage should be raised from 15 percent, as recommended by the examiner, to 20 percent, which we deem to be a more equitable division of revenues between overlying and underlying carriers and is consistent with the staff proposal herein. The examiner's recommended findings will be modified accordingly. The order herein also will provide a deduction from charges in those minimum rate tariffs when trailer equipment is furnished by persons responsible for the payment of freight charges (shippers), and the amount of trailer rental will be revised from 14 percent, as recommended by the examiner, to 15 percent which we deem reasonable and consistent with the charge for trailers furnished by overlying carriers.

We have carefully considered all of the exceptions to the recommended findings and conclusions and the replies thereto. No need appears to discuss in detail exceptions or replies except to the extent set forth above. The examiner's recommended findings and conclusions have been revised to incorporate those exceptions and replies deemed to have merit.

Anti-Competitive Practices

The practice under which underlying carriers are required to rent trailers from the overlying carrier as a condition of employment and the basis of charging for the use of the trailers as a factor separate from the brokerage charge constitute a tying arrangement which may be a per se violation of Section 1 of the Sherman Act (15 USC § 1). The trailer-rental service is tied to the brokerage service in such a manner that competition is restricted in that no

entity other than the overlying carrier (broker) or his agent can furnish trailers at any price to the underlying carrier, nor can the underlying carrier furnish his own trailer. The order which follows will provide that overlying carriers cannot require that underlying carriers rent or lease trailers as a condition of employment.

Findings of Fact

1. Minimum rates for the transportation of rock, sand, gravel, earth, asphaltic concrete, and related commodities in bulk in dump trucks are set forth in MRTs 7-A, 17-A, and 20.

2. The minimum rates set forth in MRTs 7-A, 17-A, and 20 are developed from cost data prepared by and introduced into evidence by the Commission staff.

3. The cost data underlying MRT 7-A was originally introduced into evidence as Exhibits 213-46 and 213-65 in Case No. 5437 (OSH 213). The most recent updating of the cost data in OSH 213 was introduced into evidence in Case No. 5437 (Petition 265) as Exhibit 265-71.

4. The staff cost studies referred to in the preceding finding are based on the operation of a full unit of carrier's equipment by a carrier serving a shipper directly, who neither operates as a subhauler nor as an overlying carrier.

5. A substantial amount of the dump truck services subject to the provisions of MRT 7-A are contracted for by overlying carriers who employ subhaulers to perform the transportation services.

6. Item 210 of MRT 7-A (formerly Item 94 of MRT 7) and related items in MRTs 17-A and 20 provide that charges paid by an overlying carrier to an underlying carrier shall not be less than 95 percent of charges applicable under the minimum rates, less liquidated amounts. Under this tariff provision 5 percent of the minimum rate revenue is allocated to the overlying carrier for services performed by it.

7. Item 210 of MRT 7-A and related items in MRTs 17-A and 20 do not contain provisions which set a maximum amount for the rental of trailers furnished to subhaulers by overlying carriers, nor do such tariffs divide the charges under minimum rates between subhaulers furnishing driver and tractor (or truck) and overlying carriers furnishing trailers.

8. In a prior proceeding involving the provisions of Item 94 of MRT 7, the Commission found as follows:

- "2. The existing provisions of Item 94 of MRT 7 were established on data relating to industry practices, some 20 years ago; substantially identical provisions were subsequently incorporated in Item 460 of MRT 17; and the provisions of Item 94 of MRT 7 and Item 460 of MRT 17 never have been tested by studies which include specific cost data relating to services performed by overlying carriers for underlying carriers." (Emphasis supplied.) (Page 18 of mimeo. Decision No. 78965 issued on December 8, 1970 in Petition 112 and Order Setting Hearing in Decision No. 72028 dated February 15, 1967.)

9. Since the establishment of Item 94 of MRT 7, it has become an increasing practice for overlying carriers to employ subhaulers who furnish a tractor (or truck) with driver (puller) and who pull a trailer or set of trailers owned by the overlying carrier. CDTOA estimates that there are in excess of 1,000 pullers holding permits as dump truck carriers.

10. Pullers also lease trailing equipment from shippers. The extent of this practice cannot be determined from the record, but the practice appears to be minimal compared with the operations of pullers for overlying carriers.

11. Order Setting Hearing 238 was issued to receive evidence with respect to proposals of the Commission's Transportation Division concerning revision of MRTs 7-A, 17-A, and 20 to incorporate therein rules providing for compensation to carriers which furnish units of equipment consisting of a tractor and driver without trailing equipment for the movement of commodities covered by said tariffs. Cost data and other evidence were presented by the Commission staff witnesses to support the staff proposal.

12. AIOO seeks in Petition 240, as amended (and related proceedings), modification of MRTs 7-A, 17-A and 20 by incorporating therein rules providing for the compensation to be paid to overlying carriers who furnish trailing equipment without power units to subhaulers for the movement of commodities covered by said tariffs. Cost data and other evidence were presented by AIOO in support of its proposals.

13. OSH 238 and Petition 240 were heard on a consolidated record in February and March 1974, and the matters were removed from the calendar in order to rule on the motion to dismiss the proceedings filed by CTA which opposes the relief sought. Decision No. 83672 dated October 29, 1974 denied the motion to dismiss and ordered that further hearings be held. Decision No. 83672 placed the parties on notice that the Commission considers that the reasonableness of the provisions of Item 210 (Payments to Underlying Carriers) of MRT 7-A and related provisions of MRTs 17-A and 20 is an issue in OSH 238 and Petition 240.

14. CDTOA seeks in Petition 285 (and related proceedings) to amend MRTs 7-A, 17-A, and 20 by incorporating therein rules providing for the compensation to be paid to underlying carriers operating a power unit which pulls non-owned dump trailer and/or semitrailer equipment. Evidence was presented in support of that proposal.

15. CTA opposes the addition of any rules which prescribe the division of minimum rate revenues between overlying carriers furnishing trailers and pullers. As an alternative to the proposals of the staff, CDTOA, and AIOO, CTA proposes that Item 210 of MRT 7-A (and related provisions of MRTs 17-A and 20) be cancelled, and General Order No. 130 (Rules Governing Leasing of Motor Vehicles by Highway Permit Carriers) be amended to require the filing of leases or rental agreements for use of trailing equipment furnished by an overlying carrier to an underlying carrier. Evidence was offered in support of CTA's proposals.

16. Overlying Carriers also oppose the additional rules proposed by the staff, AIOO, and CDTOA. Evidence in support of its position was offered.

17. California Asphalt Pavement Association (CAPA), appearing as an interested party, opposes any increase in the so-called brokerage fee (the 5 percent of the minimum rate allotted to the overlying carrier under provisions of Item 210 of MRT 7-A and related provisions of MRTs 17-A and 20). CAPA has no objection to the establishment of tariff provisions dividing the charges under minimum rates in MRTs 7-A, 17-A, and 20 between pullers and overlying carriers or shippers that furnish trailer equipment. Evidence in support of its position was presented by CAPA.

18. The record indicates that under current practices overlying carriers assess trailer rental charges ranging from 15 to 30 percent (exclusive of the 5 percent brokerage fee) and that the most frequently assessed trailer rental fees are 20 or 25 percent. The record does not contain information concerning the trailer rental charges currently imposed by shippers.

19. The staff, AIOO, and CDTOA allege that provisions establishing a division of minimum rate revenues between pullers and overlying carriers furnishing trailers are urgently needed to protect pullers. None of those parties urge that any particular level of trailer rental fees now assessed is unreasonable or discriminatory.

20. Revenues under the minimum rates in MRTs 7-A, 17-A, and 20 are proposed to be divided as follows:

Commission Staff:

Tractor (Truck) and Driver - 85 percent
(less 5 percent of 85 percent for
brokerage fee)

Trailer Owner - 15 percent
(plus 5 percent of 85 percent if
an overlying carrier)

AIOO:

Tractor (Truck) and Driver - 80 percent
(less 5 percent of 80 percent for
brokerage fee)

Trailer Owner - 20 percent
(plus 5 percent of 80 percent as
brokerage fee if an overlying carrier)

CDTOA:

Tractor (Truck) and Driver - 80 percent
(less 5 percent of 100 percent as
brokerage fee)

Trailer Owner - 20 percent
(plus 5 percent of 100 percent if
an overlying carrier)

21. The cost data presented by the staff divides the total operating costs for a full unit (at 100 operating ratio) between the tractor (truck) and driver and the trailer(s). The cost data is based on exhibits previously introduced by the staff in Exhibits 213-46, 213-65, and 265-71, except that the indirect expense ratio is reduced to 7 percent and the present 5 percent brokerage fee is included in tractor-driver costs as a portion of indirect expenses. Representative of the division of costs developed in Exhibit 238-12 are the following:

Five-Axle Bottom Dump Unit

Hourly Costs (straight time)

Total Cost - Full Unit	\$21.982
Total Cost - Power Only	\$19.048
Power Unit as % of Total Unit	86.7

Distance Costs

5 Miles

Total Cost - Full Unit	\$ 0.565
Total Cost - Power Only	\$ 0.496
Power Unit as % of Total Unit	87.8

50 Miles

Total Cost - Full Unit	\$ 2.805
Total Cost - Power Only	\$ 2.397
Power Unit as % of Total Unit	85.5

22. Cost data presented by AIOO divides total operating costs for a full unit in a manner similar to the staff data. AIOO's cost study also uses a 7 percent indirect expense ratio and includes the 5 percent brokerage fee as a portion of indirect expenses. The cost data developed in Table 6 of Exhibit 240-1 is as follows:

	<u>5-Axle Double Bottom Unit</u>	<u>5-Axle Truck and Transfer Trailer</u>
Average Cost per Revenue Hour at 100 O.R.	\$21.352	\$21.486
Average Total Cost Power Unit Only	\$18.658	\$19.901
Power Unit as % of Total Unit	87.38	92.62

23. Cost data presented by CDTOA was designed to show that pullers experience lower indirect expenses than operators of full units; for example, Exhibit 285-3 shows that in 1974 the average indirect expense ratio for pullers was 7.23 percent, compared to 11.41 percent for tractor- and bottom-dump trailers operated as a full unit.

24. Based solely on the cost data in Exhibits 238-12 and 240-1, the reasonable division of the revenue under minimum rates in MRT 7-A for the operation of a power unit and driver would be 86 percent, and for the trailer(s) would be 14 percent, with no provision for a brokerage fee.

25. Evidence was presented on behalf of CTA and Overlying Carriers to show that overlying carriers engaged in work on public works construction projects consider that the 5 percent of minimum rate revenues allotted to them under provisions of Item 210 of MRT 7-A is insufficient to cover the services performed by them on behalf of the contractor and the subhaulers employed on public works construction projects. This assumption was confirmed by the analysis of the operating statements of eight overlying carriers in Exhibit 238-15, presented by Overlying Carriers, and in the testimony presented on behalf of that organization.

26. Overlying carriers appearing for CTA testified that trailer rental fees are used by them to recoup the additional revenues which they believe are necessary to cover their expenses as overlying carriers which are in excess of the amounts provided by the present 5 percent brokerage fee. The testimony shows that the trailer rental fees assessed are greater than necessary to recover the reasonable expenses associated with the furnishing of trailing equipment to pullers.

27. The proposal of AIOO that trailer-rental be based on a maximum of 20 percent of the revenue accruing under the minimum rates was made in recognition that overlying carriers experience expenses which are not fully compensated for under the present 5 percent brokerage fee; therefore, the difference between 20 percent and the 12.2 to 14.5 percent of total cost allocated to trailing equipment in AIOO's Exhibit 240-1 represents that witness's judgment as to the amount of additional revenue which should be accorded to the overlying carrier for services not compensated for under the present 5 percent brokerage fee.

