

DEC. 8 1992

Decision 92-12-020 December 3, 1992

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.

And Related Matters.

ORIGINAL

Case 5437  
Petition for Modification 350  
(Filed December 19, 1991)

Case 9819  
Petition for Modification 145  
(Filed December 19, 1991)

Case 9820  
Petition for Modification 43  
(Filed December 19, 1991)

- Edward J. Hegarty, Attorney at Law, and James D. Martens, for the California Dump Truck Owners Association, petitioner.
- Charles L. Smithers, for Associated General Contractors of California, protestant.
- Dan Badger, for T&T Trucking, Inc.;
- Harold F. Culy, for Bay Counties Dump Truck Association and T&T Trucking;
- Larry Farrens, for the California Carriers Association; Daniel W. Baker, Attorney at Law, by Hanson, Bridgett, Marcus, Vlakov & Rudy, for Mission Valley Rock, Royal Trucking, and Reliable Trucking; Randall Harrison, for Harrison-Nichols; T. W. Anderson, for National Cement Company of California; Manuel Andrade, Jr., for Andrade Trucking; Don Gagliasso, for Gagliasso Trucking; Donald D. Johnston, for California Asphalt Pavement Association; Michael Lindeman, for Yuba Trucking; R. J. Marucco, for RMC Lonestar; Pat McDonald, for Salamon Trucking; Geoffrey Quinn, for Northern California Teamsters; and Addison Taylor Reid, for Southern California Rock Products Association.
- Alberto Guerrero, Attorney at Law, and Maryalis McGuinness and Lynn Maack, for Division of Ratepayer Advocates.

INTERIM OPINION

Summary of Decision

This interim decision orders increases in rates for the transportation of certain commodities hauled in dump truck equipment, as named in Minimum Rate Tariffs (MRT) 7-A, 17-A, and 20. Increases of approximately 4% are ordered, with a further review of the need for increases when evidence on the case in chief is presented commencing in late November.

These petitions were filed by California Dump Truck Owners Association (CDTOA), requesting increases in rates and charges named in MRT 7-A, 17-A, and 20. The tariffs contain rates applicable for the transportation of certain materials in dump truck equipment.

The rate increases are sought to offset increases in several cost categories, i.e., labor related costs such as FICA and worker's compensation insurance, various vehicle fixed costs such as investment cost, insurance, registration and license fees and weight and use taxes, and various vehicle running costs such as those for fuel, oil, tires and parts.

The petitions were protested by the Commission's Division of Ratepayer Advocates (DRA) and by the Associated General Contractors of California (AGC). CDTOA had requested that hearings be set early in 1992 so that processing could be completed in time for rate increases to be effective in the spring of 1992, prior to the peak dump truck hauling season, which normally commences about May 1. On May 1, 1992, CDTOA filed its Motion for an Interim Decision granting rate increases in the MRTs, followed on May 19 by an amended motion quantifying precisely the amount of increases sought in the various items of the tariffs.

Hearings were held before Administrative Law Judge (ALJ) John Lemke in March and May, at the end of which the record on CDTOA's motion for interim increases was completed and the matter

submitted with the filing of concurrent briefs on August 5, 1992. Briefs were filed by CDTOA and by DRA. The parties agreed to shorten the comment period on the ALJ's proposed decision to ten days.

Background

Dump truck rates have not been generally adjusted since Decision (D.) 89-04-086, which increased rates by 4 percentage points for the transportation of construction related commodities effective July 1, 1989. CDTOA asserts it had hoped that subsequent to the issuance of D.90-07-053, which defined the "efficient dump truck carrier" for cost gathering and ratemaking purposes, the cost gathering process would proceed quickly and result in current rates for use by efficient dump truck carriers in the tariffs. But since significant delay is expected before the OSH 325 (Case (C.) 5437) proceeding will produce the cost studies necessary to calculate current rate levels for efficient dump truck carriers, these petitions were filed by CDTOA.

The petitioner asserts that pending completion of cost studies of efficient carriers pursuant to OSH 325, et al., the Commission is obliged to adjust minimum rates upon a satisfactory showing that they are not currently just and reasonable. It refers us to Minimum Rate Tariff No. 7 (1965) 65 CPUC 167, 172 where the Commission stated:

"It is incumbent upon the Commission, therefore, to keep its minimum rate program responsive to current transportation conditions."

CDTOA also maintains that the dump truck rate deviation procedures adopted by D.89-09-104 and D.91-12-039 are now being used with high frequency on hauls where carriers believe their specific costs will allow the assessment of rates lower than the established minimums. It argues that with downward rate flexibility so easily available to carriers and shippers there is little reason for the Commission to deny or be extra cautious in

granting rate increases based upon demonstrated levels of higher cost for the more typical dump truck hauls.

On May 20, 1992, DRA filed its "Petition to Change the Ratemaking Operating Ratio for Minimum Rate Tariffs 7-A, 17-A, and 20 in Accordance with Commission Decision 90-07-053."

Evidence

CDTOA

1. Labor Costs

CDTOA has carried forward the labor costs developed in C.5437, Petition 328, et al., and adjusted those costs to reflect current statutorily mandated increases in worker's compensation insurance and FICA. Its witness Martens testified that the current Teamster Master Agreement, which binds work for signatory members of AGC, as well as for the Association of Engineering Construction Employers and Engineering & Utilities Contractors (ACE), provides a total hourly wage package, exclusive of payroll taxes and worker's compensation insurance premiums of \$29.25; whereas the current wage packages sought to be recognized in this proceeding for MRT 7-A cost/rate purposes in the Northern Region and Southern Region are, respectively, \$14.52 and \$17.60, or about 50% and 60% of the Master Agreement.

