

Decision 89 04 086

APR 26 1989

**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation  
for the purposes 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, OSH 325  
) (Filed April 17, 1985)  
) Case 5437, OSH 323  
) (Filed October 1, 1984)  
) Case 5437, Pet. 327  
) (Filed May 1, 1985)  
) Case 5437, Pet. 329  
) (Filed June 6, 1985)

And Related Matters.

) Case 9819, OSH 75  
) Case 9820, OSH 25 ✓  
) (Filed April 17, 1985)  
) Case 9819, Pet. 79  
) Case 9820, Pet. 29  
) Case 5432, Pet. 1060  
) (Filed June 6, 1985)  
) Case 9819, OSH 76  
) Case 9820, OSH 27  
) (Filed May 1, 1985)

(For appearances see Decisions 86-08-030 and 87-05-036.)

INTERIM OPINION

This consolidated proceeding is being conducted for the purpose of considering methods and procedures through which effective dump truck minimum rate policy can be established, administered, and tested in practice.

This decision will consider two related matters in this proceeding: the proposed interim rate increase for dump truck minimum rates, and the proposals for expedited procedures for securing authority to deviate from established minimum rates for the dump truck transportation. We have consolidated these matters for decision because they represent a unified solution to the problems now faced by the industry and its consumers. The rate increase will address the concerns of many carriers regarding the

adequacy of the minimum rates while we complete our task of updating those rates. An improved deviation process will address the concerns of some carriers and many shippers regarding the need to meet competitive market conditions and to permit deviations to be granted expeditiously.

#### I. INTERIM RATE INCREASE

On March 9, 1988, California Dump Truck Owners Association/California Carriers Association (CDTOA/CCA) filed its Motion For An Interim Decision Granting Rate Increases In The Dump Truck Minimum Rate Tariffs To Reflect The Increased Cost Of Doing Business (the motion).

##### Background

By Decision (D.) 86-08-030 dated August 6, 1986, we adopted cost methodologies for cost gathering and ratemaking purposes, except for those commodities described in Items 40, 50, and 60 of Minimum Rate Tariff (MRT) 7-A. The adopted methodologies are to be used, in other words, in connection with cost gathering and ratemaking of construction related commodities named in Item 30 of MRT 7-A, for which rates are named in MRTs 7-A, 17-A, and 20. (MRT 7-A names statewide hourly and distance rates, as well as certain zone rates; MRT 17-A names zone rates in southern California; and MRT 20 names zone rates and certain distance rates in the San Francisco Bay Area.)

By its motion CDTOA/CCA sought 5% interim increases in all hourly, distance, and zone rates in MRT 7-A, and in all zone and distance rates in MRTs 17-A and 20. They later amended their motion and now request increases only in those rates in the three MRTs which apply to the transportation of construction related commodities described in Item 30 of MRT 7-A.

Protests to the proposed increases were filed by Yuba Trucking, Inc. (Yuba), by Californians For Safe & Competitive Dump Truck Transportation/Syar Industries, Inc. (CSCDTT/Syar), and by the Commission's Transportation Division staff (staff). Evidence on the proposed increases was heard before Administrative Law Judge (ALJ) John Lemke in San Francisco on July 6, 1988 after which the matter was submitted.

The petitioners assert generally as follows in their written motion:

1. The Commission is statutorily obliged to keep its minimum rate program current. In Minimum Rate Tariff No. 7 (1965) 65 CPUC 167, 172, the Commission stated, in discussing its duty to regulate the rates of dump truck carriers, "It is incumbent upon the Commission, therefore, to keep its minimum rate program responsive to current transportation conditions." The current rates are not responsive to current transportation conditions; some upward adjustment is needed to offset increased costs of doing business.

2. Current rates result in a large number of carriers providing dump truck transportation at unprofitable levels.

While under current ratemaking methodology rates are designed to return an 8% profit, the results of a survey show that a large majority of carriers are operating at break-even or unprofitable levels (Exhibits 78 and 79). For example, in 12 Bay Area counties, 32.6% of the carriers report profitable operations, 17.4% report break-even operations, and 46.3% report unprofitable operations. 56% of carriers in southern California and 63.2% of carriers in the remainder of the state are operating at the break-even point, or are losing money in performing dump truck services.

3. Exhibits of record are the principal source of evidence relied upon for the requested increases. Exhibits 54, 55, 56, and 57, Revised Exhibits 59, 83, 84, and 92, and related testimony, provide this evidence. D-86-08-030 adopted cost methodologies to be used in OSH 325 for cost gathering and ratemaking purposes for

construction related commodities. The staff has used these methodologies in gathering costs contained in some of the above-mentioned exhibits. While the staff has designated its cost data as "preliminary" data, pending the results of the en banc hearings conducted by the Commission regarding the regulatory policies to be pursued in connection with the trucking industry, nevertheless, the evidence contained in these exhibits is the best and most current evidence of dump truck carrier costs available. Further, no other cost evidence is contemplated for presentation and no new studies are in progress. Therefore, the Commission should use this most current information as the basis for maintaining rates in the three MRTs at currently reasonable levels.

4. Exhibits 83 and 84 demonstrate the need for and justify the sought increases. Except for a 1986 increase of less than 3%, dump truck rates have not been increased since the decision in Petitions 328, et al. in Case (C.) 5437. Increases are warranted based on a comparison of Petition 328 costs with those contained in Exhibits 83 and 84. Indicated increases range from 6% to 34% in connection with hourly rates named in MRT 7-A, even before the introduction of Exhibit 92, which corrected historical vehicle costs by increasing the cost of a 2-axle tractor by approximately \$4,000. Exhibit data pertaining to MRTs 17-A and 20 also indicate the need for larger increases than the proposed 5%.

CDTOA/CCA originally believed the labor cost data contained in revised Exhibits 59 and 60 to be adequate and representative for use in establishing labor cost levels to premise interim adjustments in the rates in MRTs 7-A, 17-A, and 20. (However, during the hearing on July 6 their witness, James Martens, stated that in preparing Exhibit 94, which is an update of earlier cost presentations, the labor cost from Petition 328 is being used because of the uncertainty surrounding Exhibits 59 and 60, due to the appeal by the Center For Public Interest Law from a

ruling of the ALJ denying its motion to exclude data based on a labor cost survey conducted by the staff.)

CDTOA/CCA assert that it is in the area of fixed costs, i.e., vehicle, tax and license, and insurance that the greatest increases have occurred. For example, vehicle historical costs are up by 40% due to the inclusion in Exhibit 92 of the costs of 1985, 1986, and 1987 vehicles. In 1986 dump truck carriers received an increase of between 2% and 3% to recover increased costs of insurance premiums; but the increase was based on a premium of approximately \$6,000, while current premiums average \$9,873.

With respect to running costs, which include costs for fuel, oil, tire, and repair and maintenance expenses, CDTOA/CCA are willing to accept the staff developed figure of 10.8 cents per mile, shown in Exhibit 54, except that they believe the fuel cost to be used should be the most current price developed from the 521 Report.

The petitioners state that Exhibit 92, containing updated vehicle historical costs, is the most current and accurate information for the determination of fixed costs, including calculations for investment, depreciation, taxes and licenses, and insurance. They urge the use of Exhibit 92 information for purposes of this motion.

The motion was filed March 9, 1988 and was served on all parties of record. On May 20, 1988, the ALJ issued a ruling to all appearances in this consolidated proceeding stating that hearings on the motion would be conducted in San Francisco during the week of July 5. In addition to the protests filed by Yuba, CSCDTT/Syar, and the staff, the increases were opposed by the Associated General Contractors of California and by California Asphalt Pavement Association. The motion was supported by California Trucking Association.

In justification of its motion, CDTOA/CCA state that there is precedent for this method of seeking rate adjustments

found in the Commission's reregulation proceeding involving used household goods (C-5330, OSH 100). There, in circumstances very similar to those occurring in this proceeding, a need for rate increases was indicated. The carrier association requested interim increases of 10% and 15%, while the staff recommended increases of 5% and 10%. In D-86-04-062 the Commission found that increases in operating costs, including insurance premiums, historical vehicle costs, etc. had increased to the extent that increases in rates were necessary to provide just and reasonable rates for the transportation of used household goods until a complete record could be developed.

CSCDTT/Syar in their protest assert that the motion is beyond the scope of issues contemplated by this proceeding, since OSH 325 was issued for the purpose of considering methods and procedures through which more effective dump truck minimum rate policy could be established and tested in practice. Further, these protestants maintain that Petition 329, et al. of the Ad Hoc Committee in this consolidated proceeding was to consider issues such as tariff simplification, cost and rate gathering methodologies, deviation procedures, etc.; that nothing in the OSH or petitions suggests that a rate increase request should be considered in this proceeding. These protestants also argue that the proposed rate increases are based upon unreliable, outdated, and misleading cost information, would be premature, are based on speculative, unsupported hearsay evidence, and would have a substantial adverse impact upon their interests. They requested that the motion be dismissed, or, alternatively, be set for hearing.

Yuba also insists that the increases are beyond the scope of OSH 325, and that a rate increase is inappropriate at this time since the cost gathering methodologies are the subject of petitions for modification. Yuba also maintains, inter alia, that the cost evidence admitted thus far is preliminary, not final; further, that

the request for increases violates the Commission's Rules of Practice and Procedure since no rule allows a motion for a rate increase.

Staff emphasizes that its labor cost survey has been performed for the limited purpose of establishing territorial boundaries, and not for ratemaking purposes. Staff notes that while rates have been increased by only 2%-3% over the last three years, increases in excess of 25% have been ordered in the three MRTs naming rates for transportation performed in dump truck equipment since 1979. Staff contends that since the petitioners have not established an emergency need for an interim decision granting an increase, and have received rate increases in excess of 25% since 1979, the motion should be denied.

The ALJ informed the parties that he would take official notice of recent information relating to operating ratios contained in the annual reports of dump truck carriers.

During the evidentiary hearing conducted on July 6, 1988, the witness for CDTOA/CCA, James Martens, sponsored Exhibit 94, an update of costs in all categories necessary to calculate increases in total costs for transportation performed under MRT 7-A. Similar cost developments are contained in Exhibits 95 and 96, which contain costs for transportation performed under MRTs 17-A and 20, respectively.

In Exhibit 94 Martens has used revenue hours adopted in D.86-08-030 for developing equipment fixed costs, which represents a reduction of 100 hours per year for all vehicles from the annual use hours formerly used. The historical vehicle costs were taken from Exhibit 92, developed by the staff, which includes costs through 1987. Running costs are those contained in Exhibit 55 in this proceeding.

Martens calculated total costs at 100 operating ratio (O.R.) for the various regions described in MRT 7-A, and compared those costs with those premising the increases ordered in the

Petition 328 proceeding. The comparisons shown in Exhibit 94 indicate that costs at 100 O.R. have increased as follows:

S. F. Bay Area Region	- 6.4% to 17.3%
Northern Region	- 8.4% to 22.3%
Southern Region	- 5.7% to 17.6%
San Diego Region	- 6.7% to 16.2%

Increases in hourly rates in MRT 7-A based upon the same cost developments but calculated at O.R. 92 would range from 6.90% to 19.9% in the Northern Region, and 3.5% to 18.4% in the Southern Region.

Costs developed for transportation performed under MRT 17-A by the petitioners using the same methodology employed in the development of those for MRT 7-A indicate increases are warranted in rates for the transportation of rock, sand and gravel for sample hauls of 5, 25, and 50 miles ranging from 11.9% to 16.0%; for the transportation of asphaltic concrete increases range from 17.8% to 18.2%; and for asphalt the increases amount to about 8.7%. For the hauling under MRT 20 increases so measured range from 16.2% to 20.3%.

Increases in the historical cost for 2-axle and 3-axle units have significantly exceeded those for 5-axle units; hence, costs developed for the 2-axle and 3-axle units are substantially higher than those developed for 5-axle units.

Martens testified that information set forth in other exhibits shows that the industry appears to be losing money. He was referring to the petitioners' analysis contained in Exhibit 79, which contains information derived from the demographic survey.

Martens testified that the Commission will soon consider adoption of a streamlined deviation procedure; that if such procedure is adopted, the rates to be deviated from should be as current as possible, from the standpoint of being cost based. He also asserted that within the CDTOA membership are the largest and



smallest fleet owners of dump trucks in the state, and the vast majority of the membership is losing money.

Martens stated that while there have been decreases in labor expense, as well as in the cost of maintenance and repairs, the fixed costs underlying the rate structure, i.e., vehicle historical and depreciation costs, as well as insurance premiums have risen so greatly that rate relief is required. He conceded that if labor costs were to be reduced from the Petition 328 level, the result would be to offset some of the increases in fixed costs. He further commented that, based upon the labor cost survey performed by the staff (revised Exhibits 59 and 60) labor costs in the Northern California Region have increased a little over the levels used in Petition 328, while they have decreased slightly in southern California and decreased about \$5 per hour in the counties in the San Francisco Bay Area. However, he emphasized that in Petition 328 CDTOA proposed a substantially lesser increase than the labor factor indicated for the Bay Area. Martens maintained "We don't think that a 5% increase today is going to be greater than the total cost when it's all put together six months down the road."

In summary, petitioners used the labor cost from Petition 328 for purposes of their motion. All other expenses are those developed thus far by the staff, which in turn are based upon the methodologies adopted pursuant to D.86-08-030 in this proceeding. The Petition 328 labor cost levels were those measured early in 1985.

#### Discussion

Many of the rates calculated by CDTOA/CCA indicate that increases well into double digits are warranted, based upon the cost methodology employed by the staff as well as petitioners. Except for increases of 2.2% to 3.0% ordered in April 1987 to offset increased insurance premiums, the rates contained in the three involved MRTs have not been increased since November 1985.

At that time rates in MRT 7-A were increased by varying amounts ranging from 2% to 4% for hourly rates named in Item 390. Other rates in MRT 7-A were increased by 4 percentage points, which constituted increases close to 3% because the rates were then already subject to surcharges of about 25% in many cases. Increases in MRTs 17-A and 20 were increased by varying amounts ranging from 2-1/2 to 5 percentage points, which also represented lesser percentage increases because of the already applicable large surcharge levels.

The request of 5% is conservative, in that it is based upon 1985 fuel costs of 86 cents per gallon. The fuel cost measured by the staff in the most recent 521 Report is approximately 94 cents. We are committed to maintaining minimum rates at compensatory levels while this proceeding is in progress. The cost data utilized by the petitioners is the most current information available. We are now three years into this investigation, and while there has been much progress in the way of formulating cost methodologies, and many new rules have been adopted, there is no definite end to the proceeding in sight at this time. As the assigned ALJ was preparing his proposed decision, hearings were scheduled for the receipt of evidence on expedited deviation procedures. The petitioners argue that if we are to adopt such procedures immediately, prior to completion of the entire OSH 325 proceeding, it would be appropriate that rates subject to deviation procedures be as current as possible.

The demographic study relied on by the petitioners contains information which appears to corroborate the costs contained in CDTOA/CCA's Exhibit 94. Question 5.9 of the information request used in the demographic study is: "After paying all expenses of operation (including a reasonable salary for the owner), is your present dump truck business very profitable ( ), profitable ( ), break-even ( ), or unprofitable ( )?" The information requests were sent out in October 1987 to dump truck

carriers earning \$25,000 or more under the dump truck MRTs. It shows that in the CDTOA/CCA proposed Central Coastal Territory, of 592 dump truck carriers 46.3% reported unprofitable operations, 17.40% were at break-even, 31.42% were profitable and 1.18% were very profitable. In the Southern Territory, of 1,270 carriers 44.80% reported unprofitable operations, 12.13% reported break-even operations, 38.74% reported profitable operations and 2.05% reported very profitable operations. Of 535 carriers in the Northern Territory, 48.60% reported unprofitable operations, 14.58% reported break-even operations, 32.34% reported profitable operations, and 1.31% reported very profitable operations. On a statewide basis, 61.3% of the carriers either make no profit or are unprofitable, with 46.6% reporting that they are unprofitable.

Exhibit 79 also contains information concerning hours worked during the years 1984, 1985, and 1986. Based upon this data, the number of hours worked in Central Coastal Territory in those years were, respectively, 1,595, 1,585 and 1,613; in Southern Territory, 1,567, 1,630 and 1,684; and in Northern Territory, 1,610, 1,614, and 1,614 for the three years. The data tends to show that while the amount of work for the industry increased or at least held constant, nevertheless, based upon the results of the profitability question discussed supra, as well as the data contained in Exhibit 94, the industry as a whole has not been able to earn the traditional profit of approximately 8% which has been deemed by the Commission to be appropriate for this particular segment of the transportation industry.

The operating ratio information which the ALJ informed the parties he would take official notice of is stated below. It is a weighted average of 37 representative carriers who have been included in similar analyses in other proceedings involving requests for rate increases, e.g., C-5437, Petitions 314 and 321. In those cases, the operating results of 60 carriers were analyzed. The annual reports for 1987 for all 60 of those same carriers are

not available in our Auditing and Compliance Branch. The representative data indicate a weighted average cost-rate relationship of 97.8%, before allowances for interest and income tax expenses.

1987  
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ANNUAL REPORTS  
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OF  
DUMP TRUCK CARRIERS  
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Line: No.	Carrier	Revenue	Expense	Weighted: O.R. %
(1)	(2)	(3)	(4)	(5)
			(3)/(2) x 100	
1	ASTA CONSTRUCTION CO.	1,380,372	1,359,636	89.0 %
2	BAILEY, WAYNE TRUCKING, INC.	1,105,769	945,675	85.5 %
3	BARNARD TRUCKING SERVICE, INC.	2,202,824	2,163,919	98.2 %
4	BRINK & MARINI, INC.	933,148	809,939	86.7 %
5	BYERS, A. C.	4,958,367	4,850,614	97.4 %
6	CERINI TRUCKING	2,152,674	1,951,982	90.7 %
7	D & K TRUCKING	793,830	843,941	107.7 %
8	DALTON TRUCKING, INC.	13,485,799	12,916,091	95.8 %
9	DINEEN TRUCKING, INC.	1,504,070	1,423,330	94.7 %
10	DISPATCH TRUCKING	4,919,009	4,765,536	96.9 %
11	FLETCHER, K.A. INC.	2,192,407	2,205,787	100.6 %
12	HANNAH TRUCKING SERVICE, INC.	2,175,324	2,024,772	93.1 %
13	HARKRADER, ROBERT TRUCKING	1,554,557	1,414,403	91.0 %
14	HARRISON-NICHOLS COMPANY, LTD.	5,583,415	5,477,547	98.1 %
15	HARRISON TRUCKING, INC.	4,439,573	4,512,643	101.6 %
16	HARTWICK & HAND, INC.	3,081,347	3,185,829	103.4 %
17	HILDEBRAND & SONS TRUCKING, INC.	4,890,313	4,866,026	99.5 %
18	INGLETT EQUIPMENT, INC.	2,055,329	1,956,055	95.2 %
19	JOHNSON BROS. TRUCKING, INC.	3,167,275	3,216,101	101.5 %
20	KISHIDA, GEORGE INC.	3,960,724	3,621,539	91.5 %
21	LINDEMAN BROS., INC.	5,475,730	5,362,955	97.9 %
22	MARTENS, HENRY S. TRANSPORT	5,309,568	5,011,632	94.4 %
23	MORE TRUCK LINES	2,547,845	2,507,452	98.4 %
24	NICHOLLS TRUCKING, INC.	1,364,603	1,391,936	102.0 %
25	NORDIC TRUCKING, INC.	2,817,373	2,690,531	95.5 %
26	R & B & SONS, INC.	3,209,605	3,239,497	100.9 %
27	RICHMOND, LINK & SONS, INC.	8,515,984	8,553,854	100.4 %
28	ROADWAY CONSTRUCTION CO., INC.	7,828,732	7,371,609	94.3 %
29	ROGERS TRUCKS & EQUIPMENT, INC.	5,709,861	5,415,486	94.9 %
30	SALAMONI, BEN TRKG. SER., INC.	3,798,185	3,954,578	104.1 %
31	SAND TRANSPORTATION SER., INC.	2,763,050	2,745,800	99.4 %
32	SKOFF TRUCKING	1,763,449	1,745,733	99.0 %
33	TOUCHATT TRUCKING	6,757,481	6,702,166	99.2 %
34	TRI-COUNTY TRUCK CO.	13,193,215	13,005,936	98.6 %
35	VAN METRE, C.H. & SON	327,560	326,461	99.7 %
36	WALTER, R. D. TRUCKING, INC.	314,456	294,127	93.5 %
37	W.S.P. TRUCKING, INC.	3,553,705	3,765,935	106.0 %

TOTAL 2143,373,177 2140,274,933 97.5 %

We have never considered the development of costs and rates for any segment of the trucking industry to be an exact science. In order to formulate rates which are reasonable for every carrier operating under a particular minimum rate tariff, many judgment decisions must be made. In this subproceeding we have four separate pieces of information which tend to support the petitioners' rate proposal, at least in part. These are (1) their Exhibit 94, which relies upon the 1985 labor cost factor combined with current staff measured equipment costs, and would justify an increase of 5% in all rates, even when using the old fuel cost of 87 cents per gallon; (2) the operating ratio data based upon the results of operations of 37 representative dump truck carriers during 1987; (3) the demographic data presented by CDTOA/CCA in their Exhibit 79; and (4) the labor cost information contained in Revised Exhibit 59. This last data, staff insists, should not be used for ratemaking purposes. It was not gathered for that purpose; rather, staff intends to use these costs in its recommendation concerning the establishment of territorial descriptions. Neither is CDTOA/CCA using Exhibit 59 in its cost/rate development. However, for purposes of this request we may exercise our ratemaking judgment by considering the data in Exhibit 59 for the sole purpose of ensuring that the Petition 328 labor costs used by the petitioners in assembling their total costs, are "in the ballpark" with respect to currently experienced labor costs.