28. In the establishment of minimum rates pursuant to Section 3662 of the Public Utilities Code, it has been the policy and procedure of the Commission to determine the cost of performing transportation in a reasonably efficient manner by the type of carrier best suited to provide the service, and then to determine those rates which will return that cost plus a reasonable profit. In the case of transportation of rock, sand, gravel, and earth on public works construction projects, the Commission determined that the reasonably efficient carrier was one that furnished a full unit of equipment and did not operate either as an overlying carrier or as a subhauler.

29. The record shows through the testimony of AIOO, CTA, and Overlying Carriers that the existing provisions of Item 210 of MRT 7-A are unreasonable in that the division of the charges under minimum rates in MRT 7-A fails to adequately compensate overlying carriers for the services performed on public works construction projects.

30. The evidence in Exhibits 238-12 and 240-1 shows that pullers who operate as subhaulers for overlying carriers that furnish trailers are inadequately compensated for their services to the extent that such pullers receive less than 86 percent of the charges under the minimum rate.

31. The cost data and other evidence adduced herein show that the combined operations of an overlying carrier and a tractor-only subhauler for transportation of rock, sand, gravel, and earth on public works construction projects produce total costs in excess of the costs which underlie the present rates in MRT 7-A; therefore, no division of the present MRT 7-A minimum rates between a tractor-only subhauler and an overlying carrier can be equitable to both for transportation performed on a public works construction project (as defined in Item 260 of MRT 7-A).

32. Further division of the minimum rates in MRT 7-A between pullers and overlying carriers as proposed in OSH 238 and Petitions 240 and 285 will not result in just and reasonable minimum rates for transportation performed on a public works construction project (as defined in Item 260 of MRT 7-A).

33. The minimum rates set forth in MRTs 17-A and 20, which are applicable from fixed plant locations and the minimum rates in MRT 7-A applicable to transportation other than on a public works construction project are sufficient to cover the combined operating expenses of tractor-only subhaulers and overlying carriers furnishing trailers.

34. No economic need appears to exist for the assessment by overlying carriers of trailer rental charges in excess of the reasonable rental value of the trailers furnished in connection with transportation services performed under MRTs 17-A and 20 or in connection with transportation other than on public works construction projects under MRT 7-A, and such trailer rental charges are an unreasonable burden on subhaulers providing such transportation services under provisions of MRTs 7-A, 17-A, and 20.

35. MRT 7-A (except for transportation on a public works construction project) and MRTs 17-A and 20 should be amended to provide a division of revenue under the minimum rates set forth therein between tractor-only subhaulers and overlying carriers furnishing trailers. The reasonable division of revenues, based on cost data set forth in Exhibits 238-12 and 240-1, is 80 percent to the tractor-only subhauler and 20 percent to the overlying carrier supplying trailers, with no provision for assessment of additional brokerage fees. Commission staff proposals amended to provide for division of revenues in such manner will result in just, reasonable, and non-discriminatory tariff rules and should be incorporated in MRTs 17-A and 20 and in MRT 7-A for service other than transportation on a public works construction project. ✓
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36. In prior enforcement proceedings the Commission has found that trailer rentals paid by highway permit carriers to shippers in excess of the fair rental value of the equipment furnished (expressed as a percentage of revenue under the minimum rates applicable to the transportation services in which the trailers are used) is an unlawful rebate in violation of the Highway Carriers' Act. Rules should be established in MRTs 7-A, 17-A, and 20 prohibiting the payment of excessive trailer rentals to shippers in order to prevent unlawful rebates. Based on the data in Exhibits 238-12 and 240-1, trailer rental paid to a shipper which is greater than 15 percent of the revenues accruing under the minimum rate applicable to the transportation in which such trailers are used is excessive and should be prohibited. ✓

37. The proposal of CTA that Item 210 of MRT 7-A (and related items in MRTs 17-A and 20) be cancelled is beyond the announced scope of the consolidated proceedings.

38. The practice of trailer rental is common in connection with transportation services under MRTs 7-A, 17-A, and 20, and a substantial amount of dump truck transportation service is performed under such arrangements. When the use of a trailer owned or furnished by an overlying carrier is a condition of employment and an underlying carrier cannot use a trailer owned by it or acquired from an entity other than the overlying carrier, the trailer rental is a tied service to the brokerage service offered by the overlying carrier. Such tying arrangement restricts competition and may constitute a violation of the Sherman Act (15 USC § 1).

Conclusions of Law

1. MRTs 7-A, 17-A, and 20 should be amended to incorporate therein the tariff provisions found reasonable in the above findings.
2. To the extent not adopted in preceding findings, the proposals of the staff in OSH 238 and of petitioners in Petitions 240 and 285 in Case No. 5437 (and related petitions) should be denied.
3. Adequate notice that the Commission would consider the proposals of CTA was not afforded all respondents; therefore, such proposals may not be considered herein.
4. Further proceeding should be instituted to determine the method under which adequate total compensation can be achieved for the combined operations of overlying carriers furnishing trailing equipment and subhaulers operating as pullers for transportation on a public works construction project under the provisions of MRT 7-A.
5. In order to avoid duplication of tariff distribution, MRT 7-A should be amended by the order which follows and MRTs 17-A and 20 should be amended by separate orders.
6. The order herein should specifically prohibit an overlying carrier from requiring an underlying carrier to use trailers owned or controlled by the overlying carrier as a condition of employment.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 7-A (Appendix B to Decision No. 82061, as amended) is further amended by incorporating therein, to become effective July 10, 1976, the revised pages contained in Appendix A, attached hereto and by this reference made a part hereof. ✓

2. Common carriers subject to the Public Utilities Act, to the extent that they also are subject to Decision No. 82061, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered by this decision.

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 such tariff publications shall be made effective not later than July 10, 1976; and the tariff publications which are authorized but not required to be made by common carriers as a result of this order may be made effective not earlier than the tenth day after the effective date of this order, and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff pages incorporated in this order.

4. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of Section 461.5 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.

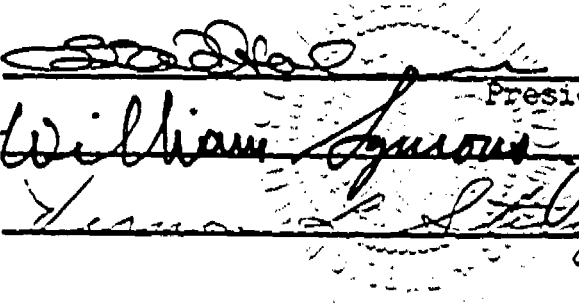
5. In all other respects, Decision No. 82061, as amended, shall remain in full force and effect.

6. To the extent not granted herein, OSH 238 and Petitions Nos. 240 and 285 in Case No. 5437, Petitions Nos. 4 and 7 in Case No. 9819, and Petitions Nos. 1 and 3 in Case No. 9820 are denied.

7. Overlying carriers subject to Decisions Nos. 80578, 81799, and 82061, as amended, are prohibited from requiring an underlying carrier to use trailers owned or controlled by the overlying carrier as a condition of employment in connection with transportation services performed under rates and charges contained in Minimum Rate Tariffs 7-A, 17-A, and 20.

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

Dated at San Francisco, California, this 8th day of JUNE, 1976.


William J. Gorman Jr. President
James L. Stigler

Commissioners

*I dissent. This
adds a needless
extra layer of
regulation to an
already shaky
house of cards.
Leonard R. Orr*

*I dissent - more needless
rules - made to be broken
Robert Bateman*

C. 5437 (OSH 238) et al.

APPENDIX A

LIST OF REVISED PAGES TO
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Ø Change)
* Addition) Decision No.

85918

EFFECTIVE

Correction

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

SECTION 1--RULES	ITEM
<p style="text-align: center;">DEFINITION OF TECHNICAL TERMS</p> <p>BATCHING PLANT means an installation (structure and appurtenant storage area) at which the ingredients for the production of concrete are received, stored, weighed, batched and subsequently transported therefrom.</p> <p>CARRIER means a radial highway common carrier, a highway contract carrier, or a dump truck carrier as defined in the Highway Carriers' Act.</p> <p>COMMERCIAL PRODUCING PLANT means an installation (structure and appurtenant storage area) at which rock, sand, and/or gravel are processed as to size and/or grade and placed in stockpiles or bunkers.</p> <p>COMMISSION means Public Utilities Commission of the State of California.</p> <p>COMMON CARRIER RATE means any intrastate rate or rates of any common carrier or common carriers, as defined in the Public Utilities Act, lawfully on file with the Commission and in effect at time of shipment.</p> <p>CONSIGNEE means the person, firm or corporation to whom the property is to be physically delivered by the carrier.</p> <p>CONSIGNOR means the person, firm or corporation from whom the property was physically received by the carrier for transportation.</p> <p>DEBTOR means the person(s) and/or corporation(s) obligated to pay a freight charge of a carrier. It also includes an overlying carrier utilizing service(s) of an underlying carrier.</p> <p>DISTANCE TABLE means Distance Table 7 issued by the Commission.</p> <p>DISTRIBUTING YARD means an area for storage of rock, sand, gravel, or cold road oil mixture (commonly called "plant mix") in piles, bins, silos or bunkers.</p> <p>DRY MIXTURES OF SAND, AND/OR GRAVEL AND/OR CRUSHED STONE (WITH OR WITHOUT CEMENT) IN BATCHES means a shipment of said mixture transported in dump truck equipment provided with one or more batch gates permitting the loading and unloading of a portion or portions of the shipment separately from the other portion or portions of the shipment.</p> <p>DUMP TRUCK EQUIPMENT means any motor vehicle (including component trailing equipment) as defined in the Highway Carriers' Act, which discharges its load by gravity either (a) in conjunction with mechanical or pneumatic (induction of air used to speed gravitation) means that are an integral part of the vehicle, or (b) by opening all or a portion of the bottom, sides or end, or (c) by combination of (a) and (b). It does not include a motor vehicle engaged in the transportation of concrete mechanically mixed in transit or equipment which is unloaded by air pressure in defiance of gravity.</p> <p>EARTH includes dirt, loam, silt or soil, individually or in any combination. It also includes miscellaneous material such as stone, rock, tree stumps, and broken concrete in combination with earth when such material does not exceed 50 percent of the total volume of the shipment.</p> <p>FREIGHT CHARGE means a charge which applies pursuant to provisions of this tariff for any service(s) performed by a carrier.</p> <p>HOT PLANT means a fixed installation for the heating of road oil or asphalt and the mixing of such heated oil or asphalt with rock, sand and any other ingredients to produce cold road oil mixture ("plant mix") or asphaltic concrete ("hot stuff").</p> <p>MAXIMUM ALLOWED LOAD means the maximum total gross weight with load in pounds permitted under the provisions of Section 35551 of the California Vehicle Code, based on a distance between the first and last axles of 56 feet or over.</p> <p style="text-align: center;">(Continued)</p>	<p style="text-align: center;">10</p>
No change on this page, Decision No. 85918	
EFFECTIVE	
<div style="display: flex; justify-content: space-between;"> Correction ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA. </div>	

