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Decision 91-07-030 Case 9819, Pet. 133

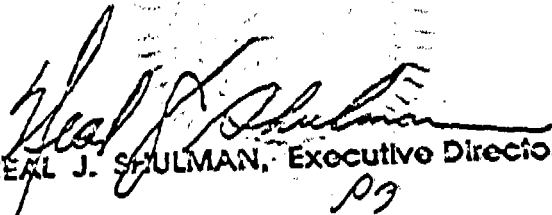
Signed at San Francisco, California, July 24, 1991

Effective date for tariff pages September 15, 1991

Signed by:

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
09

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 for the purpose of considering and)
 determining minimum rates for)
 transportation of rock, sand,)
 gravel, and related items in bulk)
 in dump truck equipment in Southern)
 California as provided in Minimum)
 Rate Tariff 17-A and Southern)
 California Production Area and)
 Delivery Zone Directory 1, and the)
 revisions or issues thereof.)

Case 9819
 Petition for Modification 133
 (Filed February 14, 1991)

OPINION

By this petition California Asphalt Pavement Association (CAPA) requests modification of Item 440 of Minimum Rate Tariff (MRT) 17-A. The tariff names rates for the transportation of commodities in dump truck equipment between points in southern California. Item 440 names minimum charges applicable in connection with such transportation.

CAPA is an association composed of hot mix asphalt producers and shippers. CAPA asserts that the minimum charge rules set forth in Item 440 of MRT 17-A, insofar as they apply to asphaltic concrete, conflict with California Vehicle Code Chapter 5, Article I, Section 35551(a).

Currently, the minimum charge for the transportation of asphaltic concrete named in Item 440 must be the charge for 26 tons when transported in 5-axle bottom dump equipment, and 25 tons when transported in all other 4-axle and 5-axle equipment. But in many instances, CAPA maintains, by loading the maximum allowable amounts, i.e., 25 or 26 tons, a shipper will be in violation of the California Vehicle Code provision cited above, which states "except as otherwise provided in this section or section 35551.5, the total gross weight in pounds imposed on the highway by any group of two

or more consecutive axles shall not exceed (80,000 lbs)...” Thus, CAPA asserts, if a shipper loads to the maximum allowable amount provided in Item 440, it could be in violation of the California Vehicle Code; while if it “short loads” in order to comply with the California Vehicle Code, it will nevertheless be assessed a rate based upon a weight of 25 or 26 tons.

CAPA initially requested that Item 440 be modified so that the minimum charge for asphaltic concrete will be the charge based on 25 tons for transportation performed in 5-axle bottom dump equipment, and 24 tons for all other 4- and 5-axle dump truck equipment.

The California Dump Truck Owners Association (CDTOA) protested the petition, but subsequently withdrew its protest after CAPA agreed to certain changes in its proposed wording.

The precise wording suggested by CDTOA is as follows:

MINIMUM CHARGE

Item 440

The minimum charge per shipment shall be the charge for:

- a. 14 tons at the applicable rate for commodities described in Item 60.
- b. 12 tons at the applicable rate for commodities described in Note 2 of Item 65 and Item 70. (see Exception #1.)
- c. 26 tons for five-axle bottom dump equipment and 25 tons for all other 4 and 5-axle equipment for commodities described in Item 65. (See Exception #2.)
- d. 13 tons at the applicable rate for commodities described in Item 75.

EXCEPTION 1 - When a shipment of asphaltic concrete or cold road oil mixture (also cold liquid asphalt in containers) is transported in a two-axle dump truck, and when the freight bill is so noted and the truck is identified on the freight bill, the minimum charge for the

transportation of the shipment shall be the charge for transporting 10 tons at the applicable rate.

EXCEPTION 2 - When the carrier's equipment (unit) cannot achieve the stated minimum charge in sub-paragraph c above, the minimum charge for the transportation of the shipment shall be the actual tonnage the carrier transported under Section 35551(a) of the Vehicle Code. The shipping document shall include gross weight, unloaded weight, and net pay load as well as the vehicle identification and DMV license numbers. In no case shall the minimum charge be less than 24 tons.