Revised Exhibit 59 shows that 1987 labor costs paid in the various counties are both over and under the Petition 328 levels. Similarly, the Petition 328 cost levels are averages of labor costs experienced in various counties. In the circumstances it is reasonable to use Petition 328 labor cost levels for interim rate offsetting purposes. With respect to equipment fixed and running, insurance, gross revenue, and indirect expenses, the costs contained in the staff exhibits may also be used for interim

ratemaking. If we were to grant the motion as proposed and amended, there would likely be sufficient cushion in the conservative total cost development of petitioners so that no such rate increase would be more than justified because of reduced labor cost measured in some counties as shown in Revised Exhibit 59. This is partly because of the use by the petitioners of the fuel cost of 86 cents, rather than the later 94 cents cost level contained in the last 521 Fuel Report. However, for the sake of those instances where such reduced labor costs may result in lower total costs than might be offset by the other cost increases, we will feel more comfortable, acting on this interim request, in granting an increase of 4 percentage points rather than the full amount requested. This will result in a theoretical industrywide cost-rate relationship of approximately 94%, based upon the 1987 operating results of the 37 representative carriers shown above.

We will place the industry on notice that when rates are ultimately developed for efficient dump truck carriers the Commission may decide to base such rates on costs other than the industry average costs traditionally used for ratemaking purposes. If so, such rates may be, at least in some instances, lower than industry average cost based rates.

Protestants object to the method of notice of the request for rate increases. Notice of filing of the motion appeared in the Commission's Daily Transportation Calendar of March 16, 1988. The ALJ's ruling of May 20 contained notice of the evidentiary hearing to be held on the motion. All appearances and parties had sufficient notice and opportunity to prepare responses to the motion and to present evidence in opposition thereto at the hearing held on July 6. A similar procedure was observed in connection with an interim increase request in our proceeding on used household goods (C-5330, OSH 100). In the circumstances, we find that the parties have had ample notice and opportunity to oppose the increase requests.

## II. MINIMUM RATE DEVIATION PROCEDURES

### Background

Public Utilities (PU) Code § 3666 provides that upon a finding by the Commission that a proposed rate is reasonable, dump truck carriers may perform transportation at a rate lower than the established minimum rate. Resolution TS-682 sets forth the procedure for filing deviation requests. It requires generally that such rates cover a carrier's fully allocated costs. Initial applications are reviewed by the Transportation Division (TD) staff and an administrative law judge (ALJ) prior to their approval by the Commission. The time between filing and granting such initial requests can take three months or more, depending on how complete the justification is when filed, and on whether public hearing is required because of protest. Applications for renewals of deviations are handled much faster under the Special Deviation Docket procedure.

Decision (D.) 85-04-095, which initiated Order Setting Hearing 325, et al. directed that hearings should be held to consider developing a "procedure under which an individual dump truck carrier can be readily permitted to charge less than the established minimum rate level when actual circumstances warrant such action."

Six days of public hearing were held during August 1988 in San Francisco. This phase of the consolidated proceeding was submitted upon the filing of briefs November 7, 1988. Recommendations were received from TD staff, Yuba Trucking (Yuba), California Dump Truck Owners Association/California Carrier Association (CDTOA/CCA), and by the Coalition For Safe, Sensible and Nondiscriminatory Dump Truck Rates (Coalition). Each proposal is discussed as follows:



#### TD Staff

TD staff asserts that dump trucking is characterized by abruptly changing seasonal and cyclical patterns peculiar to the construction industry. It believes that if carriers had the opportunity to establish less-than-minimum rates on the basis of their short run marginal (variable) costs, they might be able to gain additional business during slow times when their equipment and drivers would normally remain idle. Also, TD staff maintains that carriers would be able to seek loads for trucks that would otherwise be traveling empty to or from a point of pickup or delivery. TD staff maintains it has the experience to process rate filings of this type; that if deviation requests were reviewed by TD staff rather than handled as formal matters, rate deviations could become effective more quickly.

TD staff proposes establishing an expedited two-tier deviation procedure that would offer a choice to applicants of making either a full cost or a variable cost showing. Either showing would be processed by the TD staff, and would become involved in a formal process only if a valid protest were received.

#### Full Cost Procedure

This procedure is similar to the existing procedure. Three major differences are: (1) the applicant will not be required to make a showing of special circumstances; (2) the proposed rate, if uncontested, automatically becomes effective 30 days after notice of the filing is published in the Daily Transportation Calendar (DTC); and (3) the Special Deviation Docket procedure now used in connection with renewals will no longer be required, because renewals will also be processed under the informal procedure. Renewal applications will be listed on the DTC and processed in the same manner as initial applications. The full

cost procedure will, as at present, require a showing that the proposed rate will produce a reasonable profit over the carrier's fully allocated costs.

Variable (Marginal) Cost Procedure

This procedure allows profitable carriers or carriers who possess sufficient working capital to quickly establish rates with certain shippers at or above the carrier's variable cost of providing the service. There are restrictions on who can engage in Variable Cost Deviations, and on the length of time (six months) such deviations can be in effect without a new filing by the carrier. Variable costs are listed in the TD staff proposal, and include the following elements: driver labor, fuel/oil, maintenance and repair, gross revenue expenses, and "other" variable costs. If an input is used specifically for the job in question, and would not be used or paid for otherwise, the input is considered variable under the TD staff proposal.

Carriers must submit a showing that they are either profitable, or, in the case of new carriers, have working capital to cover any loss that could result from using the variable cost rate. A balance sheet and income statement for the most recent year will be submitted for analysis.

The applicant would also furnish a simple cost analysis proving that the proposed rate is at least 105% of its variable costs, accompanied by a statement under penalty of perjury confirming the accuracy of the analysis. The carrier and shipper must sign an agreement describing the transportation and proposed rate, and stating that the shipper has examined the carrier's cost data and accepts it. The shipper commits to pay and the carrier to collect any difference between the deviated rate and the minimum rate if, by formal order, the Commission determines that the deviated rate will not cover 105% of the carrier's variable costs.

incurred in the performance of the service. Amounts thus collected will be considered undercharges and paid to the Commission as a fine by the carrier.

Subhaulers engaged by prime carriers to provide transportation under the deviated rate must submit to the prime carrier a simple cost analysis proving that the compensation received from the deviated rate is at least 105% of the subhauler's variable costs incurred under the subject transportation. Subhaulers would also be required to submit a copy of their most recent Internal Revenue Service (IRS) Forms 1065, 1120, 1120-A or 1040, Schedule C, to prove that the subhauler's overall operations are profitable. New subhaulers would submit a balance sheet, working capital worksheet and a projected profit and loss statement. Subhaulers thus engaged must be paid not less than 95% of the deviated rate, 75% when they provide tractor (pulling service) only.

Carriers filing variable cost deviations must submit new applications every six months to continue using the rate, i.e. no renewal process would be available in connection with variable cost filings.

TD staff recommends that both procedures be adopted, and that Resolution TS-682 and Rule 42 series of the Commission's Rules of Practice and Procedure be amended as necessary to implement the procedures. TD staff has furnished both Full Cost and Variable Cost deviation application forms to be used in connection with its proposal. TD staff urges that the procedures be implemented as soon as possible, maintaining that downward pricing flexibility is needed and should be made available for use by carriers and shippers at the earliest possible date.

Yuba

Yuba's proposal, set forth in its Proposal For A Streamlined Rate Deviation Procedure (Exhibit 98), has the virtue of simplicity. It recommends that a carrier seeking to assess less

than an established minimum rate be allowed to file an application showing (A) the carrier's safety program and overall safety record, (B) its overall financial condition, indicated primarily by the information contained in the carrier's current balance sheet, and (C) specific information set forth in the application relating to the transportation to be performed, the present and proposed rates, etc. The proposed rate would have to be at least 80% of the established minimum rate. This is because, Yuba alleges, variable costs associated with the dump trucking industry, plus insurance costs, typically are about 80% of total costs. The breakdown of these costs, as contained in Yuba's proposal, is as follows: Labor, 40%; Fuel/Oil, 15.0%; Repairs & Maintenance, 12.5%; Tires, 05.0%; Insurance, 07.5%.

Yuba also alleges that if its procedure were adopted the administrative lag time and the filing costs now faced by carriers seeking deviations would be materially reduced. Since the construction hauling jobs Yuba secures each tend to produce less than \$100,000 in annual revenues, it believes that a deviation procedure that minimizes the costs associated with obtaining authority to charge less than minimums is particularly desirable. Such a procedure makes it cost effective for Yuba and many other carriers to participate in reduced rate hauling, in Yuba's opinion.

Upon finding that the carrier's financial condition and safety record are satisfactory, a proposed rate that is no less than 80% of the established minimum rate would be approved under Yuba's proposal.

CDTOA/CCA

The CDTOA/CCA proposal is set forth in Revised Exhibit 100. It consists of a proposed general order (GO) governing rate deviation procedures. The proposal contains two procedures. The first is contained in Rule 5 of the proposed GO, and relates to those situations where dump truck carriers desire to assess less than established minimum rates on a cost justified

basis. A showing must be made of circumstances or conditions involved in the subject transportation, not present in usual or ordinary circumstances, which allow cost savings. Examples of such conditions include:

- a. Equipment use factors greater than those underlying the minimum rates;
- b. Use of lightweight equipment allowing allowing greater than average loads;
- c. Favorable loading/unloading circumstances;
- d. More fuel-efficient power equipment;
- e. Greater volume of traffic and scheduling opportunity, resulting in less administrative supervision.

Applications for such reductions must show that revenue generated from proposed rates is sufficient to contribute to a carrier's profitability. Applications must also include a favorable current California Highway Patrol Terminal Evaluation Report, and a certification that the applicant and subhaulers are in compliance with all safety regulations applicable to their operations. Applications meeting specified requirements would be deemed reasonable and become effective 30 days after Calendar publication date, unless protested. Renewals of rate deviations would require the same revenue and cost data evidence required in the initial application.

The Rule 5 applications would apply to the transportation of all commodities transported under rates in Minimum Rate Tariffs (MRTs) 7-A, 17-A, and 20.

The second CDTOA/CCA proposal is set forth in Rule 6 of the proposed GO. It relates to deviations for the transportation only of construction commodities, defined as those listed in Item 30 of MRT 7-A, Item 60 of MRT 20, and Items 60, 65, 70, and 75 of MRT 17-A. This second proposal would apply in connection with the

transportation of these commodities to or from a construction project. "Construction Project" is defined as follows:

"A project involving the transportation of construction commodities in bulk in dump truck equipment and where the differential between the established minimum distance or zone rates for the involved transportation and the proposed less than the established minimum rate for application to distance or zone rated shipments will produce projected transportation cost savings totaling \$10,000 or more for the shipper (debtor)."

CDTOA/CCA's purpose in connection with Rule 6 deviations is contained in Rule 6.2, and states in part:

"The rationale for Rule 6 deviation procedures is a binding transportation contract between the dump truck carrier and the shipper (debtor), the payment and performance of which is guaranteed by the posting of a bond by the shipper (debtor). Rule 6 deviations from established rates in the dump truck minimum rate tariffs are to be supported by a detailed demonstration of performance factors by the shipper and/or carrier which are more efficient than those which have been used by the Commission in establishing dump truck minimum rates for construction commodities."

Several performance factors underlying current dump truck minimum rates are listed in Appendix B to the proposed GO. These include revenue hours, loading/unloading times, average loads, equipment hours per round trip, etc.

Paragraph D of Rule 6.3 of this proposal requires that at the time of filing of the application for use of the less than established minimum rate, a bond must be furnished by the shipper. The bond would guarantee payment to the carrier and any subhaulers used in the subject transportation of the full minimum rates, should the performance factors and efficiency standards set forth in the application not be achieved, on average, during the performance of the transportation.

There are a number of restrictions, and more than a few procedures which must be followed in connection with the CDTOA/CCA Rule 6 proposal. For example, Rule 6 deviations apply only on the transportation of construction commodities, to or from construction projects. They would not be allowed on the transportation of the Item 40, 50 or 60 commodities named in MRT 7-A, nor on interplant hauling. Nor would they be allowed on hourly rate transportation. A filing fee of \$500 would be required. Known subhaulers must co-sign the application; those added to the project later would also have to enroll in the deviation process. If carriers, including subhaulers, are not paid promptly in accordance with Item 130 of MRT 7-A, the deviation authority would be canceled. Complete documentation must be kept for each unit of equipment, showing the computation of productivity factors and efficiencies, summarized daily. This information must be accumulated and summarized in a monthly report to the Commission.

The required bond would not be cancellable until 120 days after completion of the construction project transportation, and not until the results achieved under the transportation had been audited by the Commission's TD staff and found to be consistent with the performance factors underlying the authorized rate. If the audit reveals that those performance factors were not attained, the carrier would be required to collect all "undercharges" in accordance with PU Code § 3800, pay this amount to the Commission, perhaps pay a penalty to the Commission in addition, and be barred from performing Rule 6 type deviations for one year.

The proposed GO contains a provision that the Commission would have to assign sufficient personnel to review, analyze, monitor and audit Rule 6 deviations, and increase the amount to be paid into the Transportation Rate Fund by dump truckers to pay for this additional regulation.

California Trucking Association (CTA) indicated its support of the CDTOA/CCA proposal for an interim period of two years subject to review at the expiration of that period. CDTOA/CCA have no objection to adoption of their proposal, contained in Revised Exhibit 100, for an interim two-year period.

#### Coalition

The Coalition's proposal is the easiest to state of the four proposals. It recommends simply that Resolution TS-682 be modified, by providing that if no protest is filed to a sought deviation, and neither the Commission's TD staff nor an assigned ALJ has any objection to its authorization, the ALJ shall within 20 days after expiration of the protest period prepare a proposed decision, which shall be considered by the Commission at its first meeting thereafter.

#### Discussion

For several decades we have developed and maintained minimum rates for the transportation of commodities in dump truck equipment. Costs have been developed based upon industrywide, average performance data. While many deviations have been authorized for the interplant transportation of dump truck commodities, few have been granted in connection with the transportation of rock, sand and gravel when involved in construction activity. Resolution TS-682 has required that deviations be based upon favorable circumstances attendant to the transportation, such as a return load opportunity. Such opportunities are seldom involved in construction activity. To the extent that construction haulers such as Yuba may find it infeasible to incur the present level of expense associated with obtaining authority to charge less than minimums on much of their traffic because of job size, present procedures further diminish deviation opportunities in this area.



When rail freight transportation was subject to the economic jurisdiction of this Commission, prior to its deregulation by federal decree in 1980 (Staggers Act, PL 96-448), rail rates were often available and could be assessed by dump truckers under the provisions of PU Code § 3663. However, such rail rate opportunities are no longer available, leaving the minimum rates as the going rates in most circumstances. Greater downward pricing flexibility is required to meet the needs of the industry. Such pricing flexibility should allow the favorable circumstances experienced by all dump truck carriers to be taken into account by the Commission when considering requests for deviations from the rates contained in MRTs 7-A, 17-A, and 20.

The Yuba proposal is concise and simple. Of all the proposals advanced, it appears to offer the most pricing flexibility in an expedited fashion. Because deviation applicants would not be required to incur the expense of providing a complex and detailed showing to obtain authority to engage in some degree of downward pricing activity, Yuba's proposal also helps to ensure that no traffic a carrier has an economic desire to handle under deviated rates would be generally barred from moving at less than minimums because of excessive filing costs. Under the Yuba proposal, even the smallest and most unsophisticated carrier would likely find the procedures it need follow to obtain a deviation manageable. Uniform access to deviations would be maximized. The proposal's major flaw is that it may allow a degree of downward pricing that is too great in the absence of a mechanism through which we could review individual carrier costs and engage in more carrier specific oversight.

Based on its own experience and on information from a survey it performed, Yuba alleges that the variable costs plus insurance costs incurred to operate a unit of dump truck equipment that are typically experienced in the industry amount to about 80%

of total costs. As a result, it concludes that a proposed rate that is no less than 80% of the established minimum rate can be automatically considered reasonable. We agree that about 80% of the minimum rate should generally cover the variable and insurance costs of reasonably efficient carrier operations. We acknowledged on page 5 of D.86-08-030 issued in this proceeding that the variable and insurance costs upon which the dump truck minimum rates are now based amount to about 85% of total costs. This fact, together with the fact that the minimum rates contain an 8% profit factor, should ensure that 80% of a minimum rate returns variable and insurance costs to an efficient operator. Over the normal one year duration that a deviation is authorized, however, we believe that a carrier should be required to more fully cover its total costs of performing a specific hauling job. Our concern is that 80% of the minimum rate would fail to adequately cover the costs of even an efficient carrier over the year long term of the deviation if that carrier's entire business was comprised of only the deviated rate traffic.

If Yuba's proposal were tied to a rate that was no less than 90% of the established minimum, we would consider it a more viable proposal. The existence of the 8% profit factor in the minimum rate structure would then tend to ensure that a reasonably efficient operator who used this procedure always covered nearly its entire operating costs. In its comments to the ALJ's proposed decision in this matter, even Yuba tacitly acknowledged the propriety of a more restricted downward pricing window by suggesting the substitution of a 90% minimum rate factor in connection with its proposal as a potential alternative to its original 80% recommendation. Today's four percent increase in minimum rates gives us further confidence that 90% of this new level is substantially above variable cost.

The Coalition's proposal would allow virtually no new pricing flexibility beyond what exists today. Rather, it would

perpetuate the present Resolution TS-682 requirements, but would expedite the process in those cases where there are no protests. Such a proposal does not go far enough in today's regulatory climate.

The CDTOA/CCA proposals, supported by CTA, could be granted quickly, and they provide a great deal of opportunity for the introduction of individual carrier operating experience into the industry pricing structure. The CDTOA/CCA Rule 5 proposal would provide an expedited method for achieving authority to deviate, based upon a showing similar to the one presently required under Resolution TS-682, and would allow such cost justified requests to become effective 30 days after being calendared, if unprotested. However, the CDTOA/CCA Rule 6 proposal, while innovative, would impose a number of control and oversight requirements which we do not believe are necessary in order to inject the downward pricing flexibility desired. The complex and paperwork intensive set of recommendations contained in the proposed Rule 6, coupled with the increased Commission TD staffing admittedly necessary to examine, monitor and audit such requests and the performances realized thereunder, should be undertaken only if there were no other viable method available for adoption.

