

Decision No. 86025

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investi-
gation 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.

Case No. 5437
Petition for Modification
No. 288
(Filed October 2, 1975)

E. O. Blackman, for California Dump Truck
Owners Association, petitioner.
Les Calkins, for Les Calkins Trucking, Inc.,
Respondent, and A.G.C. of California,
protestant.
J. S. (Sam) Shafer, Jr., for Trucking by
J. S. Shafer, Jr., respondent.
James Foote, by E. O. Blackman, for Associated
Independent Owner Operators; and
C. D. Gilbert, H. Hughes, and J. C. Kaspar,
for California Trucking Association;
interested parties.
Joel Anderson, for the Commission staff.

O P I N I O N

Minimum Rate Tariff 7-A (MRT 7-A) contains rates and rules governing the transportation of property in dump truck equipment. In this petition the California Dump Truck Owners Association (CDTOA) requests that the present provisions in MRT 7-A governing the application of northern territory distance tonnage rates for the transportation of asphaltic concrete ("hot stuff") and cold liquid asphalt in containers be eliminated. In lieu thereof, it is proposed that the current tariff rules providing for the alternative application of hourly asphaltic concrete rates be revised so as to make such hourly rates apply exclusively.

Public hearings of Petition 288 were held before Examiner Gagnon at San Francisco on April 28 and 29, 1976. Two dump truck operators testified in support of the petition.^{1/} A CDTOA consultant also presented evidence in support of the proposed tariff changes. Two respondent dump truck carriers appeared to protest the tariff proposal and one of the protesting carriers testified in opposition.

The distance rates for the northern territory set forth in Item 300, Section 2, of MRT 7-A apply to the dump truck transportation of:

"Asphaltic Concrete (commonly called 'Hot Stuff').

"Cold Road Oil Mixture (commonly called 'Plant Mix').

"Cold Liquid Asphalt in containers not exceeding 5 gallon capacity per container, when tendered for transportation with, and as a part of, a shipment of asphaltic concrete, and when the quantity so tendered does not exceed 15 gallons per shipment."

(Minimum weight 23 tons per unit of dump truck equipment.)

Item 250 of the tariff provides that the distance rates named in Item 300 apply to all shipments except as otherwise provided in Sections 3 and 4 of MRT 7-A which contain hourly and zone rates. Under the provisions of Item 360 of the tariff the aforementioned hourly rates apply in lieu of the otherwise governing distance rates only when:

"...a debtor or his agent and a carrier or his representative enter into a written agreement, before the transportation commences, that the hourly rate provisions apply. . . ."

Accessorial delay charges are provided in Item 90 of MRT 7-A which apply in addition to the freight charges resulting under the distance rates named in Item 300 of the tariff when:

^{1/} A stipulation was received that four additional dump truck operators were available to offer similar testimony in support of Petition 288.

"...through no fault of the carrier, the unloading and release of carrier's equipment at destination is delayed beyond the time allowances shown herein, the...accessorial charges shall be assessed." (Emphasis supplied.)

The asphaltic concrete distance and hourly rates involved in this proceeding were initially promulgated by Decision No. 82061 dated October 30, 1973 in Case No. 5437. In establishing such rates the Commission stated:

"On the record before us it is evident that there is a definite need in connection with dump truck transportation for both distance and hourly rates. It is also evident that for rates of general application the merits of the distance rates far outweigh those of the hourly rates. The distance rates should be made the basic rates for all distances, and should be assessed in all instances except those in which the carriers and shippers specifically agree, prior to the performance of transportation services involved, that the transportation should be performed under the hourly rates." (Emphasis supplied.)

Prior to reaching the above conclusion in Decision No. 82061 the Commission noted the principal merits of distance and hourly rates as follows:

DISTANCE RATES

- "a. Results in transportation charges that are proportionate to the length of haul and tonnage transported.
- "b. Charges under distance rates can be ascertained with certainty in advance of transportation.
- "c. Provide a basis of charges that is more uniformly enforceable than charges under hourly rates."

HOURLY RATES

- "a. Results in charges that vary with the hours of carrier's service.
- "b. Provide a basis of charges that is more adaptable than distance rates to special or unusual transportation conditions."

Petitioner's Evidence

Two dump truck carriers engaged in the transportation of asphaltic concrete and related products in northern California testified in support of the rate proposal. The general thrust of their testimony is:

1. The present MRT 7-A distance rates are noncompensatory.
2. Every effort is made to avoid hauling under the distance rates.
3. Asphaltic concrete products are generally transported under the alternative hourly rate provisions of the tariff.
4. Hourly rates, not the distance rates, provide a basis for charges that is more responsive to transportation costs changes experienced with various types of dump truck equipment. Hourly rates also provide a basis for charges that is more adaptable to the numerous transportation variables encountered at the different asphaltic concrete plants or jobsites.
5. Hourly rates compensate the dump truck carrier automatically for all waiting time.
6. Under distance rates accessorial charges are provided for delay time encountered at destination (jobsite) only not at point of origin (plant site).
7. Overlying carriers, transportation brokers, and contractors will not recognize subhaulers' billing for delay time under the distance rates.