ITEM	SECTION 1--RULES (Continued)
	<p style="text-align: center;">DEFINITION OF TECHNICAL TERMS (Continued)</p> <p>OVERLYING CARRIER (PRINCIPAL CARRIER) means a carrier which contracts with a shipper to provide transportation service for the latter, but which carrier in turn employs another carrier, known as the Underlying Carrier (independent-contractor subhauler), to perform that service. (See Note.)</p> <p>NOTE.--The term Overlying Carrier also includes an underlying carrier which employs another carrier to perform transportation service.</p> <p>POINT OF DESTINATION means the precise location at which a shipment is tendered for physical delivery into the custody of the consignee or his agent. It includes all locations within 300 feet of the point at which physical delivery of said shipment is initiated.</p> <p>POINT OF ORIGIN means the precise location at which a shipment is physically delivered by the consignor or his agent into the custody of the carrier for transportation. Except for transportation subject to paragraph (1) of Item 150, all points within a single commercial producing plant shall be considered as one point of origin. A single commercial producing plant shall include only contiguous property which shall not be deemed separate if intersected by a public street or streets.</p> <p>*PUBLIC WORKS CONSTRUCTION PROJECT means a project embracing all fixed works constructed for public use or protection on which bids are let by or on behalf of the State, any county or municipal government, or any political subdivision or district thereof.</p> <p>øRAILHEAD means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from rail cars. ** It also includes truck loading facilities of plants or industries located at such rail ** loading or unloading point.</p> <p>RATE includes charge, and also the ratings, minimum weight, rules governing, and the accessorial charges applying in connection therewith.</p> <p>SAME TRANSPORTATION means transportation of the same kind and quantity of property and subject to the same limitations, conditions and privileges, although not necessarily transported in an identical type of equipment.</p> <p>SEWAGE DISPOSAL PLANT means a fixed installation in which filtering rock is used for getting rid of sewage.</p> <p>øSHIPMENT means a quantity of freight tendered by one consignor on one shipping document at one point of origin for one consignee at one point of destination to be transported at one time in one unit of equipment. *Shipment does not include the unit of equipment utilized to transport property for which rates are provided in this tariff, nor any trailer, semitrailer or dolly when moved empty in connection with transportation of such commodities (See also exceptions in rule and definition for multiple lot shipment).</p> <p>SHIPPER means the person, firm or corporation (other than a carrier) who arranges with the carrier for the transportation of the property.</p> <p>øTEAM TRACK means a point at which property may be loaded into or upon, or unloaded from rail cars by the public generally. **</p> <p style="text-align: center;">(Continued)</p>
ø10	<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 30%;"> <p>ø Change)</p> <p>* Addition)</p> <p>ø Increase)</p> <p>** Eliminated)</p> </div> <div style="width: 60%;"> <p>Decision No. 85918</p> </div> </div>
	EFFECTIVE
Correction	ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

SECTION 1--RULES (Continued)	ITEM
<p data-bbox="454 284 1002 308">DEFINITION OF TECHNICAL TERMS (Concluded)</p> <p data-bbox="183 351 1346 441">TIME COMPLETED HOURLY SERVICE means the time the unit of equipment returns to the last point of loading, or the return time agreed on by the carrier and debtor representatives and shown on the shipping document. In no event shall this return time allowance be less than the last loaded running time.</p> <p data-bbox="183 463 1306 530">TIME REPORTING FOR WORK means the time when the unit of equipment with driver actually reports for work pursuant to the shipper's and/or debtor's order, or the time loading of the unit of equipment actually commences, whichever is earlier.</p> <p data-bbox="246 549 558 573">TONS means 2,000 pounds.</p> <p data-bbox="183 595 1346 661">TRACTOR means a motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.</p> <p data-bbox="183 683 1331 774">UNDERLYING CARRIER (independent-contractor subhauler) means any carrier who renders service for an overlying carrier (principal carrier), for a specified recompense, for a specified result, under the control of the overlying carrier as to the result of the work only and not as to the means by which such result is accomplished.</p> <p data-bbox="183 795 1303 840">UNIT OF EQUIPMENT means a truck, a tractor, a trailer, a semitrailer, or any combination of the foregoing operated in a train.</p> <p data-bbox="183 862 1293 929">WEIGHT TICKET means the shipper's scale weight ticket supplied to the carrier by the consignor at the point of origin and completed by the consignee at the point of destination.</p>	Ø10
<p data-bbox="246 993 596 1039">Ø Change) * Addition) Decision No.</p> <p data-bbox="683 1000 822 1043">85918</p>	
EFFECTIVE	
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.	
Correction	

SECTION 1--RULES (Continued)	ITEM
<p align="center">CHARGE FOR TRACTOR AND DRIVER WITHOUT TRAILING EQUIPMENT</p> <p>Charges to be paid by a consignor, consignee or other person responsible for payment of freight charges (except an overlying carrier) to a carrier furnishing a tractor and driver without trailing equipment, but towing trailing equipment furnished by the debtor, consignee or consignor, shall be not less than 86 percent of the otherwise applicable charge. In assessing charges under the tonnage rates contained in Sections 2 and 3 of this tariff, the carrier furnishing the tractor and driver need not assess a charge for the amount of the unladen weight of the trailing equipment when under load, nor assess a charge for the empty return movement (See Exception).</p> <p>EXCEPTION: The provisions of this item shall not apply when trailing equipment is furnished by any party other than the debtor, consignee or consignor, of the specific transportation charges involved (See Item 210).</p>	*125
<p align="center">COLLECTION OF CHARGES (1)</p> <p align="center">(For other provisions concerning payments of overlying carrier to underlying carriers, see also Item 210.)</p> <p>(a) Except as otherwise provided in this item, transportation and accessorial charges shall be collected by the carriers prior to relinquishing possession of property entrusted to them for transportation; said charges shall be collected in cash or in the form of valid checks, drafts or money orders.</p> <p>(b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of the freight in advance of payment of the charges thereon and may extend credit in the amount of such charges to debtors for a period not to exceed the 15th day following the last day of the calendar month in which the transportation was performed.</p> <p>(c) Where the carrier has relinquished possession of freight and collected the amount of charges represented in a freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the debtor, the carrier may extend credit in the amount of such additional charges for a period of 30 calendar days to be computed from the first 12 o'clock midnight following the presentation of the subsequently presented freight bill.</p> <p>(d) Freight bills for all transportation and accessorial charges shall be presented to the debtors within 5 days after the last calendar day of the month in which transportation was performed.</p> <p>(e) Debtors may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by the carrier, as evidenced by the postmark, shall be deemed to be the time of presentation of the freight bills.</p> <p>(f) The mailing by the debtor of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such debtor may be deemed to be the collection of the charges within the credit period for the purpose of these rules. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.</p> <p>(1) Will not apply to the transportation of property for the United States, state, county or municipal governments.</p>	130
<p>* Addition, Decision No. 85918</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;">COLLECT ON DELIVERY (C.O.D.) SHIPMENTS</p> <p>1. A collect on delivery shipment, hereinafter referred to as a C.O.D. shipment, means a shipment upon which the consignor has attached, as a condition of delivery, the collection of a specific sum or sums of moneys by the carrier making delivery thereon and the return of said moneys to the consignor or other payee designated by the consignor.</p> <p>2. Every carrier handling C.O.D. shipments shall:</p> <ul style="list-style-type: none"> (a) Establish and maintain a separate bank account or accounts wherein all moneys (other than checks or drafts payable to consignor or payee designated by consignor) collected on C.O.D. shipments will be held in trust until remitted to payee, except C.O.D. moneys which are remitted within five days after delivery. (b) Establish and maintain a record or records of all C.O.D. shipments in such manner and form as will plainly and readily show the following information with respect to each shipment: <ul style="list-style-type: none"> (1) Number and date of freight bill. (2) Name and address of consignor or other person designated as payee. (3) Name and address of consignee. (4) Date shipment delivered. (5) Amount of C.O.D. moneys collected. (6) Date C.O.D. moneys remitted. (7) Check number or other identification of remittance to payee. (c) Collect the full amount of the C.O.D. moneys at the time C.O.D. shipments are delivered to the consignee and remit all such collections to consignor, or to other persons designated by the consignor on such shipments, promptly and in no event later than 10 days after delivery to the consignee, unless consignor instructs otherwise in writing. All remittances for C.O.D. shipments shall refer to or otherwise identify the C.O.D. shipment or shipments covered by the remittance. (d) Not accept checks or drafts (other than certified checks, cashier's checks, or money orders) in payment of C.O.D. charges unless authority has been received from the consignor. (e) Notify the consignor immediately if a C.O.D. shipment is refused or cannot be delivered because of circumstances beyond the carrier's control. In the event of such nondelivery, and pursuant to the consignor's instructions, the shipment shall either be returned to the consignor subject to double the outbound freight charges for the round-trip movement, or delivered to another consignee subject to the applicable distance rate, in addition to the original rate, from the point of nondelivery to the new destination. (See Note) <p>NOTE.--If hourly rates are applicable on deliveries involving C.O.D. shipments, such hourly rates shall supersede the rates otherwise provided for in this subparagraph.</p> <p>3. The bond prescribed in General Order No. 84-G shall not be required of carriers while engaged as independent-contractor subhaulers; carriers while engaged in transporting property for which rates are provided in Minimum Rate Tariff 7-A; carriers operating within lawfully established pickup and delivery limits as agents of a common carrier in the performance for such common carrier of transfer, pickup or delivery services provided for in the lawfully published tariffs of such common carrier.</p>
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Correction ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.	

SECTION 1--RULES (Continued)	ITEM
<p style="text-align: center;">COMPUTATION OF DISTANCES</p> <p>1. Distances to be used in connection with distance rates named herein, except as provided in paragraph 2, shall be the actual highway mileage traversed computed from the precise location at which loading of the unit of equipment commences to the point of destination via all other locations where either loading and/or weighing is performed.</p> <p>"ACTUAL HIGHWAY MILEAGE" means the actual highway distance along the shortest usable route that may be lawfully used by the dump truck equipment utilized in conformity with governmental regulations pertaining to the usage of public streets and highways.</p> <p>2. Shipments of lightweight aggregates moving under rates in Item 330 shall be subject to the shortest resulting mileage, computed in accordance with the method provided in the Distance Table.</p>	150
<p style="text-align: center;">DESCRIPTIONS OF SOUTHERN AND NORTHERN TERRITORIES</p> <p>Southern Territory means the counties of San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, San Diego, Imperial, Riverside, San Bernardino, Kern, Inyo and Mono.</p> <p>Northern Territory means all other counties of the State not included in Southern Territory.</p>	160
<p style="text-align: center;">DISPOSITION OF FRACTIONS</p> <p>In computing a rate or charge based on percentage, the following will govern the disposition of fractions:</p> <p>Fractions of less than $\frac{1}{4}$ or .50 of a cent omit.</p> <p>Fractions of $\frac{1}{4}$ or .50 of a cent or greater, increase to next whole figure.</p>	*165
<p>* Addition, Decision No. 85918</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>	