The Commission's Transportation Division recommends that if the petition is granted, essentially the same wording suggested by CDTOA and concurred in by CAPA be included within the revised item. CAPA requests that the tariff revisions not become effective before September 15, 1991 in order that its shipper members may revise their billing procedures to reflect the new wording in Item 440. In the circumstances, the petition with modifications suggested by CDTOA and concurred in by CAPA and the Commission's Transportation Division are reasonable and should be adopted.

Findings of Fact

1. Item 440 of MRT 17-A currently sets forth minimum charges for the transportation of asphaltic concrete based upon 26 tons when shipments are transported in 5-axle bottom dump equipment, and 25 tons when transported in all other 4- and 5-axle dump truck equipment.

2. California Vehicle Code Chapter 5, Article I, Section 35551(a) establishes a gross weight limitation of 80,000 pounds for shipments of asphaltic concrete.

3. Shipments of asphaltic concrete sometimes may not be lawfully loaded to the 25 or 26 ton levels named in Item 440 of MRT 17-A, because they would then exceed the gross weight limit of 80,000 pounds specified in California Vehicle Code Chapter 5, Article I, Section 35551(a). Such shipments must, however, be assessed rates named in MRT 17-A based upon 25 or 26 tons.

4. CAPA initially proposed that the minimum charges for shipments of asphaltic concrete currently named in Item 440 of MRT 17-A be changed to 25 tons when transported in 5-axle bottom dump equipment, and to 24 tons when transported in all other 4- and 5-axle dump truck equipment.

5. CDTOA initially protested CAPA's petition, and has recommended that the problems indicated by CAPA may be met through publication in Item 440 of EXCEPTION 2, as stated above. CAPA agrees with the modification recommended by CDTOA. CDTOA has withdrawn its protest provided its suggested EXCEPTION 2 is adopted.

6. The Commission's Transportation Division staff concurs with the modification to CAPA's petition suggested by CDTOA and concurred in by CAPA.

Conclusion of Law

The petition for modification of Item 440 of MRT 17-A should be granted, as set forth above. A public hearing is not necessary.

ORDER

IT IS ORDERED that:

1. Minimum Rate Tariff 17-A (Appendix C of Decision 80578, as amended) is further amended by incorporating Thirteenth Revised Page 1-17 and Thirteenth Revised Page 1-18, attached, to become effective September 15, 1991.

2. In all other respects, Decision 80578, as amended, shall remain in full force and effect.

3. The Executive Director shall serve a copy of this decision on each subscriber to Minimum Rate Tariff 17-A.

4. The petition is granted as set forth above.
This order becomes effective 30 days from today.
Dated _____, at San Francisco, California.

SECTION 1--RULES (Continued)	ITEM
<p style="text-align: center;">METHOD OF DETERMINING WEIGHT OF SHIPMENT</p> <p>Actual weight of the shipment shall be used when furnished by the shipper or when obtained by the carrier at the shipper's direction and expense.</p> <p>Otherwise, charges for commodities listed in:</p> <p>a. Items 60, 70 and 75 shall be computed upon the basis of 2,800 pounds per cubic yard when loaded in dump truck equipment.</p> <p>b. Item 65 shall be computed on the basis of 3,200 pounds per cubic yard when loaded in dump truck equipment.</p> <p>EXCEPTION.--When rail rates are used under the provisions of Items 200 and 220 of this tariff, actual, estimated or agreed weights shall be used to compute charges in accordance with the provisions of the governing rail tariff.</p>	420
<p style="text-align: center;">MINIMUM CHARGE</p> <p>The minimum charge per shipment shall be the charge for:</p> <p>a. 14 tons at the applicable rate for commodities described in Item 60.</p> <p>eb. 12 tons at the applicable rate for commodities described in Note 2 of Items 65 and 70. (See Exception 1)</p> <p>ec. 26 tons for five-axle bottom dump equipment and 25 tons for all other 4 and 5-axle equipment for commodities described in Item 65. (See Exception 2)</p> <p>ed. 13 tons at the applicable rate for commodities described in Item 75.</p> <p>*EXCEPTION 1.--When a shipment of asphaltic concrete or cold road oil mixture (also cold liquid asphalt in containers) is transported in a two-axle dump truck, and when the freight bill is so noted and the truck is identified on the freight bill, the minimum charge for the transportation of the shipment shall be the charge for transporting 10 tons at the applicable rate.</p> <p>*EXCEPTION 2.--When the carrier's equipment (unit) cannot achieve the stated minimum charge in Subparagraph c above, the minimum charge for the transportation of the shipment shall be the actual tonnage the carrier transported under Section 35551(a) of the Vehicle Code. The shipping document shall include gross weight, unloaded weight and net pay load as well as the vehicle identification and DMV license numbers. In no case shall the minimum charge be less than 24 tons.</p>	440
<p> * Change) * Addition) Decision </p>	
EFFECTIVE	
<p style="text-align: center;">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	

