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ALJ/WSP/vdl**

Decision 88 07 067 JUL 22 1988

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.	Case 5437 Petition for Modification 265 (Filed March 25, 1988)

C. D. Gilbert, for the California Trucking Association; and James D. Martens, for California Dump Truck Owners Association; petitioners.

Ronald C. Broberg, for Les Calkins Trucking, Inc. and Transpan Corporation; Messrs. Silver, Rosen, Fischer & Stecher, by Michael J. Stecher, Attorney at Law, for Transpan Corporation, Port Costa Materials, Inc., Les Calkins Trucking, Inc., Aggrelite Rock Company, S. Bar S. Quarry, Bonnel Trucking, Trans Tech Trucking, Jessie House Trucking, Poulter Trucking, Michelis Trucking, Goldrush Transfer, E-C Trucking, Poli Trucking, Duarte Trucking, Gregory Trull Trucking, B. Luper Trucking, and Wolford Transfer; Don Wolford, for Wolford Transfer Service; and Kenneth Duarte, for Duarte Trucking; protestants.

Messrs. Nossaman, Guthner, Knox & Elliott, by William T. Bagley, John H. Bay, Richard C. Harper, Attorneys at Law, for Lightweight Processing Company; and Terry Klenske, for Dalton Trucking, Inc.; interested parties.

E. H. Burgess and Jerry Kerschman, for the Transportation Division.

O P I N I O N

The Commission Transportation Division (staff) petitions the Commission to modify Decision (D.) 83124. That decision made various changes in Minimum Rate Tariff (MRT) 7-A, a dump truck tariff. The petition requests that one of the captions to Item 330 of MRT 7-A be changed to read, simply, "Northern Territory (See Item 160)" rather than "Between Points in Northern Territory (See Item 160)" as Item 330 has read for approximately 15 years since D.83124 became effective. The staff contends that this current reading is ambiguous and has allegedly created unintended competitive problems due to some dump truck carriers and bulk shippers interpreting the item to mean that the transportation of the commodity covered by Item 330--lightweight aggregates--is rate exempt on moves from Northern California to Southern California.

The Petition shows that copies of the petition were served on all known parties of record in Case (C.) 5437, OSH 325; C.9819, OSH 75; C.9820, OSH 25; and C.5437, Petition 329. A hearing on the Petition was held in San Francisco on May 9 and 10, 1988.

Lightweight aggregates are described in Item 50 of MRT 7-A as follows:

> "Lightweight Aggregates, viz.:
> Ash, volcanic;
> Cinders;
> Clay, burnt or calcined;
> Perlite, expanded;
> Pumice;
> Sand, burnt shale;
> Scoria, volcanic;
> Shale, burnt or calcined;
> Shale, expanded;
> Slag, expanded."

The territorial scope of MRT 7-A is set out in Item 80, which reads as follows:

"APPLICATION OF TARIFF--TERRITORIAL

"Rates in this tariff apply for transportation between all points within the State of California."

Items 330 and 340 set forth distance rates for the transportation of lightweight aggregates. The distance rates in Item 330 are delineated to apply as follows:

"Between points in Northern Territory (See Item 160)."

There are no named points in Item 330. The rates in Item 340 are delineated to apply as follows:

"SOUTHERN TERRITORY INTERPLANT DISTANCE RATES (See Item 160)."

There are no plant sites identified in Item 340.

Item 265 provides as follows:

"INTERTERRITORIAL MOVEMENTS"

"When a shipment originates in one territory and terminates in another, the rates applicable in the originating territory will apply."

In June 1987, Trucking Support Services Team, Inc. (TruSST), at the request of protestant, Les Calkins Transportation, Inc. (Calkins), directed a letter to the Commission in which TruSST stated that "it appears that MRT 7-A doesn't presently name rates applicable to lightweight aggregates moving from Northern Territory to Southern Territory" and asked for confirmation of that opinion. That opinion was confirmed by a member of the Commission staff in a letter dated June 29, 1987 to TruSST and also in a letter to TruSST from the staff dated August 31, 1987. This last letter stated, among other things, as follows:

"Item 340 contains Southern Territory interplant rates for lightweight aggregate hauling. Through the application of Item 265, which provides that origin territory rates apply to interterritorial movements, Item 340 rates apply both to hauls within Southern Territory

> and from that territory to Northern Territory. Item 330 contains Northern Territory rates for lightweight aggregate hauling. Unlike Item 340 rates, however, Item 330 rates are specifically limited to transportation between points in Northern Territory. Because this specific language is contained in Item 330, it appears that the more general provisions of Item 265 do not apply to the use of its rates, and cannot be applied to interterritorial movements."

