Decision 82 10 028 OCT 6 1982 ORIGINAL

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.	Case 5437 Petition for Modification 315 (Filed January 8, 1982)
And Related Matters.	Case 9819 Petition for Modification 52 (Filed January 8, 1982) Case 9820 Petition for Modification 20 (Filed January 8, 1982)

(See Appendix A for appearances.)

O P I N I O N

By these petitions, California Dump Truck Owners Association (CDTOA) seeks increases in the Commission's three minimum rate tariffs containing rates for commodities transported in dump trucks--Minimum Rate Tariffs (MRT) 7-A, 17-A, and 20.

Ten days of duly noticed public hearings were held during March in Los Angeles and San Francisco before Administrative Law Judge (ALJ) John Lemke. Evidence was presented in addition to CDTOA, by California Carriers Association (CCA), the Commission staff

(staff), Associated General Contractors of California (AGC), Lindeman Brothers Inc. (Lindeman), Granite Rock Company (Granite), and Les Calkins Trucking, Inc., (Calkins). All three proceedings were submitted upon the receipt of concurrent briefs on June 14, 1982.

CDTOA is seeking increases in the present rates in MRT 7-A of amounts ranging from 5% to 15%, averaging 10.6%, in the hourly rates; and increases in distance rates of 6% and 18%, averaging 12%. It requests that rates in MRT 17-A be increased by amounts ranging from 3.5% to 14%, averaging about 7%. It requests increases of 15% in the rates in MRT 20. The staff recommendation supports the increases requested by CDTOA. These recommendations were strenuously protested by AGC, Lindeman, Calkins, and Granite.

Background

MRT 7-A contains rates for the statewide transportation of commodities hauled in dump trucks. These rates are named on both an hourly and a tonnage basis. MRT 17-A contains dump truck rates for transportation performed between described production areas and delivery zones in southern California. MRT 20 contains rates for transportation between described production areas and delivery zones in the San Francisco Bay Area. Rates and charges in MRTs 7-A, 17-A, and 20 were last generally adjusted effective September 26, 1981 by Decision (D.) 93523 in Case (C.) 5437, Petition (Pet.) 314, et al. By that decision we authorized increases of about 4.5% for each of the three tariffs. Rates in MRTs 7-A and 17-A were established in 1973 in C.5437, Order Setting Hearing (OSH) 213.

Prior to D.93523, rates in the three tariffs had last been generally adjusted by D.90854 et al., effective November 1, 1979. However, since that date rates were increased several times to compensate carriers for increased fuel costs. In the Pet. 314 et al., proceedings in 1981, CDTOA and the staff, in arriving at their recommended increases, employed offset techniques recognized by the Commission for many years. The reasons we did not award the full amount of increases recommended by CDTOA and the staff in those proceedings were essentially as follows:

1. The construction industry had been faced with a severely reduced level of economic activity since 1980, continuing into 1981.

2. Dump truck carriers had been unlawfully assessing rates less than the minimum to a greater extent than usual since the reduction of economic activity in the construction industry. The practice would increase if the full amount of requested increases were granted.

3. Rates contained in the three tariffs are minimum rates. Carriers had demonstrated an ability to negotiate rates higher than minimum when business conditions in the construction industry are better and there was a greater demand for their services.

During the course of these proceedings an abundance of evidence was presented to the Commission. It consisted of individual carrier testimony, operating expense data, industry profile statistics, and construction industry information. 55 exhibits were introduced. The testimony presented by CDTOA and protestants, and the parties joining in their respective recommendations, comprises easily the lengthiest, most contradictory and complex record received for evaluation in a dump truck offset proceeding. Because of the importance to the parties and the Commission, much of the evidence received will be recited in this decision.

Summary

We are adopting an increase in each of the three MRTs of about 5%. This figure is the result of the addition of six percentage points to the tariff surcharges presently applicable. It is arrived at, as we will see, through an analysis of representative operating ratios derived from the annual reports on file with the Commission of a representative group of truckers.

The Evidence

CDTOA

James Martens, general manager of CDTOA, testified initially in support of the petitions. He furnished information concerning the present dump truck industry and CDTOA's role in these proceedings. He testified essentially as follows:

1. His association is comprised of approximately 875 members as well as a number of affiliate members.
2. Membership is comprised of independent owner-operators of single units of equipment as well as fleet equipment operators. There are 21 association chapters situated throughout the state.
3. At the association's rate committee meeting held last October, considerable time was spent trying to analyze what portion of its previous petitions had been granted. At that time, by D.93523, et al., the rates in MRTs 7-A, 17-A, and 20 were increased by adding 5 percentage points to the surcharges already in effect. This had the effect of increasing rates in those tariffs by approximately 4.5%.
4. About 70% of the dump trucks engaged in for-hire transportation are driven by independent owner-operators; the balance by employed drivers. Of that balance about 10% is probably performed by proprietary operators who also perform for-hire transportation. About 5% of the total for-hire dump truck transportation is performed by fleet operators. 15% is performed by hired drivers working for owner-operators.