The TD staff's proposals, in the main, appear to offer a greater degree of pricing flexibility than now exists under present procedures. They do so with a minimum of oversight. Staff's Full Cost Procedure would afford carriers and shippers the expedited procedure we have desired. It would also allow carriers the opportunity to assess less than minimum rates based upon individual operating experience, thereby achieving the departure from average costs and rates which have been the principal targets of critics of minimum rate regulation. The TD staff proposal provides adequate protection for the viability of the industry by requiring the showing of profitability or working capital adequacy every six months in order to initiate and continue Variable Cost deviations.

The TD staff's Variable Cost Procedure offers further opportunity to carriers with the ability to achieve further savings in situations described by the TD staff witness in his exhibit - those where they might be able to gain additional business during slow times when equipment and drivers are idle, or when carriers may be traveling empty to or from a point of pickup or delivery. However, we believe that the TD staff Variable Cost Procedure would be more reasonable if amended to include the cost for insurance, as recommended by Yuba in its proposal. Insurance costs have often been treated by cost experts as variable, rather than fixed costs, as in those cases where insurance is paid as a percentage of gross revenue, or on a mileage basis. These costs have been increasing disproportionately to other costs in recent years. They should be included in variable cost presentations of all carriers; otherwise, carriers who do not incur such expenses as variable costs could exclude them from their cost presentations, while those who do pay for their insurance as a variable cost would have to include them. These latter carriers could not compete on the same basis with the first group. This unfair result would best be resolved by requiring the inclusion of insurance by all carriers wishing to use the TD staff's Variable Cost Procedure in bidding for transportation. Insurance is an expense mandated by Commission order. It is more reasonable in these circumstances to require reimbursement for such expense when it is mandated.

None of the proposals except CDTOA/CCA's contained specific recommendations concerning labor expense. Over the years the Commission has authorized many rate deviations in dump truck transportation, the labor portion of which has been based on the actual labor cost experienced, rather than the cost underlying the minimum rate. Use of actual labor cost experienced seems preferable, given the nature of the problem that a minimum

rate deviation addresses. Therefore, we will continue the existing treatment of labor costs in cases handled under the new deviation procedure.

We believe TD staff has the expertise to check-off compliance with the relatively straightforward filing requirements we adopt today for deviation requests. It has administered GO 147-A, which underlies the existing general freight program, and, of course, TD staff's conclusions and actions in the course of processing rate requests under our new program are subject to challenge: a protestant, if his protest is not found by TD staff to fit our adopted guidelines, may file a formal complaint concerning the rates in issue, and an applicant in a similar position can pursue formal processing of his application (which will be referred to an administrative law judge). In summary, this carefully defined and prescribed delegation to TD staff entails its processing requests by checking-off compliance with clear requirements, and a carrier or protestant who takes legitimate issue with staff's processing of a request may, as noted above, pursue formal review with a complaint or application.

After consideration, we will adopt new dump truck deviation procedures that combine what we believe to be the desirable elements of the Yuba and the TD staff proposals. Under our adopted procedures, a carrier seeking to assess no less than 90% of the established minimum rate will be allowed to do so by filing a simplified rate deviation application form similar to the one contained in Appendix A to Yuba's Exhibit 98. An applicant will be required to submit evidence of its overall financial condition, a proper safety report, plus a certification that all subhaulers are in compliance with applicable safety regulations.

A carrier seeking to assess less than 90% of the established minimum rate will be required to comply with the provisions of the TD staff's proposal. We will require applicants

to show that insurance costs, as well as other costs that are clearly variable in nature, are covered under the Variable Cost Procedure.

Both Yuba and CDTOA/CTA recommend that the deviation procedures we adopt require an applicant to submit a favorable California Highway Patrol (CHP) report and to certify that all subhaulers are in compliance with applicable safety regulations. In his proposed decision adopting the deviation procedures proposed by TD staff, the ALJ integrated these recommended safety procedures into TD staff's proposed procedures.

We support the principle that underlies the Yuba and CDTOA/CCA proposed safety requirements. A review of the record, however, indicates little evidence on whether CHP can expeditiously issue such reports. We note that Assembly Bill (AB) 2706 (1988) requires the CHP to begin a program of inspecting all trucks biennially. It appears unrealistic, given the burden of performing its AB 2706 related tasks, to expect that the CHP could respond expeditiously to requests for safety inspection reports beyond those required by AB 2706.

We believe that the next best alternative to the recommended requirements of Yuba and CDTOA/CCA is to require deviation applicants to: 1) show they have applied for a CHP Biennial Inspection of Terminals (BIT); 2) submit a Requestor Code number assigned them by the Department of Motor Vehicles (DMV) to evidence participation in that agency's Pull Notice Program; and 3) certify that any subhaulers used to perform transportation under the proposed deviation have also paid the fees required to apply for a CHP BIT inspection and are participating in the DMV's Pull Notice Program. In keeping with our working relationship with the CHP, we will forward the names of deviation applicants to the CHP. These requirements will provide the safety check that Yuba and

CDTOA/CCA recommended. The complete detail of our adopted procedures are contained in Appendixes A through D of this decision.

We expect that these revised deviation procedures will afford carriers new opportunities to pursue deviations, especially for construction-related jobs. However, we will need to monitor these revised procedures carefully to ensure that they have the results we intend. A period of two years will be reasonable to implement the changes and monitor their effect upon the industry and its consumers. We will order our Transportation Division to produce a monitoring report assessing the first year's experience under these revised procedures. With this report, as well as other communications we may receive from the industry and its consumers, we will be able to make any needed revisions prior to making the new procedures permanent. In this regard, we will issue a further decision during 1990. This schedule will permit needed changes to be made before the experimental program expires in early 1991.

This is an interim decision. We think it is premature to amend Resolution TS-682 and our Rules of Practice and Procedure, and the Special Deviation Docket relating to deviations and renewals from minimum rates. Therefore, under Rule 87, this decision will temporarily supersede the provisions of Resolution TS-682, as well as those of Rule 42.1 and 42.2 (b) of our Rules of Practice and Procedure, and the Special Deviation Docket, insofar as they relate to transportation subject to MRTs 7-A, 17-A, and 20. We supersede these procedures only because we could not otherwise implement this new process for a two-year experimental period. We believe that this is the minimum supersedure that is necessary to permit this. Applicants and potential protestants should note that we are superseding only Rule 42.2 (b) while leaving Rule 42.2 (a) in place for this purpose. Protests to applications for deviation shall not be considered unless they satisfy the full requirements of Rule 42.2 (a). In addition to any other reasons for filing a

protest, we recognize that a protest may convey a competitive advantage to the protestant merely through the administrative delay that may thereby be caused to an applicant. Should we detect a pattern of protests that appear to be filed for this purpose and that do not meet the requirements of Rule 42.2 (a), we may consider appropriate remedies either through amendments to the Rules of Practice and Procedure or through other means available to us.

Accordingly, we refer to Rule 87 of our Rules of Practice and Procedure in finding that good cause exists to order the deviations from our Rules described above for the purpose of adopting this program during the two-year experimental period. At or before the end of the experimental period contemplated by this decision, consideration will be given to amendment of Resolution TS-682, Rules 42.1 and 42.2 (b), and the Special Deviation Docket.

In accordance with PU Code § 311, the ALJ's proposed decision was mailed to appearances on November 10, 1988. Comments were received from CDTOA/CCA, Yuba, AGC, T&T Trucking, Inc. (T&T), and from the Coalition. We have reviewed and considered these comments, and note again that those of Yuba contain a recommendation that we adopt a deviation procedure substantially similar to the one we are adopting by this decision. We also note that the comments of T&T, and certain of the comments of AGC, are particularly persuasive.

In the proposed decision, Appendix A, Subsection A, Subsection (d) on Page A-2, Appendix B-7(b) on Page B-2, and Appendix C-3(B) on Page C-2, Internal Revenue Service Income Tax Forms 1065, 1120, 1120-A or 1040, Schedule C are to be filed with the application if authority is sought utilizing subhaulers to transport the involved commodity. T&T believes subhaulers will be extremely reluctant to provide their income tax returns for a filing which then becomes public record, considering such information to be confidential between the filing party and the Internal Revenue Service. T&T believes the recommended deviation



procedures in this respect to be of questionable legality, and inhibitive to the effective implementation of the procedure. It urges the elimination of these tax forms should the ALJ's proposed decision be adopted.

As an alternative, T&T suggests that the Commission consider protection of subhauler interests through adoption of "50%" requirements as set forth in the CDTOA/CCA Exhibit 100 Revised deviation proposal (e.g. Rule 5.2-D), or a similar provision in GO 147-A, Rule 7.1(e). Under that requirement, if subhaulers are to be used to provide less than 50% of the actual transportation under the proposed rate, no subhauler costs or financial information need be submitted. However, when subhaulers are to be used to provide more than 50% of the transportation, then subhauler costs must be submitted with the application. In T&T's view, this rule would provide adequate protection against abuse of subhaulers and is far preferable to the required submission of income tax returns.

Appendix A, Paragraph (b)6 on Page A-2, and Appendix C on Page C-5 of the proposed decision requires that an involved shipper enter into a written agreement with the applicant for a Variable Cost Procedure deviation to evidence that it commits to pay - and that applicant commits to collect - any difference between the deviated rate and the minimum rate (undercharges) if we determine that the former will not cover 105% of applicants variable costs. AGC believes that such a requirement will effectively preclude use of this procedure. In AGC's words: "No shipper would knowingly expose himself to this potential liability." It recommends that this requirement be eliminated.

We concur with T&T's concern about the confidentiality of tax forms. We agree that adoption of the "50%" rule would be adequate for purposes of this proceeding in lieu of the forms referred to above, and would be consistent with our rules in the general freight program. We also share AGC's concern that the

Variable Cost Procedure be constructed in a way that will not inappropriately prohibit its use. We recognize that the carrier/shipper agreement could well have a chilling effect on shipper willingness to use deviated rates, especially as the meaning of the agreement is unclear. The agreement refers to undercharges that might be assessed should the deviated rate later be found unreasonable by the Commission. However, a properly-supported and duly approved deviation will by definition be a reasonable rate, and therefore not properly the subject of any undercharges; by contrast, the use by a carrier of a deviation for which the carrier did not have proper authority could lead to an assessment of undercharges. We will not include the carrier/shipper agreement in the Variable Cost Procedure.

Our adopted Full Cost and Variable Cost Procedures incorporate both T&T's recommended "50%" rule and AGC's recommendation to eliminate the carrier/shipper agreement contained in Appendixes A and C of the proposed decision.

#### Findings of Fact

1. CDTOA/CCA have filed a motion for an interim 5% increase in rates in MRTs 7-A, 17-A, and 20 for commodities named in Item 30 of MRT 7-A.

2. The equipment costs contained in the various staff exhibits, and the labor costs used in Petition 328, are the best and most current evidence for measuring costs for dump truck carriers.

3. Except for increases of 2.2% to 3.0% ordered in 1987, rates named in MRTs 7-A, 17-A, and 20 have not been increased since 1985.

4. Since the last rate increases ordered in these MRTs, the industry has experienced further increases in total costs. These costs have been measured by CDTOA/CCA, and indicate that increases in rates for the transportation of construction related commodities

of 4 percentage points will allow the industry to earn revenues which are reasonable and necessary.

5. The operating ratio and demographic information discussed in the decision tends to confirm the need for increases as measured by the petitioners, although not necessarily in the same amounts proposed.

6. The filing of petitioners' motion, publication thereof in the Daily Transportation Calendar, and the ALJ's ruling of May 20 advising all parties of the July 6 hearing provide adequate notice.

7. PU Code § 3666 states: "If any highway carrier, other than a highway common carrier, desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate for not more than one year."

8. D.85-04-095, which initiated OSH 325, et al. directed that hearings should be held to consider developing a "procedure under which an individual dump truck carrier can be readily permitted to charge less than the established minimum rate level when actual circumstances warrant such action."

9. While many deviations have been authorized from minimum rates in connection with the interplant transportation of commodities in dump truck equipment, virtually none have been authorized in connection with dump truck construction activity. Furthermore, those deviations which have been authorized have often not become effective until several months after filing, even if unprotested, because of the current administrative procedure.

10. Eighty percent of the minimum rate will generally cover the variable and insurance costs of reasonably efficient carrier operations. Thus, if Yuba's proposal were tied to a rate not less than 90% of the established minimum (allowing an 8% profit factor), the resulting minimum rate deviation procedure would ensure that a

reasonably efficient carrier using this procedure would be able to cover its operating costs.

11. The procedures set forth in Appendixes A through D to this decision will provide reasonable, workable, expedited procedures for processing initial and renewed requests for deviations from rates in MRTs 7-A, 17-A, and 20.

12. The TD staff has the expertise to perform the check-off compliance review of applications for authority to deviate from minimum rates, in the manner set forth on Pages A-4, A-5 and A-6 of Appendix A to this decision, after such applications are calendared. This will provide an expeditious and reasonable procedure for such requests.

13. The need to proceed with revisions to the Commission's procedures for authorizing deviations from minimum rates for dump truck transportation for an experimental period of two years constitutes good cause for deviating from Rules 42.1 and 42.2 (b) of the Commission's Rules of Practice and Procedure.

#### Conclusions of Law

1. MRTs 7-A, 17-A, and 20 should be amended to conform to our findings above. The resultant rates will be just and reasonable.

2. MRTs 17-A and 20 should be amended by separate orders to avoid duplication of tariff distribution.

3. Due to the needs of dump truck carriers performing transportation under rates in MRTs 7-A, 17-A, and 20 for rate relief, the effective date of this decision should be today.

4. The provisions included in this decision as Appendixes A through D, should be adopted for an interim period of two years.

5. This decision should provide the bases for achieving deviations from rates in MRTs 7-A, 17-A, and 20, and should supersede Resolution TS-682 and Rules 42.1 and 42.2 (b) of the Commission's Rules of Practice and Procedure, and the Special Deviation Docket, in connection with transportation performed under

those tariffs. Such supersedure is appropriate under Rule 87 of the Rules of Practice and Procedure.

6. The Commission should authorize TD staff to perform the check-off compliance review, as provided in Appendix A of today's decision, of applications for authority to deviate from rates in MRT's 7-A, 17-A, or 20.

INTERIM ORDER

IT IS ORDERED that:

1. MRT 7-A (Appendix B to D.82061, as amended) is further amended by incorporating the attached Supplement 29, effective July 1, 1989.
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 the tariff amendment on each subscriber to MRT 7-A.
4. Resolution TS-682 and Rules 42.1 and 42.2 (b) of the Commission's Rules of Practice and Procedure, and the rules contained in the Special Deviation Docket, are superseded by the rules contained in Appendixes A through D, attached, in connection with transportation performed under MRTs 7-A, 17-A, and 20, effective July 1, 1989.
5. The authority contained in this decision will expire July 30, 1991 unless sooner canceled, modified or extended by further order of the Commission.
6. The Executive Director shall serve a copy of this decision on each subscriber to MRTs 7-A, 17-A, and 20.

7. On or before August 1, 1990, the Transportation Division shall present the Commission with a report describing the experience under the first year of these revised deviation procedures.


This order is effective today.

Dated APR 26 1989, at San Francisco, California.

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

Commissioner Patricia Eckert  
present but not participating

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

  
Victor Weller, Executive Director

so

SURCHARGE SUPPLEMENT

SUPPLEMENT 29

(Cancels Supplement 28)  
(Supplements 9 and 29 Contain All Changes)

TO  
MINIMUM RATE TARIFF 7-A  
NAMING  
MINIMUM RATES AND RULES  
FOR THE  
TRANSPORTATION OF PROPERTY IN DUMP TRUCK  
EQUIPMENT BETWEEN POINTS IN CALIFORNIA

BY  
HIGHWAY CONTRACT CARRIERS  
AGRICULTURAL CARRIERS  
AND  
DUMP TRUCK CARRIERS

Decision

89 04 086

EFFECTIVE July 1, 1989

Issued by the  
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
Governor Edmund G. "Pat" Brown Building  
505 Van Ness Avenue  
San Francisco, California 94102

## APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules of this tariff and increase the amount so computed by the following: (See Exception)

	<u>Transportation of Commodities Described in Item 30</u>	<u>Transportation of Commodities Not Described in Item 30</u>
Moving at rates named in Item 390 (hourly rates)	07%	3%
Moving at rates named in all other items	06.2%	2.2%

For purposes of disposing of fractions under provisions hereof, fractions of less than one-half (1/2) cent shall be dropped and fractions of one-half (1/2) cent or greater shall be increased to the next higher whole cent.

EXCEPTION: The surcharge herein shall not apply to:

1. Items 100 and 110 (Railhead-to-railhead charges only);
2. Item 120 - Bridge and Ferry Tolls; and
3. Item 260 - Additional charge for service.

THE END

Change )  
Increase ) Decision

89 04 086



# **CORRECTION**

**THIS DOCUMENT HAS  
BEEN REPHOTOGRAPHED  
TO ASSURE  
LEGIBILITY**

## APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules of this tariff and increase the amount so computed by the following: (See Exception)

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2. Item 120 - Bridge and Ferry Toller and
3. Item 260 - Additional charge for service.

THE END

Δ Change )  
◊ Increase ) Decision

89 04 086

C.5437, OSH 325 et al.

ALT-COM- FRD

A P P E N D I X    A

PROCEDURES AND CRITERIA FOR  
FILING DEVIATION APPLICATIONS

### THREE-TIER EXPEDITED DUMP TRUCK DEVIATION GUIDELINES AND PROCEDURES

A carrier seeking to assess less than an established minimum rate can select one of the following deviation procedures:

#### I. SIMPLIFIED RATE DEVIATION APPLICATIONS (for rates that are no less than 90% of the applicable minimum rates)

- a. A Simplified Rate Deviation Procedure will be available only to carriers proposing a rate that is 90% or more of the applicable minimum rate. A proposed rate at that level is presumed to be reasonable and no cost showing is required. Staff will handle these deviation requests as informal matters and those that are not contested will become effective 30 days after calendar notice.
- b. Use of this procedure will require that carriers submit:
  1. A proposed rate that is no less than 90% of the applicable minimum rate.
  2. Their latest available balance sheet and an income statement from the most current fiscal year.
  3. Their identity and the identities, signatures and telephone numbers of the shipper and any subhaulers involved in the transportation.
  4. A description of the transportation.
  5. The applicable minimum rate and the proposed rate, using the same unit of measurement as that shown in the applicable minimum rate tariff.
  6. A current favorable California Highway Patrol safety report, plus, if subhaulers are used, a certification that all subhaulers are in compliance with applicable safety regulations.
- c. Subhaulers engaged by prime carriers to provide transportation under the deviated rate must be paid not less than 95% of the deviated rate, 75% when they are providing the tractor (pulling services) only.
- d. Carriers wishing to continue use of the Simplified Rate Deviation should file an application for renewal at least six weeks in advance of the current deviation's expiration date.

#### II. FULL COST DEVIATION APPLICATIONS (for rates that are less than 90% of the applicable minimum rate)

- a. Applicants for Full Cost Deviations will adhere to the same requirements as those contained in Resolution TS-682, except that:

1. It will no longer be necessary to show that the transportation in question is performed under favorable operating conditions that differ from those used in establishing minimum rates.
  2. Staff will handle these deviation requests as informal matters and, if they are not contested, will become effective 30 days after calendar notice.
  3. Renewal applications will no longer be handled under the Special Deviation Docket Procedure. All renewals, as with initial applications, will be processed under the informal expedited procedure.
  4. They shall declare that subhaulers will not be used to provide more than half of the actual transportation (as evidenced, for example, by the subhaulers providing less than half of the power units to be used), or if subhaulers are to be used on more than half of the transportation, the costs of the subhaulers employed in the transportation shall be included.
  5. All prime carrier applicants must submit a current favorable California Highway Patrol safety report, plus a certification that all subhaulers used in the transportation are in compliance with applicable safety regulations.
- b. Full Cost applications, based on the carrier's actual cost, will continue to require a showing that the proposed rate will cover the applicant's full cost for providing the service and will produce a profit.