Michael Willcoxon testified on behalf of Oliver de Silva, a general engineering contractor, and also on behalf of ACE. He stated that ACE contractors pay for-hire dump truck carriers over \$100 million annually; that it is a concern of Oliver de Silva as well as ACE that dump truck drivers be paid adequately; that sometimes situations arise where 50 or 60 trucks are needed, but only 20 or 30 trucks are obtainable; that adequate levels of hauling services are unavailable during peak construction season; that when a contractor submits a bid on public work, there is such competition that if one bids in excess of the minimum rate, he would lose the job; and that dump truck drivers earn about \$10 per

hour in the Bay Area, a figure so low as to make it difficult to secure quality drivers.

Willcoxon supports the CDTOA motion for an interim increase of about 5% to 6%.

2. Fixed Costs

CDTOA has updated vehicle investment costs through 1990, using the Commission's Report 511-39. Fixed costs have also been increased to reflect recent statutory increases for registration and license fees, weight fees, and highway use taxes.

CDTOA obtained insurance quotes from three different suppliers representing three major insurance underwriters. Martens testified that the three insurance carriers utilized are, to the best of his belief, the lowest cost carriers. Martens then obtained premium quotations for the historical dump truck vehicle units, one quotation for a driver with a good citation/accident record, and one with a fair record, and averaged the two costs. He used the average premium quoted by the company located in the middle of the three-carrier range. He believes that his development is consistent with D.86-08-030, which specified that insurance costs for liability and fire, theft, and collision be included as a fixed cost, and that costs be based on industry average costs, and not on the cost of minimum coverage required.

3. Running Costs

Costs of fuel, oil, tires, and vehicle parts have been increased or decreased to levels current when the petitions were filed. CDTOA's diesel fuel price of \$1.195 compares almost precisely with the regression analysis development employed by the Transportation Division staff of \$1.1979. The Staff development was accepted by the parties as an accurate surrogate for the staff's Fuel and Oil Cost Survey, and reflects the cost as of May 1992.

4. Operating Ratio Data

Exhibit 11 depicts the 1991 operating revenues and expenses of a group of 34 dump truck carriers of construction commodities whom CDTOA believes to be representative of the industry. Included are ten carriers appearing in the Efficient Carrier list of 137 carriers. These carriers reported revenues exceeding \$109 million; \$31.7 million thereof was earned by the ten Efficient Carriers. After certain adjustments to account for those individual proprietors who drew no salary, a composite operating ratio of 100.8 was calculated for the entire list of 34 carriers, and of 101.3 for the ten Efficient Carriers.

The ALJ took official notice of the Efficient Carrier list, and of the operating ratios of carriers listed thereon who filed annual reports no later than June 7, 1992. A list of such carriers was prepared by DRA and is included with CDTOA's brief as Appendix A. The list includes 47 carriers. In Appendix B, CDTOA has presented an analysis of the operating revenues and expenses of 46 of the 47 Efficient Carriers listed in Appendix A. One carrier was omitted because it had furnished a letter with its annual report stating that the figures reported should not be used for rate setting purposes, since the carrier operates three businesses under one set of books with no segregation of revenues and expenses. The financial results of these 46 carriers, without any adjustments, are set forth in Appendix B, and indicate a composite operating ratio of 99.6 based on total revenues of \$108,228,731.

In Appendix C, CDTOA has portrayed the results of operations of these carriers, omitting one additional carrier, with adjustments in the expenses of eight of them for owners' salaries. 21 of these 45 carriers had operating ratios in excess of 100. The composite operating ratio is 100.9, based on total revenues of \$105,465,205.

Specific Increase Request

In its Amendment to Motion filed May 19, 1992, CDTOA quantified the amount of interim rate increases it seeks.

In MRT 7-A, CDTOA requests that Item 390 Column "M" (weekday) hourly rates be increased by 7% in all four hourly regions, less the current Supplement 36 surcharge of 1%, effectively increasing these rates by 6%. It requests no changes in the Columns "O" and "P" rates, which apply on weekends and holidays. It requests that Items 290, 300, and 310 distance rates be increased by 7% less the Supplement 36 surcharge of 1.2%. It requests that delay time rates in Items 90(a), 90(b), and 90(c), applicable for each six minute period or fraction thereof, be raised to \$4.06, \$4.08, and \$4.08, respectively, from the present charge of about \$2.75. CDTOA states that these charges have not been adjusted for several years, and the sought rates will provide that delay time can be charged at slightly over \$40 per hour. CDTOA requests that the additive rates in Item 270(a) be increased to 55 cents per ton in both the Northern and Southern territories, from the present approximate 40 and 43 cents per ton, and, in Item 280(a), to 75 cents per ton for both territories. Item 400 Column "M" demolition rates are requested to be increased by 7% less the 1.2% surcharge in Supplement 36, which should be eliminated. No changes are proposed in the Columns "O" and "P" rates in Item 400. The zone rates in Items 490 and 510 are requested to be increased by 7%, less the surcharge of 1.2%, effectively 5.8%.

In MRT 17-A, CDTOA requests that all zone rates except those applicable from San Diego County and the Santa Barbara-San Luis Obispo production areas be increased by 7% less the Supplement 49 surcharge of 1.1%, which should be eliminated. The petitioner requests that the San Diego County production area rates be increased by 3%, and that the existing Supplement 49 surcharge of 1.1% be eliminated. CDTOA proposes that the Santa Barbara-San

Luis Obispo production area rates be increased by 4%, after elimination of the Supplement 49 surcharge. Item 120(A) and (b) rates are proposed to be increased to 55 and 75 cents per ton from about 30 and 70 cents, respectively. CDTOA proposes that the delay time rates named in Item 170, and those named in Item 180 for Sections 4 through 9.2 and 10 be increased to \$4.08.