On cross-examination Martens stated that members of his association have not received amounts in excess of the minimum rates for some time now--perhaps since 1979, a very good year for business--

and that there is probably a certain amount of rate-cutting going on at the present time. He believes that the work picture for dump trucks has been worsening and is presently depressed at least 20% below normal conditions.

Martens stated that there are only two or three major freeway projects currently under construction within the State. One is in San Diego County--Interstate 15--not projected for completion for two or three years. There are two freeway segments in the Bay Area which will continue under construction through this year and the next.

CDTOA Cost Evidence

J. M. Jenkins, a transportation consultant, sponsored the exhibits containing the estimated costs which provide the basis for CDTOA's request in these proceedings. Exhibit 1 contains the estimated costs used in developing his rate recommendation for MRT 7-A. It is an update of the costs which appeared in staff Exhibit 2, presented in the previous offset proceeding (Petition 314) in July 1981. Labor costs have been modified to show contract and statutory changes as of January 1, 1982. FICA taxable income has been increased to $32,400, and FICA tax rate to 6.70%. The compensation insurance rate has been decreased to 10.57%. Vehicle fixed costs have been revised to include historical investment costs based upon data shown in Commission Report 511-27, which contains information concerning investment costs through the year 1980. Department of Motor Vehicles License and Weight fees have been updated through 1981. Fuel and oil costs have been determined from Commission data through September 1981; tire costs have been carried forward from Staff Exhibit 2 in Pet. 314; and repair costs are those which appeared in the Staff Exhibit presented in Pet. 307 in 1979.

Jenkins had been a transportation engineer with the Commission between 1951 and 1981. During the course of that employment he made a number of studies for the purposes of establishing datum plane cost information in connection with the for-hire dump truck industry. In developing the costs underlying CDTOA's rate proposal in these proceedings, Jenkins employed the same methodology used by the staff and CDTOA, and approved by the Commission in labor and other offset proceedings in these continuing minimum rate cases for many years.

In developing his labor cost data, Jenkins relied upon essentially the same labor contracts used in the 1973 OSH 213 proceeding. He stated that the labor rates named in those various contracts provided the basis for the labor cost component for that base study and the several labor offset proceedings considered by the Commission during the intervening years. The effective date for the current labor rates appearing in these contracts, he stated, is predominantly August 1981.

Jenkins testified that while there was an increase of $2 per hour in the San Diego region 1981 labor contract, he did not include that increase, based upon the judgment of CDTOA that to do so would be imprudent at this time. However, a similar $2 increase in the San Francisco Bay Area Region contracts was used in the cost development for the rates in MRT 7-A applicable within that area. The authority for this decision was really Martens' and he addressed this issue. He said that while it is true that his directions to Jenkins were to adjust costs from the previous 1981 exhibits presented in Pet. 314, and update the allied payroll expenses, in considering the San Diego cost increases the total was going to develop into a figure which he deemed exorbitant. He contacted the carriers in the San Diego area, presented his analysis to them and was advised that indeed the resultant increases would be excessive.

Martens stated that the hourly rate for the San Diego area would have been about $53, as opposed to the present rate of about $45. He further stated that in his opinion the best possible minimum rate for publication in MRT 7-A would be about 2% to 4% less than a contractor's actual cost.

Jenkins testified that he had analyzed the results of certain CDTOA members in order to verify that the costs used in CDTOA's petition were not in excess of those actual costs experienced in the field currently. Running costs, use hours, days operated, miles operated, expenses, et cetera, were analyzed in order to validate the costs adopted in CDTOA's petition. Costs of fleet operators as well as owner-operators were examined. Jenkins concluded from his analysis that the costs in CDTOA's exhibits are understated. He testified that the running costs for 5-axle bottom dump units increased about 2-1/2% between the dates that Pets. 314 and 315 were prepared. However, Jenkins emphasized that he is basing his costs and rate recommendations for the purposes of this proceeding over the 1979 datum plane costs. It is the view of some parties, that CDTOA is attempting to retry Pet. 314. But CDTOA's position is that there was no precise method of determining exactly what was granted in the Pet. 314 proceeding.