ITEM	SECTION 1--RULES (Continued)																																						
170	<p style="text-align: center;">ISSUANCE OF SHIPPING DOCUMENTS</p> <p>1. A Combined Shipping Order and Freight Bill (or other document) shall be issued by the carrier to the shipper for each shipment received for transportation under rates named in this tariff. The carrier shall be furnished with a separate shipping order for each engagement of each unit of equipment supplied for transportation performed under the hourly rates in Section 3 of this tariff.</p> <table border="0"> <tr> <td>(1) Name of carrier.</td><td>(8) Address of debtor if other than consignor.</td></tr> <tr> <td>(2) Date of shipment.</td><td>(9) Name of consignee.</td></tr> <tr> <td>(3) Commodity.</td><td>(10) Address of consignee.</td></tr> <tr> <td>(4) Equipment number.</td><td>(11) Name of underlying carrier (if any).</td></tr> <tr> <td>(5) Name of consignor.</td><td>(12) Signature of driver.</td></tr> <tr> <td>(6) Address of consignor.</td><td>(13) Type of equipment (See Note 1).</td></tr> <tr> <td>(7) Name of debtor if other than consignor.</td><td></td></tr> </table> <p>NOTE 1.--The document shall identify whether the power unit is a truck or tractor and shall specify number of axles. Additionally, trailing equipment shall be identified as "transfer type pull trailer," "semi-end dump trailer," "semi-bottom dump trailer," or other specific type. If no trailing equipment is provided, the document shall say "No trailing equipment."</p> <p>2. Upon completion of each shipment or engagement, the carrier shall issue a freight bill, in duplicate, subject to the provisions of Item 130, showing the following information:</p> <p>(a) For distance rates in Section 2 and zone rates in Section 4 hereof:</p> <table border="0"> <tr> <td>(1) Point of origin.</td><td>(5) Delivery zone number (zone rates only).</td></tr> <tr> <td>(2) Point of destination.</td><td>(6) Commodity description.</td></tr> <tr> <td>(3) Distance in miles (actual or constructive, whichever is applicable).</td><td>(7) Weight or other unit of measurement upon which charges are based.</td></tr> <tr> <td>(4) Production area letter (zone rates only).</td><td>(8) Rate and charges assessed.</td></tr> <tr> <td></td><td>(9) Accessorial, helper or other charges.</td></tr> </table> <p>(b) For hourly rates in Section 3 hereof:</p> <table border="0"> <tr> <td>(1) Time reporting for work.</td><td>(8) Time unit of equipment completed discharging last load.</td></tr> <tr> <td>(2) Location of reporting for work.</td><td>(9) Time completed hourly service.</td></tr> <tr> <td>(3) Commodity transported.</td><td>(10) Overall Time: From time reporting for work to the time completed hourly service.</td></tr> <tr> <td>(4) Number of axles.</td><td>(11) Any deductions for meals or failure of carrier's equipment.</td></tr> <tr> <td>(5) Capacity in cubic yards (applies in connection with rates in Item 400).</td><td>(12) Net chargeable time (10 minus 11).</td></tr> <tr> <td>(6) Time unit of equipment completed last loading.</td><td>(13) Applicable hourly rate.</td></tr> <tr> <td>(7) Time unit of equipment commenced discharging last load.</td><td>(14) Charges due.</td></tr> </table> <p style="text-align: center;">(Continued)</p>	(1) Name of carrier.	(8) Address of debtor if other than consignor.	(2) Date of shipment.	(9) Name of consignee.	(3) Commodity.	(10) Address of consignee.	(4) Equipment number.	(11) Name of underlying carrier (if any).	(5) Name of consignor.	(12) Signature of driver.	(6) Address of consignor.	(13) Type of equipment (See Note 1).	(7) Name of debtor if other than consignor.		(1) Point of origin.	(5) Delivery zone number (zone rates only).	(2) Point of destination.	(6) Commodity description.	(3) Distance in miles (actual or constructive, whichever is applicable).	(7) Weight or other unit of measurement upon which charges are based.	(4) Production area letter (zone rates only).	(8) Rate and charges assessed.		(9) Accessorial, helper or other charges.	(1) Time reporting for work.	(8) Time unit of equipment completed discharging last load.	(2) Location of reporting for work.	(9) Time completed hourly service.	(3) Commodity transported.	(10) Overall Time: From time reporting for work to the time completed hourly service.	(4) Number of axles.	(11) Any deductions for meals or failure of carrier's equipment.	(5) Capacity in cubic yards (applies in connection with rates in Item 400).	(12) Net chargeable time (10 minus 11).	(6) Time unit of equipment completed last loading.	(13) Applicable hourly rate.	(7) Time unit of equipment commenced discharging last load.	(14) Charges due.
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SECTION 1--RULES (Continued)	ITEM
<p style="text-align: center;">PAYMENTS TO UNDERLYING CARRIERS</p> <p>*Except as provided in Note 3, charges paid by any overlying carrier to an underlying carrier and collected by the latter carrier from the former for the service of said underlying carrier shall be not less than 95 percent of the charges applicable under the minimum rates prescribed in this tariff, "and shall be in the same unit of measurement upon which charges are assessed to the debtor, less the gross revenue tax applicable and required to be paid by the overlying carrier. (See Notes 1, 2 and "3). The underlying carrier may extend credit to the overlying carrier for a period not to exceed twenty days following the last day of the calendar month in which the transportation was performed, and payment to the underlying carrier must be made within that time. Freight bills for transportation and accessorial charges shall be presented by underlying carriers to overlying carriers within three days after the last calendar day of the month in which the transportation was performed.</p> <p>*Charges paid by an underlying carrier (a subhauler) to another underlying carrier (a sub-subhauler), and collected by the latter for services performed for the former, shall be not less than 95 percent of the charges received by the former from the overlying carrier (exclusive of allowances for liquidated amounts as may be due from debts of the subhauler to the overlying carrier).</p> <p>NOTE 1.--As used in this item the term gross revenue tax means the tax payable to the California Public Utilities Commission under the Transportation Rate Fund Act "and the Highway Carriers' Uniform Business License Tax Act.</p> <p>NOTE 2.--Nothing herein contained shall prevent an overlying carrier, in paying such charges, from deducting therefrom such liquidated amounts as may be due from the underlying carrier to the overlying carrier, providing such deductions have been authorized in writing by the underlying carrier. Any overlying carrier electing to employ this procedure shall itemize such amounts and maintain for the Commission's inspection all documents involved in the transaction. "The term "liquidated amounts" as used in this item, shall not include, when the underlying carrier provides a tractor and driver without trailing equipment, charges pertaining to the operation and maintenance of trailing equipment such as: tires, tubes, parts, repairs, maintenance, painting, and cleaning.</p> <p>*NOTE 3.--In the event the underlying carrier furnishes tractor and driver without trailing equipment, and the overlying carrier furnishes the trailing equipment the charges paid to the underlying carrier shall be not less than 85 percent of the charge determined in accordance with the provisions of this tariff. The provisions of this note will not apply to shipments of rock, sand, gravel or earth transported to, from or on a Public Works Construction Project.</p>	<p style="text-align: center;">ø210</p>
<p style="text-align: center;">RATES BASED ON VARYING MINIMUM TRUCKLOAD WEIGHTS</p> <p>When charges on a shipment transported in one unit of dump truck equipment at one time based on actual weight exceed the charges which would accrue if charges were computed upon a rate based upon a higher minimum weight, the latter will apply.</p>	<p style="text-align: center;">220</p>
<p style="text-align: center;">REFERENCES TO ITEMS, OTHER TARIFFS AND GENERAL ORDERS</p> <p>Unless otherwise provided, references herein to item numbers in this or other tariffs include references to such numbers with letter suffix, and references to other tariffs include references to amendments and successive issues of such other tariffs and references to general orders include references to amendments or successive issues of such general orders.</p>	<p style="text-align: center;">230</p>
<p>ø Change) * Addition) Decision No. 85918</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>	

ITEM	SECTION 1--RULES (Continued)
*235	<p data-bbox="513 362 1103 388">REPAIRS OR REPLACEMENTS TO TRAILING EQUIPMENT</p> <p data-bbox="277 407 1364 543">When it becomes necessary for the carrier furnishing the tractor and driver without trailing equipment under provisions of Item 125, to repair or replace any part of the trailing equipment furnished by the debtor, consignee or consignor, the debtor, consignee or consignor shall be charged and the carrier shall collect for all parts and expenses, including communication, labor and tow truck service, incurred by the carrier.</p>
<p data-bbox="345 741 865 793">* Addition, Decision No. 85918</p>	
EFFECTIVE	
<p data-bbox="188 1992 317 2013">Correction</p> <p data-bbox="541 1961 1443 2009">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>	

SECTION 1--RULES (Concluded)	ITEM
<p style="text-align: center;">SHIPMENTS TRANSPORTED IN MULTIPLE LOTS</p> <p style="text-align: center;">(Applicable only in connection with Items 100 and 110 of this tariff.)</p> <p>1. When a carrier does not pick up an entire shipment in a single unit of carrier's equipment at one time, the following provisions shall apply in addition to other applicable rules and regulations:</p> <ul style="list-style-type: none"> (a) The entire shipment shall be available at the time of the first pickup. (b) Except as provided in paragraph 2 of this item, at the time of or prior to the first pickup, the carrier shall issue to the shipper a single multiple lot document for the entire shipment. The single multiple lot document shall show the following information: <ul style="list-style-type: none"> (1) Name of consignor and name of consignee. (2) Point of origin and point of destination. (3) Date of first pickup. (4) The kind and quantity of property in the multiple lot shipment. <p>2. When the information required to be shown on the multiple lot document by subparagraph 1(b) of this item has not been received by the carrier prior to or at the time of the first pickup, the following provisions shall apply:</p> <ul style="list-style-type: none"> (a) Written shipping instructions shall be furnished by the shipper to the carrier within a period of five calendar days (excluding Saturdays, Sundays and legal holidays) of the date on which the first lot is picked up. The written instructions shall confirm oral shipping instructions and shall describe the kind and quantity of property in the multiple lot shipment. (b) Within a period of five calendar days (excluding Saturdays, Sundays and legal holidays) of the date on which it receives the written shipping instructions, the carrier shall issue to the shipper the single multiple lot document for the entire shipment as required by subparagraph 1(b) of this item. (c) Preparation by the shipper of the required single multiple lot document referred to in subparagraph 2(b) will constitute compliance with subparagraph 2(a). <p>3. In addition to the single multiple lot document, a shipping document shall be issued to the shipper by the carrier for each pickup, including the first. Each such shipping document shall show the date and number of the single multiple lot document and such other information necessary to clearly identify the single multiple lot document.</p> <p>4. The entire shipment shall be picked up by the carrier within:</p> <ul style="list-style-type: none"> (a) A period of two days computed from 12:01 a.m. of the date on which the initial pickup commences, excluding Saturdays, Sundays and legal holidays, when the highway carrier's trailer equipment is placed for loading by the consignor without the presence of carrier personnel or motive equipment. (b) A 24-hour period computed from 12:01 a.m. of the date on which the initial pickup commences, when the shipment is loaded other than under the conditions specified in subparagraph (a) above. <p>5. The rate for a multiple lot shipment shall be the rate in effect on the date of the first pickup for the transportation of a shipment of like kind and quantity of property picked up or transported on a single vehicle or connected train of vehicles.</p> <p>6. If any of the property described in the single multiple lot document is picked up without complying with the foregoing provisions, each such pickup shall be rated as a separate shipment. The property picked up in accordance with the provisions of paragraph 1 or paragraph 2 shall constitute the multiple lot shipment.</p>	240
No change on this page, Decision No. 85918	
EFFECTIVE	
<div style="display: flex; justify-content: space-between;"> Correction ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA. </div>	

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
for the purpose of considering and
determining minimum rates for trans-
portation of sand, rock, gravel and
related items in bulk, in dump truck
equipment between points in
California as provided in Minimum
Rate Tariff 7-A and the revisions
or reissues thereof.

In the Matter of the Investigation
for the purpose of considering and
determining minimum rates for
transportation of rock, sand, gravel
and related items in bulk, in dump
truck equipment in Southern
California as provided in Minimum
Rate Tariff 17-A and Southern
California Production Area and
Delivery Zone Directory 1, and the
revisions or reissues thereof.

In the Matter of the Investigation
for the purpose of considering and
determining minimum rates for
transportation of rock, sand and
gravel in bulk, in dump truck
equipment in Northern California
as provided in Minimum Rate
Tariff 20 and Northern California
Production Area and Delivery Zone
Directory 2, and the revisions
and reissues thereof.