In MRT 20, the petitioner requests that all existing zone rates be increased by 7%, less the Supplement 33 surcharge of 1.1%, which should be eliminated, an effective interim increase of 5.9%. The same increase is requested for the Item 550 distance rates. CDTOA requests that the Item 140 additive rates be increased to 55 cents per ton, and the Items 180 and 190 delay time charges increased to \$40.76 per hour. These are significant increases, approximating 40% or greater, and are sought, CDTOA maintains, as in the case of similar increases in MRTs 7-A and 17-A, to bring charges in these long ignored items up to levels reflective of actual costs.

At the conclusion of evidentiary hearings, the ALJ asked that the parties address several specific issues in their briefs:

1. The correlation between operating ratios and construction activity presented in Exhibit 13.

2. The significance of the Davis-Bacon Act in connection with these petitions.

3. The impact of insurance costs with respect to these petitions.

4. The impact of fuel costs with respect to the petitions.

5. Mr. Willcoxon's argument that rates should be increased so drivers, and in particular owner-operators, should be more willing to perform transportation services.

As shown in Exhibit 1, the United States and the State of California have prevailing wage statutes applicable to public works projects funded by federal and state funds. Such public works projects represent a growing portion of construction related



hauling performed by dump truck carriers, expected to increase dramatically this year and the next several years with the availability of additional state and federal funds.

CDTOA believes the increase in spending for federal and state public works projects to be significant for many reasons, including the applicability of federal and state prevailing wage requirements for dump truck carriers. The federal prevailing wage law was adopted by Congress pursuant to the Davis-Bacon Act (40 USC Sec. 276(a)). Federal prevailing wage requirements have been adopted, with some changes, by California in the California Labor Code, Section 1770 through 1773.5. The Director of the California Department of Industrial Relations (DIR) is responsible for determining the "prevailing wage" which, for construction projects, is the applicable wage rate established by collective bargaining agreements in the area of the work.

The prevailing wage determined to be applicable by the DIR to dump truck carriers engaged in hauling on public works projects is the labor cost negotiated in the current Teamster Union collective bargaining agreement. If dump truck carriers employed drivers on such jobs, this is the labor cost which must be paid. The present prevailing wage established by the DIR for dump truck drivers is:

Base Wage	\$19.28
Pension	3.59
Health/Welfare	3.85
Vac./Holiday	2.00
Misc. Benefits	<u>.53</u>
Total	\$29.25

To the above package must be added the cost for worker's compensation, FICA and all other statutory payroll costs, amounting to about another 11 percent of the base pay. CDTOA asserts that the effect of this disparity between prevailing wages and the labor costs premising the dump truck minimum rates is that employee drivers cannot be used on public works jobs because there are

insufficient labor costs in the minimum rates to pay drivers the mandated labor costs. However, CDTOA is not asking that we increase labor expense to the prevailing wage level. It asks only that we recognize and accept the level of the ten-year old labor costs to support interim increases in these rates. It suggests that ultimately a two-tier rate level, or some other mechanism should be developed so that dump truck employers can use employee drivers on public works jobs.

The development of insurance costs has been discussed earlier. CDTOA estimates that about 30% of the increases requested may be attributable to increases in insurance premiums.

Adjusted Operating Ratio

DRA suggests that if operating ratios are used to establish minimum rates for purposes of this interim increase, it be increased from 94 to 96. CDTOA argues that while the Commission in D.90-07-053 adopted the weighted cost of capital methodology for determining the appropriate current operating ratio as set forth in Appendix B of the decision, DRA has not utilized that methodology. This is so, CDTOA maintains, because the appropriate profit margin for the dump truck industry in accordance with D.90-07-053, must be based upon five industry averages:

- a. The California dump truck industry average income tax rate;
- b. The California dump truck industry average debt interest rate;
- c. The general trucking industry expected equity return rate;
- d. The California dump truck industry average proportion of rate base held in debt; and
- e. The California dump truck industry average proportion of rate base held in equity.

CDTOA asserts that nowhere in Exhibit 21 has DRA obtained or used California dump truck industry averages to determine the

average tax rate, average debt interest rate, average proportion of rate base held in debt, or average proportion of rate base held in equity. In fact, CDTOA notes, Exhibit 21 states on page 2-4 that market data for permitted dump truck carriers are not readily available.

AGC

In Exhibit 13, AGC witness Peter Fusselman has presented a comparison of operating ratios with construction volumes during the years 1976 through 1987. The comparisons are set forth below:

TABLE 1

Comparison of Operating Ratio and Construction Volume

<u>Year</u>	<u>Dump Truck Operating Ratio</u>	<u>Statewide Annual Construction Volume *</u>
1976	97%	\$28.95 Billions
1977	98%	33.50 Billions
1978	96%	33.57 Billions
1979	97%	32.90 Billions
1980	98%	27.91 Billions
1981	99%	26.65 Billions
1982	99%	22.92 Billions
1983	97%	31.00 Billions
1984	97%	35.72 Billions
1985	97%	41.02 Billions
1986	96%	45.02 Billions
1987	96%	43.51 Billions

\* (stated in constant 1991 dollars)

The data purports to show that operating ratios fall and rise with changes in construction activity. CDTOA notes, however, that during the years 1976-1977, and also 1983-1985, construction activity increased, yet carrier operating ratios increased or remained constant, and suggests that AGC's correlation theory is inconsistent. Moreover, while construction activity increased to \$49.26 billion in 1989, based upon testimony by the AGC witness, the industry operating ratio for 1989 was 97.5.