The staff's Petition seeks to correct the alleged ambiguity which it contends was inadvertent, as the Commission did not intend to exempt from rate regulation the movement of lightweight aggregates from the Northern Territory to the Southern Territory.

At the hearing the staff witness gave a history of the tariff items in question. MRT 7, which was the predecessor of MRT 7-A, had an interterritorial provision in Item 120 reading as follows:

> ". . . Where the movement originates within Northern Territory and terminates in Southern Territory, the distance rates applicable shall be those set forth in...Items 138 and 148."

(Item 138 of MRT 7 is now Item 330 in MRT 7-A and reads the same as it did when it was Item 138 in MRT 7.) MRT 7-A was established and MRT 7 cancelled in 1973 by D.82061 and although that decision made no mention that the Commission intended to discontinue setting rates for interterritorial movements of lightweight aggregates (or any other MRT 7 commodities), the content of Item 120 of MRT 7 was not carried forward to MRT 7-A. However, in Petition 265 in C.5437 in 1974, a staff exhibit submitted in that case indicated as follows:

> "MRT 7-A does not contain a rule prescribing the application of rates when the shipment moves between two territories. We believe this to be an oversight in Decision 82061. We have proposed a rule which will designate the applicable level." (Page 2, Exhibit 265-6, C.5437, Petition 265.)

The rule the staff proposed in Exhibit 265-6, which was subsequently adopted for MRT 7-A by D.83124, is the one that is presently set forth in MRT 7-A as Item 265. The staff witness stated that the provisions of Item 265, which were intended to supplant the provisions of Item 12 in MRT 7, contain no specific reference to tariff rate items. The lack of specifics in the original framing of Item 265, taken together with the fact that the phrase "between points in Northern Territory" was carried forward from MRT 7, Item 138 into MRT 7-A, Item 330, appears to have produced an unintended technical rate exemption for lightweight aggregate traffic hauled from Northern Territory origins to Southern Territory destinations.

The staff contends that its research into the genesis of Item 265 clearly shows that the Commission's intent is to regulate the rates of north-to-south shipments of lightweight aggregates under minimum rates. As an example of that specific intent the staff points to a deviation granted Dalton Trucking Inc. in D.84-07-028 in 1984 to deviate from the minimum rates contained in Item 330 of MRT 7-A for the movement of cinders (a lightweight aggregate) from Clearlake in the Northern Territory to Montclair in the Southern Territory. The witness for Dalton Trucking Inc. testified herein that the reason he filed for such deviation was that in 1983 he was cited by the Commission for hauling several loads of lightweight aggregates from Clearlake to Montclair at less than the Item 330 rates and that the Commission levied a fine against him for so doing. He stated that he paid such fine. He stated that he thought he had found a "window" through which he could charge less than the Item 330 rates on the moves but did not contest the fine. He thinks Item 330 is ambiguous.

Protestants oppose the staff's requested amendment and variously contend that the movement of lightweight aggregates from the Northern Territory to the Southern Territory is exempt and that the Commission has meant it to be that way, stating as follows:

1. The language in Item 330 is unambiguous, that is, it applies only to shipments of lightweight aggregates 'between points in Northern California.' It has been unambiguous since 1973.

2. A review of the Commission's decisions affecting MRT 7-A demonstrates, unequivocally, that the Commission did intend to prohibit application of the Item 330 rates to interterritorial movements.

3. Decision 83124 expresses no intent, explanation or discussion suggesting that Item 330 rates should govern interterritorial movements from the Northern Territory to the Southern Territory.

4. Other than pure speculation and guesswork, the Petition offers no substantive, evidentiary support to warrant such a major revision in MRT 7-A which will directly and adversely affect those who are involved in the transportation of lightweight aggregates as discussed previously, including shippers, carriers and a substantial number of subhaulers.

5. Protestants have made substantial financial investments in equipment and facilities based on the unambiguous language of MRT 7-A, Item 330 and the Staff's written interpretation of the application of Item 330 of the tariff.