### III. VARIABLE (MARGINAL) COST DEVIATION APPLICATIONS (for rates that are less than 90% of the applicable minimum rate)

- a. A variable cost procedure, also based on the carrier's actual costs, will only be available to either profitable carriers or those with sufficient working capital. Staff will handle these deviation requests as informal matters and those that are not contested will become effective 30 days after calendar notice.
- b. Use of this procedure will require that carriers submit:
  1. A showing that they are either profitable or have sufficient working capital to cover any loss that could result from using the variable cost rate. Applicants will prove profitability and working capital availability by submitting a balance sheet and income statement from the most current fiscal year. New carriers must submit a balance sheet, a working capital worksheet and a projected profit and loss statement. New carriers and applicants who show a loss on their income statement will also be required to sign a release form authorizing the Commission to obtain financial information from the applicant's bank records. These forms are contained in Appendix D.

2. Their identity and the identity of the shipper and any subhaulers involved in providing the transportation.
  3. A description of the transportation.
  4. The existing rate and the proposed rate, using an appropriate unit of measurement.
  5. A simple cost analysis proving that the proposed rate is at least 105% of the total of variable costs and insurance, accompanied by a statement under penalty of perjury confirming the accuracy of this analysis.
  6. Either a declaration that subhaulers will not be used to provide more than half of the actual transportation under the proposed rates (as evidenced, for example, by the subhaulers providing less than half of the power units to be used), or the inclusion of the costs of the subhaulers employed in the transportation.
  7. A current favorable California Highway Patrol safety report, plus, if subhaulers are used, a certification that all subhaulers are in compliance with applicable safety regulations.
- c. Carriers who are required by formal order of the Commission to collect undercharges from shippers, for failure to cover 105% of their total of variable and insurance costs in performing the service, must immediately discontinue use of the rate in question. The carriers are also prohibited by the Commission from filing or participating in any new deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure.)
- d. Subhaulers engaged by prime carriers to provide transportation under the deviated rate:
1. must, if providing more than half of the transportation under the deviated rate, submit to the prime carrier, for joining with the filing of the application, a simple cost analysis proving that the compensation received from the deviated rate is at least 105% of the total of variable costs and insurance to be incurred under the subject transportation. When subhaulers provide more than half of the transportation: 1) new subhaulers must submit a balance sheet, a working capital worksheet and a projected profit and loss statement; and 2) new subhaulers and subhaulers who show a loss on their income statement will also be required to sign a release form (found in Appendix D) authorizing the Commission to obtain financial information from the subhauler's bank records.
  2. must be paid not less than 95% of the deviated rate, 75% when they are providing the tractor (pulling services) only.
  3. must certify, under penalty of perjury, that the compensation to be received from the deviated rate will cover 105% of the total

of their variable costs plus insurance. Prime carriers will review each subhauler's costs and certify that they have determined the costs to be accurate and valid. The verification forms are contained in Appendix C.

- e. If the Commission determines in its final order that 105% of the subhauler's actual total of variable and insurance costs exceed the amount earned by the subhauler under the deviated rate, the prime carrier shall pay the subhauler 95% (or 75% for pullers) of the minimum rate for all work performed under the deviated rate. The difference between this and what was paid to the subhauler under the deviated rate shall be paid to the Commission as an undercharge fine by the subhauler.
- f. Subhaulers who are required by the Commission to collect undercharges from the prime carrier must immediately discontinue use of the rate in question and are prohibited from filing a new deviation or providing transportation services under a new deviated rate for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure.)
- g. No renewal process will be available. Carriers filing variable cost deviations must submit new applications every 6 months to continue using the rate. Carriers wishing to continue use of the variable cost rate should file at least 6 weeks in advance of the current deviation's expiration date.

#### FILING THE DUMP TRUCK DEVIATION APPLICATIONS UNDER EXPEDITED PROCEDURE

- a. Two copies of all applications to deviate from MRT's 7-A, 17-A and 20, including any supplements or amendments, shall be delivered or mailed to:  
  
California Public Utilities Commission  
Truck Tariff Section-2nd Floor  
505 Van Ness Avenue  
San Francisco, CA 94102
- b. If a receipt for the filings is desired, the application shall be sent in triplicate with a self-addressed stamped envelope. One copy will be date stamped and returned as a receipt.
- c. Rejected applications will be returned to the applicant with an explanation of why the application was not accepted.
- d. All applications filed will be available for public inspection at the Commission's office in San Francisco.

PROCEDURES FOR REVIEW OF DEVIATION APPLICATIONS  
UNDER EXPEDITED PROCEDURE

- a. The deviation filing will be noted immediately in the Commission's Transportation Calendar. Renewals of simplified and full cost deviations will be labeled as such in the calendar notice. The deviated rate will become effective 30 days after the calendar notice date, unless rejected or suspended prior to that date by the Commission staff.
- b. The Commission staff will review the proposed deviations during the 30 day notice period.
- c. Staff may reject a filing within the 30 day notice period. All rejections will be noted in the Daily Transportation Calendar and applicants will be notified by mail of the reasons for rejection.
- d. Staff will reject any application that is incomplete or fails to meet the following conditions:
  - i. If a simplified rate deviation application, the proposed rate must be no less than 90% of the applicable minimum rate.
  - ii. If a full cost application, the proposed rate must provide an operating ratio of less than 100.
  - iii. If a variable cost application, the proposed rate must cover at least 105% of the total of variable cost and insurance.
  - iv. Submit a current favorable California Highway Patrol safety report, plus, if subhaulers are used, a certification that all subhaulers are in compliance with applicable safety regulations.
- e. Any party may protest a proposed rate deviation. The protest must be in writing and specifically indicate in what manner the application for a deviated rate is defective. It must be received no later than 10 days before the deviated rate is scheduled to become effective. A copy of the protest shall be served on the applicant on the same date it is either forwarded or delivered to the Commission. All protests will be noted in the Commission's Transportation Calendar.
- f. If the Commission staff determines that valid grounds exist for the protest, it will evaluate the substance of the protest based on conformity with the guidelines for filing the application and may decide to reject the filing before the effective date of the rate. The staff may also temporarily suspend the rate for a period of time not to exceed 45 days beyond the date of suspension, during which time it will either reject the protest



or request the Commission to further suspend the rate and set the matter for hearing. Protests involving costs may have merit which is not clearly determinable by Staff, in which case the rate filing will be suspended with a request to the Commission that the matter be set for hearing.

- g. Notice of any rejection or rate suspension, and any vacation of such suspension, will appear in the Commission's Transportation Calendar.
- h. If a protest results in the Commission setting the matter for hearing, the burden of proof rests with the proponent of the deviated rate.
- i. Commission review of any rate which is in effect may be initiated by filing a formal complaint. The burden of proof in a complaint shall be upon the complainant. The complainant will send a copy of the complaint to the defendant (carrier), shipper and any subhaulers who are parties to the transportation agreement.

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A P P E N D I X A-1

SIMPLIFIED RATE DEVIATION APPLICATION FORM

SIMPLIFIED RATE DEVIATION APPLICATION FORM

1. APPLICANT INFORMATION

Application No: (Commission will insert number)

Is this a renewal application? yes no

Cal T-No:

Name:

Address:

Telephone:

Person to contact:

If a corporation, attach articles of incorporation or  
reference a previous filing that contained the articles:

Signature of owner or officer:

2. SAFETY AND SUBHAULER COMPENSATION INFORMATION

Attach your current favorable California Highway Patrol  
safety report. If subhaulers are used, include this  
statement: I certify that all subhaulers used in perform-  
ing this transportation are in compliance with applicable  
safety regulations. I further certify that they will be  
paid not less than 95% of the deviated rate, 75% when they  
are providing the tractor (pulling services) only.

3. FINANCIAL INFORMATION

Attach latest available balance sheet, dated           , 19    

Attach income statement for the latest fiscal year ending  
          , 19    .

4. SHIPPER INFORMATION

Name:

Address:

Telephone:

Person to contact:

Signature of owner or officer:

5. TRANSPORTATION DETAILS

Job location:

Point of origin:

Point of Destination:

Haul distance:

Commodity:

Quantity:

Applicable tariff:

Applicable tariff rate:

Proposed rate:

Effective date of proposed rate:

Termination date of proposed rate\*:

\*Note: All rate deviations must be renewed after one year.

The renewal application should be submitted at least six weeks prior  
to expiration.

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6. SUBHAULER INFORMATION

Attach separate pages with information on items 1 and 2  
(on page A-1-1).

CARRIER VERIFICATION

I am the applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Applicant)

CARRIER VERIFICATION

(Where Applicant Is a Corporation)

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Signature and Title of Corporate Officer)

# CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing application has been served by (specify method of service) upon each of the following:

(List names and addresses of parties served.)

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
(Name of City) (Day)  
of \_\_\_\_\_, 19\_\_.  
(Month)

(Signature of Person Responsible for Service

A P P E N D I X    B

FULL COST DEVIATION APPLICATION FORM



APPLICATION TO DEVIATE FROM THE MINIMUM RATES FOR  
TRANSPORTATION OF COMMODITIES IN DUMP TRUCK EQUIPMENT

FULL COST DEVIATION APPLICATION

Is this a renewal application? \_\_\_\_\_yes \_\_\_\_\_no

Full cost deviation application # (Commission will insert number)

Name of carrier \_\_\_\_\_(Exact Legal Name)

Principal place of business \_\_\_\_\_(Street Address and City)

If applicant is a corporation, attach articles of incorporation or  
make reference to a previous filing that contained the articles.

Carrier is authorized to transport (Show Operating Authority)

Contact person regarding this application (Name, Title, Address  
and Telephone Number)

Commodity description and form \_\_\_\_\_

Deviation from Minimum Rate Tariff (Tariff Number)

Origin \_\_\_\_\_

Destination \_\_\_\_\_

Shipper \_\_\_\_\_

Present Rate (express in unit of measure) min. wt., unless hourly

Proposed Rate (express in unit of measure) min. wt., unless hourly

1. Describe the transportation to be performed. (The description should cover all particulars of the transportation to include but not be limited to: Loading and unloading, loadweights and anticipated volume per day or other time period, and whether the transportation is part of a backhaul or fronthaul.)
2. Show the estimated cost of performing the transportation under the proposed rate. Include the development of labor costs, vehicle fixed costs and mileage costs, other direct costs and allocations of administrative and other indirect costs. Overall cost should be expressed in terms of cost per 100 pounds, cost per load, or other appropriate unit of measure.
3. Show expected revenue from the transportation under the proposed rate in terms of revenue per 100 pounds, revenue per load or :

other appropriate unit of measure that will permit evaluation of the profitability of the service at the proposed rates. Explain the methods used in developing the revenue figures.

4. Attach a letter of support from the shipper.
5. Identify any carrier(s) presently providing the specific service sought by the applicant.
6. Attach applicant's latest available balance sheet, dated \_\_\_\_\_, 19\_\_\_\_, and an income statement for the latest fiscal year ending \_\_\_\_\_, 19\_\_\_\_.
7. Subhaulers will be used to perform less than half\_\_\_\_, more than half\_\_\_\_, or none\_\_\_\_ of the transportation.
8. If subhaulers are engaged to perform the service, they must either be paid the full proposed rate or, if the subhaulers will be paid a lesser rate or charge than that sought by the applicant, or if in any case more than half of the transportation under the deviated rate is to be provided by subhaulers, the following facts and statements must be submitted and joined with the filing of the application:

- A. Name of Subhauler  
Permit Number  
Current Address

LIST SUBHAULERS BELOW:

- |                                     |                                     |
|-------------------------------------|-------------------------------------|
| 1. _____<br>_____<br>_____<br>_____ | 2. _____<br>_____<br>_____<br>_____ |
| 3. _____<br>_____<br>_____<br>_____ | 4. _____<br>_____<br>_____<br>_____ |

- B. A profit and loss (income) statement and a balance sheet.
- C. A detailed financial statement from each subhauler showing its total revenues and expenses in performing the transportation for the prime carrier for the last fiscal year and the subhauler's projected revenues and expenses for the specific transportation sought under this application.
9. Other facts relied upon to support the reasonableness of the proposed rate.

10. Attach your current favorable California Highway Patrol safety report. If subhaulers are used, include this statement: I certify that all subhaulers used in performing this transportation are in compliance with applicable safety regulations.
11. This rate shall become effective 30 days after the date that notice of the filing appears in the Commission's Transportation Calendar.
12. This rate shall expire \_\_\_\_\_ (show date) \_\_\_\_\_ (no later than one year from the effective date).
13. In all other respects the rates and rules in MRT \_\_\_\_\_ shall apply.
14. Applicant will furnish a copy of this application to any interested party either upon their written request or that of the Commission. Renewal applications must be served upon the parties who were served a copy of the preceding application.

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

CARRIER VERIFICATION

I am the applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Applicant)

CARRIER VERIFICATION

(Where Applicant Is a Corporation)

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Signature and Title of Corporate Officer)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing application has been served by (specify method of service) upon each of the following:

(List names and addresses of parties served.)

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
(Name of City) (Day)

of \_\_\_\_\_, 19\_\_.  
(Month)

\_\_\_\_\_  
(Signature of Person Responsible for Service)

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A P P E N D I X    C

VARIABLE COST DEVIATION APPLICATION FORM

APPLICATION TO DEVIATE FROM THE MINIMUM RATES FOR TRANSPORTATION  
OF COMMODITIES IN DUMP TRUCK EQUIPMENT

VARIABLE COST DEVIATION APPLICATION

Carrier applicant qualifies to file a deviation under the variable cost deviation procedure by demonstrating profitability or working capital availability by submitting a balance sheet and income statement from its most current fiscal year. New dump truck carriers must submit a balance sheet, a working capital worksheet and a projected profit and loss statement. New carriers and those applicants who show a loss on their profit and loss (income) statement will also be required to sign a release form (Appendix D) authorizing the Commission to obtain financial information from the applicant's bank records.

If subhaulers are to be used, the cost justification shall either contain a declaration that subhaulers will not provide more than half of the actual transportation under the proposed rates (as evidenced, for example, by the subhaulers providing less than half of the power units), or include the costs of the subhaulers. When subhaulers provide more than half of the transportation: 1) new subhaulers must submit a balance sheet, a working capital worksheet and a projected income statement; and 2) subhaulers who show a loss on their income statement, and new subhaulers, will be required to sign a release form (Appendix D) authorizing the Commission to obtain financial information from the subhauler's bank records.

Variable cost deviation application # (Commission will insert number)

Name of carrier (Exact Legal Name)

Principal place of business (Street Address and City)

If applicant is a corporation, attach articles of incorporation or make reference to a previous filing that contained the articles.

Carrier is authorized to transport (Show Operating Authority)

Contact person regarding this application (Name, Title, Address and Telephone Number)

Description of commodity

Deviation from Minimum Rate Tariff (Tariff Number)

Origin

Destination

Shipper

Present Rate (express in unit of measure) min. wt. (unless hourly)

Proposed Rate (express in unit of measure) min. wt. (unless hourly)



1. Describe the transportation that will be performed under this rate. (The description should cover all particulars of the transportation to include but not be limited to: Loading and unloading, loadweights and anticipated volume per day or other time period, and whether the transportation is part of a backhaul or fronthaul.)

2. In the event that subhaulers are engaged to perform this transportation, they shall be paid no less than 95% of the revenue earned from the deviated rate. If the subhaulers are only providing "pulling" services, (tractor and driver only) they shall be paid no less than 75% of the revenue earned from the deviated rate. The difference between the deviated rate and the amount paid to the subhauler will cover any brokerage fee normally paid to the prime carrier. If the rate does not adequately cover 105% of the total of the subhauler(s)' variable cost and insurance cost of performing the service, the prime carrier shall reimburse the subhauler at 95% (75% for "pullers") of the applicable minimum rate. The difference between this and what was paid to the subhauler under the deviated rate shall be paid to the Commission, by the subhauler, as an undercharge fine.

3. Subhaulers will be used to perform less than half\_\_\_\_, more than half\_\_\_\_, or none\_\_\_\_ of the transportation.

4. If authority is sought utilizing subhaulers, submit the following:

Name of Subhauler  
Permit Number  
Current Address

LIST SUBHAULERS BELOW:

1. _____	2. _____
_____	_____
_____	_____
_____	_____
3. _____	4. _____
_____	_____
_____	_____
_____	_____

5. Attach your current favorable California Highway Patrol safety report. If subhaulers are used, include this statement: I certify that all subhaulers used in performing this transportation are in compliance with applicable safety regulations.

6. Revenue/Cost Comparisons--The rate/cost information can be stated per trip, per mile, per ton, per hour or other appropriate unit of measure. Please be consistent throughout your presentation. If the proposal contains different origin/destination combinations or different weights, please give appropriate examples. (Additional sheets may be used for subhauler data). ALL CARRIERS (and

subhaulers, if subhaulers are providing more than 50% of the transportation) MUST SUBMIT REVENUE/COST COMPARISON STATEMENTS. The format below can be followed or can serve as a guide:

PROPOSED RATE:	_____	_____	_____	_____
INSURANCE COSTS:	_____	_____	_____	_____
VARIABLE COSTS:				
Driver Labor	_____	_____	_____	_____
Fuel/Oil	_____	_____	_____	_____
Tires	_____	_____	_____	_____
Maintenance and Repair	_____	_____	_____	_____
Gross Revenue Expenses	_____	_____	_____	_____
Other variable costs (Please specify. If none, write "none") *	_____	_____	_____	_____
TOTAL VARIABLE COST	_____	_____	_____	_____
INSURANCE PLUS VARIABLE COSTS	_____	_____	_____	_____
DIFFERENCE (Rate minus Costs)	_____	_____	_____	_____

\*If an input is used specifically for the job in question, and would not be used or paid for otherwise, the input is variable.

7. Attached is the carrier verification and the subhauler/prime carrier verification forms. ALL VARIABLE COST DEVIATION PROPOSALS MUST INCLUDE THE CARRIER VERIFICATION FORM. If subhaulers will be performing transportation the SUBHAULER/PRIME CARRIER VERIFICATION form must be submitted as well.

8. This rate shall become effective 30 days after the date that notice of the filing appears in the Commission's Transportation Calendar.

9. This rate shall expire           (show date)           (no later than six months from effective date).

10. In all other respects the rates and rules in MRT          shall apply.

11. Applicant will furnish a copy of this application to any interested party upon either their written request or that of the Commission.

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

### CARRIER VERIFICATION

I am the applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I certify that the rates contained in Variable Cost Deviation Application # (Commission will insert number) will cover 105% of the total of all variable costs and insurance incurred in providing the transportation.

If I am required by the Commission to collect undercharges under this deviated rate application, I must immediately discontinue use of the rate and will be prohibited from filing or participating in any new deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_ California  
(Date) (Name of City)

---

Carrier Applicant

CARRIER VERIFICATION

(Where Applicant is a Corporation)

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I certify that the rates contained in the Variable Cost Deviation Application # (Commission will insert number) will cover 105% of the total of all variable costs and insurance incurred in providing the transportation.

If I am required by the Commission to collect undercharges under this deviated rate application, I must immediately discontinue use of the rate and will be prohibited from filing or participating in any new deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure.)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Signature and Title of Corporate Officer)

SUBHAULER/PRIME CARRIER VERIFICATION

I am the subhauler applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I certify that 95%\* of the rate contained in Variable Cost Deviation Application #\_\_\_\_\_ will cover 105% of the total of all variable costs and insurance incurred in providing the transportation.

If the Commission determines that my variable and insurance costs exceed the amount earned under the deviated rate, the prime carrier shall pay me 95%\* of the minimum rate for all work performed under the deviated rate. I will pay the difference between this amount and 95%\* of the deviated rate to the Commission as an undercharge fine.

If the prime carrier is required by the Commission to pay me 95%\* of the minimum rate, I understand that I will be prohibited from filing or participating in any new rate deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Subhauler Applicant)

\_\_\_\_\_  
(Carrier Applicant)

\*75% for "pullers" furnishing a driver and tractor only.

# CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing application has been served by (specify method of service) upon each of the following:

(List names and addresses of parties served.)

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
(Name of City) (Day)  
of \_\_\_\_\_, 19\_\_\_\_.  
(Month)

(Signature of Person Responsible for Service)

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A P P E N D I X    D

FINANCIAL STATEMENT FORMS REFERRED TO IN APPENDIX C



PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
RELEASE OF INFORMATION AUTHORIZATION

The undersigned authorizes the California Public Utilities Commission to obtain such verification or further information as it may require concerning information on financial condition set forth in the application for deviation authority, as submitted by the undersigned.

