

Decision 90-12-012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

**ORIGINAL**

Case 5437  
Petition for Modification 346  
(Filed June 21, 1990;  
amended August 3, 1990)

Case 9820  
Petition for Modification 39  
(Filed June 21, 1990;  
amended August 3, 1990)

And Related Matters. )

Case 9819  
Petition for Modification 125  
(Filed June 21, 1990;  
amended August 3, 1990)

Larry E. Farrens, for the California  
Carriers Association; Edward J. Hegarty,  
Attorney at Law, for California Dump  
Truck Owners Association and California  
Carriers Association; and James D.  
Martens, for California Dump Truck  
Owners Association; petitioners.  
Charles L. Smithers, for Associated General  
Contractor of California, interested  
party.  
Maryalis McGuinness and Lynn Maack, for the  
Division of Ratepayer Advocates.

O P I N I O N

By these three petitions California Dump Truck Owners  
Association and California Carriers Association (CDTOA/CCA) request  
increases in rates contained in Minimum Rate Tariffs (MRT) 7-A,

17-A, and 20, which name rates and rules for the transportation of certain commodities in dump truck equipment. The increases are sought to offset increases in the costs of fuel and higher annual truck weight fees mandated by the passage of Proposition 111 on June 5, 1990. The petitioners request increases of three percent in each of the three MRTs.

Evidentiary hearing was held on October 16, 1990 in San Francisco before Administrative Law Judge (ALJ) Frank O'Leary at which time the matter was submitted and evidence was presented by CDTOA/CCA, and by the Division of Ratepayer Advocates (DRA). The petitions were protested by Yuba Trucking Inc. who did not appear at the hearing.

Evidence

On June 5, 1990, the voters of California approved Proposition 111. This statewide traffic congestion relief program provides new revenues to be used to reduce traffic congestion by building state highways, local streets and roads, and public mass transit facilities. The new revenues are generated by enactment of a 40% increase in truck weight fees and a five cents per gallon increase in the fuel tax, effective August 1, 1990. An additional annual one cent per gallon increase will be imposed on fuel tax on January 1, 1991, and each January thereafter, until the total increase amounts to nine cents per gallon. Another increase of 10% on truck weight fees will be imposed on January 1, 1995.

On July 18, 1990 we issued Resolution TL-18365 wherein we made the following findings:

1. The weight fee and fuel tax increases mandated by Proposition 111 and effective August 1, 1990 will increase the average operating costs of highway carriers subject to the dump truck MRTs by the amounts shown herein.
2. Although the permitted classes of carriers subject to the dump truck MRTs are free to raise their rates by the amounts set forth herein without prior Commission

authorization, Highway Common Carriers subject to MRT 7-A are not.

3. Since Proposition 111 related cost increases are mandated by statute, we should authorize Highway Common Carriers who publish rates for commodities named in MRT 7-A to increase those rates by 1.2%, effective August 1, 1990.
4. The rate increase authorization referred to in Finding 3 is justified because it allows Highway Common Carriers the same opportunity to recover mandated cost increases as is enjoyed by the permitted classes of carriers subject to the dump truck MRTs.
5. The permitted classes of carriers who perform transportation subject to the dump truck MRTs should be informed that they will have to raise their rates by the amounts set forth herein to recover the increased costs they will experience as of August 1, 1990.
6. A public hearing on this matter is not necessary.

Petitioners and DRA agree that in order to recover the increases mandated by Proposition 111 effective on August 1, 1990 carriers' rates should be increased by approximately 1.2%. The only dispute is whether the increase should be mandated or not.

The General Manager of CDTOA testified that:

"While it is, perhaps, legally possible for dump truck carriers to assess rates above the minimum level, the vast majority of CDTOA's membership have not been able to recover Proposition 111 cost increases in the real-world market place and I have been informed by our membership that they are being required to absorb increased fuel taxes and weight fees.