ITEM	SECTION 1--RULES (Continued)
460	<p style="text-align: center;">PAYMENTS TO UNDERLYING CARRIERS</p> <p>Except as provided in Item 255 of this section, charges paid by any overlying carrier to an underlying carrier and collected by the latter carrier from the former for the service of said underlying carrier shall be not less than 95 percent of the charges applicable under the minimum rates prescribed in this tariff, less the gross revenue tax applicable and required to be paid by the overlying carrier (See Notes 1 and 2). The underlying carrier may extend credit to the overlying carrier for a period not to exceed 25 days following the last day of the calendar month in which the transportation was performed, and payment to the underlying carrier must be made within that time. Freight bills shall be presented by the underlying carrier to the overlying carrier within seven calendar days of the date transportation was performed, except that they shall be presented not later than three days after the last calendar day of the month in which the transportation was performed. All payments to the underlying carrier by the overlying carrier shall specifically identify the freight bill(s) of the underlying carrier being paid by the overlying carrier.</p> <p>Overlying carriers may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by the underlying carrier, as evidenced by the postmark, shall be deemed to be the time of presentation of the freight bills.</p> <p>NOTE 1.--As used in this item the term "gross revenue tax" means the fees payable to the California Public Utilities Commission under the Transportation Rate Fund Act.</p> <p>NOTE 2.--Nothing herein contained shall prevent an overlying carrier, in paying such charges, from deducting therefrom such liquidated amounts as may be due from the underlying carrier to the overlying carrier, providing such deductions have been authorized in writing by the underlying carrier. Any overlying carrier electing to employ this procedure shall itemize such amounts and maintain for the Commission's inspection all documents involved in the transaction. The term "liquidated amounts" as used in this item, shall not include, when the underlying carrier provides a tractor and driver without trailing equipment, charges pertaining to the operation and maintenance of trailing equipment such as: tires, tubes, parts, repairs, maintenance, painting and cleaning.</p>
480	<p style="text-align: center;">RATES FOR DRY MIXTURES OF ROCK, SAND AND GRAVEL (WITH OR WITHOUT CEMENT) IN BATCHES</p> <p>Rates for the transportation of dry mixtures of two or more of the commodities listed in Item 60, in batches, shall be 17 cents per ton more than the rates otherwise provided in this tariff for the transportation of rock, sand and gravel between the same points.</p>
500	<p style="text-align: center;">REFERENCES TO ITEMS, OTHER TARIFFS AND GENERAL ORDERS</p> <p>Unless otherwise provided, references herein to item numbers in this or other tariffs include references to such numbers with letter suffix, and references to other tariffs or publications include references to amendments and successive issues of such other tariffs or publications and references to general orders include references to amendments or successive issues of such general orders.</p>
<p>No change on this page, Decision EFFECTIVE</p>	
<p>Correction ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>	