6. The minimum rates in MRT 7-A, Item 330 do not accurately reflect current operating costs of carriers transporting lightweight aggregates from the Northern Territory to the Southern Territory.

7. The proposed revision of Item 330 will result in unjust, unreasonable, excessive and unlawful rates.

8. The rates in Item 330 are substantially higher than the negotiated rate between carrier and shipper under which the

lightweight aggregates have moved for years.

9. The Staff's Petition is not in the public interest.

Protestant Calkins claims it made an investment of approximately $350,000 to augment its dump truck fleet relying on the staff's 1987 letters, referred to previously, that the southbound moves were rate exempt. The Calkins witness stated that its major southbound shipper told him that if Calkins had to go back to charging minimum rates, the shipper, who presently moves approximately half its shipments southbound by railroad under contract, will increase that amount which moves by railroad and so lessen Calkins' income. Additional revenue will also be lost to Calkins because it would also lose the revenue from the return northbound hauls, which it was always able to generate. Calkins hauled approximately 43 loads of lightweight aggregate from the Northern Territory to the Southern Territory in 1987 at a negotiated rate of $24 per ton and 21 loads so far in 1988 at the same rate.

All the five dump truck protestants who appeared had been hauling the subject commodity north to south at less than MRT 7-A rates and felt that requiring them to charge the MRT 7-A minimum rates on hauls to the Southern Territory on the involved commodity would have a severe economic impact on them as they feel the shippers will not move the commodity by truck at such minimum rates but will divert more product to move by railroad with the result that they will lose not only the southbound revenue but the backhaul northbound revenue as well.

One dump truck protestant stated he invested approximately $70,000 in equipment in 1987 based on the 1987 staff letter in anticipation of increased hauls to the Southern Territory. He had between one and three hauls a day in 1987.

However, since the shipper went to rail in 1988 the dump truck carrier has had only one haul a day.

A witness for a major producer and shipper of lightweight aggregates at Port Costa testified that its product is very much in demand in Southern California because of its color quality. It maintains a storage yard in Montclair, 20 miles west of Ontario, to which it ships in bulk. Last year it shipped entirely by truck and this year it was shipping 50% of its material by railroad under a contract rate and 50% by truck. Since early last year its truck shipments had all moved rate exempt at $24 a ton. If required to ship at MRT 7-A minimum rates in the future it will turn more of its movements over to the railroad.

A former employee of California Trucking Association which was one of the original petitioners in C.5437, Petition 265, testified that he was involved in the prosecution of that petition and that very little consideration was given in that case to long hauls of the type here under consideration. Furthermore, such long haul rates were never cost justified. In researching previous Commission decisions he discovered that nowhere did the Commission express a specific intent to regulate the rates for moves of lightweight aggregates from Northern California to Southern California.

Lightweight Processing produces and sells lightweight aggregates in the Southern California market and occasionally in the Northern California market. It believes that its Northern California competitors gain egregiously unfair price advantages in selling their product because of the fact that the tariff has received what it considers an improper interpretation not in conformity with D.83124. In fact, the Northern California producers have used this transportation cost advantage to sell lightweight aggregate in Southern California at unreasonably low prices severely restricting Lightweight Processing's ability to compete. It contends that the price penalty which the current

will not find a schedule of rates delineated as being applicable to north-to-south movements, and may think there are no such rates. Therefore, we will require that Item 330 be amended to add note (5) to read "For application of these rates to interterritorial movements see Item 265" as well as striking out the words "Between points in" in the caption of Item 330.

Comments to the Administrative Law Judge's Proposed Decision were received and their contents noted. We are not persuaded to change or modify the proposed decision.

Findings of Fact

1. The caption of the schedule of distance rates for the transportation of lightweight aggregates in Item 330 of MRT 7-A reads "Between points in Northern Territory (see Item 160)".

2. Item 265 of MRT 7-A provides that for interterritorial moves "the rates applicable in the originating territory will apply."

3. In several letters mailed around the middle of 1987, the staff stated that in its opinion the words "Between points in" in the caption of Item 330 caused an ambiguity which nullified the application of Item 265 to Item 330.

4. Protestants contend that the Commission never intended to regulate the rates of permitted carriers in the transportation of lightweight aggregates in dump truck from the north to the south.

5. Item 80 of MRT 7-A states that the rates in MRT 7-A apply "between all points within the State of California."

6. Item 265 provides that the rates in the origin territory shall apply to an interterritorial move.

7. The rates between points in the Northern Territory, as those rates are referred to in Item 330, would be the rates applicable in the Northern Territory.