DRA

DRA asserts that CDTOA has not met its burden of establishing that an interim rate increase is warranted in these tariffs. It maintains that there is no emergency situation besetting the dump trucking industry; that CDTOA's presentations selectively measure and overstate certain costs; that due to current financial market conditions a lower return on investment is warranted which would lower rates; and that it is bad pricing policy to raise prices in the face of depressed demand for dump truck service.

DRA argues that the Commission has consistently held that an interim rate increase is an emergency measure, applicable only in the instance where minimum financial obligations cannot be met prior to the establishment of definitive rates, and where such increase is necessary to protect integrity of service. DRA refers us to Pacific Electric Railway Co., 44 CRC 85, 88 (1942); Re General Teleph Co. 14 CPUC 2d 1 (1983); Re Little Lake Wtr Co., 15 CPUC 2d 154 (1984); and Re Hillview Wtr Co., 16 CPUC 417 (1984). In Pacific Electric Railway the Commission stated:

"As applying to the instant application an emergency may be defined as that state of financial condition wherein, upon a cash basis, the carrier cannot procure sufficient funds from earnings or other sources to defray the essential and unavoidable costs of providing a reasonable standard of service over a period of time of such length as to allow for a full and final determination of whether or not applicant is entitled to increased revenue and, if decided in the affirmative, to test the equity of the fare structure proposed."

The Commission indicated that an emergency might exist if the carrier had insufficient funds to meet current payroll costs, or to meet interest payments on outstanding bonds. The Commission denied the railway's request for an interim increase, and deferred final decision regarding the proper ultimate

fare structure until a complete record could be developed, one based upon the input of all parties.

In the General Telephone decision cited by DRA, we granted partial rate relief. We commented that partial relief could be granted based on an uncontested additional revenue requirement, and only when, because of scheduling and extraordinary conditions, a final decision cannot be issued before the start of the test year when a utility, under our Rate Case Processing Plan, ordinarily expects a decision on its application. The Commission again stated, however, that interim rate relief is granted only when a utility faces a demonstrated financial emergency.

In Little Lake Water Co. and Hillview Water Co. we essentially reiterated our holding in Pacific Electric Co.

DRA also refers us to TURN v. PUC, 44 Cal. 3d at 878, where the California Supreme Court stated that while the Commission certainly has the power to award an interim increase, it must be only after a prima facie showing of an emergency condition. (By D.71874 dated January 17, 1967 66 CPUC 725, we ordered an interim increase in MRT 17 rates because the existing rate structure did not provide adequate revenues to carriers engaged in asphalt transportation.)

DRA asserts that CDTOA is attempting to finesse an interim rate increase before the Commission has been presented with the best evidence. It believes CDTOA's cost figures for insurance, fuel, and repair and maintenance are overstated. It notes that insurance costs measured by CDTOA account for the largest single factor in CDTOA's total cost development. DRA takes issue with CDTOA's decision to use National Casualty Insurance quotations, and not those of the lower priced Wilshire Insurance. It further believes that CDTOA's solicited premium quotes do not capture all policy options or operating characteristics, that its selection of costs from a single insurance company is too limited, that its data

source is potentially biased, and that DRA's survey data is a superior source for insurance costs.

DRA recommends, with respect to fuel costs, that rather than using the most recent (May 1992) cost of \$1.1979 developed through the regression analysis utilized by TD staff and shown in Exhibit 14-A, an average figure for the approximate first five months should be employed. This cost would be \$1.14.

DRA takes exception (in its Brief) to CDTOA's presumption that repair and maintenance costs have increased since 1979, and in fact believes such costs have decreased. It notes that CDTOA has updated repair costs using the Producer Price Index (PPI) factor as of July 1991, resulting in a 35.25% increase. DRA points out that CDTOA's witness Jenkins testified that the PPI index for vehicle parts from August 1979 was used to develop maintenance costs, stating that the procedure was the same used in 1979, the last time repair costs were adjusted.

DRA argues that repair costs were revised in C.5437, OSH 325, and that as part of that case the CDTOA witness testified in July 1988 that the industry had experienced decreases in some cases of repair costs compared with amounts stated in the last petition of record, Petition 328, filed in 1985. DRA argues that it would be appropriate to take into account only the incremental change in repair costs which have occurred since the adjustments adopted in 1989, which were based upon a staff study conducted in September 1986. It has made the following calculation, set forth in Table 1 of its brief:

PPI (#1412 Motor Vehicle Part

PPI July 1991	112.3
PPI Sept 1986	103.4
Increase	8.61%
Increase in repairs	4.3%

Since parts make up only half of total repair costs, DRA contends, only half of this percentage increase in parts should be used to update the repair and maintenance cost category. Thus, DRA recommends that any adjustment in repair costs from levels for these tariffs be based upon a 4.3% escalation factor over the repair cost data contained in Exhibits 94, 95, and 96 of C.5437, OSH 325. And when the 4.3% increase is applied to the figure of \$.108 for a 5-axle double bottom dump unit set forth in Exhibits 94, 95, and 96, the resultant cost of \$.113 is a little less than half of the cost of \$.242 shown in CDTOA's Exhibit 4. DRA urges that we consider this decrease in repair costs when determining whether rates should be increased on an interim basis.

DRA objects to rate increases based on comparisons of historical industry average operating ratios with the ratemaking operating ratio, noting that even CDTOA's witness Martens testified that he does not believe it has been a Commission practice to look at operating ratios to decide whether the industry needs a rate increase: "I think it has no relevance, no relevance at all to whether the industry needs a rate increase."

If, however, the Commission should choose to determine there is a need for a rate increase relying upon operating ratio data, DRA contends, it should be predicated on its currently developed operating ratio, based in turn upon its recent cost of capital related operating ratio of 96%.