"As the commission found in Decision 90-07-053, about 90% of carriers who actually perform dump truck transportation services are owner-operators who drive their own equipment and

operate principally as subhaulers (finding of fact No. 1). These small carriers, frequently minority enterprises, do not often negotiate rates or have any direct dealings with dump truck commodity shippers but, rather, are engaged by overlying carriers. The division of revenue rules in the dump truck MRTs only require that subhaulers be paid a designated percentage of the minimum rate, not a percentage of any higher rate which may be capable of negotiation between the overlying carrier and the shipper. That presents a major problem. The shipper/contractor is, in the first instance, highly reluctant to pay in excess of the MRT rate and, even in those few instances where higher rates can be negotiated, there is no requirement that those higher rates be passed on to the subhaulers who actually pay the increased fuel taxes and weight fees to perform the majority of the actual transportation.

"Because of the above-stated circumstances, the Resolution TL-18365 information that Proposition 111 mandated cost increases should result in a 1.2% increase in MRT 7-A is virtually meaningless. Our information discloses that carriers providing dump truck service have been unable to recover those costs in the rates they are paid."

DRA's position is set forth in Exhibit 2 as follows:

"DRA supports the Commission's action as embodied in Resolution TL-18365, i.e., the statement of the permissive nature of rate increases of dump truck carriers and the allowance of common carriers subject to MRT 7-A to increase rates as well.

"Dump truck carriers are allowed to increase their individual rates at any time. There are no regulatory constraints on these carriers to prevent them from reacting to cost increases as would any business entity. Moreover, it is not known what the overall cost picture of dump truck carriers is relative to the current cost datum plane. On the other hand, common carriers, to the extent there are any subject to MRT 7-A, do not have the ability to increase

their rates without authority from the Commission. Resolution TL-18635, by allowing these carriers permissive increase authority, has accommodated this situation in an equitable manner.

"DRA is generally opposed to rate regulation of trucking. However, if the Commission wishes to effect mandatory increases in minimum rates, then such increases should be no more than those that DRA has found appropriate through use of its methodology as explained in this exhibit. The results of DRA's analysis are shown in Section 4 on page three of this exhibit."

The increases recommended by DRA in its exhibit are as follows:

	<u>Proposed Surcharge</u>
MRT 7-A - Distance rates	1.20%
- Hourly rates	1.00%
MRT 17-A	1.10%
MRT 20	1.10%

Petitioners have no objection to the above proposed surcharges provided they are mandatory rather than permissive.

It is a well known fact that virtually all dump truck transportation is performed by dump truck carriers, who are subject to the various MRTs covering dump truck transportation.

Section 3662 of the Public Utilities Code provides as follows:

"The commission shall, upon complaint or upon its own initiative without complaint, establish or approve just, reasonable, and nondiscriminatory maximum or minimum or maximum and minimum rates to be charged by any highway permit carrier for the transportation of property and for accessorial service performed by it.

"In establishing or approving such rates, the commission shall give due consideration to the

cost of all of the transportation services performed, including length of haul, any additional transportation service performed, or to be performed, to, from, or beyond the regularly established termini of common carriers or of any accessorial service, the value of the commodity transported, and the value of the facility reasonably necessary to perform the transportation service."

The costs mandated by Proposition 111 are increased costs of providing transportation. We are bound by the provisions of Section 3662 to give consideration of those costs. We will therefore increase the minimum rates as set forth herein.

Since the datum plane upon which DRA has made its calculations is based upon the rates set forth in the tariff absent any surcharge increases the increases authorized herein will not be compounded with any existing surcharge but will be calculated on the base rates and added as a separate surcharge.

The parties to the proceeding stipulated that the 30-day period provided in Section 311(d) could be waived and that the time for filing comments on the proposed decision pursuant to Rule 77.2 of the Rules of Practice and Procedure should be reduced from 20 days to five days and that replies to comments would be waived.