Jenkins was asked whether it is not true that newer diesel engines sold in the last three or four years are able to attain considerably better mileage than older models. This may be true he stated, but most operators that he is familiar with are unable to afford them.

Queried about the method of confirming the labor costs for the purpose of these proceedings, Jenkins stated that the records of about 25 or 30 carriers were inspected. This group of carriers is representative of fleet operations and owner-operator services throughout the state.

Staff Cost Evidence

Firmo Garcia testified for the staff. With respect to basic labor hourly rates, Garcia used the current rates from the union contract adopted in our OSH 213 proceeding nearly 10 years ago. The exception to this general approach is that the basic contract rate for the San Diego region was increased by about $2; however, since CDTOA excluded that increase, it was excluded by Garcia. He made no attempt to determine whether the rates in the new labor contracts are actually being paid by the for-hire carrier industry. Garcia used information from the Commission's data bank in order to update equipment costs through 1980. Fuel and equipment costs have been determined from Commission reports relating to those areas of cost.

AIOO Evidence

James Foote, manager of Associated Independent Owner-Operators, Inc. (A-100) testified in support of the petition. A-100 is a trade association of independent owner-operators. About 60% of its 850 members are engaged fulltime in the transportation of commodities in dump trucks. He concurs with Martens that about 70% of for-hire dump truck operations performed in California are done by owner-operators. He stated that in his view, while there have been increases recently in the level of proprietary operations conducted, such increases have not been related to rate increases authorized in the minimum rate tariffs. He stated that from his observations, when revenues are inadequate to support dump truck operators they defer necessary maintenance and repairs. Even when it is absolutely necessary to make repairs, he states they will often merely patch or temporarily repair equipment. He mentioned such specific factors as brakes, lighting, and worn tires as elements contributing to the unsafe running condition of owner-operator equipment. Foote believes that the increases and reductions he has observed over the last 10 years in the level of proprietary operations have been attributable to the demand for a larger number of for-hire truckers during peak activity periods in the construction industry. He states that it has been necessary on occasion for rock producers and general contractors to purchase their own proprietary equipment to fill that need. He believes that the costs of proprietary carriers are higher than those of individual owner-operators. He testified that if the rate increases sought in this petition are not granted, some of his membership will continue to defer maintenance, go out of business, or attempt to transport other freight in order to stay in business.

Carrier Evidence in Support of Petitions

Thomas Ross, a dump trucker located in southern California, testified in support of the petitions. He stated that he has deferred maintenance on his dump truck equipment, especially his brakes and tires. He testified that he is running currently with brake drums on his trailer which are so substandard that if he were to be caught by the California Highway Patrol, he would have to cease operating. He also stated that during the last three years he has had to do all of his maintenance himself, except major engine repairs, since he could not afford to have it done professionally. Ross believes he has been going broke for the last three years; that even if increases are granted in this proceeding to the extent requested by CDTOA, it will take him a long time to catch up to the point where he will be able to make a profit from his operation. Ross stated he works an average of about 10 hours a day, five days a week when times are good. But for the last few years he would be glad to have 20 hours of work a week. He stated that he earned about $79,000 during 1981. He testified that when he began to experience increased costs he asked his prime carrier for a raise and was fired.

Late-filed Exhibit 11 is a reproduction of Ross' 1981 Federal Income Tax Schedule C (Profit or Loss Statement from Business). It shows gross receipts of $79,438, and total deductions (expenses) of $70,534, for a net profit of $8,904. The total expense figure includes no payments for wages; thus, Ross' "wages," he being an owner-operator, for 1981 was the net profit of $8,904.

Leo Webb testified in support of the petitions. He stated that he too is currently operating with equipment on which maintenance has had to be deferred. Webb testified that he has been in the dump truck business for about 12 years, but has made a profit in only one of those years.

Terry Klenske of Dalton Trucking (Dalton) testified in support of the petitions. He is president and principal shareholder of Dalton. He testified that Dalton has 21 power units which it operates with its own drivers. About 50% of Dalton's business is derived from the use of subhaulers, principally under MRT 17-A zone rates. The company also has a vice president, an operations manager, a fulltime in-house accountant, an office manager, a billing clerk, and a part-time clerk. It employs four fulltime mechanics and maintains an 8,000 square foot truck shop where drive-line components are rebuilt, so that the company is able to do all of its engine work.