Regarding the verification of bank records, such verification shall be limited to the particular accounts and/or items listed below by the applicant and shall be limited to a period of time commencing on the date of the signing of the application and ending on the date of the granting or rejection of the application; but in no event shall the period for the verification of bank records extend beyond the date of the final disposition of the application.

The applicant has the right to revoke this authorization at any time, and agrees that any documents submitted for the purpose of demonstrating financial condition shall remain with the Commission.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant(s)

BANK RECORDS:

NAME AND LOCATION OF BANK	TYPE OF ACCOUNT	ACCT. NO.	AMOUNT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
CONSENT TO OBTAIN INFORMATION  
(To be signed by non-applicant spouse of married applicant)

I authorize the California Public Utilities Commission to obtain whatever information about my financial condition it considers necessary and appropriate for the purposes of evaluating the financial condition of my spouse as an applicant for deviation authority.

Regarding the verification of bank records, my authorization is limited to the accounts and/or items listed below and is limited to a period of time commencing on the date of the signing of the application and ending on the date of the granting or rejection of the application; but in no event shall the period for the verification of bank records extend beyond the date of the final disposition of the application.

I understand that I have the right to revoke this authorization at any time.

Date \_\_\_\_\_  
Signature of Spouse \_\_\_\_\_

BANK RECORDS:

NAME AND LOCATION OF BANK	TYPE OF ACCOUNT	ACCT. NO.	AMOUNT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

MEMORANDUM

TH-2 & TH-5

Date : January 24, 1989  
To : The Commission  
From : Carl Danner <sup>OO</sup>  
Advisor to President Wilk  
File No.: OSH 325 et al.  
Subject : Alternate to Items TH-2 and TH-5, January 27, 1989  
Agenda

This alternate combines ALJ Lemke's version of TH-2 with an alternate to TH-5. We consolidated these orders to link the two decisions as a comprehensive approach to problems now faced by the industry and its consumers.

There are two significant changes to TH-5 in this alternate. One, the Yuba Trucking expedited/deviation is adopted for rate deviations not to exceed 10 percent of the minimum rate. We believe that this more straightforward procedure should be available for relatively small deviations that are certain to cover variable costs. Two, the Transportation Division's proposed variable cost deviation procedure is amended by removal of the carrier-shipper agreement. This agreement stated that undercharges could be assessed for transportation carried under an approved deviation if a later review discredited the original basis for the deviation. Potential liability for shipments carried under an approved rate seems inconsistent with the purpose of the deviation procedure. Such a requirement would also have a chilling effect on shipper willingness to participate in the process.

A number of other small changes are included and marked. The attached appendices have been modified to comport with changes to the body of the decision.

## Decision \_\_\_\_\_

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation  
for the purposes 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, OSH 325  
) (Filed April 17, 1985)  
) Case 5437, OSH 323  
) (Filed October 1, 1984)  
) Case 5437, Pet. 327  
) (Filed May 1, 1985)  
) Case 5437, Pet. 329  
) (Filed June 6, 1985)

And Related Matters.

) Case 9819, OSH 75  
) Case 9820, OSH 25  
) (Filed April 17, 1985)  
) Case 9819, Pet. 79  
) Case 9820, Pet. 29  
) Case 5432, Pet. 1060  
) (Filed June 6, 1985)  
) Case 9819, OSH 76  
) Case 9820, OSH 27  
) (Filed May 1, 1985)

(For appearances see Decisions 86-08-030 and 87-05-036.)

INTERIM OPINION

This consolidated proceeding is being conducted for the purpose of considering methods and procedures through which effective dump truck minimum rate policy can be established, administered, and tested in practice.

This decision will consider two related matters in this proceeding: the proposed interim rate increase for dump truck minimum rates, and the proposals for expedited procedures for securing authority to deviate from established minimum rates for the dump truck transportation. We have consolidated these matters for decision because they represent a unified solution to the problems now faced by the industry and its consumers. The rate increase will address the concerns of many carriers regarding the

adequacy of the minimum rates while we complete our task of updating those rates. An improved deviation process will address the concerns of some carriers and many shippers regarding the need to meet competitive market conditions and to permit deviations to be granted expeditiously.

#### I. INTERIM RATE INCREASE

On March 9, 1988, California Dump Truck Owners Association/California Carriers Association (CDTOA/CCA) filed its Motion For An Interim Decision Granting Rate Increases In The Dump Truck Minimum Rate Tariffs To Reflect The Increased Cost Of Doing Business (the motion).

##### Background

By Decision (D.) 86-08-030 dated August 6, 1986, we adopted cost methodologies for cost gathering and ratemaking purposes, except for those commodities described in Items 40, 50, and 60 of Minimum Rate Tariff (MRT) 7-A. The adopted methodologies are to be used, in other words, in connection with cost gathering and ratemaking of construction related commodities named in Item 30 of MRT 7-A, for which rates are named in MRTs 7-A, 17-A, and 20. (MRT 7-A names statewide hourly and distance rates, as well as certain zone rates; MRT 17-A names zone rates in southern California; and MRT 20 names zone rates and certain distance rates in the San Francisco Bay Area.)

By its motion CDTOA/CCA sought 5% interim increases in all hourly, distance, and zone rates in MRT 7-A, and in all zone and distance rates in MRTs 17-A and 20. They later amended their motion and now request increases only in those rates in the three MRTs which apply to the transportation of construction related commodities described in Item 30 of MRT 7-A.

Protests to the proposed increases were filed by Yuba Trucking, Inc. (Yuba), by Californians For Safe & Competitive Dump Truck Transportation/Syar Industries, Inc. (CSCDTT/Syar), and by the Commission's Transportation Division staff (staff). Evidence on the proposed increases was heard before Administrative Law Judge (ALJ) John Lemke in San Francisco on July 6, 1988 after which the matter was submitted.

The petitioners assert generally as follows in their written motion:

1. The Commission is statutorily obliged to keep its minimum rate program current. In Minimum Rate Tariff No. 7 (1965) 65 CPUC 167, 172, the Commission stated, in discussing its duty to regulate the rates of dump truck carriers, "It is incumbent upon the Commission, therefore, to keep its minimum rate program responsive to current transportation conditions." The current rates are not responsive to current transportation conditions; some upward adjustment is needed to offset increased costs of doing business.

2. Current rates result in a large number of carriers providing dump truck transportation at unprofitable levels.

While under current ratemaking methodology rates are designed to return an 8% profit, the results of a survey show that a large majority of carriers are operating at break-even or unprofitable levels (Exhibits 78 and 79). For example, in 12 Bay Area counties, 32.6% of the carriers report profitable operations, 17.4% report break-even operations, and 46.3% report unprofitable operations. 56% of carriers in southern California and 63.2% of carriers in the remainder of the state are operating at the break-even point, or are losing money in performing dump truck services.

3. Exhibits of record are the principal source of evidence relied upon for the requested increases. Exhibits 54, 55, 56, and 57, Revised Exhibits 59, 83, 84, and 92, and related testimony, provide this evidence. D.86-08-030 adopted cost methodologies to be used in OSH 325 for cost gathering and ratemaking purposes for

construction related commodities. The staff has used these methodologies in gathering costs contained in some of the above-mentioned exhibits. While the staff has designated its cost data as "preliminary" data, pending the results of the en banc hearings conducted by the Commission regarding the regulatory policies to be pursued in connection with the trucking industry, nevertheless, the evidence contained in these exhibits is the best and most current evidence of dump truck carrier costs available. Further, no other cost evidence is contemplated for presentation and no new studies are in progress. Therefore, the Commission should use this most current information as the basis for maintaining rates in the three MRTs at currently reasonable levels.

4. Exhibits 83 and 84 demonstrate the need for and justify the sought increases. Except for a 1986 increase of less than 3%, dump truck rates have not been increased since the decision in Petitions 328, et al. in Case (C.) 5437. Increases are warranted based on a comparison of Petition 328 costs with those contained in Exhibits 83 and 84. Indicated increases range from 6% to 34% in connection with hourly rates named in MRT 7-A, even before the introduction of Exhibit 92, which corrected historical vehicle costs by increasing the cost of a 2-axle tractor by approximately \$4,000. Exhibit data pertaining to MRTs 17-A and 20 also indicate the need for larger increases than the proposed 5%.

CDTOA/CCA originally believed the labor cost data contained in revised Exhibits 59 and 60 to be adequate and representative for use in establishing labor cost levels to premise interim adjustments in the rates in MRTs 7-A, 17-A, and 20. (However, during the hearing on July 6 their witness, James Martens, stated that in preparing Exhibit 94, which is an update of earlier cost presentations, the labor cost from Petition 328 is being used because of the uncertainty surrounding Exhibits 59 and 60, due to the appeal by the Center For Public Interest Law from a

ruling of the ALJ denying its motion to exclude data based on a labor cost survey conducted by the staff.)

CDTOA/CCA assert that it is in the area of fixed costs, i.e., vehicle, tax and license, and insurance that the greatest increases have occurred. For example, vehicle historical costs are up by 40% due to the inclusion in Exhibit 92 of the costs of 1985, 1986, and 1987 vehicles. In 1986 dump truck carriers received an increase of between 2% and 3% to recover increased costs of insurance premiums; but the increase was based on a premium of approximately \$6,000, while current premiums average \$9,873.

With respect to running costs, which include costs for fuel, oil, tire, and repair and maintenance expenses, CDTOA/CCA are willing to accept the staff developed figure of 10.8 cents per mile, shown in Exhibit 54, except that they believe the fuel cost to be used should be the most current price developed from the 521 Report.

The petitioners state that Exhibit 92, containing updated vehicle historical costs, is the most current and accurate information for the determination of fixed costs, including calculations for investment, depreciation, taxes and licenses, and insurance. They urge the use of Exhibit 92 information for purposes of this motion.

The motion was filed March 9, 1988 and was served on all parties of record. On May 20, 1988, the ALJ issued a ruling to all appearances in this consolidated proceeding stating that hearings on the motion would be conducted in San Francisco during the week of July 5. In addition to the protests filed by Yuba, CSCDTT/Syar, and the staff, the increases were opposed by the Associated General Contractors of California and by California Asphalt Pavement Association. The motion was supported by California Trucking Association.

In justification of its motion, CDTOA/CCA state that there is precedent for this method of seeking rate adjustments



found in the Commission's reregulation proceeding involving used household goods (C.5330, OSH 100). There, in circumstances very similar to those occurring in this proceeding, a need for rate increases was indicated. The carrier association requested interim increases of 10% and 15%, while the staff recommended increases of 5% and 10%. In D.86-04-062 the Commission found that increases in operating costs, including insurance premiums, historical vehicle costs, etc. had increased to the extent that increases in rates were necessary to provide just and reasonable rates for the transportation of used household goods until a complete record could be developed.

CSCDTT/Syar in their protest assert that the motion is beyond the scope of issues contemplated by this proceeding, since OSH 325 was issued for the purpose of considering methods and procedures through which more effective dump truck minimum rate policy could be established and tested in practice. Further, these protestants maintain that Petition 329, et al. of the Ad Hoc Committee in this consolidated proceeding was to consider issues such as tariff simplification, cost and rate gathering methodologies, deviation procedures, etc.; that nothing in the OSH or petitions suggests that a rate increase request should be considered in this proceeding. These protestants also argue that the proposed rate increases are based upon unreliable, outdated, and misleading cost information, would be premature, are based on speculative, unsupported hearsay evidence, and would have a substantial adverse impact upon their interests. They requested that the motion be dismissed, or, alternatively, be set for hearing.

Yuba also insists that the increases are beyond the scope of OSH 325, and that a rate increase is inappropriate at this time since the cost gathering methodologies are the subject of petitions for modification. Yuba also maintains, inter alia, that the cost evidence admitted thus far is preliminary, not final; further, that

the request for increases violates the Commission's Rules of Practice and Procedure since no rule allows a motion for a rate increase.

Staff emphasizes that its labor cost survey has been performed for the limited purpose of establishing territorial boundaries, and not for ratemaking purposes. Staff notes that while rates have been increased by only 2%-3% over the last three years, increases in excess of 25% have been ordered in the three MRTs naming rates for transportation performed in dump truck equipment since 1979. Staff contends that since the petitioners have not established an emergency need for an interim decision granting an increase, and have received rate increases in excess of 25% since 1979, the motion should be denied.

The ALJ informed the parties that he would take official notice of recent information relating to operating ratios contained in the annual reports of dump truck carriers.

During the evidentiary hearing conducted on July 6, 1988, the witness for CDTOA/CCA, James Martens, sponsored Exhibit 94, an update of costs in all categories necessary to calculate increases in total costs for transportation performed under MRT 7-A. Similar cost developments are contained in Exhibits 95 and 96, which contain costs for transportation performed under MRTs 17-A and 20, respectively.

In Exhibit 94 Martens has used revenue hours adopted in D.86-08-030 for developing equipment fixed costs, which represents a reduction of 100 hours per year for all vehicles from the annual use hours formerly used. The historical vehicle costs were taken from Exhibit 92, developed by the staff, which includes costs through 1987. Running costs are those contained in Exhibit 55 in this proceeding.

Martens calculated total costs at 100 operating ratio (O.R.) for the various regions described in MRT 7-A, and compared those costs with those premising the increases ordered in the

Petition 328 proceeding. The comparisons shown in Exhibit 94 indicate that costs at 100 O.R. have increased as follows:

S. F. Bay Area Region	- 6.4% to 17.3%
Northern Region	- 8.4% to 22.3%
Southern Region	- 5.7% to 17.6%
San Diego Region	- 6.7% to 16.2%

Increases in hourly rates in MRT 7-A based upon the same cost developments but calculated at O.R. 92 would range from 6.90% to 19.9% in the Northern Region, and 3.5% to 18.4% in the Southern Region.

Costs developed for transportation performed under MRT 17-A by the petitioners using the same methodology employed in the development of those for MRT 7-A indicate increases are warranted in rates for the transportation of rock, sand and gravel for sample hauls of 5, 25, and 50 miles ranging from 11.9% to 16.0%; for the transportation of asphaltic concrete increases range from 17.8% to 18.2%; and for asphalt the increases amount to about 8.7%. For the hauling under MRT 20 increases so measured range from 16.2% to 20.3%.

Increases in the historical cost for 2-axle and 3-axle units have significantly exceeded those for 5-axle units; hence, costs developed for the 2-axle and 3-axle units are substantially higher than those developed for 5-axle units.

Martens testified that information set forth in other exhibits shows that the industry appears to be losing money. He was referring to the petitioners' analysis contained in Exhibit 79, which contains information derived from the demographic survey.

Martens testified that the Commission will soon consider adoption of a streamlined deviation procedure; that if such procedure is adopted, the rates to be deviated from should be as current as possible, from the standpoint of being cost based. He also asserted that within the CDTOA membership are the largest and

smallest fleet owners of dump trucks in the state, and the vast majority of the membership is losing money.

Martens stated that while there have been decreases in labor expense, as well as in the cost of maintenance and repairs, the fixed costs underlying the rate structure, i.e., vehicle historical and depreciation costs, as well as insurance premiums have risen so greatly that rate relief is required. He conceded that if labor costs were to be reduced from the Petition 328 level, the result would be to offset some of the increases in fixed costs. He further commented that, based upon the labor cost survey performed by the staff (revised Exhibits 59 and 60) labor costs in the Northern California Region have increased a little over the levels used in Petition 328, while they have decreased slightly in southern California and decreased about \$5 per hour in the counties in the San Francisco Bay Area. However, he emphasized that in Petition 328 CDTOA proposed a substantially lesser increase than the labor factor indicated for the Bay Area. Martens maintained "We don't think that a 5% increase today is going to be greater than the total cost when it's all put together six months down the road."

In summary, petitioners used the labor cost from Petition 328 for purposes of their motion. All other expenses are those developed thus far by the staff, which in turn are based upon the methodologies adopted pursuant to D.86-08-030 in this proceeding. The Petition 328 labor cost levels were those measured early in 1985.

#### Discussion

Many of the rates calculated by CDTOA/CCA indicate that increases well into double digits are warranted, based upon the cost methodology employed by the staff as well as petitioners. Except for increases of 2.2% to 3.0% ordered in April 1987 to offset increased insurance premiums, the rates contained in the three involved MRTs have not been increased since November 1985.

At that time rates in MRT 7-A were increased by varying amounts ranging from 2% to 4% for hourly rates named in Item 390. Other rates in MRT 7-A were increased by 4 percentage points, which constituted increases close to 3% because the rates were then already subject to surcharges of about 25% in many cases. Increases in MRTs 17-A and 20 were increased by varying amounts ranging from 2-1/2 to 5 percentage points, which also represented lesser percentage increases because of the already applicable large surcharge levels.

The request of 5% is conservative, in that it is based upon 1985 fuel costs of 86 cents per gallon. The fuel cost measured by the staff in the most recent 521 Report is approximately 94 cents. We are committed to maintaining minimum rates at compensatory levels while this proceeding is in progress. The cost data utilized by the petitioners is the most current information available. We are now three years into this investigation, and while there has been much progress in the way of formulating cost methodologies, and many new rules have been adopted, there is no definite end to the proceeding in sight at this time. As the assigned ALJ was preparing his proposed decision, hearings were scheduled for the receipt of evidence on expedited deviation procedures. The petitioners argue that if we are to adopt such procedures immediately, prior to completion of the entire OSH 325 proceeding, it would be appropriate that rates subject to deviation procedures be as current as possible.

The demographic study relied on by the petitioners contains information which appears to corroborate the costs contained in CDTOA/CCA's Exhibit 94. Question 5.9 of the information request used in the demographic study is: "After paying all expenses of operation (including a reasonable salary for the owner), is your present dump truck business very profitable ( ), profitable ( ), break-even ( ), or unprofitable ( )?" The information requests were sent out in October 1987 to dump truck

carriers earning \$25,000 or more under the dump truck MRTs. It shows that in the CDTA/CCA proposed Central Coastal Territory, of 592 dump truck carriers 46.3% reported unprofitable operations, 17.40% were at break-even, 31.42% were profitable and 1.18% were very profitable. In the Southern Territory, of 1,270 carriers 44.80% reported unprofitable operations, 12.13% reported break-even operations, 38.74% reported profitable operations and 2.05% reported very profitable operations. Of 535 carriers in the Northern Territory, 48.60% reported unprofitable operations, 14.58% reported break-even operations, 32.34% reported profitable operations, and 1.31% reported very profitable operations. On a statewide basis, 61.3% of the carriers either make no profit or are unprofitable, with 46.6% reporting that they are unprofitable.

Exhibit 79 also contains information concerning hours worked during the years 1984, 1985, and 1986. Based upon this data, the number of hours worked in Central Coastal Territory in those years were, respectively, 1,595, 1,585 and 1,613; in Southern Territory, 1,567, 1,630 and 1,684; and in Northern Territory, 1,610, 1,614, and 1,614 for the three years. The data tends to show that while the amount of work for the industry increased or at least held constant, nevertheless, based upon the results of the profitability question discussed supra, as well as the data contained in Exhibit 94, the industry as a whole has not been able to earn the traditional profit of approximately 8% which has been deemed by the Commission to be appropriate for this particular segment of the transportation industry.

The operating ratio information which the ALJ informed the parties he would take official notice of is stated below. It is a weighted average of 37 representative carriers who have been included in similar analyses in other proceedings involving requests for rate increases, e.g., C.5437, Petitions 314 and 321. In those cases, the operating results of 60 carriers were analyzed. The annual reports for 1987 for all 60 of those same carriers are

not available in our Auditing and Compliance Branch. The representative data indicate a weighted average cost-rate relationship of 97.8%, before allowances for interest and income tax expenses.