CORRECTION

THIS DOCUMENT HAS

BEEN REPHOTOGRAPHED

TO ASSURE

LEGIBILITY

erroneous application of MRT 7-A imposes on it reduces the relative worth of the company by virtue of its location since the company's mine location cannot be moved to secure rate advantages. It disagrees with the staff's interpretation respecting the interterritorial application of the Item 330 rates but requests the Commission make any changes administratively to Item 330 to do away with the alleged ambiguity.

Discussion

The parties stated that nowhere did they find where the Commission stated that it specifically intended to regulate or not to regulate the north-to-south lightweight aggregate rates. We think, however, the Commission's intent to so regulate those rates was established in MRT 7-A. Item 80, supra, states that the rates in MRT 7-A apply "between all points within the State of California." No specific exception is made in that or other items for the movement of commodities from the Northern Territory to the Southern Territory. In addition, Item 265, supra, provides that the rates applicable to interterritorial movements are the rates applicable "in" the originating territory. The rates between points in the Northern Territory, as those rates are referred to in Item 330, are the rates applicable "in" the originating territory and so are applicable to movements from the Northern Territory to the Southern Territory. Furthermore, the Commission in 1984 authorized Dalton Trucking Inc. to deviate from those interterritorial rates and certainly would not have done this so readily if it had questioned the applicability of Item 330 rates or its intent to have the movement rate regulated. When Item 265 is read in conjunction with Item 330 it is clear that the rates "in" Item 330 apply to moves from the Northern Territory to the Southern Territory. We believe the ambiguity, or confusion, arises because there is nothing in Item 330 itself which indicates that these same rates are applicable to interterritorial moves. If one is not aware of Item 265 and looks through the schedule of rates, one

will not find a schedule of rates delineated as being applicable to north-to-south movements, and may think there are no such rates. Therefore, we will require that Item 330 be amended to add note (5) to read "For application of these rates to interterritorial movements see Item 265" as well as striking out the words "Between points in" in the caption of Item 330.

Comments to the Administrative Law Judge's Proposed Decision were received and their contents noted. We are not persuaded to change or modify the proposed decision.

Findings of Fact

1. The caption of the schedule of distance rates for the transportation of lightweight aggregates in Item 330 of MRT 7-A reads "Between points in Northern Territory (see Item 160)".

2. Item 265 of MRT 7-A provides that for interterritorial moves "the rates applicable in the originating territory will apply."

3. In several letters mailed around the middle of 1987, the staff stated that in its opinion the words "Between points in" in the caption of Item 330 caused an ambiguity which nullified the application of Item 265 to Item 330.

4. Protestants contend that the Commission never intended to regulate the rates of permitted carriers in the transportation of lightweight aggregates in dump truck from the north to the south.

5. Item 80 of MRT 7-A states that the rates in MRT 7-A apply "between all points within the State of California."

6. Item 265 provides that the rates in the origin territory shall apply to an interterritorial move.

7. The rates between points in the Northern Territory, as those rates are referred to in Item 330, would be the rates applicable in the Northern Territory.

8. On an interterritorial move from the Northern Territory to the Southern Territory the Item 330 rates in the Northern Territory would apply.

9. In 1983 the Commission granted Dalton Trucking Inc. a deviation from the rates in Item 330 for the transportation of lightweight aggregates in dump trucks from the Northern Territory to the Southern Territory.

10. Earlier in 1983, Dalton Trucking Inc. was issued a citation forfeiture and paid a fine for transporting lightweight aggregates at less than the rates set out in Item 330 from the Northern Territory to the Southern Territory.

11. MRT 7-A expresses the Commission's intent to regulate the permitted carrier rates for transporting lightweight aggregates from the Northern Territory to the Southern Territory.

12. The Commission's dealings with Dalton Trucking Inc. as set out in Findings of Fact 9 and 10 evinces Commission intent to regulate the rates of permitted carriers transporting lightweight aggregates in dump trucks from the Northern Territory to the Southern Territory.

13. There is nothing in Item 330 to indicate that the rates therein are to be used in interterritorial moves as provided for in Item 265.

14. The lack of indication set out in Finding 13, along with the present wording in the caption of Item 330, creates uncertainty as to the application of that item to interterritorial moves.