In its determination of the relationship between dump truck operating ratios and construction activity, DRA performed a regression analysis between the two variables for the years 1977 to

1990, and also tested the period 1980 through 1990 to determine the effects of rate increases in the previous years and changes in state construction activity. DRA concluded from these analyses that historical profits are heavily influenced by construction activity, over 50 percent of the changes in dump truck profits being attributable thereto.

DRA has also commented on Willcoxon's position that minimum rate tariffs should be increased so that driver wages will be increased to a level which will attract sufficient qualified drivers to perform construction projects efficiently. It notes that the wage rate built into the present minimum rates for the San Francisco Region is \$16.70/hour, not \$10.00 as asserted by Willcoxon. It contends that a rational dump truck employer will not offer a wage in excess of the level necessary to attract a sufficient quantity and quality of employees. To satisfy Willcoxon's position, DRA maintains, carriers must pay employee drivers higher wages; and increasing minimum rates is a clumsy, inefficient way to accomplish this. DRA contends that the witness's advocacy of reasonable (higher) wages for dump truck drivers is really an attempt to create an oversupply of carriers from which construction employers can choose at a moment's notice.

With respect to the granting of interim relief, DRA notes that CDTOA filed its general rate increase petition on December 19, 1991, and that it announced during the prehearing conference of February 21, 1992 that it intended to request interim relief at the time of hearings in March, or before, by motion. However, CDTOA delayed filing its motion until May 1, 1992. DRA concludes that CDTOA clearly did not consider the situation to be urgent; otherwise, a motion would have been filed in December 1991. Moreover, DRA maintains that the peak hauling season, beginning May 1, 1992 will be well past by the time this interim request is processed, and that any interim increase will practically coincide with submission of the case in chief.



DRA states that increase requests for accessorial and additive items named in the tariffs were not specified until the final days of hearing in May, and that CDTOA offered no satisfactory breakdown of its increase request attributable to specific rate components. It believes such information to be necessary for a complete record, and imperative to determine the reasonableness or necessity of its requests for interim or permanent increases in minimum rates. (CDTOA's witness did testify that additive charges are applied to about 30% to 35% of all dump truck transportation, and accessorial charges assessed by carriers about 5% of the time.)

DRA calculates that incorporating its adjusted ratemaking operating ratio (96%) rather than that of CDTOA (94%) reduces CDTOA's results by about 2.1%.

#### Discussion

The obvious first decision in this proceeding must be whether there is a need, and if so a sufficient one, to warrant an interim increase in these three tariffs. The best information before us on that point is the operating ratio data set forth in Exhibit 11, discussed above, showing a composite operating ratios (OR) of 100.8 for the 34 carriers, and 101.3 for the ten efficient carriers on the list. Moreover, the list of 45 efficient dump truck carriers portrayed in Appendix C to CDTOA's brief indicates that 21 carriers had ORs exceeding 100, and the composite OR therefore is 100.9. We believe that such results of operations indicate sufficient financial distress in the dump trucking industry to constitute a financial emergency, justifying interim rate increases. Moreover, this analysis is confirmed when the disputed costs are recast, giving effect to DRA's recommended fuel cost of \$1.14, its running cost of 11.3 cents per mile, and the lowest insurance cost figure determined by CDTOA.

Inextricably connected with the issue of operating results is the subject of an appropriate OR at this time, in order

to determine what profit level should be included in current minimum rates. D.90-07-053 found an OR of 94% to be appropriate; but DRA has endeavored to show that financial conditions have changed since mid-1990. Debt, for example, has lessened, based upon DRA's forecasted cost, from 14.33% (Table 2, Exhibit 106, C. 5437, OSH 25) to 10.21% (Table 5, Exhibit 21). Forecasted debt cost was utilized in the Exhibit 106 development "because Staff's recommendation concerns minimum rates that are likely to be effective in 1990." (Exhibit 106, page 19.) A differential of 4.5%, the historical spread between the prime rate and actual dump truck debt cost was utilized in Exhibit 106, and added to the forecasted prime rate.

DRA witness Christopher Blunt has utilized the actual long-term debt outstanding, and corresponding interest expense for the dump truck industry, from CTA's Financial Who's Who for the four year period 1987 through 1990. He subtracted therefrom the average prime rate during the same time period to determine a historical spread between the nominal interest rate and the actual prime rate. He then added the Data Resources International (DRI) and Blue Chip 1992 average forecasted prime rate to the four year average historical spread, thereby developing an estimated (forecasted) cost of debt for the dump truck industry of 10.21%. This methodology is approximately the same as that adopted by D.90-07-053. The principal difference is that Blunt used CTA Who's Who dump truck carrier debt information, whereas data for 383 dump truck carriers were analyzed for the presentation adopted by D.90-07-053. Appendix B to D.90-07-053 requires that debt cost for "the California dump truck industry" be estimated. This Blunt has done.

His capitalization ratios are based upon his analysis of seven publicly traded general freight interstate trucking companies. However, he also reviewed the capitalization ratios of the California dump truck industry reported in CTA Financial Who's

Who for 1987 through 1990, and testified that the CTA reported data regarding capitalization ratios is virtually the same as that of the seven publicly traded companies.

The witness' calculation of expected return on equity (11.36%) is based upon analyses, utilizing Discounted Cash Flow and Risk Premium methodologies, of general freight carriers, as directed by D.90-07-053.

After consideration, Blunt's presentation appears to be a fair and reasonable analysis of the estimated capitalization ratios, as well as the tax and debt costs, and the return on equity reasonably expected by the California dump truck industry. The resultant operating ratio of 95.99, shown in Table 11 of Exhibit 21 and based upon the operating margin and operating ratio of the efficient carrier group, is appropriate for setting current rates in the three minimum rate tariffs. This operating ratio is quite close to the 95.64% figure shown in Table 10 of Exhibit 21, which is based upon the somewhat different total rate base and operating revenues of the CTA Who's Who carriers. It is close enough to confirm the validity and appropriateness of the efficient dump truck carrier group OR of 95.99%.

