

FEB 6 1991

Decision 91-02-002 February 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Harrison-Nichols Company, Ltd.,  
John Payne Dump Truck Svc.,  
Link Richmond & Sons, Inc.,  
Bob Zadina Trucking, Inc., and  
Schelhorn & Sons,

**ORIGINAL**

Complainants,

Case 90-06-024

(Filed June 11, 1990)

vs.

Dalton Trucking, Inc.,  
Defendant.

ORDER OF DISMISSAL

This complaint asks that the Commission rescind the authority granted to defendant pursuant to Full Cost Deviation Application DT-90-013-F.

On December 13, 1990, complainants and defendant filed a settlement agreement together with a motion for its adoption by the Commission. As the agreement (Attachment A) states that it shall not be construed as a precedent or policy statement of any kind, we will adopt it and dismiss this proceeding according to its terms.

Findings of Fact

1. Complainants seek to have the Commission rescind the authority granted to defendant pursuant to Full Cost Deviation Application DT-90-013-F.

2. On December 13, 1990, complainants and defendant filed a settlement agreement together with a motion for its adoption by the Commission.

3. The settlement agreement (Attachment A) states that it shall not be construed as a precedent or policy statement of any kind.

4. As this order is made at the request of all parties, it should be effective immediately.

Conclusion of Law

The settlement agreement should be adopted.

**IT IS ORDERED** that:

1. Attachment A, the settlement agreement, is adopted.
2. The authority granted to defendant pursuant to Full Cost Deviation Application DT-90-013-F is rescinded.
3. Waiver by the parties of the requirement of a noticed conference pursuant to Rule 51.1(b), Rules of Practice and Procedure, is accepted.
4. The complaint is dismissed without prejudice.

This order is effective today.

Dated February 6, 1991, at San Francisco, California.

PATRICIA M. SECKERT  
 President  
 G. MITCHELL WILK  
 JOHN B. OHANIAN  
 Commissioners

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

*Neal J. Shulman*  
 NEAL J. SHULMAN, Executive Director  
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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

Harrison-Nichols Company, Ltd.,	)	
John Payne Dump Truck Svc.,	)	
Link Richmond & Sons, Inc., Bob	)	
Zadina Trucking, Inc., and	)	
Schelhorn & Sons	)	
	)	Case No. 90-06-024
Complainants	)	
vs.	)	
Dalton Trucking, Inc.	)	
Defendant	)	

SETTLEMENT AGREEMENT

This Settlement Agreement (Settlement) is entered into on November 28, 1990, by and between Harrison-Nichols Company, Ltd., John Payne Dump Truck Service, Link Richmond & Sons, Inc., Bob Zadina Trucking, Inc., Schelhorn & Sons (collectively, known as Complainants) and Dalton Trucking, Inc. (Dalton), all parties to Complaint Case No. 90-06-024 now pending before the California Public Utilities Commission. There are no other active parties in this proceeding.

I. RECITALS

WHEREAS, Complainants and Dalton, desiring to avoid the expense, inconvenience and uncertainty attendant to the litigation of the issues in dispute between them, have agreed upon a settlement of these issues and desire to submit to the Public Utilities Commission this Settlement for approval and adoption as its final disposition of the matters herein.

WHEREAS, this Settlement represents a compromise; Complainants and Dalton have entered into this Settlement on the basis that its adoption not be construed as an admission or concession by any party regarding facts or law in dispute which have been resolved in this proceeding. Complainants and Dalton expressly reserve the right to raise any unresolved issues in future proceedings before the Commission. Furthermore, it is the intent and understanding of Complainants and Dalton that the Commission's adoption of this stipulation will not be construed as a precedent or policy statement of any kind for or against the parties in any current or future proceeding.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, Complainants and Dalton agree as follows:

## II. SETTLEMENT TERMS

1. Within seven (7) days of the date this Settlement is executed, Dalton agrees to ask the Commission to rescind the authority granted to it pursuant to the Full Cost Deviation Application DF-90-013-F (the Application), for authority to charge less than the applicable minimum rate for the transportation of rock and sand from El Monte (Production Zone 19F) to Wilmington (Delivery Zone 19246) (the Subject Traffic) on behalf of Livingston-Graham, Inc.
2. Dalton agrees not to refile the deviation at this time.
3. Dalton agrees that if, in the future, it seeks authority from the Commission to deviate from the applicable rates for the

Subject Traffic, Dalton will separately cost justify the proposed rate for each type of equipment the company intends to use.

4. Complainants agree to voluntarily withdraw their complaint against Dalton without prejudice upon the Commission's decision to rescind the authority granted pursuant to the Application.

5. Pursuant to Rule 51.10 of the CPUC's Rules of Practice and Procedure (Rules), the Complainants and Dalton agree to file a motion for waiver of Rule 51.1(b) of the Rules which requires that a duly noticed conference be held for all parties to the proceeding prior to signing any settlement or stipulation. Complainants and Dalton agree to cooperate in obtaining such a waiver in good faith.

6. Complainants and Dalton agree to file a motion with the Commission seeking the following actions: (a) adoption of this agreement; (b) rescission of the authority granted pursuant to application DT-013-F; (c) waiver of the requirement of a noticed conference pursuant to Rule 51.1(b); and (d) dismissal without prejudice of the complaint.

7. The binding force of this Settlement is expressly contingent upon Commission approval and adoption of this Agreement. In the event that the Administrative Law Judge or the CPUC rejects or changes this Agreement or individual portions of it, this Agreement shall be null and void and shall be withdrawn from the proceeding, unless Complainants and Dalton agree otherwise. If changes are proposed, such changes shall not

become effective unless the undersigned parties agree in writing to accept the modifications.

8. The Settlement may be executed in one or more counterparts, and each counterpart shall constitute an original instrument but all such separate counterparts shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement pertaining to the issues raised in C. 90-06-024 on the above-referenced date.

Harrison-Nichols Company, Ltd.

Bob Zadina Trucking, Inc.

By Randall P. Harrison  
Randall Harrison

By Bob Zadina  
Bob Zadina

John Payne Dump Truck Svc.

Schelhorn & Sons

By Jay Payne  
Jay Payne

By George Schelhorn  
George Schelhorn

Link Richmond & Sons, Inc.

Dalton Trucking, Inc.

By John Richmond  
John Richmond

By Richard Wood  
Richard Wood

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Harrison-Nichols Company, Ltd.

Bob Zadina Trucking, Inc.

By \_\_\_\_\_  
Randall Harrison

By \_\_\_\_\_  
Bob Zadina

John Payne Dump Truck Svc.

Schelhorn & Sons

By \_\_\_\_\_  
Jay Payne

By \_\_\_\_\_  
George Schelhorn

Link Richmond & Sons, Inc.

Dalton Trucking, Inc.

By \_\_\_\_\_  
John Richmond

By \_\_\_\_\_  
Richard Wood