Case No. 5437
Order Setting Hearing 238
(Filed January 16, 1973)
Petition for Modification
No. 240
(Filed February 9, 1973;
amended February 4, 1975)
Petition for Modification
No. 285
(Filed February 28, 1975;
amended May 27, 1975)

Case No. 9819
Petition for Modification
No. 4
(Filed February 4, 1975)
Petition for Modification
No. 7
(Filed February 28, 1975;
amended May 27, 1975)

Case No. 9820
Petition for Modification
No. 1
(Filed February 4, 1975)
Petition for Modification
No. 3
(Filed February 28, 1975;
amended May 27, 1975)

(Appearances as shown in Appendix A)

PROPOSED REPORT OF EXAMINER J. W. MALLORY

Order Setting Hearing 238 was issued to receive evidence with respect to proposals of the Commission's Transportation Division concerning revision of Minimum Rate Tariffs 7-A, 17-A, and 20 (MRTs 7-A, 17-A, and 20) to incorporate therein rules and regulations providing for compensation to carriers which furnish units of equipment consisting of a tractor and driver without trailing equipment for the movement of commodities covered by said tariffs.

Associated Independent Owner-Operators, Inc. (AIOO), a nonprofit corporation with a membership of approximately 1,000 highway permit carriers, seeks in Petition No. 240 (and related proceedings) modification of MRTs 7-A, 17-A, and 20 by incorporating therein rules and regulations providing for the compensation to be paid to overlying carriers who furnish trailing equipment without power units to subhaulers for the movement of commodities covered by said tariffs.

California Dump Truck Owners Association (CDTOA), a nonprofit corporation with a membership of approximately 1,000 highway carriers, seeks in Petition 285 (and related proceedings) to amend MRTs 7-A, 17-A, and 20 by incorporating therein rules and regulations providing for the compensation to be paid to dump truck carriers operating a power unit which pulls non-owned dump trailer and/or semitrailer equipment.

OSH 238 and Petition 240 were heard in a consolidated record in February and March 1974, and the matters were removed from the calendar in order to rule on the motion to dismiss the proceedings filed by California Trucking Association (CTA) which opposes the relief sought. Decision No. 83672 dated October 29, 1974 denied the motion to dismiss and ordered that further hearings be held.

The decision stated that the Commission considers that evidence designed to show that the provisions of Item 94 of former MRT 7 (now Item 210 of MRT 7-A) are reasonable and appropriate provisions in connection with other proposals is essential to resolve the issues presented in these proceedings.^{1/} Parties were placed on notice that the Commission considers the reasonableness of the provisions of Item 210 (Payments to Underlying Carriers) of MRT 7-A and related provisions of MRTs 17-A and 20 is an issue in OSH 238 and Petition 240.

1/ Item 210 (Payments to Underlying Carriers) reads as follows:

"Charges paid by any overlying carrier to an underlying carrier and collected by the latter carrier from the former for the service of said underlying carrier shall be not less than 95 percent of the charges applicable under the minimum rates prescribed in this tariff, less the gross revenue tax applicable and required to be paid by the overlying carrier. (See Notes 1 and 2.) The underlying carrier may extend credit to the overlying carrier for a period not to exceed twenty days following the last day of the calendar month in which the transportation was performed, and payment to the underlying carrier must be made within that time. Freight bills for transportation and accessorial charges shall be presented by underlying carriers to overlying carriers within three days after the last calendar day of the month in which the transportation was performed.

"NOTE 1.--As used in this item the term gross revenue tax means the tax payable to the California Public Utilities Commission under the Transportation Rate Fund Act.

"NOTE 2.--Nothing herein contained shall prevent an overlying carrier, in paying such charges, from deducting therefrom such liquidated amounts as may be due from the underlying carrier to the overlying carrier, providing such deductions have been authorized in writing by the underlying carrier. Any overlying carrier electing to employ this procedure shall itemize such amounts and maintain for the Commission's inspection all documents involved in the transaction."

C. 5437 OSH 238 et al. lmm
Prop. Rept.

Further hearings in the captioned proceedings were held before Examiner Mallory on December 9, 1974, March 10, 11, and 12, June 2, 3, 4, and 5, and July 14, 1975. The matters were submitted on the latter date. The request for an Examiner's Proposed Report was approved by the Commission.

At the original series of hearings evidence was presented by representatives of the Commission staff, AIOO, and CTA. At the hearings subsequent to the issuance of Decision No. 83672, evidence was presented by AIOO, the Commission staff, CDTQA, CTA, Northern and Southern California Overlying Carrier Chapters of CDTQA (Overlying Carrier Chapters-CDTQA), and California Asphalt Plant Association (CAPA). CTA and Overlying Carrier Chapters-CDTQA oppose the rules proposed by the Commission staff, AIOO, and CDTQA. CAPA does not oppose such rules.

Staff Evidence - OSH 238

At the initial hearings evidence was presented by the Commission staff witnesses as follows:

- Exhibit 238-7 - Cost Study
- Exhibit 238-8 - Proposed Rules
- Exhibit 239-9 - List of Carriers

The staff engineer sponsoring Exhibit 238-7 testified that the cost data therein is based on costs in Exhibits 213-46 and 213-65 introduced in OSH 213 in Case No. 5437. Those costs served as a basis for the general revision and reissuance of MRT 7 accomplished by Decision No. 82061 in Case No. 5437 (OSH 213). Exhibits 213-46 and 213-65 were designed to develop the costs of operation of reasonably efficient carriers engaged in the transportation of rock, sand, gravel, earth, and asphaltic concrete in bulk in dump truck equipment owned by such carriers. The cost data in those exhibits did not purport to be applicable to overlying carriers who engage other carriers (subhaulers) to perform the transportation, nor to subhaulers. Nor does such cost data have application to MRT 17-A.

The cost data in Exhibit 238-7 develops an estimate of the total costs at operating ratio 100 (no profit) of providing tractor-and-driver services only in connection with transportation of the aforementioned commodities in dump truck equipment. That exhibit shows that tractor-driver costs range from 82.6 percent to 88.3 percent of the total straight-time operating costs, depending upon the labor agreement used in the development of the cost data, the area in which service is performed, and length of haul.

A staff rate expert presented Exhibit 238-8 which contains proposed rules governing the transportation services performed by a carrier that provides a tractor and driver without trailing equipment. The witness testified that a field study was made in which he interviewed 75 underlying carriers and 28 shippers or shipper associations. This study showed that so-called owner-operators which operate as subhaulers and lease trailing equipment are required to pay amounts ranging from 20 to 35 percent of gross revenue for trailer rental. In some instances the trailer rental charge includes the 5 percent "brokerage" fee provided in Item 210 of MRT 7-A; in other instances it does not. Based on this field study and the cost data in Exhibit 238-7, the witness proposes that the tractor-only

subhauler be paid not less than 85 percent of the applicable minimum rate, less the 5 percent brokerage fee.^{2/}

In the reopened proceeding additional evidence was offered by the staff. Exhibit 238-11 contains information concerning the substitution of a 7 percent indirect expense ratio for the 10 percent indirect ratio used in Exhibit 238-7. The staff engineer testified that Exhibit 238-11 was offered to show the manner in which indirect expenses were developed in the OSH 213 proceeding (Exhibit 213-30). Exhibit 238-11 also portrays the results of a special study of 2-axle tractor operators. That study showed a composite indirect expense ratio of 7.95 percent. The 5 percent fee paid by such carriers to overlying carriers was considered as an indirect expense in the determination of the 7.95 percent indirect expense figure. The witness stated that the 7 percent indirect expense ratio used in Exhibit 238-7 was selected by the staff based on such data. The average indirect expense ratio for all carriers (used in Exhibit 213-30) was 10.27 percent.

Exhibit 238-12 was prepared to show the difference between total costs and tractor-driver costs resulting from the use of an indirect expense ratio of 7 percent for the tractor-driver, in place

^{2/} The staff proposal is as follows:

Charge for Tractor and Driver Without Trailing Equipment

Charges to be paid by debtor to a carrier furnishing a tractor and driver without trailing equipment, but towing trailing equipment furnished by the debtor, consignee, or consignor shall be not less than 85 percent of the otherwise applicable charge. In assessing charges under the tonnage rates contained in Sections 2 and 3 of this tariff, the carrier furnishing the tractor and driver need not assess a charge for the amount of the unladen weight of the trailing equipment when under load, nor assess a charge for the empty return movement. (See Exception.)

Exception - The provisions of this item shall not apply when trailing equipment is furnished by any party other than the debtor, consignee, or consignor of the specific transportation charges involved.

of the 10 percent indirect expense ratio used in Exhibit 238-7. Such change in indirect expenses reduces the portion of total costs allocated to tractor-driver operations. Exhibit 238-12 also shows the effect of updating the cost data in Exhibit 238-7 to show the effect of wage and fuel cost increases. The effect of adjusting costs for current wages and fuel is to raise the percentage of total costs attributable to the tractor-driver by about 2.8 percent. The composite effect of the two changes is to increase the tractor-driver percentage of total costs by approximately 0.2 to 0.3 percent above that shown in Exhibit 238.7. The staff rate expert stated that no change in his proposal was required because of the revisions in the cost data in Exhibit 238-12, even though the 5 percent brokerage fee is included in indirect expenses in that cost exhibit.

The staff rate witness testified that the proposed tariff rules in Exhibit 238.7 are needed in order to regulate relationships between overlying and underlying carriers. Overlying carriers expressed no need for the rule, but indicated to him that the rule would set a standard under which all overlying carriers would know what others are paying to tractor-driver subhaulers. The staff rate witness testified that his investigation showed that shippers indicated no need for the added regulations proposed by him.

No evidence was offered by staff witnesses concerning the reasonableness of the so-called 95 percent rule in Item 210 of MRT 7-A.

Evidence of AIOO (Petition 240)

AIOO, petitioner in Petition 240, presented evidence through an employee of that association who sponsored a study of the costs of owner-operators of tractors and trucks who pull trailers owned by others and who engage in hauling rock, sand, earth, and other commodities in bulk. In the scope of his study, the witness reviewed questionnaires completed by members of the association concerning their operating expenses. The witness explained that

after his review of the record and questionnaire forms of several dump truck operators, he concluded that the staff cost data set forth in Exhibit 265-5 (Petition 265 in Case No. 5437) were similar to the figures developed by him. Therefore, the witness adopted the staff cost data for the purposes of his study, with the exception of historical equipment costs and vehicle licensing and registration fees. An indirect expense ratio of 7 percent also was used in the AIOO study. The results of these analyses are shown in Table 6 of Exhibit 240-1 as follows:

Associated Independent Owner-Operators, Inc.

Comparison of Total Costs Per
Revenue Hour at 100 O.R. for
Transportation of Rock and Sand

	<u>5-axle Double Bottom Units</u>	<u>5-axle Transfer Truck and Trailer</u>
Average Cost Per Revenue Hour	\$21.352	\$21.486
Average Total Cost Power Unit Only	18.658	19.901
Power Unit as Percent of Total Unit	87.38	92.62

Based on the cost data set forth above and other factors the witness proposed that MRTs 7-A, 17-A, and 20 be amended by incorporating rules which would provide that charges paid to debtors to a carrier furnishing a tractor and driver without trailing equipment, but towing trailing equipment furnished by the debtor, consignor, or consignee, shall be not less than 80 percent of the otherwise applicable charge; subject to the provision that if an overlying carrier furnishes the trailing equipment, the charges paid to the underlying carrier shall be 95 percent of the charge so determined.

