

ORIGINAL

Decision No. 86055

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 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.

Case No. 9819
Petition for Modification
No. 13
(Filed September 5, 1975;
amended January 22, 1976)

Harry C. Phelan, Jr., for California
Asphalt Pavement Association, petitioner.
C. D. Gilbert and H. W. Hughes, for
California Trucking Association, and
E. O. Blackman, for California Dump
Truck Owners Association, protestants.
James R. Foote, for Associated Independent
Owner Operators, Inc., and J. S. Shafer, Jr.,
for himself, interested parties.
George L. Hunt, Raymond Toohey, and
J. M. Jenkins, for the Commission staff.

O P I N I O N

By this petition, as amended, California Asphalt Pavement Association seeks modification of Note 3 in Item 65 and the exception in Item 160 of Minimum Rate Tariff 17-A (MRT 17-A) to provide that distance rates in Minimum Rate Tariff 7-A (MRT 7-A) apply to the transportation of asphaltic concrete, cold road oil mixture, and cold

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liquid asphalt in containers not exceeding five-gallon capacity per container (asphaltic concrete products) rather than the hourly rates in MRT 7-A.

Public hearing was held before Examiner O'Leary on December 9, 1975 and April 20, 1976 in Los Angeles. The matter was submitted on the latter date.

The representative of petitioner testified that the use of the hourly rates precludes producers from quoting a firm transportation rate to consignees and entails significantly more bookkeeping when deliveries are made to more than one consignee during one day.

Petitioner alleges that prior to the issuance of Decision No. 84648 dated July 5, 1975 in Cases Nos. 5437 and 9819 the transportation of asphaltic concrete products was transported under the distance rates in MRT 7-A when the hourly agreement required pursuant to Item 360 of MRT 7-A was not entered into.

The California Dump Truck Owners Association and the California Trucking Association opposed the sought relief.

MRT 17-A when issued in 1972 contained hourly rates for the transportation of asphaltic concrete products in trucks with trailing equipment or tractors with trailers. On October 30, 1973 the Commission issued Decision No. 82061 which canceled Minimum Rate Tariff 7 and established MRT 7-A effective December 1, 1973. By separate order in Decision No. 82062 the hourly rates in MRT 17-A were canceled and MRT 17-A was amended to provide that the rates in MRT 7-A would apply to the transportation of asphaltic concrete products in trucks with trailing equipment and tractors with trailers within the area embraced by MRT 17-A. On March 4, 1974 the Commission issued Decision No. 82536 wherein it stated:

"Decision No. 82062 dated October 30, 1973, in the above proceeding canceled the hourly rates in Minimum Rate Tariff 17-A and provided that the hourly rates in Minimum Rate Tariff 7-A would apply in lieu thereof.

"It has come to the Commission's attention that uncertainty exists concerning the application of such hourly rates to the transportation of asphaltic concrete and cold road oil mixture.

"In the circumstances, the Commission finds that the applications of such hourly rates should be clarified by the order herein. A public hearing is not necessary."

As a result Items 65 and 160 of MRT 17-A were amended to provide that the hourly rates in MRT 7-A were to apply to the subject transportation. Item 360 of MRT 7-A provides that: ". . . Hourly rates apply 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. . . . In the absence of an hourly agreement, rates otherwise provided in this tariff shall be assessed..." On July 8, 1975 the Commission issued Decision No. 84648 wherein it stated:

"It has come to the Commission's attention that uncertainty exists concerning the application of the hourly rate provisions of Item 160 of Minimum Rate Tariff 17-A in connection with the transportation of asphaltic concrete in trucks with trailing equipment or tractors with trailers.

"In the circumstances, the Commission finds that the hourly rate provisions should be clarified by the order herein. A public hearing is not necessary."

The decision amended Item 160 of MRT 17-A to provide that the written agreement provisions set forth in Item 360 of MRT 7-A are not applicable to transportation of asphaltic concrete products when transported in trucks with trailing equipment and tractors with trailers.

It is clear that since the cancellation of the hourly rates in MRT 17-A, the Commission has intended that the hourly rates in MRT 7-A were to apply to the transportation of asphaltic concrete products in trucks with trailing equipment and tractors with trailers within the area embraced by MRT 17-A.

To make the change sought by petitioner could cause substantial changes in the use of equipment, the extent of which is unknown on this record. We are not persuaded that any benefit arising from petitioner's proposal will outweigh any potential adverse effects on the industry. Simply stated we need evidence on the effect of the proposed change.

Findings

1. MRT 17-A provides that when asphaltic concrete products are transported in trucks with trailing equipment or tractors with trailers, when transported between points embraced by MRT 17-A, the hourly rates set forth in MRT 7-A apply.

2. Since the cancellation of the hourly rates in MRT 17-A the Commission has always intended that the hourly rates in MRT 7-A apply to the transportation set forth in Finding 1.

3. Petitioner did not present any evidence with respect to comparisons of the distance rates set forth in MRT 7-A and the hourly rates in MRT 7-A or the zone rates in MRT 17-A.

4. The tariff changes proposed by petitioner have not been shown to be justified by transportation conditions and should not be adopted.

The Commission concludes that Petition No. 13 should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 13 in Case No. 9819 is denied.

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

Dated at San Francisco, California, this 7th day of JULY, 1976.

William J. Lyons President
Vernon L. Stetson
Leonard Ross
Robert Bateman Commissioners