15. This order should be effective on the date it is signed to eliminate further confusion over the status of interterritorial movements.

Conclusions of Law

1. The Petition should be granted.

2. Item 330 should also be amended to include Note (5) to read "For application of these rates to interterritorial movements see Item 265."

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 7-A (MRT 7-A) (Appendix B to D.82061, as amended) is further amended by incorporating Eighth Revised Page 33 and Eighth Revised Page 34, attached, to become effective 39 days after today.

2. In all other respects D.82061, as amended, shall remain in full force and effect.

3. The Executive Director shall serve a copy of this decision and tariff amendments on each subscriber to MRT 7-A.

This order is effective today.

Dated JUL 22 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

[illegible], Executive Director

SECTION 2--DISTANCE RATES (Continued)
In Cents Per Ton

ITEM

MATERIAL, viz.:

Lightweight Aggregates as described in Item 50.

Northern Territory (See Item 160).

MILES (1) Over	But Not Over	Rates (2) (3) Minimum Weight (Per Unit of Carrier's Equipment) 8 Tons	13 Tons	18 Tons
0	1	121	94	85
1	2	138	109	97
2	3	156	124	119
3	4	173	138	122
4	5	191	153	134
5	6	207	167	145
6	7	222	181	156
7	8	238	195	167
8	9	253	209	178
9	10	269	223	189
10	11	285	236	201
11	12	301	248	213
12	13	318	261	225
13	14	334	273	237
14	15	350	286	249
15	16	365	297	258
16	17	380	308	267
17	18	395	318	276
18	19	410	328	285
19	20	425	339	294
20	21	437	348	302
21	22	449	358	310
22	23	460	367	318
23	24	472	377	326
24	25	484	386	334
25	26	495	395	342
26	27	506	404	349
27	28	517	414	357
28	29	528	423	364
29	30	539	432	372
30	31	551	443	381
31	32	563	453	390
32	33	575	464	398
33	34	587	474	407
34	35	599	485	416
35	37	625	506	434
37	39	651	527	454
39	41	678	548	471
41	43	704	569	488
43	45	730	590	507
45	50	800	647	556
50	55	870	703	605
55	60	940	760	653
60	65	1010	816	702
65	70	1080	873	751
70	75	1143	923	795
75	80	1205	973	839
80	85	1268	1023	883
85	90	1330	1073	927
90	95	1394	1124	971
95	100	1455	1174	1015
(4)		63	50	45

ø330

(1) Miles are subject to Item 150.

(2) Rates are subject to Item 220.

(3) Rates are not subject to Item 90.

(4) For each additional 5 miles or fraction thereof, add to the rate for 100 miles the amount shown opposite this reference.

*◇(5) For application of these rates to interterritorial movements, see Item 265.

ø Change)
* Addition) Decision No. 88 07 067
◇ Increase)

EFFECTIVE AUG 30 1988

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

Correction

ITEM

SECTION 2--DISTANCE RATES (Continued)
In Cents Per Ton

MATERIAL, viz.:

Lightweight Aggregates as described in Item 50.

(1) SOUTHERN TERRITORY INTERPLANT DISTANCE RATES (See Item 160)

MILES Over	MILES But not Over	Rates (2) Minimum Weight 8 Tons (Per Shipment)	(3) 13 Tons	(3) 18 Tons
0	1	133	102	91
1	2	154	120	106
2	3	175	139	122
3	4	198	157	137
4	5	216	175	152
5	6	235	190	164
6	7	253	206	174
7	8	272	221	190
8	9	290	237	202
9	10	309	252	214
10	11	326	265	226
11	12	343	277	238
12	13	359	290	249
13	14	376	302	261
14	15	393	315	273
15	16	406	325	283
16	17	420	336	292
17	18	433	346	302
18	19	447	357	311
19	20	460	367	321
20	21	473	376	329
21	22	485	386	337
22	23	498	395	346
23	24	510	405	354
24	25	523	414	362
25	26	535	424	370
26	27	547	434	379
27	28	558	445	387
28	29	570	455	396
29	30	582	465	404
30	31	594	477	414
31	32	605	490	423
32	33	617	502	433
33	34	628	515	442
34	35	640	527	452

340

(Continued)

No change on this page, Decision No. 88 07 067

EFFECTIVE AUG 30 1988

Correction

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

The territorial scope of MRT 7-A is set out in Item 80, which reads as follows:

"APPLICATION OF TARIFF--TERRITORIAL

"Rates in this tariff apply for transportation between all points within the State of California."