The tax rate used by the DRA witness is the one found reasonable in D.90-07-053, and we believe appropriate for purposes of this proceeding.

DRA witness Auriemma prepared three exhibits in which she has calculated the amount of increase represented by each cost category requested by CDT0A. Her calculations are shown as follows, and are applicable only in connection with MRT 7-A costs.

	<u>Table 1</u>	<u>Table 2</u>
	<u>Hourly Cost</u>	<u>Distance Cost</u>
Mandated Fees		
Work. Comp/FICA	2.73%	2.92%
Hist. Equip. Cost	2.34%	2.73%
Insurance	5.88%	7.61%
Driver Revenue		
Hour Charges	1.64%	1.56%
Fuel/Oil/Tires	1.21%	2.18%
Maintenance, Parts		
(Running costs, less	4.40%	4.98%
fuel, oil, tires)		
	18.20%	21.98%
Less:	11.00%	11.00%
	7.20%	10.98%

The final totals (net of present 11.0% surcharges) shown as 7.20% for hourly, and 10.98% for distance costs, are from Exhibit 22, presented by CDTOA. The categories shown for Mandated Fees, Historical Equipment Cost, and Driver/Revenue Hour Charges are not in dispute. The disputed costs are those for Insurance, Fuel, and Maintenance Parts.

We concur with DRA that the insurance cost used for this proceeding should be the lower cost shown in CDTOA Exhibit 8 of \$8,762, rather than the midpoint (National) cost of \$9,257. The lower figure is 95% of the higher. Applying this 95% relationship to the figures shown in the above insurance categories provides the proper amounts to be used for purposes of this proceeding. Thus, 95% of 5.88% is 5.59%, and 95% of 7.61% is 7.23%.

With respect to fuel costs, while the May 1992 figure of \$1.1979 shown in Exhibit 14-A is referred to by DRA as a "spike," it also represents the continuation of an upward trend extending from at least the first of the year 1992. The cost of \$1.1979 appears reasonable and will be adopted for this interim decision.

The figure will be examined again when the case in chief is presented later this year.

The arguments presented by DRA in its brief concerning repair and maintenance costs appear to be testimony, and may have been of use if properly presented during evidentiary hearings. To rely upon those arguments would be a violation of the petitioner's due process at this juncture. DRA is invited to present its analysis during the course of hearings on the case in chief.

Based upon the evidence presented by CDTOA concerning the development of costs in the traditional manner, combined with the evidence regarding industry operating results during 1991, we conclude that interim increases should be ordered in the three tariffs. It would be spring of 1993, and possibly later, before the Commission will be able to issue a final decision in this consolidated proceeding. In the meanwhile, we feel that effective and expeditious downward pricing continues to be available through the Commission's expedited deviation procedures, and allays any concerns we might otherwise have in authorizing these interim adjustments.

For purposes of this interim decision the following increases should be ordered:

MRT 7-A - Increase rates for the transportation of commodities described in Item 30, as named in Item 390 Column "M," and distance rates for Item 30 commodities named in Items 290, 300, and 310 by 4%.

MRT 17-A - Increase all zone rates by 4%, except those applicable from San Diego and Santa Barbara-San Luis Obispo production areas. Increase San Diego rates by 2%, and the Santa Barbara-San Luis Obispo rates by 3%.

MRT 20 - Increase zone rates and distance rates by 4%.

Comments on Proposed Decision

In accordance with Public Utilities Code Section 311, the ALJ's proposed decision was mailed to the parties on October 30, 1992. Comments were received from CDTOA, DRA, CCA, BCDTA/T&T, and California Asphalt Pavement Association (CAPA).

CDTOA, CCA, CAPA, and BCDTA/T&T object to Finding of Fact 7, which states that cost of capital data presented by DRA demonstrate that rates will be reasonable if based upon an operating ratio of 96%. These parties assert generally that D.90-07-053 found an operating ratio of 94% to be appropriate for ratemaking purposes, while the proposed decision finds (inappropriately) that this ratio should be increased to 96%. They note that the DRA witness testified that his capitalization ratios are based upon his analysis of seven publicly traded general freight interstate trucking companies, and a general comparison of the California Trucking Association's Financial Who's Who. This use by DRA of the cost of capital experienced by a few multi-million dollar publicly traded interstate carriers, and CTA's Who's Who list of 77 bulk carriers, many of which are not construction haulers, they believe not to be representative of the California dump truck industry.

These parties note that the great majority of dump truck carrier service is provided by independent contractors (owner operators), and assert that the division of revenue derived by these actual service providers will not permit recovery of costs at a 96% operating ratio, since most are already subject to a 5% brokerage fee, and many haul at deviated rates.

CDTOA further maintains that it is unreasonable to now adjust the cost/rate relationship from 94% to 96% for the setting of minimum rates, because CDTOA and other parties opposing this adjustment have been given no opportunity to present evidence in opposition, or to even reply to or protest the DRA petition which initially raised this issue. (The operating ratio adjustment

sought by DRA was first raised by a "Petition" dated and served May 19, 1992. Hearings on DRA's petition were then held May 27 through 30. CDTOA insists it is entitled to the benefit of the Commission's Rules (Article 2.5) which allow the filing of a protest within 30 days, and before the Commission considers the "Petition."

CDTOA asks that Finding of Fact 7 not be adopted, and that no adjustment in the operating ratio be considered for adoption at this time; that the question whether such an adjustment is appropriate should be deferred until at least June 1, 1993 at which time 1992 financial results can be considered to determine actual profitability levels of dump truck carriers, as well as interest rates and other cost of capital elements applicable in connection with this transportation.