1987  
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ANNUAL REPORTS  
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OF  
DUMP TRUCK CARRIERS  
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Line: No.	Carrier	Revenue	Expense	Weighted: D.R. %
(1)		(2)	(3)	(4) (3)/(2) x 100
1	ASTA CONSTRUCTION CO.	\$ 1,580,372	\$ 1,358,686	85.9 %
2	BAILEY, WAYNE TRUCKING, INC.	1,105,763	945,675	85.5 %
3	BARNARD TRUCKING SERVICE, INC.	2,202,824	2,163,919	98.2 %
4	BRINK & MARINI, INC.	935,148	800,959	85.7 %
5	BYERS, A. C.	4,958,367	4,830,614	97.4 %
6	CERINI TRUCKING	2,152,674	1,951,982	90.7 %
7	D & K TRUCKING	783,820	843,941	107.7 %
8	DALTON TRUCKING, INC.	13,485,799	12,915,091	95.8 %
9	DINEEN TRUCKING, INC.	1,504,070	1,423,320	94.6 %
10	DISPATCH TRUCKING	4,919,009	4,765,536	96.9 %
11	FLETCHER, K.A. INC.	2,192,407	2,205,787	100.6 %
12	HANNAH TRUCKING SERVICE, INC.	2,175,524	2,024,772	93.1 %
13	HARKRADER, ROBERT TRUCKING	1,554,957	1,414,403	89.7 %
14	HARRISON-NICHOLS COMPANY, LTD.	5,583,415	5,477,547	98.1 %
15	HARRISON TRUCKING, INC.	4,439,573	4,512,643	101.6 %
16	HARTWICK & HAND, INC.	3,081,347	3,186,829	103.4 %
17	HILDEBRAND & SONS TRUCKING, INC.	4,890,313	4,868,028	99.5 %
18	INGLETT EQUIPMENT, INC.	2,055,529	1,958,055	95.3 %
19	JOHNSON BROS. TRUCKING, INC.	3,167,275	3,216,101	101.5 %
20	KISHIDA, GEORGE INC.	3,960,724	3,621,639	91.5 %
21	LINDEMAN BROS., INC.	5,475,730	5,362,955	97.9 %
22	MARTENS, HENRY E. TRANSPORT	5,309,568	5,011,652	94.4 %
23	MORE TRUCK LINES	2,547,845	2,507,452	98.4 %
24	NICHOLLS TRUCKING, INC.	1,364,603	1,391,936	102.0 %
25	NORDIC TRUCKING, INC.	2,817,373	2,690,531	95.5 %
26	R & B & SONS, INC.	3,209,605	3,239,497	100.9 %
27	RICHMOND, LINK & SONS, INC.	8,515,984	8,353,854	98.1 %
28	ROADWAY CONSTRUCTION CO., INC.	7,828,732	7,371,608	94.2 %
29	ROGERS TRUCKS & EQUIPMENT, INC.	5,709,861	5,415,486	94.9 %
30	SALAMONI, BEN TRKG. SER., INC.	3,798,185	3,954,578	104.1 %
31	SAND TRANSPORTATION SER., INC.	2,763,050	2,745,800	99.4 %
32	SKOFF TRUCKING	1,763,449	1,745,753	99.0 %
33	TOUCHATT TRUCKING	6,757,481	6,702,166	99.2 %
34	TRI-COUNTY TRUCK CO.	13,193,215	13,006,996	98.6 %
35	VAN METRE, C.H. & SON	327,560	326,461	99.7 %
36	WALTER, A. D. TRUCKING, INC.	314,456	294,127	93.5 %
37	W.S.P. TRUCKING, INC.	3,553,705	3,765,935	106.0 %

TOTAL      \$143,375,177    \$140,274,983      97.8 %



We have never considered the development of costs and rates for any segment of the trucking industry to be an exact science. In order to formulate rates which are reasonable for every carrier operating under a particular minimum rate tariff, many judgment decisions must be made. In this subproceeding we have four separate pieces of information which tend to support the petitioners' rate proposal, at least in part. These are (1) their Exhibit 94, which relies upon the 1985 labor cost factor combined with current staff measured equipment costs, and would justify an increase of 5% in all rates, even when using the old fuel cost of 87 cents per gallon; (2) the operating ratio data based upon the results of operations of 37 representative dump truck carriers during 1987; (3) the demographic data presented by CDTOA/CCA in their Exhibit 79; and (4) the labor cost information contained in Revised Exhibit 59. This last data, staff insists, should not be used for ratemaking purposes. It was not gathered for that purpose; rather, staff intends to use these costs in its recommendation concerning the establishment of territorial descriptions. Neither is CDTOA/CCA using Exhibit 59 in its cost/rate development. However, for purposes of this request we may exercise our ratemaking judgment by considering the data in Exhibit 59 for the sole purpose of ensuring that the Petition 328 labor costs used by the petitioners in assembling their total costs, are "in the ballpark" with respect to currently experienced labor costs.

Revised Exhibit 59 shows that 1987 labor costs paid in the various counties are both over and under the Petition 328 levels. Similarly, the Petition 328 cost levels are averages of labor costs experienced in various counties. In the circumstances it is reasonable to use Petition 328 labor cost levels for interim rate offsetting purposes. With respect to equipment fixed and running, insurance, gross revenue, and indirect expenses, the costs contained in the staff exhibits may also be used for interim

ratemaking. If we were to grant the motion as proposed and amended, there would likely be sufficient cushion in the conservative total cost development of petitioners so that no such rate increase would be more than justified because of reduced labor cost measured in some counties as shown in Revised Exhibit 59. This is partly because of the use by the petitioners of the fuel cost of 86 cents, rather than the later 94 cents cost level contained in the last 521 Fuel Report. However, for the sake of those instances where such reduced labor costs may result in lower total costs than might be offset by the other cost increases, we will feel more comfortable, acting on this interim request, in granting an increase of 4 percentage points rather than the full amount requested. This will result in a theoretical industrywide cost-rate relationship of approximately 94%, based upon the 1987 operating results of the 37 representative carriers shown above.

We will place the industry on notice that when rates are ultimately developed for efficient dump truck carriers the Commission may decide to base such rates on costs other than the industry average costs traditionally used for ratemaking purposes. If so, such rates may be, at least in some instances, lower than industry average cost based rates.

Protestants object to the method of notice of the request for rate increases. Notice of filing of the motion appeared in the Commission's Daily Transportation Calendar of March 16, 1988. The ALJ's ruling of May 20 contained notice of the evidentiary hearing to be held on the motion. All appearances and parties had sufficient notice and opportunity to prepare responses to the motion and to present evidence in opposition thereto at the hearing held on July 6. A similar procedure was observed in connection with an interim increase request in our proceeding on used household goods (C.5330, OSH 100). In the circumstances, we find that the parties have had ample notice and opportunity to oppose the increase requests.

## II. MINIMUM RATE DEVIATION PROCEDURES

### Background

Public Utilities (PU) Code § 3666 provides that upon a finding by the Commission that a proposed rate is reasonable, dump truck carriers may perform transportation at a rate lower than the established minimum rate. Resolution TS-682 sets forth the procedure for filing deviation requests. It requires generally that such rates cover a carrier's fully allocated costs. Initial applications are reviewed by the Transportation Division (TD) staff and an administrative law judge (ALJ) prior to their approval by the Commission. The time between filing and granting such initial requests can take three months or more, depending on how complete the justification is when filed, and on whether public hearing is required because of protest. Applications for renewals of deviations are handled much faster under the Special Deviation Docket procedure.

Decision (D.) 85-04-095, which initiated Order Setting Hearing 325, et al. directed that hearings should be held to consider developing a "procedure under which an individual dump truck carrier can be readily permitted to charge less than the established minimum rate level when actual circumstances warrant such action."

Six days of public hearing were held during August 1988 in San Francisco. This phase of the consolidated proceeding was submitted upon the filing of briefs November 7, 1988. Recommendations were received from TD staff, Yuba Trucking (Yuba), California Dump Truck Owners Association/California Carrier Association (CDTOA/CCA), and by the Coalition For Safe, Sensible and Nondiscriminatory Dump Truck Rates (Coalition). Each proposal is discussed as follows:

### TD Staff

TD staff asserts that dump trucking is characterized by abruptly changing seasonal and cyclical patterns peculiar to the construction industry. It believes that if carriers had the opportunity to establish less-than-minimum rates on the basis of their short run marginal (variable) costs, they might be able to gain additional business during slow times when their equipment and drivers would normally remain idle. Also, TD staff maintains that carriers would be able to seek loads for trucks that would otherwise be traveling empty to or from a point of pickup or delivery. TD staff maintains it has the experience to process rate filings of this type; that if deviation requests were reviewed by TD staff rather than handled as formal matters, rate deviations could become effective more quickly.

TD staff proposes establishing an expedited two-tier deviation procedure that would offer a choice to applicants of making either a full cost or a variable cost showing. Either showing would be analyzed and approved by the TD staff, and would become involved in a formal process only if a valid protest were received.

### Full Cost Procedure

This procedure is similar to the existing procedure. Three major differences are: (1) the applicant will not be required to make a showing of special circumstances; (2) the proposed rate, if uncontested, automatically becomes effective 30 days after notice of the filing is published in the Daily Transportation Calendar (DTC); and (3) the Special Deviation Docket procedure now used in connection with renewals will no longer be required, because renewals will also be processed under the informal procedure. Renewal applications will be listed on the DTC and processed in the same manner as initial applications. The full

cost procedure will, as at present, require a showing that the proposed rate will produce a reasonable profit over the carrier's fully allocated costs.

Variable (Marginal) Cost Procedure

This procedure allows profitable carriers or carriers who possess sufficient working capital to quickly establish rates with certain shippers at or above the carrier's variable cost of providing the service. There are restrictions on who can engage in Variable Cost Deviations, and on the length of time (six months) such deviations can be in effect without a new filing by the carrier. Variable costs are listed in the TD staff proposal, and include the following elements: driver labor, fuel/oil, maintenance and repair, gross revenue expenses, and "other" variable costs. If an input is used specifically for the job in question, and would not be used or paid for otherwise, the input is considered variable under the TD staff proposal.

Carriers must submit a showing that they are either profitable, or, in the case of new carriers, have working capital to cover any loss that could result from using the variable cost rate. A balance sheet and income statement for the most recent year will be submitted for analysis.

The applicant would also furnish a simple cost analysis proving that the proposed rate is at least 105% of its variable costs, accompanied by a statement under penalty of perjury confirming the accuracy of the analysis. The carrier and shipper must sign an agreement describing the transportation and proposed rate, and stating that the shipper has examined the carrier's cost data and accepts it. The shipper commits to pay and the carrier to collect any difference between the deviated rate and the minimum rate if, by formal order, the Commission determines that the deviated rate will not cover 105% of the carrier's variable costs

incurred in the performance of the service. Amounts thus collected will be considered undercharges and paid to the Commission as a fine by the carrier.

Subhaulers engaged by prime carriers to provide transportation under the deviated rate must submit to the prime carrier a simple cost analysis proving that the compensation received from the deviated rate is at least 105% of the subhauler's variable costs incurred under the subject transportation. Subhaulers would also be required to submit a copy of their most recent Internal Revenue Service (IRS) Forms 1065, 1120, 1120-A or 1040, Schedule C, to prove that the subhauler's overall operations are profitable. New subhaulers would submit a balance sheet, working capital worksheet and a projected profit and loss statement. Subhaulers thus engaged must be paid not less than 95% of the deviated rate, 75% when they provide tractor (pulling service) only.

Carriers filing variable cost deviations must submit new applications every six months to continue using the rate, i.e. no renewal process would be available in connection with variable cost filings.

TD staff recommends that both procedures be adopted, and that Resolution TS-682 and Rule 42 series of the Commission's Rules of Practice and Procedure be amended as necessary to implement the procedures. TD staff has furnished both Full Cost and Variable Cost deviation application forms to be used in connection with its proposal. TD staff urges that the procedures be implemented as soon as possible, maintaining that downward pricing flexibility is needed and should be made available for use by carriers and shippers at the earliest possible date.

#### Yuba

Yuba's proposal, set forth in its Proposal For A Streamlined Rate Deviation Procedure (Exhibit 98), has the virtue of simplicity. It recommends that a carrier seeking to assess less

than an established minimum rate be allowed to file an application showing (A) the carrier's safety program and overall safety record, (B) its overall financial condition, indicated primarily by the information contained in the carrier's current balance sheet, and (C) specific information set forth in the application relating to the transportation to be performed, the present and proposed rates, etc. The proposed rate would have to be at least 80% of the established minimum rate. This is because, Yuba alleges, variable costs associated with the dump trucking industry, plus insurance costs, typically are about 80% of total costs. The breakdown of these costs, as contained in Yuba's proposal, is as follows: Labor, 40%; Fuel/Oil, 15.0%; Repairs & Maintenance, 12.5%; Tires, 05.0%; Insurance, 07.5%.

Yuba also alleges that if its procedure were adopted the administrative lag time and the filing costs now faced by carriers seeking deviations would be materially reduced. Since the construction hauling jobs Yuba secures each tend to produce less than \$100,000 in annual revenues, it believes that a deviation procedure that minimizes the costs associated with obtaining authority to charge less than minimums is particularly desirable. Such a procedure makes it cost effective for Yuba and many other carriers to participate in reduced rate hauling, in Yuba's opinion.

Upon finding that the carrier's financial condition and safety record are satisfactory, a proposed rate that is no less than 80% of the established minimum rate would be approved under Yuba's proposal.

CDTOA/CCA

The CDTOA/CCA proposal is set forth in Revised Exhibit 100. It consists of a proposed general order (GO) governing rate deviation procedures. The proposal contains two procedures. The first is contained in Rule 5 of the proposed GO, and relates to those situations where dump truck carriers desire to assess less than established minimum rates on a cost justified

basis. A showing must be made of circumstances or conditions involved in the subject transportation, not present in usual or ordinary circumstances, which allow cost savings. Examples of such conditions include:

- a. Equipment use factors greater than those underlying the minimum rates;
- b. Use of lightweight equipment allowing allowing greater than average loads;
- c. Favorable loading/unloading circumstances;
- d. More fuel-efficient power equipment;
- e. Greater volume of traffic and scheduling opportunity, resulting in less administrative supervision.

Applications for such reductions must show that revenue generated from proposed rates is sufficient to contribute to a carrier's profitability. Applications must also include a favorable current California Highway Patrol Terminal Evaluation Report, and a certification that the applicant and subhaulers are in compliance with all safety regulations applicable to their operations. Applications meeting specified requirements would be deemed reasonable and become effective 30 days after Calendar publication date, unless protested. Renewals of rate deviations would require the same revenue and cost data evidence required in the initial application.

The Rule 5 applications would apply to the transportation of all commodities transported under rates in Minimum Rate Tariffs (MRTs) 7-A, 17-A, and 20.

The second CDTOA/CCA is set forth in Rule 6 of the proposed GO. It relates to deviations for the transportation only of construction commodities, defined as those listed in Item 30 of MRT 7-A, Item 60 of MRT 20, and Items 60, 65, 70, and 75 of MRT 17-A. This second proposal would apply in connection with the



transportation of these commodities to or from a construction project. "Construction Project" is defined as follows:

"A project involving the transportation of construction commodities in bulk in dump truck equipment and where the differential between the established minimum distance or zone rates for the involved transportation and the proposed less than the established minimum rate for application to distance or zone rated shipments will produce projected transportation cost savings totaling \$10,000 or more for the shipper (debtor)."

CDTOA/CCA's purpose in connection with Rule 6 deviations is contained in Rule 6.2, and states in part:

"The rationale for Rule 6 deviation procedures is a binding transportation contract between the dump truck carrier and the shipper (debtor), the payment and performance of which is guaranteed by the posting of a bond by the shipper (debtor). Rule 6 deviations from established rates in the dump truck minimum rate tariffs are to be supported by a detailed demonstration of performance factors by the shipper and/or carrier which are more efficient than those which have been used by the Commission in establishing dump truck minimum rates for construction commodities."

Several performance factors underlying current dump truck minimum rates are listed in Appendix B to the proposed GO. These include revenue hours, loading/unloading times, average loads, equipment hours per round trip, etc.

Paragraph D of Rule 6.3 of this proposal requires that at the time of filing of the application for use of the less than established minimum rate, a bond must be furnished by the shipper. The bond would guarantee payment to the carrier and any subhaulers used in the subject transportation of the full minimum rates, should the performance factors and efficiency standards set forth in the application not be achieved, on average, during the performance of the transportation.

There are a number of restrictions, and more than a few procedures which must be followed in connection with the CDTA/CCA Rule 6 proposal. For example, Rule 6 deviations apply only on the transportation of construction commodities, to or from construction projects. They would not be allowed on the transportation of the Item 40, 50 or 60 commodities named in MRT 7-A, nor on interplant hauling. Nor would they be allowed on hourly rate transportation. A filing fee of \$500 would be required. Known subhaulers must co-sign the application; those added to the project later would also have to enroll in the deviation process. If carriers, including subhaulers, are not paid promptly in accordance with Item 130 of MRT 7-A, the deviation authority would be canceled. Complete documentation must be kept for each unit of equipment, showing the computation of productivity factors and efficiencies, summarized daily. This information must be accumulated and summarized in a monthly report to the Commission.

The required bond would not be cancellable until 120 days after completion of the construction project transportation, and not until the results achieved under the transportation had been audited by the Commission's TD staff and found to be consistent with the performance factors underlying the authorized rate. If the audit reveals that those performance factors were not attained, the carrier would be required to collect all "undercharges" in accordance with PU Code § 3800, pay this amount to the Commission, perhaps pay a penalty to the Commission in addition, and be barred from performing Rule 6 type deviations for one year.

The proposed GO contains a provision that the Commission would have to assign sufficient personnel to review, analyze, monitor and audit Rule 6 deviations, and increase the amount to be paid into the Transportation Rate Fund by dump truckers to pay for this additional regulation.

California Trucking Association (CTA) indicated its support of the CDTOA/CCA proposal for an interim period of two years subject to review at the expiration of that period. CDTOA/CCA have no objection to adoption of their proposal, contained in Revised Exhibit 100, for an interim two-year period.

#### Coalition

The Coalition's proposal is the easiest to state of the four proposals. It recommends simply that Resolution TS-682 be modified, by providing that if no protest is filed to a sought deviation, and neither the Commission's TD staff nor an assigned ALJ has any objection to its authorization, the ALJ shall within 20 days after expiration of the protest period prepare a proposed decision, which shall be considered by the Commission at its first meeting thereafter.

#### Discussion

For several decades we have developed and maintained minimum rates for the transportation of commodities in dump truck equipment. Costs have been developed based upon industrywide, average performance data. While many deviations have been authorized for the interplant transportation of dump truck commodities, few have been granted in connection with the transportation of rock, sand and gravel when involved in construction activity. Resolution TS-682 has required that deviations be based upon favorable circumstances attendant to the transportation, such as a return load opportunity. Such opportunities are seldom involved in construction activity. To the extent that construction haulers such as Yuba may find it infeasible to incur the present level of expense associated with obtaining authority to charge less than minimums on much of their traffic because of job size, present procedures further diminish deviation opportunities in this area.

When rail freight transportation was subject to the economic jurisdiction of this Commission, prior to its deregulation by federal decree in 1980 (Staggers Act, PL 96-448), rail rates were often available and could be assessed by dump truckers under the provisions of PU Code § 3663. However, such rail rate opportunities are no longer available, leaving the minimum rates as the going rates in most circumstances. Greater downward pricing flexibility is required to meet the needs of the industry. Such pricing flexibility should allow the favorable circumstances experienced by all dump truck carriers to be taken into account by the Commission when considering requests for deviations from the rates contained in MRTs 7-A, 17-A, and 20.

The Yuba proposal is concise and simple. Of all the proposals advanced, it appears to offer the most pricing flexibility with a minimum of oversight. It also affords carriers and shippers the expedited procedure we desire. Because deviation applicants would not be required to incur the expense of providing a complex and detailed showing to obtain authority to engage in some degree of downward pricing activity. Yuba's proposal also helps to ensure that no traffic a carrier has an economic desire to handle under deviated rates would be generally barred from moving at less than minimums because of excessive filing costs. Under the Yuba proposal, even the smallest and most unsophisticated carrier would likely find the procedures it need follow to obtain a deviation manageable. Uniform access to deviations would be maximized. The proposal's major flaw is that it may allow a degree of downward pricing that is too great in the absence of a mechanism through which we could review individual carrier costs and engage in more carrier specific oversight.