Comments to the Proposed Decision

The ALJ's proposed decision was filed and mailed to the parties on November 20, 1990. Comments on the proposed decision were filed by Associated General Contractors of California (AGC). The comments point out that the proposed decision provides that the increased rates are to become effective 10 days after the order is signed. The comments also point out that Section 3662.5 of the Public Utilities Code provides as follows:

"The commission shall require no dump truck carrier rate established after a hearing to take effect sooner than 30 days after issuance of its order establishing the rate, regardless of the effective date of that order, unless the commission finds and determines that an

emergency situation requires it to specify an earlier date for the rate to take effect."

Since there was no evidence or stipulation that an emergency situation requires the specification of an earlier date for the rates to take effect AGC requests that the proposed decision be revised to provide for an effective date 30 days after signature.

We agree with AGC that the increased rates authorized herein should not become effective sooner than 30 days after they are authorized, however, rather than change the effective date provision of the proposed decision we have changed ordering paragraph 1 to provide that the Supplements to the minimum rate tariffs will become effective 30 days after today rather than 10 days after today.

Findings of Fact

1. By these petitions CDTOA/CCA request increases in certain rates and charges named in MRT's 7-A, 17-A, and 20, naming rates for the transportation of specified commodities in dump truck equipment.

2. Rates currently published in MRT's 7-A, 17-A, and 20 are based upon various costs, the diesel fuel portion of which is 86 cents per gallon.

3. CDTOA/CCA has presented cost information based upon increases in the costs mandated by Proposition 111 passed by the electorate on June 5, 1990.

4. The parties to the proceeding stipulated that the 30-day period provided in Section 311(d) could be waived and that the time for filing comments on the proposed decision pursuant to Rule 77.2 of the Rules of Practice and Procedure should be reduced from 20 days to five days and that replies to comments would be waived.

Conclusions of Law

1. Based upon the evidence increases are warranted in MRTs 7-A, 17-A, and 20 as set forth in Appendix A of this decision.
2. Because there is an immediate need for rate relief, the effective date of this decision should be today.
3. In order to avoid duplication of tariff distribution, MRTs 17-A and 20 should be amended by separate orders.
4. The 30-day period provided Public Utilities Code § 311(d) should be waived, and as single comment period of five days should be provided.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff (MRT) 7-A (Appendix B to Decision (D.) 82061, as amended) is hereby further amended by incorporating Supplement 36, attached, to become 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 amendments on each subscriber to MRT 7-A.
4. Petitions for Modification 346 in Case (C.) 5437, 125 in C.9819, and 39 in C.9820 are granted to the extent set forth in this decision.



C.5437, Pet. 346 et al. ALJ/FJO/po

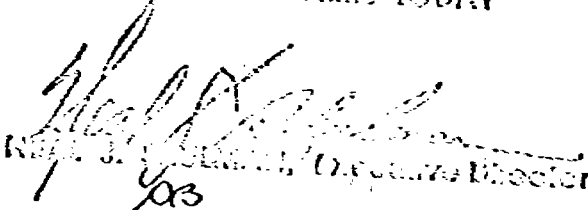
5. The 30-day period provided in Public Utilities Code § 311(d) is waived. All parties wishing to file comments on the proposed decision shall do so within 5 days of the mailing of this decision. There will no reply comments.

This order is effective today.

Dated 12-06-90, at San Francisco, California.

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

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

  
Neal S. Johnson, Executive Director

**SURCHARGE SUPPLEMENT**

**SUPPLEMENT 36**

(Supplements 9, 33, 35 and 36 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

**(1) APPLICATION OF SURCHARGE**

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules of this tariff (excluding surcharges) 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 300 (hourly rates)	◇1.0%	◇1.0%
Moving at rates named in all other items	◇1.2%	◇1.2%

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. Item 95 - Tarp Labor Charge;
2. Items 100 and 110 (Railhead-to-railhead charges only);
3. Item 120 - Bridge and Ferry Tolls; and
4. Item 260 - Additional Charge for Service.

(1) The surcharges in this supplement are separate and should not be compounded with any other surcharges - they are to be added to the last subtotal.

◇ Increase, Decision 90-12-012

EFFECTIVE 01/05/91

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