Items 330 and 340 set forth distance rates for the transportation of lightweight aggregates. The distance rates in Item 330 are delineated to apply as follows:

"Between points in Northern Territory (See Item 160)."

There are no named points in Item 330. The rates in Item 340 are delineated to apply as follows:

"SOUTHERN TERRITORY INTERPLANT DISTANCE RATES (See Item 160)."

There are no plant sites identified in Item 340.

Item 265 provides as follows:

"INTERTERRITORIAL MOVEMENTS"

"When a shipment originates in one territory and terminates in another, the rates applicable in the originating territory will apply."

In June 1987, Trucking Support Services Team, Inc. (TruSST), at the request of protestant, Les Calkins Transportation, Inc. (Calkins), directed a letter to the Commission in which TruSST stated that "it appears that MRT 7-A doesn't presently name rates applicable to lightweight aggregates moving from Northern Territory to Southern Territory" and asked for confirmation of that opinion. That opinion was confirmed by a member of the Commission staff in a letter dated June 29, 1987 to TruSST and also in a letter to TruSST from the staff dated August 31, 1981. This last letter stated, among other things, as follows:

"Item 340 contains Southern Territory interplant rates for lightweight aggregate hauling. Through the application of Item 265, which provides that origin territory rates apply to interterritorial movements, Item 340 rates apply both to hauls within Southern Territory

The rule the staff proposed in Exhibit 265-6, which was subsequently adopted for MRT 7-A by D.83124, is the one that is presently set forth in MRT 7-A as Item 265. The staff witness stated that the provisions of Item 265, which were intended to supplant the provisions of Item 12 in MRT 7, contain no specific reference to tariff rate items. The lack of specifics in the original framing of Item 265, taken together with the fact that the phrase "between points in Northern Territory" was carried forward from MRT 7, Item 138 into MRT 7-A, Item 330, appears to have produced an unintended technical rate exemption for lightweight aggregate traffic hauled from Northern Territory origins to Southern Territory destinations.

The staff contends that its research into the genesis of Item 265 clearly shows that the Commission's intent is to regulate the rates of north-to-south shipments of lightweight aggregates under minimum rates. As an example of that specific intent the staff points to a deviation it granted Dalton Trucking Inc. in D.84-07-028 in 1984 to deviate from the minimum rates contained in Item 330 of MRT 7-A for the movement of cinders (a lightweight aggregate) from Clearlake in the Northern Territory to Montclair in the Southern Territory. The witness for Dalton Trucking Inc. testified herein that the reason he filed for such deviation was that in 1983 he was cited by the Commission for hauling several loads of lightweight aggregates from Clearlake to Montclair at less than the Item 330 rates and that the Commission levied a fine against him for so doing. He stated that he paid such fine. He stated that he thought he had found a "window" through which he could charge less than the Item 330 rates on the moves but did not contest the fine. He thinks Item 330 is ambiguous.

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erroneous application of MRT 7-A imposes on it reduces the relative worth of the company by virtue of its location since the company's mine location cannot be moved to secure rate advantages. It disagrees with the staff's interpretation respecting the interterritorial application of the Item 330 rates but requests the Commission make any changes administratively to Item 330 to do away with the alleged ambiguity.

Discussion

The parties stated that nowhere did they find where the Commission stated that it specifically intended to regulate or not to regulate the north-to-south lightweight aggregate rates. We think, however, the Commission's intent to so regulate those rates was established in MRT 7-A. Item 80, supra, states that the rates in MRT 7-A apply "between all points within the State of California." No specific exception is made in that or other items for the movement of commodities from the Northern Territory to the Southern Territory. In addition, Item 265, supra, provides that the rates applicable to interterritorial movements are the rates applicable "in" the originating territory. The rates between points in the Northern Territory, as those rates are referred to in Item 330, are the rates applicable "in" the originating territory and so are applicable to movements from the Northern Territory to the Southern Territory. Furthermore, the Commission in 1984 authorized Dalton Trucking Inc. to deviate from those interterritorial rates and certainly would not have done this so readily if it had questioned the applicability of Item 330 rates or its intent to have the movement rate regulated.