DRA, on the other hand, believes that the proposed decision would grant CDTOA more than it has requested as an interim increase. DRA reasons that current rates are based on an operating ratio of 92%, and that applying a ratemaking operating ratio of 96% to current rates should reduce the rates by about 4.1%. Thus, increases of 2 to 4 percent should be offset by the reduced rates associated with the increased operating ratio, and even result in some decreases, DRA maintains.

Finding of Fact 7 of the proposed decision states that the cost of capital data presented by DRA demonstrate that rates in the three tariffs will be reasonable if based upon cost/rate relationships of 96. Finding of Fact 7 is correct. However, we concur with CDTOA that other parties should have adequate opportunity to present their evidence on cost of capital during the evidentiary hearings on the case in chief to be conducted commencing November 30, as they have indicated they will do in their comments. We will include in our interim order a further finding that others should have this opportunity. Since the other parties will not have the benefit of this finding until after the

further hearings have been held, this proceeding should be held open until the parties have become aware of this decision, and further evidence is taken on the cost of capital issue. In the meantime, interim increases of approximately 4% are reasonable based upon the present record consisting of the traditional engineered cost development introduced by CDTOA, and as confirmed by the operating ratio data already presented.

In the proposed decision, the ALJ indicated no increases would be ordered in the additive or delay time rates until further hearings. However, the proposed decision also stated that for tariff simplicity, the exemptions shown in the current supplements would be revised, or removed, thus causing the former exemptions to be made subject to the surcharges. The surcharges named in MRT 7-A do presently apply to additives and delays; those in MRTs 17-A and 20 do not. This situation is best resolved by making these items subject to surcharges, and the surcharge supplements developed for purposes of these interim increases show that the increased surcharges will apply to additive and delay rates.

Findings of Fact

1. CDTOA requests that the Commission order interim increases, in varying amounts, in the rates and charges named in MRT's 7-A, 17-A, and 20, in order to offset cost increases in labor related categories, vehicle fixed costs, and vehicle running costs, including fuel costs.

2. Rates named in these tariffs were last generally adjusted in 1989 by D.89-04-086. Since that time costs of dump truck carriers performing transportation under these tariffs have increased.

3. Operating ratio data contained in Exhibit 11 indicate that in 1991 dump truck carriers operated at a cost-rate relationship of about 101%.

4. The 1991 dump truck industry operating ratio information tends to confirm the traditional engineered cost development



introduced by CDTOA, which indicates that carrier costs have increased since the last general increase to levels where the minimum rates named in MRT's 7-A, 17-A, and 20 will not allow carriers to earn revenues sufficient to meet operating costs, and also provide carriers with the opportunity to earn reasonable profits on their capital investments.

5. The situation described in Finding 4 constitutes an emergency, justifying an interim increase in the rates contained in these three minimum rate tariffs.

6. Interim increases will provide dump truck carriers the opportunity to earn revenues sufficient to meet operating costs, and to earn a reasonable return on capital investments, until the case in chief in this consolidated proceeding is completed, and the need for permanent increases measured based upon the evidence presented by all parties.

7. Cost of capital data presented by DRA demonstrate that rates in MRTs 7-A, 17-A, and 20 will be reasonable if based upon cost/rate relationships of 96%.

8. Rate increases have been justified on this record as follows:

9. CDTOA and other parties have not had adequate opportunity to present updated evidence on cost of capital.

MRT 7-A - (rates for transportation of commodities named in Item 30) - 5% in the Column "M" hourly rates named in Item 390, as well as the distance rates named in Items 290, 300, and 310. (Concurrently, the surcharges shown in Supplement 36 for the transportation of commodities described in Item 30 should be canceled.)

MRT 17-A - 5% in all zone rates, except for those applying from San Diego County Production Areas, which should be increased by 3%, and those from Santa Barbara-San Luis Obispo County Production Areas, which should be 4%. (Concurrently, the surcharge shown in Supplement 49 of 1.1% should be canceled.)

MRT 20 - 5% in all zone and distance rates. Concurrently, the surcharge of 1.1% shown in Supplement 33 should be canceled.)

Conclusions of Law

1. MRTs 7-A, 17-A, and 20 should be adjusted, on an interim basis, to conform with our findings above.
2. MRTs 17-A and 20 should be amended by separate orders to avoid duplication of tariff distribution.
3. Because of the needs of carriers performing transportation services under rates in MRTs 7-A, 17-A, and 20 for immediate rate relief, the effective date of this decision should be today.
4. CDTOA and other parties should have opportunity to present evidence on current cost of capital confronted by the dump truck industry during the taking of evidence on the case in chief in this consolidated proceeding.

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 40 and Thirteenth Revised Page 40, effective today.
2. In all other respects, D.82061, as amended, shall remain in full force and effect.

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

This order is effective today.

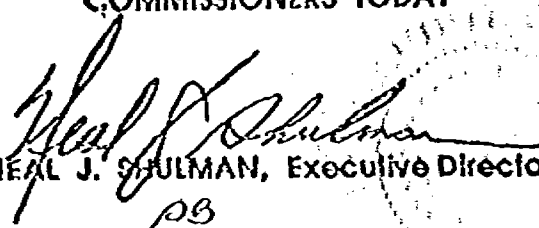
Dated December 3, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

I will file a written dissent.