Based on its own experience and on information from a survey it performed, Yuba alleges that the variable costs plus insurance costs incurred to operate a unit of dump truck equipment that are typically experienced in the industry amount to about 80%

of total costs. As a result, it concludes that a proposed rate that is no less than 80% of the established minimum rate can be automatically considered reasonable. We agree that about 80% of the minimum rate should generally cover the variable and insurance costs of reasonably efficient carrier operations. We acknowledged on page 5 of D.86-08-030 issued in this proceeding that the variable and insurance costs upon which the dump truck minimum rates are now based amount to about 85% of total costs. This fact, together with the fact that the minimum rates contain an 8% profit factor, should ensure that 80% of a minimum rate returns variable and insurance costs to an efficient operator. Over the normal one year duration that a deviation is authorized, however, we believe that a carrier should be required to more fully cover its total costs of performing a specific hauling job. Our concern is that 80% of the minimum rate would fail to adequately cover the costs of even an efficient carrier over the year long term of the deviation if that carrier's entire business was comprised of only the deviated rate traffic.

If Yuba's proposal were tied to a rate that was no less than 90% of the established minimum, we would consider it a more viable proposal. The existence of the 8% profit factor in the minimum rate structure would then tend to ensure that a reasonably efficient operator who used this procedure always covered nearly its entire operating costs. In its comments to the ALJ's proposed decision in this matter, even Yuba tacitly acknowledged the propriety of a more restricted downward pricing window by suggesting the substitution of a 90% minimum rate factor in connection with its proposal as a potential alternative to its original 80% recommendation. Today's four percent increase in minimum rates gives us further confidence that 90% of this new level is substantially above variable cost.

The Coalition's proposal would allow virtually no new pricing flexibility beyond what exists today. Rather, it would

perpetuate the present Resolution TS-682 requirements, but would expedite the process in those cases where there are no protests. Such a proposal does not go far enough in today's regulatory climate.

The CDTOA/CCA proposals, supported by CTA, could be granted quickly, and they provide a great deal of opportunity for the introduction of individual carrier operating experience into the industry pricing structure. The CDTOA/CCA Rule 5 proposal would provide an expedited method for achieving authority to deviate, based upon a showing similar to the one presently required under Resolution TS-682, and would allow such cost justified requests to become effective 30 days after being calendared, if unprotested. However, the CDTOA/CCA Rule 6 proposal, while innovative, would impose a number of control and oversight requirements which we do not believe are necessary in order to inject the downward pricing flexibility desired. The complex and paperwork intensive set of recommendations contained in the proposed Rule 6, coupled with the increased Commission TD staffing admittedly necessary to examine, monitor and audit such requests and the performances realized thereunder, should be undertaken only if there were no other viable method available for adoption.

The TD staff's proposals, in the main, appear to offer a greater degree of pricing flexibility than now exists under present procedures. They do so with a minimum of oversight. Staff's Full Cost Procedure would afford carriers and shippers the expedited procedure we have desired. It would also allow carriers the opportunity to assess less than minimum rates based upon individual operating experience, thereby achieving the departure from average costs and rates which have been the principal targets of critics of minimum rate regulation. The TD staff proposal provides adequate protection for the viability of the industry by requiring the showing of profitability or working capital adequacy every six months in order to initiate and continue Variable Cost deviations.

The TD staff's Variable Cost Procedure offers further opportunity to carriers with the ability to achieve further savings in situations described by the TD staff witness in his exhibit - those where they might be able to gain additional business during slow times when equipment and drivers are idle, or when carriers may be traveling empty to or from a point of pickup or delivery. However, we believe that the TD staff Variable Cost Procedure would be more reasonable if amended to include the cost for insurance, as recommended by Yuba in its proposal. Insurance costs have often been treated by cost experts as variable, rather than fixed costs, as in those cases where insurance is paid as a percentage of gross revenue, or on a mileage basis. These costs have been increasing disproportionately to other costs in recent years. They should be included in variable cost presentations of all carriers; otherwise, carriers who do not incur such expenses as variable costs could exclude them from their cost presentations, while those who do pay for their insurance as a variable cost would have to include them. These latter carriers could not compete on the same basis with the first group. This unfair result would best be resolved by requiring the inclusion of insurance by all carriers wishing to use the TD staff's Variable Cost Procedure in bidding for transportation. Insurance is an expense mandated by Commission order. It is more reasonable in these circumstances to require reimbursement for such expense when it is mandated.

None of the proposals except CDTA/CCA's contained specific recommendations concerning labor expense. Over the years the Commission has authorized many rate deviations in dump truck transportation, the labor portion of which has been based on the actual labor cost experienced, rather than the cost underlying the minimum rate. Use of actual labor cost experienced seems preferable, given the nature of the problem that a minimum

rate deviation addresses. Therefore, we will continue the existing treatment of labor costs in cases handled under the new deviation procedure.

We believe TD staff has the expertise to check-off compliance with the relatively straightforward filing requirements we adopt today for deviation requests. It has administered GO 147-A, which underlies the existing general freight program, and, of course, TD staff's conclusions and actions in the course of processing rate requests under our new program are subject to challenge: a protestant, if his protest is not found by TD staff to fit our adopted guidelines, may file a formal complaint concerning the rates in issue, and an applicant in a similar position can pursue formal processing of his application (which will be referred to an administrative law judge). In summary, this carefully defined and prescribed delegation to TD staff entails its processing requests by checking-off compliance with clear requirements, and a carrier or protestant who takes legitimate issue with staff's processing of a request may, as noted above, pursue formal review with a complaint or application.

After consideration, we will adopt new dump truck deviation procedures that combine what we believe to be the desirable elements of the Yuba and the TD staff proposals. Under our adopted procedures, a carrier seeking to assess no less than 90% of the established minimum rate will be allowed to do so by filing a simplified rate deviation application form similar to the one contained in Appendix A to Yuba's Exhibit 98. An applicant will be required to submit evidence of its overall financial condition, a favorable California Highway Patrol report, plus a certification that all subhaulers are in compliance with applicable safety regulations.

A carrier seeking to assess less than 90% of the established minimum rate will be required to comply with the provisions of the TD staff's proposal. We will require applicants



to show that insurance costs, as well as other costs that are clearly variable in nature, are covered under the Variable Cost Procedure. As recommended by Yuba and CDTOA/CCA, we will also modify the TD Staff's proposal to require an applicant filing under either the Full Cost Procedure or the Variable Cost Procedure to submit a favorable California Highway Patrol report and a certification that all subhaulers are in compliance with applicable safety regulations. The complete detail of our adopted procedures are contained in Appendixes A through D of this decision.

In order to ensure the continued viability of the industry, our decision here should be made on an interim basis. A period of two years will be a reasonable period of time to implement the new program and monitor its effect upon the industry. If the program works successfully, as we expect it to, it can be made permanent at the end of that period. If adjustments are needed, we expect and urge the TD staff and industry to inform the Commission at any time during this interim period so that adjustments can be considered.

This is an interim decision. We think it is premature to amend Resolution TS-682 and our Rules of Practice and Procedure, and the Special Deviation Docket relating to deviations and renewals from minimum rates. Therefore, under Rule 87, this decision will temporarily supersede the provisions of Resolution TS-682, as well as those of Rule 42.1 and 42.2 (b) of our Rules of Practice and Procedure, and the Special Deviation Docket, insofar as they relate to transportation subject to MRTs 7-A, 17-A, and 20. We supersede these procedures only because we could not otherwise implement this new process for a two-year experimental period. We believe that this is the minimum supersedure that is necessary to permit this. Applicants and potential protestants should note that we are superseding only Rule 42.2 (b) while leaving Rule 42.2 (a) in place for this purpose. Protests to applications for deviation shall not be considered unless they satisfy the full requirements

of Rule 42.2 (a). In addition to any other reasons for filing a protest, we recognize that a protest may convey a competitive advantage to the protestant merely through the administrative delay that may thereby be caused to an applicant. Should we detect a pattern of protests that appear to be filed for this purpose and that do not meet the requirements of Rule 42.2 (a), we may consider appropriate remedies either through amendments to the Rules of Practice and Procedure or through other means available to us.

Accordingly, we refer to Rule 87 of our Rules of Practice and Procedure in finding that good cause exists to order the deviations from our Rules described above for the purpose of adopting this program during the two-year experimental period. At the end of the experimental period contemplated by this decision, consideration will be given to amendment of Resolution TS-682, Rules 42.1 and 42.2 (b), and the Special Deviation Docket.

In accordance with PU Code § 311, the ALJ's proposed decision was mailed to appearances on November 10, 1988. Comments were received from CDTOA/CCA, Yuba, AGC, T&T Trucking, Inc. (T&T), and from the Coalition. We have reviewed and considered these comments, and note again that those of Yuba contain a recommendation that we adopt a deviation procedure substantially similar to the one we are adopting by this decision. We also note that the comments of T&T, and certain of the comments of AGC, are particularly persuasive.

In the proposed decision, Appendix A, Subsection A, Subsection (d) on Page A-2, Appendix B-7(b) on Page B-2, and Appendix C-3(B) on Page C-2, Internal Revenue Service Income Tax Forms 1065, 1120, 1120-A or 1040, Schedule C are to be filed with the application if authority is sought utilizing subhaulers to transport the involved commodity. T&T believes subhaulers will be extremely reluctant to provide their income tax returns for a filing which then becomes public record, considering such information to be confidential between the filing party and the

Internal Revenue Service. T&T believes the recommended deviation procedures in this respect to be of questionable legality, and inhibitive to the effective implementation of the procedure. It urges the elimination of these tax forms should the ALJ's proposed decision be adopted.

As an alternative, T&T suggests that the Commission consider protection of subhauler interests through adoption of "50%" requirements as set forth in the CDTOA/CCA Exhibit 100 Revised deviation proposal (e.g. Rule 5.2-D), or a similar provision in GO 147-A, Rule 7.1(e). Under that requirement, if subhaulers are to be used to provide less than 50% of the actual transportation under the proposed rate, no subhauler costs or financial information need be submitted. However, when subhaulers are to be used to provide more than 50% of the transportation, then subhauler costs must be submitted with the application. In T&T's view, this rule would provide adequate protection against abuse of subhaulers and is far preferable to the required submission of income tax returns.

Appendix A, Paragraph (b)6 on Page A-2, and Appendix C on Page C-5 of the proposed decision requires that an involved shipper enter into a written agreement with the applicant for a Variable Cost Procedure deviation to evidence that it commits to pay - and that applicant commits to collect - any difference between the deviated rate and the minimum rate (undercharges) if we determine that the former will not cover 105% of applicants variable costs. AGC believes that such a requirement will effectively preclude use of this procedure. In AGC's words: "No shipper would knowingly expose himself to this potential liability." It recommends that this requirement be eliminated.

We concur with T&T's concern about the confidentiality of tax forms. We agree that adoption of the "50%" rule would be adequate for purposes of this proceeding in lieu of the forms referred to above, and would be consistent with our rules in the

general freight program. We also share AGC's concern that the Variable Cost Procedure be constructed in a way that will not inappropriately prohibit its use. We recognize that the carrier/shipper agreement could well have a chilling effect on shipper willingness to use deviated rates, especially as the meaning of the agreement is unclear. The agreement refers to undercharges that might be assessed should the deviated rate later be found unreasonable by the Commission. However, a properly-supported and duly approved deviation will by definition be a reasonable rate, and therefore not properly the subject of any undercharges; by contrast, the use by a carrier of a deviation for which the carrier did not have proper authority could lead to an assessment of undercharges. We will not include the carrier/shipper agreement in the Variable Cost Procedure.

Our adopted Full Cost and Variable Cost Procedures incorporate both T&T's recommended "50%" rule and AGC's recommendation to eliminate the carrier/shipper agreement contained in Appendixes A and C of the proposed decision.

#### Findings of Fact

1. CDTOA/CCA have filed a motion for an interim 5% increase in rates in MRTs 7-A, 17-A, and 20 for commodities named in Item 30 of MRT 7-A.
2. The equipment costs contained in the various staff exhibits, and the labor costs used in Petition 328, are the best and most current evidence for measuring costs for dump truck carriers.
3. Except for increases of 2.2% to 3.0% ordered in 1987, rates named in MRTs 7-A, 17-A, and 20 have not been increased since 1985.
4. Since the last rate increases ordered in these MRTs, the industry has experienced further increases in total costs. These costs have been measured by CDTOA/CCA, and indicate that increases in rates for the transportation of construction related commodities

of 4 percentage points will allow the industry to earn revenues which are reasonable and necessary.

5. The operating ratio and demographic information discussed in the decision tends to confirm the need for increases as measured by the petitioners, although not necessarily in the same amounts proposed.

6. The filing of petitioners' motion, publication thereof in the Daily Transportation Calendar, and the ALJ's ruling of May 20 advising all parties of the July 6 hearing provide adequate notice.

7. PU Code § 3666 states: "If any highway carrier, other than a highway common carrier, desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate for not more than one year."

8. D.85-04-095, which initiated OSH 325, et al. directed that hearings should be held to consider developing a "procedure under which an individual dump truck carrier can be readily permitted to charge less than the established minimum rate level when actual circumstances warrant such action."

9. While many deviations have been authorized from minimum rates in connection with the interplant transportation of commodities in dump truck equipment, virtually none have been authorized in connection with dump truck construction activity. Furthermore, those deviations which have been authorized have often not become effective until several months after filing, even if unprotested, because of the current administrative procedure.

10. The procedures set forth in Appendixes A through D to this decision will provide reasonable, workable, expedited procedures for processing initial and renewed requests for deviations from rates in MRTs 7-A, 17-A, and 20.

11. The TD staff has the expertise to perform the check-off compliance review of applications for authority to deviate from

minimum rates, in the manner set forth on Pages A-4, A-5 and A-6 of Appendix A to this decision, after such applications are calendared. This will provide an expeditious and reasonable procedure for such requests.

12. The need to proceed with revisions to the Commission's procedures for authorizing deviations from minimum rates for dump truck transportation for an experimental period of two years constitutes good cause for deviating from Rules 42.1 and 42.2 (b) of the Commission's Rules of Practice and Procedure.

Conclusions of Law

1. MRTs 7-A, 17-A, and 20 should be amended to conform to our findings above. The resultant rates will be just and reasonable.

2. MRTs 17-A and 20 should be amended by separate orders to avoid duplication of tariff distribution.

3. Due to the needs of dump truck carriers performing transportation under rates in MRTs 7-A, 17-A, and 20 for rate relief, the effective date of this decision should be today.

4. The provisions included in this decision as Appendixes A through D, should be adopted for an interim period of two years.

5. This decision should provide the bases for achieving deviations from rates in MRTs 7-A, 17-A, and 20, and should supersede Resolution TS-682 and Rules 42.1 and 42.2 (b) of the Commission's Rules of Practice and Procedure, and the Special Deviation Docket, in connection with transportation performed under those tariffs. Such supersedure is appropriate under Rule 87 of the Rules of Practice and Procedure.

6. The Commission should authorize TD staff to perform the check-off compliance review, as provided in Appendix A of today's decision, of applications for authority to deviate from rates in MRT's 7-A, 17-A, or 20.

A P P E N D I X    A

PROCEDURES AND CRITERIA FOR  
FILING DEVIATION APPLICATIONS

### THREE-TIER EXPEDITED DUMP TRUCK DEVIATION GUIDELINES AND PROCEDURES

A carrier seeking to assess less than an established minimum rate can select one of the following deviation procedures:

#### I. SIMPLIFIED RATE DEVIATION APPLICATIONS (for rates that are no less than 90% of the applicable minimum rates)

- a. A Simplified Rate Deviation Procedure will be available only to carriers proposing a rate that is 90% or more of the applicable minimum rate. A proposed rate at that level is presumed to be reasonable and no cost showing is required. Staff will handle these deviation requests as informal matters and those that are not contested will become effective 30 days after calendar notice.
- b. Use of this procedure will require that carriers submit:
  1. A proposed rate that is no less than 90% of the applicable minimum rate.
  2. Their latest available balance sheet and an income statement from the most current fiscal year.
  3. Their identity and the identities, signatures and telephone numbers of the shipper and any subhaulers involved in the transportation.
  4. A description of the transportation.
  5. The applicable minimum rate and the proposed rate, using the same unit of measurement as that shown in the applicable minimum rate tariff.
  6. A current favorable California Highway Patrol safety report, plus, if subhaulers are used, a certification that all subhaulers are in compliance with applicable safety regulations.
- c. Subhaulers engaged by prime carriers to provide transportation under the deviated rate must be paid not less than 95% of the deviated rate, 75% when they are providing the tractor (pulling services) only.
- d. Carriers wishing to continue use of the Simplified Rate Deviation should file an application for renewal at least six weeks in advance of the current deviation's expiration date.

#### II. FULL COST DEVIATION APPLICATIONS (for rates that are less than 90% of the applicable minimum rate)

- a. Applicants for Full Cost Deviations will adhere to the same requirements as those contained in Resolution TS-682, except that:



1. It will no longer be necessary to show that the transportation in question is performed under favorable operating conditions that differ from those used in establishing minimum rates.
  2. Staff will handle these deviation requests as informal matters and, if they are not contested, will become effective 30 days after calendar notice.
  3. Renewal applications will no longer be handled under the Special Deviation Docket Procedure. All renewals, as with initial applications, will be processed under the informal expedited procedure.
  4. They shall declare that subhaulers will not be used to provide more than half of the actual transportation (as evidenced, for example, by the subhaulers providing less than half of the power units to be used), or if subhaulers are to be used on more than half of the transportation, the costs of the subhaulers employed in the transportation shall be included.
  5. All prime carrier applicants must submit a current favorable California Highway Patrol safety report, plus a certification that all subhaulers used in the transportation are in compliance with applicable safety regulations.
- b. Full Cost applications, based on the carrier's actual cost, will continue to require a showing that the proposed rate will cover the applicant's full cost for providing the service and will produce a profit.

III. VARIABLE (MARGINAL) COST DEVIATION APPLICATIONS (for rates that are less than 90% of the applicable minimum rate)

- a. A variable cost procedure, also based on the carrier's actual costs, will only be available to either profitable carriers or those with sufficient working capital. Staff will handle these deviation requests as informal matters and those that are not contested will become effective 30 days after calendar notice.
- b. Use of this procedure will require that carriers submit:
  1. A showing that they are either profitable or have sufficient working capital to cover any loss that could result from using the variable cost rate. Applicants will prove profitability and working capital availability by submitting a balance sheet and income statement from the most current fiscal year. New carriers must submit a balance sheet, a working capital worksheet and a projected profit and loss statement. New carriers and applicants who show a loss on their income statement will also be required to sign a release form authorizing the Commission to obtain financial information from the applicant's bank records. These forms are contained in Appendix D.

2. Their identity and the identity of the shipper and any subhaulers involved in providing the transportation.
  3. A description of the transportation.
  4. The existing rate and the proposed rate, using an appropriate unit of measurement.
  5. A simple cost analysis proving that the proposed rate is at least 105% of the total of variable costs and insurance, accompanied by a statement under penalty of perjury confirming the accuracy of this analysis.
  6. Either a declaration that subhaulers will not be used to provide more than half of the actual transportation under the proposed rates (as evidenced, for example, by the subhaulers providing less than half of the power units to be used), or the inclusion of the costs of the subhaulers employed in the transportation.
  7. A current favorable California Highway Patrol safety report, plus, if subhaulers are used, a certification that all subhaulers are in compliance with applicable safety regulations.
- c. Carriers who are required by formal order of the Commission to collect undercharges from shippers, for failure to cover 105% of their total of variable and insurance costs in performing the service, must immediately discontinue use of the rate in question. The carriers are also prohibited by the Commission from filing or participating in any new deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure.)
- d. Subhaulers engaged by prime carriers to provide transportation under the deviated rate:
1. must, if providing more than half of the transportation under the deviated rate, submit to the prime carrier, for joining with the filing of the application, a simple cost analysis proving that the compensation received from the deviated rate is at least 105% of the total of variable costs and insurance to be incurred under the subject transportation. When subhaulers provide more than half of the transportation: 1) new subhaulers must submit a balance sheet, a working capital worksheet and a projected profit and loss statement; and 2) new subhaulers and subhaulers who show a loss on their income statement will also be required to sign a release form (found in Appendix D) authorizing the Commission to obtain financial information from the subhauler's bank records.
  2. must be paid not less than 95% of the deviated rate, 75% when they are providing the tractor (pulling services) only.
  3. must certify, under penalty of perjury, that the compensation to be received from the deviated rate will cover 105% of the total

of their variable costs plus insurance. Prime carriers will review each subhauler's costs and certify that they have determined the costs to be accurate and valid. The verification forms are contained in Appendix C.