When Item 265 is read in conjunction with Item 330 it is clear that the rates "in" Item 330 apply to moves from the Northern Territory to the Southern Territory. We believe the ambiguity, or confusion, arises because there is nothing in Item 330 itself which indicates that these same rates

are applicable to interterritorial moves. If one is not aware of Item 265 and looks through the schedule of rates he will not find a schedule of rates delineated as being applicable to north-to-south movements, and may think there are no such rates. Therefore, we will require that Item 330 be amended to add note (5) to read "For application of these rates to interterritorial movements see Item 265" as well as striking out the words "Between points in" in the caption of Item 330.

Comments to the Administrative Law Judge's Proposed Decision were received and their contents noted.

Findings of Fact

1. The caption of the schedule of distance rates for the transportation of lightweight aggregates in Item 330 of MRT 7-A reads "Between points in Northern Territory (see Item 160)".

2. Item 265 of MRT 7-A provides that for interterritorial moves "the rates applicable in the originating territory will apply."

3. In several letters mailed around the middle of 1987, the staff stated that in its opinion the words "Between points in" in the caption of Item 330 caused an ambiguity which nullified the application of Item 265 to Item 330.

4. Protestants contend that the Commission never intended to regulate the rates of permitted carriers in the transportation of lightweight aggregates in dump truck from the north to the south.

5. Item 80 of MRT 7-A states that the rates in MRT 7-A apply "between all points within the State of California."

6. Item 265 provides that the rates in the origin territory shall apply to an interterritorial move.

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4. Protestants contend that the Commission never intended to regulate the rates of permitted carriers in the transportation of lightweight aggregates in dump truck from the north to the south.

5. Item 80 of MRT 7-A states, without exception, that the rates in MRT 7-A apply "between all points within the State of California."

6. Item 265 provides that the rates in the origin territory shall apply to an interterritorial move.

7. The rates between points in the Northern Territory, as those rates are referred to in Item 330, would be the rates applicable in the Northern Territory.

8. On an interterritorial move from the Northern Territory to the Southern Territory the Item 330 rates in the Northern Territory would apply.

9. In 1983 the Commission granted Dalton Trucking Inc. a deviation from the rates in Item 330 for the transportation of lightweight aggregates in dump trucks from the Northern Territory to the Southern Territory.

10. Earlier in 1983, Dalton Trucking Inc. was issued a citation forfeiture and paid a fine for transporting lightweight aggregates at less than the rates set out in Item 330 from the Northern Territory to the Southern Territory.

11. MRT 7-A expresses the Commission's intent to regulate the permitted carrier rates for transporting lightweight aggregates from the Northern Territory to the Southern Territory.

12. The Commission's dealings with Dalton Trucking Inc. as set out in Findings of Fact 9 and 10 evinces Commission intent to regulate the rates of permitted carriers transporting lightweight aggregates in dump trucks from the Northern Territory to the Southern Territory.

13. There is nothing in Item 330 to indicate that the rates therein are to be used in interterritorial moves as provided for in Item 265.

14. The lack of indication set out in Finding 13, along with the present wording in the caption of Item 330, creates uncertainty as to the application of that item to interterritorial moves.

15. Because this order merely clarifies the MRT it should be effective on the date it is signed to eliminate further confusion over the status of interterritorial movements.

Conclusions of Law

1. The Petition should be granted.

2. Item 330 should also be amended to include Note (5) to read "For application of these rates to interterritorial movements see Item 265."

ORDER

IT IS ORDERED that:

1. Minimum Rate Tariff 7-A (MRT 7-A) (Appendix B to D.82061, as amended) is further amended by incorporating Eighth Revised Page 33 and Eighth Revised Page 34, attached, to become effective 39 days after today.

2. Tariff publications required to be made by common carriers as a result of this order shall be filed on or after the effective date of this order and made effective 39 eays after today, on not less than 5 days' notice to the Commission and to the public; such tariff publications as are authorized shall be made effective not earlier than 39 days after today, on not less than 5 days' notice to the Commission and to the public, and this authority shall expire unless exercised within 60 days after the effective date of this order.

3. In all other respects D.82061, as amended, shall remain in full force and effect.

4. The Executive Director shall serve a copy of this decision on every common carrier, or such carrier's authorized publishing agent, performing transportation services subject to MRT 7-A, and on each subscriber to MRT 7-A.

This order is effective today.

Dated _____, at San Francisco, California.