The consultant for CDTOA also presented evidence in support of Petition 288. In his Exhibit 1 a comparison is made of the revenues resulting from sample shipments of asphaltic concrete rated under either the northern territory distance or hourly rates. The revenue comparison is predicated upon some 570 loads of asphaltic concrete transported by 24 different dump truck operators. The exhibit indicates that the average revenue per hour amounted to \$26.03 under the hourly rates and \$18.62 when rated under the distance rates. Since the CDTOA had previously shown that a substantial portion of the asphaltic concrete traffic moving within the northern territory is currently being rated under the hourly rates, the consultant was

apparently required to rerate a number of the sample shipments shown in Exhibit 1 in order to develop the revenue resulting under the otherwise governing distance rates. To what extent this re-rating underestimated delay time for which accessorial charges are provided was not clearly shown.

The consultant does not dispute the fact that at present dump truck operators have been very successful in negotiating prior agreements with shippers to transport asphaltic concrete under the MRT 7-A northern territory hourly rates. He insists, however, that the very existence of lower distance rates in the tariff will eventually result in increased shipper demand for their application, to the ultimate detriment of the dump truck carriers. The direct testimony of CDTOA's supporting trucker witnesses does not, however, substantiate this alleged concern of the consultant. On the contrary, they have to date been extremely successful in negotiating asphaltic concrete agreements to haul under the hourly rates, in lieu of the distance rates, in the precise manner contemplated by Decision No. 82061 and as currently reflected in MRT 7-A.

Two respondent dump truck operators oppose the CDTOA's suggested cancellation of the northern territory asphaltic concrete distance rates. The president for Les Calkins Trucking, Inc. offered direct testimony in opposition to CDTOA's rate proposal. He noted that prior to Decision No. 82061 asphaltic concrete was transported under tonnage rates with subsequent conversion to an hourly rate basis, presumably to comply with the then effective minimum hourly rate requirements of MRT 7.^{2/} He explained that contractors wanted their transportation costs for asphaltic concrete expressed on a tonnage basis for subsequent bids on government highway construction jobs. If Petition 288 is granted the president for the respondent dump truck carrier contends that tonnage rates would still be quoted

^{2/} Prior to Decision No. 82061, only minimum hourly rates governed the dump truck hauling of asphaltic concrete in the northern territory.

with subsequent conversion to an hourly basis in an effort to comply with MRT 7-A. The truck witness also noted that many times Les Calkins Trucking, Inc. bids for transporting asphaltic concrete are higher than the minimum rates named in Item 300 of MRT 7-A. Whenever unusual delay time is involved the carrier assertedly offers his services at the hourly rates. While the provisions for accessorial delay charges contained in Item 90 of MRT 7-A are assertedly not perfect, the truck witness contends that cancellation of such tariff provisions is not justified.

Most of the CDTOA's alleged deficiencies in the current distance rates pertain to the results of application of the rates and not to the basic need for a scale of distance rates as previously found justified in Decision No. 82061. In most instances the alleged deficiencies could be resolved through appropriate tariff revisions rather than the proposed elimination of distance rates. Such an alternative course of action, together with the required evidence in support thereof, might well be made the subject of an appropriate petition in Case No. 5437. The California Trucking Association, in urging that the Commission retain the current distance rates for asphaltic concrete products, generally concurs with this latter suggested course of action.

Findings

1. Minimum distance and hourly rates are provided in MRT 7-A for the transportation of asphaltic concrete products between points located within northern territory as described in the tariff.

2. The distance rates apply to all shipments except when the dump truck carrier and debtor enter into a written agreement, before transportation commences, that the alternative hourly rate provisions of the tariff shall apply.

3. The distance and hourly asphaltic concrete rates contained in MRT 7-A were initially adopted by Decision No. 82061 dated October 30, 1973 in Case No. 5437. In providing for the alternative application of hourly rates for the otherwise governing distance rates the Commission first determined that for general rate application

the merits of the distance rates far outweigh those of the hourly rates. The Commission further determined that the distance rates should be assessed in all instances except those in which the carriers and shippers specifically agree, prior to the commencement of service, that the transportation should be performed under the hourly rates.

4. In justification of its rate proposals the CDTOA endeavored to generally show that:

- (a) The distance rates are noncompensatory.
- (b) Hourly rates are now generally employed.
- (c) Hourly rates provide a basis for charges more adaptable than distance rates to special or unusual transportation conditions.
- (d) Hourly rates result in charges that vary with the hours of service.
- (e) Carriers are unable to collect accessorial charges for delay time under distance rates.

5. Two respondent dump truck operators hauling asphaltic concrete and related products under the existing MRT 7-A tonnage rates oppose CDTOA's rate proposal. If Petition 288 is granted a respondent carrier contends that tonnage rates would still be quoted with subsequent conversion to an hourly basis in order to comply with minimum rate regulations.

6. The Commission's prior determination in Decision No. 82061 summarized in Finding 3 hereof relative to the apparent need for the alternative application of distance and hourly rates is affirmed by the facts of record in this proceeding.

7. In most instances CDTOA's alleged deficiencies in the present MRT 7-A distance rate provisions could be resolved, if shown to be justified, by appropriate tariff revisions rather than the proposed complete elimination of the distance rates for the transportation involved.

8. The tariff changes proposed by the CDTOA have not been shown to be justified by transportation conditions and should not be adopted.

The Commission concludes that Petition 288 should be denied.

O R D E R

IT IS HEREBY ORDERED that Petition for Modification No. 288 of the California Dump Truck Owners Association is denied.

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

Dated at San Francisco, California, this 29th day of JUNE, 1976.

William L. Sycamore President
George L. Sturgeon
Don
Robert Batil Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.