The witness explained that under AIOO's proposal the tractor and driver would receive an amount less than is indicated in his cost study. Such proposal is based on the rationale that (a) some costs that the trailer owner may experience cannot be accounted for in a cost study, (b) the Commission assertedly has set a maximum trailer rental of 20 percent in enforcement proceedings involving use of trailers owned by shippers, and (c) setting the trailer rental at this time at anything lower than 20 percent would be disruptive of present practices. The witness testified that it would be logical to set the trailer rental rate at 20 percent at the present time and then reduce it to 15 percent in a future proceeding.

The witness, in response to cross-examination questions, indicated that the 20 percent trailer rental was proposed in consideration of the assertion of overlying carriers that they are now recovering part of their overhead costs from trailer rental fees, and that to disrupt that practice by establishing a lower trailer rental fee may cause loss of business to underlying carriers. This testimony is the only evidence adduced by AIOO concerning the reasonableness of Item 210 of MRT 7-A, as directed in Decision No. 83672.

Evidence of CDTQA (Petition 285)

CDTQA, petitioner in Petition 285, presented evidence in support of that petition through a consultant who formerly was the managing director of the association.

The witness testified that since the early 1950's there has been an increasing amount of power units pulling non-owned dump truck trailers. The witness stated that evidence adduced in a prior proceeding (Petition 112 in Case No. 5432) indicated that there were in excess of 1,000 power units pulling non-owned trailer equipment. The rate relationship between power-unit owners and trailer-unit owners has been a major concern of the membership of

CDTOA for a number of years. As a result of that concern, a policy was developed to provide an equitable division of revenues between each faction. The witness stated that it is imperative that the minimum rate tariffs be clarified so that all carriers will be on notice as what the Commission feels is a fair and equitable division of revenues between factions.

The witness for CDTOA supported the proposal of A100 with minor modifications. The witness explained that the 85-15 percent allocation of costs developed by the staff does not give adequate consideration to the problem of overhead expenses of the overlying carrier. According to the witness, an owner-operator experiences substantially lower indirect expenses than the operator of a fully-owned unit. The study made by the witness in Exhibit 285-3 was directed to that aspect of operating expenses.

Exhibit 285-3 purports to show the indirect expenses of small carriers engaged in the operation of different kinds of dump truck equipment. For the purposes of preparing the data in the exhibit the witness included the 5 percent brokerage fee as an indirect expense. The exhibit developed that the average indirect expense ratio of the 30 so-called "pullers" included in the study was 7.23 percent, as compared with average indirect expense ratios of 11.41 percent of 7 carriers operating bottom dump trucks, and 9.73 percent for 19 carriers operating 3-axle truck equipment. The witness stated that the thrust of his exhibit was to show that indirect expenses are greater for fully-owned units than for tractor-only operators.

The CDTOA witness testified that the so-called 5 percent commission or brokerage fee was established to provide remuneration for the overhead expenses incurred by overlying carrier when they employ subhaulers on the premise or theory that such carriers are in the trucking business and are providing a transportation service.

According to the witness, the need to provide remuneration for sales costs is not affected by the fact that the overlying carrier may supply trailers to subhaulers. The witness stated that his proposal differs from the staff or AIOO in that the 5 percent commission or brokerage fee is computed on the full minimum rate rather than on that portion of the rate allocated to the "puller".
California Trucking Association

CTA presented evidence through three witnesses. Two overlying carriers testified in opposition to the establishing of additional rules providing for division of minimum rates between overlying carriers who furnish trailers and the underlying carriers who pull them. The overlying carriers stated, in effect, that the indirect expenses incurred by them on behalf of subhaulers exceeded the 5 percent brokerage fee or commission provided by Item 210 of MRT 7-A, and that their charges for trailer rental covered use of the trailer and also provided for recovery of that portion of their indirect expenses in excess of the 5 percent brokerage fee.

The assistant director of CTA's division of transportation economics presented CTA's proposals in the consolidated proceedings. The witness proposed in Exhibit 238-14 that Item 210 of MRT 7 and related provisions of other tariffs be deleted, and that General Order No. 130 (Rules Governing the Leasing of Motor Vehicles) be amended to require the filing with the Commission of subhaul agreements which include provision for compensation by one carrier to another for the lease of trailer equipment. According to the witness, the filing of such subhaul agreements would permit the Commission staff and other parties to build up a body of information for use in any subsequent proceeding involving leasing of trailers.

The CTA staff witness testified that the so-called 95 percent rule (Item 210 - MRT 7) is the heart of this proceeding in that the 5 percent of the minimum rate allotted to overlying carriers is

inadequate to compensate such carriers for the performance of their services on behalf of subhaulers. Therefore, in order to gain the revenues they deem adequate, overlying carriers assertedly increase their revenues through trailer rentals to subhaulers at amounts in excess of the fair rental value of the trailer equipment. It is the position of CTA that any further attempt by the Commission to apportion the minimum rates between overlying carriers and underlying carriers will cause overlying carriers to purchase and operate tractors, or will cause other and different arrangements to be initiated that will defeat the intent of new rules. The CTA staff witness cited to the testimony of the two overlying carrier members of that association to support the CTA's contentions concerning the result of any additional tariff rules apportioning minimum rates between overlying and underlying carriers.

Overlying Carrier Chapters of CDTOA

An overlying carrier appearing for the Northern and Southern Overlying Carrier Chapters of CDTOA testified in opposition to the proposals of the staff, AIOO, and CDTOA. In Exhibit 238-15, the witness endeavored to show through analyses of the income statements of six overlying carriers that the present 95-percent rule (Item 210 of MRT 7) provides inadequate compensation to overlying carriers for the functions performed on behalf of subhaulers. The witness described those services as follows:

1. Obtaining work through bidding of jobs. This purportedly involves the surveying of potential construction projects; determining the trucking requirements for the project; preparing the trucking portion of the contractor's bid; and advising the contractor on rates, sources of materials, and other factors.
2. Servicing the contractor, by determining the daily number of vehicles required, placing trucking supervisors at loading and discharge points, and advising contractors concerning the daily work accomplished.

3. Preparation of freight bills for underlying carriers and advising them concerning rates.
4. Supplying capital to contractors and underlying carriers by paying the latter for their services in advance of the receipt of payment from contractors.
5. Furnishing fuel, tires, and repairs to underlying carriers at cost, based on volume discounts or credit arrangements accorded to the overlying carrier by its suppliers.
6. Providing parking for subhaulers' equipment at or near jobsite without cost.
7. Providing liability insurance for trailer-equipment owned by the overlying carrier under limits in excess of that available to subhaulers operating single-units.

The witness testified that his analyses of the cost studies upon which the minimum rates in MRTs 7-A and 17-A are predicated indicate that such cost studies do not make provision for the indirect expenses enumerated above, inasmuch as such cost studies are designed to reflect the costs of a full-unit operator furnishing service direct to a shipper.

In Exhibit 238-15, the witness allocated expenses to the management and overhead functions related to employing subhaulers and to the furnishing trailers to subhaulers. Based on his methods of expense allocations, the witness determined that the 5 percent of the revenue under the minimum rate allocated to the overlying carrier under Item 210 of MRT 7-A did not cover the associated expenses; and that the amounts collected for trailer-rental failed to cover the related costs.

Based on his analyses, the witness concluded that adoption of the proposals of the staff, AIOO, or CDTQA would cause either of the following to occur:

1. Overlying carrier would fail to adequately maintain the mechanical condition, tires, and appearances of the trailers provided to subhaulers, resulting in a lessening of the ability of the subhaulers to furnish adequate service; or

2. Overlying carriers may cease to employ tractor-only subhaulers, and may acquire and operate full units.

In the opinion of the witness, tractor-only subhaulers would be worse off under the proposals of the staff, AIOO, or CDTOA than under existing conditions.

Evidence of CAPA

The executive director of CAPA testified that CAPA is a nonprofit association of asphalt producers and contractors organized to advance and protect the interests of that industry. CAPA has participated extensively in proceedings involving the establishment or revision of minimum rates for transportation of asphalt in bulk in dump trucks. The position of CAPA in this proceeding is that the present 5 percent brokerage fee or commission should not be increased because it adequately covers the services performed by overlying carriers for underlying carriers in connection with transportation of asphalt from plant sites of producers to jobsites of contractors who are members of CAPA. CAPA also opposes the elimination of the so-called 95-percent rules, as proposed by CTA.

Cross-examination of the witness indicated that for 75 percent of its transportation requirements CAPA members deal directly with individual owner-operators, and that approximately 25 percent of their transportation requirements are fulfilled by overlying carriers. Overlying carriers or "brokers" are used primarily to meet the overflow trucking requirements of CAPA members, and that it is for the convenience of the asphalt shipper that overlying carriers' services are used.

According to the CAPA witness there are approximately 200 asphalt plants in California, of which more than 190 are fixed facilities, and less than 10 are portable plants-used for remote construction projects.

The witness testified that transportation from fixed facilities requires less service by overlying carriers than work on construction projects, such as described in the testimony of the witness for Overlying Carrier Chapters-CDTOA. CAPA's witness stated that asphalt producers generally use owner-operators of full units to perform their primary transportation needs, and that overlying carriers usually are called upon only to cover the occasional excess trucking requirements of individual producers. When overlying carriers are used by asphalt plants, the carriers are required only to locate the number of subhaulers required for that day's work. No supervisory employees are placed at origin or destination by the overlying carriers, no rate information is furnished to the shipper, and no job bidding is undertaken. CAPA believes the present brokerage fee of 5 percent is adequate for services performed by overlying carriers for the use made of them by asphalt plants.

Discussion - MRT 7-A

The costs underlying the existing minimum rates in MRT 7-A are based on the assumption that services are performed by a carrier owning and furnishing a full unit of equipment.

The record herein indicates that the combined operating costs of a puller (tractor-driver) and an overlying carrier furnishing trailer units for work on construction projects are different from, and may be substantially greater than, the costs for a full-unit operator.

Therefore, there can be no division of a minimum rate bottomed on costs incurred by a full-unit operator which will be equitable to both the puller and the overlying carrier furnishing trailers. To some extent this fact is recognized in the proposals of AIOO and CDTOA, wherein those associations propose that the overlying carrier furnishing trailers receive a larger allocation of the minimum rate (20 percent for trailer rental and 5 percent

for brokerage) than is indicated by the cost data of record. The cost data supplied by AIOO in Exhibit 240-1 indicates, for example, that only 12.62 percent of the total operating cost of a full-unit consisting of a tractor and two bottom-dump trailers is attributable to operating the trailers and that the balance (or 87.38 percent) is attributable to the operation of the tractor unit with driver. It can be seen from this that any attempt to allocate minimum rates between pullers and overlying carriers furnishing trailers in the manner proposed by AIOO and CDTQA will be arbitrary and will not be based on operating costs of record.

On the other hand, the staff proposed in Exhibit 238-8 that carriers furnishing tractors and drivers without trailing equipment assess and collect not less than 85 percent of the minimum rate, less the brokerage fee of 5 percent. This proposal is more closely related to the cost data in Exhibits 238-12 and 240-1 than are the proposals of AIOO and CDTQA, yet the staff proposal overlooks the fact that the brokerage fee of 5 percent is included in the indirect costs apportioned to the tractor and driver. The tractor-driver portion of total costs in the staff study ranges from 84.4 percent to 87.8 percent of the full-unit operating costs for straight-time service. If credance is given to the cost data in Exhibit 238-12, the underlying carrier operating as a puller should receive not less than 85 percent of the revenue under the minimum rate without deduction of a brokerage fee.