- e. If the Commission determines in its final order that 105% of the subhauler's actual total of variable and insurance costs exceed the amount earned by the subhauler under the deviated rate, the prime carrier shall pay the subhauler 95% (or 75% for pullers) of the minimum rate for all work performed under the deviated rate. The difference between this and what was paid to the subhauler under the deviated rate shall be paid to the Commission as an undercharge fine by the subhauler.
- f. Subhaulers who are required by the Commission to collect undercharges from the prime carrier must immediately discontinue use of the rate in question and are prohibited from filing a new deviation or providing transportation services under a new deviated rate for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure.)
- g. No renewal process will be available. Carriers filing variable cost deviations must submit new applications every 6 months to continue using the rate. Carriers wishing to continue use of the variable cost rate should file at least 6 weeks in advance of the current deviation's expiration date.

#### FILING THE DUMP TRUCK DEVIATION APPLICATIONS UNDER EXPEDITED PROCEDURE

- a. Two copies of all applications to deviate from MRT's 7-A, 17-A and 20, including any supplements or amendments, shall be delivered or mailed to:  
  
California Public Utilities Commission  
Truck Tariff Section-2nd Floor  
505 Van Ness Avenue  
San Francisco, CA 94102
- b. If a receipt for the filings is desired, the application shall be sent in triplicate with a self-addressed stamped envelope. One copy will be date stamped and returned as a receipt.
- c. Rejected applications will be returned to the applicant with an explanation of why the application was not accepted.
- d. All applications filed will be available for public inspection at the Commission's office in San Francisco.

PROCEDURES FOR REVIEW OF DEVIATION APPLICATIONS  
UNDER EXPEDITED PROCEDURE

- a. The deviation filing will be noted immediately in the Commission's Transportation Calendar. Renewals of simplified and full cost deviations will be labeled as such in the calendar notice. The deviated rate will become effective 30 days after the calendar notice date, unless rejected or suspended prior to that date by the Commission staff.
- b. The Commission staff will review the proposed deviations during the 30 day notice period.
- c. Staff may reject a filing within the 30 day notice period. All rejections will be noted in the Daily Transportation Calendar and applicants will be notified by mail of the reasons for rejection.
- d. Staff will reject any application that is incomplete or fails to meet the following conditions:
  - i. If a simplified rate deviation application, the proposed rate must be no less than 90% of the applicable minimum rate.
  - ii. If a full cost application, the proposed rate must provide an operating ratio of less than 100.
  - iii. If a variable cost application, the proposed rate must cover at least 105% of the total of variable cost and insurance.
  - iv. Submit a current favorable California Highway Patrol safety report, plus, if subhaulers are used, a certification that all subhaulers are in compliance with applicable safety regulations.
- e. Any party may protest a proposed rate deviation. The protest must be in writing and specifically indicate in what manner the application for a deviated rate is defective. It must be received no later than 10 days before the deviated rate is scheduled to become effective. A copy of the protest shall be served on the applicant on the same date it is either forwarded or delivered to the Commission. All protests will be noted in the Commission's Transportation Calendar.
- f. If the Commission staff determines that valid grounds exist for the protest, it will evaluate the substance of the protest based on conformity with the guidelines for filing the application and may decide to reject the filing before the effective date of the rate. The staff may also temporarily suspend the rate for a period of time not to exceed 45 days beyond the date of suspension, during which time it will either reject the protest

or request the Commission to further suspend the rate and set the matter for hearing. Protests involving costs may have merit which is not clearly determinable by Staff, in which case the rate filing will be suspended with a request to the Commission that the matter be set for hearing.

- g. Notice of any rejection or rate suspension, and any vacation of such suspension, will appear in the Commission's Transportation Calendar.
- h. If a protest results in the Commission setting the matter for hearing, the burden of proof rests with the proponent of the deviated rate.
- i. Commission review of any rate which is in effect may be initiated by filing a formal complaint. The burden of proof in a complaint shall be upon the complainant. The complainant will send a copy of the complaint to the defendant (carrier), shipper and any subhaulers who are parties to the transportation agreement.

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A P P E N D I X    A-1

SIMPLIFIED RATE DEVIATION APPLICATION FORM

SIMPLIFIED RATE DEVIATION APPLICATION FORM

1. APPLICANT INFORMATION

Application No: (Commission will insert number)

Is this a renewal application? yes no

Cal T-No:

Name:

Address:

Telephone:

Person to contact:

If a corporation, attach articles of incorporation or  
reference a previous filing that contained the articles:

Signature of owner or officer:

2. SAFETY AND SUBHAULER COMPENSATION INFORMATION

Attach your current favorable California Highway Patrol  
safety report. If subhaulers are used, include this  
statement: I certify that all subhaulers used in perform-  
ing this transportation are in compliance with applicable  
safety regulations. I further certify that they will be  
paid not less than 95% of the deviated rate, 75% when they  
are providing the tractor (pulling services) only.

3. FINANCIAL INFORMATION

Attach latest available balance sheet, dated           , 19      

Attach income statement for the latest fiscal year ending  
          , 19      .

4. SHIPPER INFORMATION

Name:

Address:

Telephone:

Person to contact:

Signature of owner or officer:

5. TRANSPORTATION DETAILS

Job location:

Point of origin:

Point of Destination:

Haul distance:

Commodity:

Quantity:

Applicable tariff:

Applicable tariff rate:

Proposed rate:

Effective date of proposed rate:

Termination date of proposed rate\*:

\*Note: All rate deviations must be renewed after one year.  
The renewal application should be submitted at least six weeks prior  
to expiration.

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6. SUBHAULER INFORMATION

Attach separate pages with information on items 1 and 2  
(on page A-1-1).



CARRIER VERIFICATION

I am the applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Applicant)

CARRIER VERIFICATION

(Where Applicant Is a Corporation)

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Signature and Title of Corporate Officer)

# CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing application has been served by (specify method of service) upon each of the following:

(List names and addresses of parties served.)

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
(Name of City) (Day)  
of \_\_\_\_\_, 19\_\_\_\_  
(Month)

(Signature of Person Responsible for Service

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A P P E N D I X    B

FULL COST DEVIATION APPLICATION FORM

APPLICATION TO DEVIATE FROM THE MINIMUM RATES FOR  
TRANSPORTATION OF COMMODITIES IN DUMP TRUCK EQUIPMENT

FULL COST DEVIATION APPLICATION

Is this a renewal application?        yes        no

Full cost deviation application # (Commission will insert number)

Name of carrier (Exact Legal Name)

Principal place of business (Street Address and City)

If applicant is a corporation, attach articles of incorporation or  
make reference to a previous filing that contained the articles.

Carrier is authorized to transport (Show Operating Authority)

Contact person regarding this application (Name, Title, Address  
and Telephone Number)

Commodity description and form

Deviation from Minimum Rate Tariff (Tariff Number)

Origin

Destination

Shipper

Present Rate (express in unit of measure) min. wt., unless hourly

Proposed Rate (express in unit of measure) min. wt., unless hourly

1. Describe the transportation to be performed. (The description should cover all particulars of the transportation to include but not be limited to: Loading and unloading, loadweights and anticipated volume per day or other time period, and whether the transportation is part of a backhaul or fronthaul.)
2. Show the estimated cost of performing the transportation under the proposed rate. Include the development of labor costs, vehicle fixed costs and mileage costs, other direct costs and allocations of administrative and other indirect costs. Overall cost should be expressed in terms of cost per 100 pounds, cost per load, or other appropriate unit of measure.
3. Show expected revenue from the transportation under the proposed rate in terms of revenue per 100 pounds, revenue per load or

other appropriate unit of measure that will permit evaluation of the profitability of the service at the proposed rates. Explain the methods used in developing the revenue figures.

4. Attach a letter of support from the shipper.
5. Identify any carrier(s) presently providing the specific service sought by the applicant.
6. Attach applicant's latest available balance sheet, dated \_\_\_\_\_, 19\_\_\_\_, and an income statement for the latest fiscal year ending \_\_\_\_\_, 19\_\_\_\_.
7. Subhaulers will be used to perform less than half\_\_\_\_, more than half\_\_\_\_, or none\_\_\_\_ of the transportation.
8. If subhaulers are engaged to perform the service, they must either be paid the full proposed rate or, if the subhaulers will be paid a lesser rate or charge than that sought by the applicant, or if in any case more than half of the transportation under the deviated rate is to be provided by subhaulers, the following facts and statements must be submitted and joined with the filing of the application:

- A. Name of Subhauler  
Permit Number  
Current Address

LIST SUBHAULERS BELOW:

1. _____	2. _____
_____	_____
_____	_____
_____	_____
3. _____	4. _____
_____	_____
_____	_____
_____	_____

- B. A profit and loss (income) statement and a balance sheet.
- C. A detailed financial statement from each subhauler showing its total revenues and expenses in performing the transportation for the prime carrier for the last fiscal year and the subhauler's projected revenues and expenses for the specific transportation sought under this application.

9. Other facts relied upon to support the reasonableness of the proposed rate.

10. Attach your current favorable California Highway Patrol safety report. If subhaulers are used, include this statement: I certify that all subhaulers used in performing this transportation are in compliance with applicable safety regulations.
11. This rate shall become effective 30 days after the date that notice of the filing appears in the Commission's Transportation Calendar.
12. This rate shall expire \_\_\_\_\_ (show date) \_\_\_\_\_ (no later than one year from the effective date).
13. In all other respects the rates and rules in MRT \_\_\_\_\_ shall apply.
14. Applicant will furnish a copy of this application to any interested party either upon their written request or that of the Commission. Renewal applications must be served upon the parties who were served a copy of the preceding application.

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

CARRIER VERIFICATION

I am the applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Applicant)



CARRIER VERIFICATION

(Where Applicant Is a Corporation)

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Signature and Title of Corporate Officer)

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing application has been served by (specify method of service) upon each of the following:

(List names and addresses of parties served.)

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
(Name of City) (Day)

of \_\_\_\_\_, 19\_\_-  
(Month)

\_\_\_\_\_  
(Signature of Person Responsible for Service)

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A P P E N D I X   C

VARIABLE COST DEVIATION APPLICATION FORM

APPLICATION TO DEVIATE FROM THE MINIMUM RATES FOR TRANSPORTATION  
OF COMMODITIES IN DUMP TRUCK EQUIPMENT

VARIABLE COST DEVIATION APPLICATION

Carrier applicant qualifies to file a deviation under the variable cost deviation procedure by demonstrating profitability or working capital availability by submitting a balance sheet and income statement from its most current fiscal year. New dump truck carriers must submit a balance sheet, a working capital worksheet and a projected profit and loss statement. New carriers and those applicants who show a loss on their profit and loss (income) statement will also be required to sign a release form (Appendix D) authorizing the Commission to obtain financial information from the applicant's bank records.

If subhaulers are to be used, the cost justification shall either contain a declaration that subhaulers will not provide more than half of the actual transportation under the proposed rates (as evidenced, for example, by the subhaulers providing less than half of the power units), or include the costs of the subhaulers. When subhaulers provide more than half of the transportation: 1) new subhaulers must submit a balance sheet, a working capital worksheet and a projected income statement; and 2) subhaulers who show a loss on their income statement, and new subhaulers, will be required to sign a release form (Appendix D) authorizing the Commission to obtain financial information from the subhauler's bank records.

Variable cost deviation application # (Commission will insert number)

Name of carrier (Exact Legal Name)

Principal place of business (Street Address and City)

If applicant is a corporation, attach articles of incorporation or make reference to a previous filing that contained the articles.

Carrier is authorized to transport (Show Operating Authority)

Contact person regarding this application (Name, Title, Address and Telephone Number)

Description of commodity

Deviation from Minimum Rate Tariff (Tariff Number)

Origin

Destination

Shipper

Present Rate (express in unit of measure) min. wt. (unless hourly)

Proposed Rate (express in unit of measure) min. wt. (unless hourly)

1. Describe the transportation that will be performed under this rate. (The description should cover all particulars of the transportation to include but not be limited to: Loading and unloading, loadweights and anticipated volume per day or other time period, and whether the transportation is part of a backhaul or fronthaul.)

2. In the event that subhaulers are engaged to perform this transportation, they shall be paid no less than 95% of the revenue earned from the deviated rate. If the subhaulers are only providing "pulling" services, (tractor and driver only) they shall be paid no less than 75% of the revenue earned from the deviated rate. The difference between the deviated rate and the amount paid to the subhauler will cover any brokerage fee normally paid to the prime carrier. If the rate does not adequately cover 105% of the total of the subhauler(s)' variable cost and insurance cost of performing the service, the prime carrier shall reimburse the subhauler at 95% (75% for "pullers") of the applicable minimum rate. The difference between this and what was paid to the subhauler under the deviated rate shall be paid to the Commission, by the subhauler, as an undercharge fine.

3. Subhaulers will be used to perform less than half\_\_\_\_, more than half\_\_\_\_, or none\_\_\_\_ of the transportation.

4. If authority is sought utilizing subhaulers, submit the following:

Name of Subhauler  
Permit Number  
Current Address

LIST SUBHAULERS BELOW:

1. _____	2. _____
_____	_____
_____	_____
3. _____	4. _____
_____	_____
_____	_____

5. Attach your current favorable California Highway Patrol safety report. If subhaulers are used, include this statement: I certify that all subhaulers used in performing this transportation are in compliance with applicable safety regulations.

6. Revenue/Cost Comparisons--The rate/cost information can be stated per trip, per mile, per ton, per hour or other appropriate unit of measure. Please be consistent throughout your presentation. If the proposal contains different origin/destination combinations or different weights, please give appropriate examples. (Additional sheets may be used for subhauler data). ALL CARRIERS (and

subhaulers, if subhaulers are providing more than 50% of the transportation) MUST SUBMIT REVENUE/COST COMPARISON STATEMENTS. The format below can be followed or can serve as a guide:

PROPOSED RATE:	_____	_____	_____	_____
INSURANCE COSTS:	_____	_____	_____	_____
VARIABLE COSTS:				
Driver Labor	_____	_____	_____	_____
Fuel/Oil	_____	_____	_____	_____
Tires	_____	_____	_____	_____
Maintenance and Repair	_____	_____	_____	_____
Gross Revenue Expenses	_____	_____	_____	_____
Other variable costs (Please specify. If none, write "none") *	_____	_____	_____	_____
TOTAL VARIABLE COST	_____	_____	_____	_____
INSURANCE PLUS VARIABLE COSTS	_____	_____	_____	_____
DIFFERENCE (Rate minus Costs)	_____	_____	_____	_____

\*If an input is used specifically for the job in question, and would not be used or paid for otherwise, the input is variable.

7. Attached is the carrier verification and the subhauler/prime carrier verification forms. ALL VARIABLE COST DEVIATION PROPOSALS MUST INCLUDE THE CARRIER VERIFICATION FORM. If subhaulers will be performing transportation the SUBHAULER/PRIME CARRIER VERIFICATION form must be submitted as well.

8. This rate shall become effective 30 days after the date that notice of the filing appears in the Commission's Transportation Calendar.

9. This rate shall expire \_\_\_\_\_ (show date) \_\_\_\_\_ (no later than six months from effective date).

10. In all other respects the rates and rules in MRT \_\_\_\_\_ shall apply.

11. Applicant will furnish a copy of this application to any interested party upon either their written request or that of the Commission.

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_\_\_.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

CARRIER VERIFICATION

I am the applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I certify that the rates contained in Variable Cost Deviation Application # (Commission will insert number) will cover 105% of the total of all variable costs and insurance incurred in providing the transportation.

If I am required by the Commission to collect undercharges under this deviated rate application, I must immediately discontinue use of the rate and will be prohibited from filing or participating in any new deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_ California  
(Date) (Name of City)

\_\_\_\_\_  
Carrier Applicant



CARRIER VERIFICATION

(Where Applicant is a Corporation)

I am an officer of the applicant corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I certify that the rates contained in the Variable Cost Deviation Application # (Commission will insert number) will cover 105% of the total of all variable costs and insurance incurred in providing the transportation.

If I am required by the Commission to collect undercharges under this deviated rate application, I must immediately discontinue use of the rate and will be prohibited from filing or participating in any new deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure.)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Signature and Title of Corporate Officer)

SUBHAULER/PRIME CARRIER VERIFICATION

I am the subhauler applicant in the above-entitled matter; the statements in the foregoing document are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I certify that 95%\* of the rate contained in Variable Cost Deviation Application #\_\_\_\_\_ will cover 105% of the total of all variable costs and insurance incurred in providing the transportation.

If the Commission determines that my variable and insurance costs exceed the amount earned under the deviated rate, the prime carrier shall pay me 95%\* of the minimum rate for all work performed under the deviated rate. I will pay the difference between this amount and 95%\* of the deviated rate to the Commission as an undercharge fine.

If the prime carrier is required by the Commission to pay me 95%\* of the minimum rate, I understand that I will be prohibited from filing or participating in any new rate deviation for one year from the effective date of the order. (This prohibition does not apply to renewals of existing deviations filed under the Simplified or Full Cost Procedure).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_ at \_\_\_\_\_, California.  
(Date) (Name of City)

\_\_\_\_\_  
(Subhauler Applicant)

\_\_\_\_\_  
(Carrier Applicant)

\*75% for "pullers" furnishing a driver and tractor only.

# CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing application has been served by (specify method of service) upon each of the following:

(List names and addresses of parties served.)

Dated at \_\_\_\_\_, California, this \_\_\_\_\_  
(Name of City) (Day)  
of \_\_\_\_\_, 19\_\_\_\_.  
(Month)

(Signature of Person Responsible for Service)

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A P P E N D I X   D

FINANCIAL STATEMENT FORMS REFERRED TO IN APPENDIX C

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
RELEASE OF INFORMATION AUTHORIZATION

The undersigned authorizes the California Public Utilities Commission to obtain such verification or further information as it may require concerning information on financial condition set forth in the application for deviation authority, as submitted by the undersigned.

Regarding the verification of bank records, such verification shall be limited to the particular accounts and/or items listed below by the applicant and shall be limited to a period of time commencing on the date of the signing of the application and ending on the date of the granting or rejection of the application; but in no event shall the period for the verification of bank records extend beyond the date of the final disposition of the application.

The applicant has the right to revoke this authorization at any time, and agrees that any documents submitted for the purpose of demonstrating financial condition shall remain with the Commission.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Applicant(s)

BANK RECORDS:

NAME AND LOCATION OF BANK	TYPE OF ACCOUNT	ACCT. NO.	AMOUNT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
CONSENT TO OBTAIN INFORMATION  
(To be signed by non-applicant spouse of married applicant)

I authorize the California Public Utilities Commission to obtain whatever information about my financial condition it considers necessary and appropriate for the purposes of evaluating the financial condition of my spouse/as an applicant for deviation authority.

Regarding the verification of bank records, my authorization is limited to the accounts and/or items listed below and is limited to a period of time commencing on the date of the signing of the application and ending on the date of the granting or rejection of the application; but in no event shall the period for the verification of bank records extend beyond the date of the final disposition of the application.

I understand that I have the right to revoke this authorization at any time.

Date \_\_\_\_\_ Signature of Spouse \_\_\_\_\_

BANK RECORDS:

NAME AND LOCATION OF BANK	TYPE OF ACCOUNT	ACCT. NO.	AMOUNT
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

INTERIM ORDER

IT IS ORDERED that:

1. MRT 7-A (Appendix B to D.82061, as amended) is further amended by incorporating the attached Supplement 29, effective 30 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 the tariff amendment on each subscriber to MRT 7-A.
4. Resolution TS-682 and Rules 42.1 and 42.2 (b) of the Commission's Rules of Practice and Procedure, and the rules contained in the Special Deviation Docket, are superseded by the rules contained in Appendixes A through D, attached, in connection with transportation performed under MRTs 7-A, 17-A, and 20, effective March 1, 1989.
5. The authority contained in this decision will expire February 28, 1991 unless sooner canceled, modified or extended by further order of the Commission.
6. The Executive Director shall serve a copy of this decision on each subscriber to MRTs 7-A, 17-A, and 20.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.