/s/ NORMAN D. SHUMWAY  
Commissioner

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

  
NEAL J. SHULMAN, Executive Director  
PS

SURCHARGE SUPPLEMENT

SUPPLEMENT 40  
(Cancels Supplements 35 and 36)  
(Supplements 9 and 40 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

◊ 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 as follows:  
(SEE EXCEPTION)

- ◊1. By thirteen and six-tenths (13.6) per cent on charges computed at rates provided in Items 290, 300, 310, 490 and 510.
- ◊2. By three and four-tenths (3.4) percent on charges computed at rates provided in Items 320, 325, 330, 340, 350 and 400.

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 surcharges herein shall not apply to:

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1. Item 120 - Bridge and ferry tolls;

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\*2. Item 390 - Hourly Rates.

\*\*

◊ Increase, Decision 92-12-020

\*\* Eliminated

\* Addition

EFFECTIVE December 3, 1992

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

MINIMUM RATE TARIFF 7-A

SECTION 3--HOURLY RATES (Continued)						ITEM	
In Cents Per Hour							
NUMBER OF AXLES PER UNIT OF EQUIPMENT	(1) COLUMN	FROM: POINTS OF ORIGIN IN					
		NORTHERN TERRITORY (SEE ITEMS 160 AND 380)		SOUTHERN TERRITORY (SEE ITEMS 160 AND 380)			
		Northern Region	San Francisco Bay Area Region	Southern Region	San Diego Region		
<b>COMMODITIES, as described in Item 30</b>						◊ 390	
2	M	4349	4921	4692	4607		
	O	5610	6600	6160	6270		
	P	4840	5500	5060	5170		
3	M	4921	5551	5322	5322		
	O	6160	7150	6710	7040		
	P	5390	6050	5720	6160		
4	M	5093	5608	5608	5608		
	O	6270	7260	7260	7260		
	P	5500	6160	6160	6160		
5 OR MORE	M	5488	6066	5926	6066		
	O	6710	7590	7370	7590		
	P	5940	6600	6360	6490		
<b>COMMODITIES, as described in Items 40 and 60</b>							
2	M	3952	4472	4264	4368		
	O	5304	6240	5824	5928		
	P	4576	5200	4784	4888		
3	M	4472	5044	4836	4836		
	O	5824	6760	6344	6656		
	P	5096	5720	5408	5824		
4	M	4628	5096	5096	5096		
	O	5928	6864	6864	6864		
	P	5200	5824	5824	5824		
5 OR MORE	M	4987	5512	5385	5512		
	O	6344	7176	6968	7176		
	P	5616	6240	6032	6136		
(1) See Item 410							
◊ Increase, Decision 92-12-020							
EFFECTIVE December 3, 1992							
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,							
CORRECTION 486			SAN FRANCISCO, CALIFORNIA				

C.5437, Pet. 350, D.92-12-020  
C.9819, Pet. 145, D.92-12-017  
C.9820, Pet. 43, D.92-12-018

11-6, 11-7, 2

Norman D. Shumway, Commissioner, Dissenting:

Only a few months ago in Decision 92-05-028 we took a significant step toward introducing more competition in the regulation of transportation. In that decision we ended fifty years of minimum rate regulation in the household goods moving industry. We thus reaffirmed the idea that open competition will result in benefit to California's consumers.

Today's decision is a step backward from our policy to end minimum rate tariffs which we began in 1990 when we eliminated such tariffs in the general freight industry. I believe we made the right decision when we applied the same policy to the household goods movers. We miss here a golden opportunity to continue our resolve toward promoting competition in the transportation industry.

California's economy continues to show signs of recession. Many of our state's carriers would no doubt like to be shielded from the effects of a distressed economy by seeking protection through increased minimum rates. But a better solution would be to give the industry greater flexibility to adjust prices and improve services. Raising rates during recessionary times contradicts basic common sense.

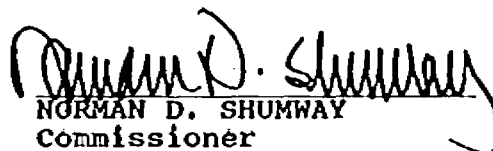
If carriers cannot survive at rates currently being charged, they should raise their prices. A minimum rate is just that; a minimum. The industry is free to charge higher prices if it chooses. However, if some carriers find price increases necessary to cover their costs, all other carriers who operate efficiently at lower costs should not be required to deprive consumers of the benefits of the lower prices they might offer. Today's decision insures that consumers will not benefit from lower prices.

C.5437, Pet. 350, D.92-12-020  
C.9819, Pet. 145, D.92-12-017  
C.9820, Pet. 43, D.92-12-018

Moreover, minimum rate regulation creates compliance problems which conflict with our desire to promote competition. If a carrier wishes to offer lower prices which benefit consumers, the carrier must file for permission which may result in a lengthy, costly regulatory process. Otherwise, the carrier faces fines or other penalties. A Commission which has clearly stated its desire to foster greater competition should not be supporting a process which deprives the public from the very benefits attributable to competition.

Finally, minimum rates do not promote improvements in service quality. To the contrary, protection provided by minimum rates serves to reduce innovation and improvement since rates are guaranteed in spite of service quality. Increasing minimum rates only further reduces incentives to improve service quality, and may encourage marginal or inefficient operators to enter the business. The result is higher prices and lower quality service to consumers, with greater regulatory intervention to enforce rate compliance and weed out shoddy operators. I don't believe that is the direction this Commission wants or ought to go.

I note that we have not examined the facts surrounding the degree and nature of competition in the dump truck industry as we did in the household goods moving industry. I believe we should do so. Our present "Efficient Carrier, Expedited Deviation" process (OSH 325) is not calculated to get us there. We should perhaps issue a new Order Instituting Investigation (OII) in order to underscore the need for deregulation. In the meantime, we should preserve the status quo without increasing minimum rates.

  
NORMAN D. SHUMWAY  
Commissioner

December 3, 1992  
San Francisco