None of the parties advocating the establishment of rules governing the division of the minimum rate between pullers and overlying carriers supplying trailers have presented studies designed to show that the provisions of Item 210 of MRT 7-A (and related provisions of MRTs 17-A and 20) are reasonable and appropriate in connection with their proposals herein, as directed in Decision No. 83672. The evidence directed specifically to that point is the

testimony of the CDTOA witness (at page 489 of the transcript), a CTA witness (at page 557 of the transcript), and a witness appearing for Overlying Carrier Chapters-CDTOA (at page 709 of the transcript). The CDTOA witness testified to the effect that it is impossible to analyze the indirect expenses of overlying carriers, although the witness recognized that such indirect expenses are substantial. The CTA witness, an overlying carrier, testified that the present 5 percent commission is insufficient to adequately cover the costs of bidding and running dump truck operations on freeway construction projects. The witness appearing for Overlying Carrier Chapters-CDTOA endeavored to show the inadequacy of the existing 5 percent commission by analyzing the expenses of eight overlying carriers.

The evidence of record that bears on the issue of the reasonableness of the existing rule in Item 210 of MRT 7-A shows that the 5 percent of the minimum rate allocated to overlying carriers is inadequate to cover the services performed by overlying carriers for sub-haulers with respect to work on construction projects. The record also shows that such inadequacy is compensated for by extracting trailer-rental fees in excess of the fair rental value of such equipment. On the other hand, the cost evidence presented by the staff and AI00 shows that under any reasonable division of the costs which underlie the existing minimum rates, at least 85 percent of the total operating cost should be allocated to the tractor and driver and only 15 percent to the trailers, with no reduction from the 85 percent for compensation for services performed by overlying carriers on behalf of subhaulers.

As heretofore indicated, CTA and the Overlying Carrier Chapters-CDTOA oppose the establishment of any additional regulations in these proceedings, for the principal reason that overlying carriers use trailer rental to recover from tractor-only subhaulers that portion of the overlying carriers' overhead expenses which are not

recovered in the 5 percent brokerage fee allowed under Item 210 of MRT 7-A. It is the position of those protestants that the establishment of a trailer-rental fee at 20 percent of the minimum rate will cause overlying carriers to operate full units owned by them; thus, tractor-only subhaulers will be driven out of business.

It is clear that any attempt by the Commission to establish a division of the minimum rates between tractor-only subhaulers and overlying carriers furnishing trailer equipment will cause serious disruptions in the construction industry. It is also clear that the minimum hourly rates do not reflect the operating costs of subhaulers, either on a full-unit basis or on a tractor-only basis. The foregoing conclusion stems from the fact that the cost data underlying the rates in MRT 7-A are based on the operations of a full-unit by the carrier that actually performs the service and because the reasonableness of a 5 percent brokerage fee deducted from the minimum rate has never been established.

The record indicates that additional tariff rules that would establish a division of revenues between pullers and overlying carriers that furnish trailers on construction projects will either drive the pullers out of business or cause the persons involved to seek some new method to circumvent the added tariff rules. Before pullers are driven out of business, some accommodation will be made which will permit the pullers to continue to operate and the overlying carriers to obtain the revenues they feel are necessary for the risks involved in bidding and operating large construction projects. That accommodation, necessarily, would violate at least the spirit, if not the content, of the added tariff rules and would cause new and different enforcement problems for our staff.

The only enforceable tariff provision is to require that MRT 7-A rates apply to operations by subhaulers; that no deductions can be made from tariff rates for trailer rental, brokerage fees, nor any other services or facilities furnished by another carrier; and

that any recompense for brokerage or similar services be obtained in the form of charges higher than the minimum rates. If the foregoing principals are established to govern transportation services performed under MRT 7-A the level of the minimum rates can be reduced to reflect the lower overall costs of carriers now operating as subhaulers.

Discussion - MRTs 17-A and 20

The transportation of asphaltic concrete and other processed materials from fixed plant locations is subject to zone rates in MRTs 17-A and 20.

The functions of overlying carriers are different with respect to hauling from fixed locations, such as asphalt plants, and hauling on construction projects. The services performed by overlying carriers on construction projects as described by overlying carriers appearing for CTA and Overlying Carrier Chapters-CDTOA are greatly in excess of the services performed by overlying carriers hauling from asphalt plants at fixed locations, as described by CAPA's witness. No evidence was adduced with respect to whether or not the 5 percent brokerage fee or commission is adequate to cover the expenses of overlying on transportation from fixed plant locations.^{3/} From the description of the limited activities of overlying carriers hauling from fixed plant locations, it appears that existing 5 percent brokerage fee is adequate to cover the services performed by such overlying carriers. Therefore, the existing minimum rates are sufficient to cover the combined services performed by the overlying carrier and subhauler for transportation subject to the minimum rates in MRTs 17-A and 20. Thus, there is no impediment to establishing a division of rates in those tariffs between tractor-only subhaulers and overlying carriers furnishing

^{3/} It appears that, while the eight overlying carriers whose expenses are analyzed in Exhibit 238-15 engage in all phases of dump truck activities, their primary overlying carrier activities are in connection with construction projects.

trailers. The staff cost study in Exhibit 213-12 and AIOO cost study in Exhibit 240-1 both include the present 5 percent brokerage fee in the indirect expenses of subhaulers considered in those exhibits. In the circumstances, an equitable division of revenues between tractor-only subhaulers and overlying carriers furnishing trailers is 85 percent of the minimum rate revenue to the puller and 15 percent to the overlying carrier. The tariff provisions proposed by the staff, amended to provide that no additional brokerage fee shall be deducted from the puller's portion of the total revenue, will be reasonable and should be adopted for MRTs 17-A and 20.

Discussion - Shipper-Owned Trailers

While the record does not indicate the extent that shippers lease trailers to dump truck carriers, prior enforcement proceedings have found that excessive trailer rental charges can be a form of unlawful rebate.^{4/} Those decisions also showed that insufficient cost or similar evidence was made available in the enforcement proceedings to determine whether the trailer rentals imposed by shippers were in excess of the fair rental value of equipment furnished. That type of evidence is available in this record. Based on the cost data in Exhibits 238-12 and 240-1, the maximum fair rental value of trailing equipment furnished to a dump truck carrier by a shipper is not in excess of 14 percent of the charges under the applicable minimum rate. To prevent unlawful rebates with respect to rental of trailing equipment from shippers to dump truck carriers, MRTs 7-A, 17-A, and 20 should be amended to provide a maximum rental fee of 14 percent of the charges applicable under the minimum rates prescribed in those tariffs for the transportation

^{4/} McDonald & Dorsa Transportation Co., 64 CPUC 340, 344 and 68 CPUC 87; William H. Marback, 68 CPUC 290 and cases cited therein; Wilfred J. Fluery Trucking Co. Inc., 68 CPUC 294; Larry L. Quigley (Quigley Trucking), 69 CPUC 486 and cases cited therein; Summer & Son Transport, Inc. et al., 69 CPUC 184; and F. M. Wert Trucking, 72 CPUC 167 and cases cited therein.

performed with said trailer equipment. The term "trailer equipment" includes a semitrailer, full-trailer, or any combination thereof which lawfully may be operated in combination with a single power unit.

Recommended Findings of Fact

1. Minimum rates for the transportation of rock, sand, gravel, earth, asphaltic concrete, and related commodities in bulk in dump trucks are set forth in MRTs 7-A, 17-A and 20.

2. The minimum rates set forth in MRTs 7-A, 17-A, and 20 are developed from cost data prepared by and introduced into evidence by the Commission staff.

3. The cost data underlying MRT 7-A was originally introduced into evidence as Exhibits 213-46 and 213-65 in Case No. 5437 (OSH 213). The most recent updating of the cost data in OSH 213 was introduced into evidence in Case No. 5437 (Petition 265) as Exhibit 265-71.

4. The staff cost studies referred to in the preceding finding are based on the operation of a full unit of carrier's equipment by a carrier serving a shipper directly, who neither operates as a subhauler nor as an overlying carrier.

5. A substantial amount of the dump truck services subject to the provisions of MRT 7-A are contracted for by overlying carriers (brokers) who employ subhaulers to perform the transportation services.

6. Item 210 of MRT 7-A (formerly Item 94 of MRT 7) and related items in MRTs 17-A and 20 provide that charges paid by an overlying carrier to an underlying carrier shall not be less than 95 percent of charges applicable under the minimum rates, less liquidated amounts. Under this tariff provision 5 percent of the minimum rate revenue is allocated to the overlying carrier for services performed by it.

7. Item 210 of MRT 7-A and related items in MRTs 17-A and 20 do not contain provisions which set a maximum amount for the rental of trailers furnished to subhaulers by overlying carriers, nor do such tariffs divide the charges under minimum rates between subhaulers furnishing driver and tractor (or truck) and overlying carriers furnishing trailers.

8. In a prior proceeding involving the provisions of Item 94 of MRT 7, the Commission found as follows:

"2. The existing provisions of Item 94 of MRT 7 were established on data relating to industry practices, some 20 years ago; substantially identical provisions were subsequently incorporated in Item 460 of MRT 17; and the provisions of Item 94 of MRT 7 and Item 460 of MRT 17 never have been tested by studies which include specific cost data relating to services performed by overlying carriers for underlying carriers." (Emphasis supplied.) (Page 18 of mimeo. Decision No. 78965 issued on December 8, 1970 in Petition 112 and Order Setting Hearing in Decision No. 72028 dated February 15, 1967.)

9. Since the establishment of Item 94 of MRT 7, it has become an increasing practice for overlying carriers to employ subhaulers who furnish a tractor (or truck) with driver (puller) and who pull a trailer or set of trailers owned by the overlying carrier. CDTOA estimates that there are in excess of 1,000 pullers holding permits as dump truck carriers.

10. Pullers also lease trailing equipment from shippers. The extent of this practice cannot be determined from the record, but the practice appears to be minimal compared with the operations of pullers for overlying carriers.

11. Order Setting Hearing 238 was issued to receive evidence with respect to proposals of the Commission's Transportation Division concerning revision of MRTs 7-A, 17-A, and 20 to incorporate therein rules and regulations providing for compensation to carriers

which furnish units of equipment consisting of a tractor and driver without trailing equipment for the movement of commodities covered by said tariffs. Cost data and other evidence was presented by the Commission staff witnesses to support the staff proposal.

12. AIOO seeks in Petition 240, as amended (and related proceedings), modification of MRTs 7-A, 17-A, and 20 by incorporating therein rules and regulations providing for the compensation to be paid to overlying carriers who furnish trailing equipment without power units to subhaulers for the movement of commodities covered by said tariffs. Cost data and other evidence were presented by AIOO in support of its proposals.

13. OSH 238 and Petition 240 were heard on a consolidated record in February and March 1974, and the matters were removed from the calendar in order to rule on the motion to dismiss the proceedings filed by CTA which opposes the relief sought. Decision No. 83672 dated October 29, 1974 denied the motion to dismiss and ordered that further hearings be held. Decision No. 83672 placed the parties on notice that the Commission considers that the reasonableness of the provisions of Item 210 (Payments to Underlying Carriers) of MRT 7-A and related provisions of MRTs 17-A and 20 is an issue in OSH 238 and Petition 240.

14. CDTOA seeks in Petition 285 (and related proceedings) to amend MRTs 7-A, 17-A, and 20 by incorporating therein rules and regulations providing for the compensation to be paid to underlying carriers operating a power unit which pulls non-owned dump trailer and/or semitrailer equipment. Evidence was presented in support of that proposal.

15. CTA opposes the addition of any rules which prescribe the division of minimum rate revenues between overlying carriers furnishing trailers and pullers. As an alternative to the proposals

of the staff, CDTQA, and AIOO, CTA proposes that Item 210 of MRT 7-A (and related provisions of MRTs 17-A and 20) be cancelled, and General Order No. 130 (Rules Governing Leasing of Motor Vehicles by Highway Permit Carriers) be amended to require the filing of leases or rental agreements for use of trailing equipment furnished by an overlying carrier to an underlying carrier. Evidence was offered in support of CTA's proposals.

16. Overlying Carrier Chapters-CDTQA also oppose the additional rules proposed by the staff, AIOO, and CDTQA. Evidence in support of its position was offered by protestant.

17. CAPA, appearing as an interested party, opposes any increase in the so-called brokerage fee (the 5 percent of the minimum rate allotted to the overlying carrier under provisions of Item 210 of MRT 7-A and related provisions of MRTs 17-A and 20). CAPA has no objection to the establishment of tariff provisions dividing the charges under minimum rates in MRTs 7-A, 17-A, and 20 between pullers and overlying carriers or shippers that furnish trailer equipment. Evidence in support of its position was presented by CAPA.

18. The record indicates that under current practices overlying carriers assess trailer rental charges ranging from 15 to 30 percent (exclusive of the 5 percent brokerage fee) and that the most frequently assessed trailer rental fees are 20 or 25 percent. The record does not contain information concerning the trailer rental charges currently imposed by shippers.

19. The staff, AIOO, and CDTQA allege that provisions establishing a division of minimum rate revenues between pullers and overlying carriers furnishing trailers are urgently needed to protect pullers. None of those parties urge that any particular level of trailer rental fees now assessed is unreasonable or discriminatory.

20. Revenues under the minimum rates in MRTs 7-A, 17-A, and 20 are proposed to be divided as follows:

Commission Staff:

Tractor (Truck) and Driver - 85 percent
(less 5 percent of 85 percent for
brokerage fee)

Trailer Owner - 15 percent
(plus 5 percent of 85 percent if
an overlying carrier)

AI00:

Tractor (Truck) and Driver - 80 percent
(less 5 percent of 80 percent for
brokerage fee)

Trailer Owner - 20 percent
(plus 5 percent of 80 percent as
brokerage fee if an overlying carrier)

CDTOA:

Tractor (Truck) and Driver - 80 percent
(less 5 percent of 100 percent as
brokerage fee)

Trailer Owner - 20 percent
(plus 5 percent of 100 percent if
an overlying carrier)

21. The cost data presented by the staff divides the total operating costs for a full unit (at 100 operating ratio) between the tractor (truck) and driver and the trailer(s). The cost data is based on exhibits previously introduced by the staff in Exhibits 213-46, 213-65, and 265-71, except that the indirect expense ratio is reduced to 7 percent and the present 5 percent brokerage fee is included in tractor-driver costs as a portion of indirect expenses. Representative of the division of costs developed in Exhibit 238-12 are the following:

Five-Axle Bottom Dump Unit

Hourly Costs (straight time)

Total Cost - Full Unit	\$21.982
Total Cost - Power Only	\$19.048
Power Unit as % of Total Unit	86.7

Distance Costs

5 Miles

Total Cost - Full Unit	\$ 0.565
Total Cost - Power Only	\$ 0.496
Power Unit as % of Total Unit	87.8

50 Miles

Total Cost - Full Unit	\$ 2.805
Total Cost - Power Only	\$ 2.397
Power Unit as % of Total Unit	85.5

22. Cost data presented by AIOO divides total operating costs for a full unit in a manner similar to the staff data. AIOO's cost study also uses a 7 percent indirect expense ratio and includes the 5 percent brokerage fee as a portion of indirect expenses. The cost data developed in Table 6 of Exhibit 240-1 is as follows:

	<u>5-Axle Double Bottom Unit</u>	<u>5-Axle Truck and Transfer Trailer</u>
Average Cost per Revenue Hour at 100 O.R.	\$21.352	\$21.486
Average Total Cost Power Unit Only	\$18.658	\$19.901
Power Unit as % of Total Unit	87.38	92.62

23. Cost data presented by CDT0A was designed to show that pullers experience lower indirect expenses than operators of full units; for example, Exhibit 285-3 shows that in 1974 the average indirect expense ratio for pullers was 7.23 percent, compared to 11.41 percent for tractor- and bottom-dump trains operated as a full unit.

24. Based solely on the cost data in Exhibits 238-12 and 240-1, the reasonable division of the revenue under minimum rates in MRT 7-A for the operation of a power unit and driver would be 86 percent, and for the trailer(s) would be 14 percent, with no provision for a brokerage fee.

25. Evidence was presented on behalf of CTA and Overlying Carrier Chapters-CDTOA to show that overlying carriers engaged in work on construction projects consider that the 5 percent of minimum rate revenues allotted to them under provisions of Item 210 of MRT 7-A are insufficient to cover the services performed by them on behalf of the contractor and the subhaulers employed on such construction projects. This assumption was confirmed by the analysis of the operating statements of eight overlying carriers in Exhibit 238-15, presented by Overlying Carrier Chapters-CDTOA, and in the testimony presented on behalf of that organization.

26. Overlying carriers appearing for CTA testified that trailer rental fees are used by them to recoup the additional revenues which they believe are necessary to cover their expenses as overlying carriers which are in excess of the amounts provided by the present 5 percent brokerage fee. The testimony shows that the trailer rental fees assessed are greater than necessary to recover the reasonable expenses associated with the furnishing of trailing equipment to pullers.

27. The proposal of AIOO that trailer-rental be based on a maximum of 20 percent of the revenue accruing under the minimum rates was made in recognition that overlying carriers experience expenses which are not fully compensated for under the present 5 percent brokerage fee; therefore, the difference between 20 percent and the 12.2 to 14.5 percent of total cost allocated to trailing equipment in AIOO's Exhibit 240-1 represents that witness's judgment as to the amount of additional revenue which should be accorded to the overlying carrier for services not compensated for under the present 5 percent brokerage fee.

28. In the establishment of minimum rates pursuant to Section 3662 it has been the policy and procedure of the Commission to determine the cost of performing transportation in a reasonably efficient manner by the type of carrier best suited to provide the service, and then to determine those rates which will return that cost plus a reasonable profit. In the case of transportation of rock, sand, gravel, and earth on construction projects, the Commission determined that the reasonably efficient carrier was one that furnished a full unit of equipment and did not operate either as an overlying carrier or as a subhauler.

29. The record shows through the testimony of AIOO, CTA, and Overlying Carrier Chapters-CDTOA that the existing provisions of Item 210 of MRT 7-A are unreasonable in that the division of the charges under minimum rates in MRT 7-A fails to adequately compensate overlying carriers for the services performed on construction projects.

30. The data set forth in Exhibits 238-12 and 240-1 show that pullers who operate as subhaulers for overlying carriers that furnish trailers are inadequately compensated for their services to the extent that such pullers receive less than 86 percent of the charges under the minimum rate.

31. The cost data and other evidence adduced herein show that the combined operations of an overlying carrier and a tractor-only subhauler for transportation of rock, sand, gravel, and earth on construction projects produce total costs in excess of the costs which underlie the present rates in MRT 7-A; therefore, no division of the present MRT 7-A minimum rates between a tractor-only subhauler and an overlying carrier can be equitable to both.

32. Further division of the minimum rates in MRT 7-A between pullers and overlying carriers as proposed in OSH 238 and Petitions 240 and 285 will not result in just and reasonable minimum rates.

33. The minimum rates set forth in MRTs 17-A and 20, which are applicable from fixed plant locations, are sufficient to cover the combined operating expenses of tractor-only subhaulers and overlying carriers furnishing trailers.

34. MRTs 17-A and 20 should be amended to provide a division of revenue under the minimum rates set forth therein between tractor-only subhaulers and overlying carriers furnishing trailers. The reasonable division of revenues, based on cost data set forth in Exhibits 238-12 and 240-1, is 85 percent to the tractor-only subhauler and 15 percent to the overlying carrier supplying trailers, with no provision for assessment of additional brokerage fees. Commission staff proposals amended to provide for such division of revenues will result in just, reasonable, and non-discriminatory tariff rules and should be incorporated in MRTs 17-A and 20.

35. In prior enforcement proceedings the Commission has found that trailer rentals paid by highway permit carriers to shippers in excess of the fair rental value of the equipment furnished (expressed as a percentage of revenue under the minimum rates applicable to the transportation services in which the trailers are used) is an unlawful rebate in violation of the Highway Carriers Act. Rules should be established in MRTs 7-A, 17-A and 20 prohibiting the payment of excessive trailer rentals to shipper in order to prevent unlawful rebates. Based on the data in Exhibits 238-12 and 240-1, trailer rental paid to a shipper which is greater than 14 percent of the revenues accruing under the minimum rate applicable to the transportation in which such trailers are used is excessive and should be prohibited.

36. The proposal of CTA that Item 210 of MRT 7-A (and related items in MRTs 17-A and 20) be cancelled is beyond the announced scope of the consolidated proceedings, and full-unit subhaulers were not properly notified that a proposal affecting their operations would be considered in the consolidated proceeding.

Recommended Conclusions of Law

1. MRTs 7-A, 17-A, and 20 should be amended to incorporate therein the tariff provisions found reasonable in the above findings.
2. To the extent not adopted in preceding findings, the proposals of the staff in OSH 38 and of petitioners in Petitions 240 and 285 in Case No. 5438 (and related petitions) should be denied.
3. Adequate notice that the Commission would consider the proposals of CTA was not afforded all respondents; therefore, such proposals may not be considered herein.
4. Further proceedings should be instituted to determine the method under which adequate total compensation can be achieved for the combined operations of overlying carriers furnishing trailing equipment and subhaulers operating as pullers, under the provisions of MRT 7-A.

Dated at San Francisco, California, this 13th day of November, 1975.

/s/ J. W. MALLORY

J. W. Mallory
Examiner

APPENDIX A

LIST OF APPEARANCES

Petitioner (Petition 240): G. Ralph Grago, James R. Foote, and John C. Grissom, for Associated Independent Owner-Operators, Inc.

Petitioner (Petition 285): E. O. Blackman and C. Ralph Eighmy, for California Dump Truck Owners Association.

Respondents: Ray S. Bruton and Mike Mallin, for Miles & Sons Trucking Service; Robert K. Davidson, for Roy E. Lay Trucking; Don L. Hays, for A. W. Hays Trucking; La Fay Lindeman, for Lindeman Bros. Inc.; Kenneth P. Harrison, for Harrison-Nichols Co. Ltd.; Walker Brown, for Walker Brown Trucking, Inc.; N. Vannucci, for CBM Trucking Co.; Albert Giorgi, for Giorgi Trucking Co.; Jack Wood, for Edgewood Materials; Les Calkins, for Les Calkins Trucking Co.; E. Lockridge, for Pacific Construction Trucking, Inc.; William R. Della-Rosa, for Della-Rosa Bros. Trucking, Inc.; F. R. Golzen, for Universal Transport System; Stanley A. Ziganti, for CAP Transport, Inc.; Richard M. Davilla, for Davilla Trucking, Inc.; Don R. Moe, for Southern California Eagle Company; and J. S. Shafer, Jr., for Trucking by J. S. Shafer, Jr.

Protestant: Richard W. Smith and William T. Meinhold, Attorneys at Law, R. C. Broberg, and H. Hughes, for California Trucking Association.

Interested Parties: Steve Wilcox, for Kaiser Sand and Gravel; Harry C. Phelan, for California Asphalt Pavement Association; Richard Cunha and R. A. Lubich, for themselves; Graham & James, by David J. Marchant, Attorney at Law, and James Quintrall, for Overlying Carrier Chapters of the California Dump Truck Owners Association; and E. J. Bertana, for Lone Star Industries, Inc.

Commission Staff: Walter H. Kessenick, Attorney at Law, E. Q. Carmody, and J. M. Jenkins.