Klenske testified that for the 7-month period July 1981 through January 1982 his company grossed $1,750,000, earning a pretax profit of $15,000, or less than 1%. His gross income for the fiscal year 1980-1981 was $3.5 million, with a pretax profit of just over $30,000. He said that his current operating ratio is in excess of 99. Dalton's operating ratio for the year 1980 was 96.4 based upon a gross of $2.3 million and a net of about $84,000. Some of Klenske's equipment costs are less than those shown in the CDTOA and staff exhibits. He conceded that when the company is having a good year they have, on occasion, bought equipment and taken an investment tax credit in order to shelter their taxes. He also acknowledged the use of other methods of reducing tax liabilities in good years, such as paying bonuses and contributions to pension plans and increasing maintenance. Klenske stated that if the increases sought are not granted his company would have to gradually phase out of business. He states that his company sometimes gets more than the minimum rate for mountain work and for asphalt hauling, but for other work shippers will pay only the rates named in the tariffs. Klenske's drivers work for a guaranteed minimum of $10.50 per hour. In addition, they receive a percentage of the revenue, so that in total their base pay is something slightly less than $13 per hour. Fringes and payroll taxes increase the base hourly cost by about a third. (The base labor rate in CDTOA's cost exhibit relating to MRT 7-A's southern territory and MRT 17-A is $10.90.)

Klenske believes an increase of about 10% is needed at this time in the rates of MRTs 7-A and 17-A. He estimates this would provide his operations with an operating ratio of about 92 or 93%. He identified Senate Bill 215, effective January 1, 1982, as a factor which has increased costs considerably for the industry. This bill had the effect of doubling truck weight fees.

Klenske was asked why he believes the PUC should raise minimum rates by 10% rather than Dalton's reducing drivers' pay, revising depreciation schedules, and perhaps reducing the number of salaried employees in the company. He answered that his operation is a reasonably efficient one and his labor is nonunion. His average driver has been with the company between two and three years. Klenske believes that a stable driver force maintains good company relations; that experienced drivers are easier on trucks and more efficient on the job. He believes it is important to pay his drivers wages comparable to those paid in proprietary operations, although he currently pays something less.

James Robinson testified as a witness for CDTOA. He is a dump truck operator owning a 1979 3-axle Kenwood tractor which he stated cost $57,400 when purchased new in 1979. He states that, as an owner-operator, he earns the difference between his gross income and operating expenses. He feels that he must make at least what a union driver makes as a base salary because he must pay any benefits out of his own pocket. He carries his own health insurance and life insurance but is unable to afford any kind of a personal pension to supplement social security. He was paying $1.22 per gallon for diesel fuel, including taxes, during the month of March 1982. Costs have increased for tires and maintenance, he testified. He worked 1,283 revenue hours during 1981, which was somewhat down from 1980, which he estimated at about 1,500. He believes that his revenue hours will increase during 1982 but that they will not come back to the 1980 figure. He does not believe that an increase in the rate levels in these tariffs would make an appreciable difference in the amount of work available to the for-hire trucking industry. He estimated that about 70% of his operations are as a subhauler and 30% as a prime carrier. Over 90% of his subhauling is done at the minimum rates. Robinson estimates his actual operating costs, less wages, profit, and any major overhaul costs, at about $32 per hour. He included no depreciation in that figure.

Linda Spangler also testified in support of the petitions. She does bookkeeping and dispatching for her husband who operates a 1979 3-axle Peterbilt tractor and a 1979 semi-end dump trailer. The tractor cost $84,000 including interest, life insurance, license, and sales tax; the trailer about $29,000. She judges that their business has been operating at a loss because at the end of 1981 there was no money left in their savings account.

She and her husband have been in the dump trucking business since 1969. They ran a 10-wheeler for about 10 years and then saw that a lot of the 10-wheeler work was going into semi-end dump operations. They felt that the purchase of new different type equipment would make them more competitive and hopefully increase their use hours, but this has not been the case. The Spanglers' total insurance cost is currently $2,367 per year. She conceded that this is somewhat less than the cost shown in the staff cost study of $3,159. The Spanglers' are paid in excess of the minimum rates in MRT 7-A when hauling to The Geysers because it is situated in mountainous terrain. Their business is primarily a subhaul operation. They purchase fuel from a jobber and were paying $1.229 per gallon.

Robert Hill is a dump trucker operating in the Redding area. He operates several units of equipment in what he calls "adverse terrain," that is, territory in northern California where it is mountainous and costly to operate. He employs several drivers under the Associated General Contractors Master Labor Agreement. He stated that the basic wage cost under that agreement is about $3 higher than under the rock producer's contract. Hill's average equipment use during 1981 was about 580 hours--considerably less than used by the staff in the OSH 213 and intervening offset proceedings. He testified that his operating costs are several times higher than those which appear in the CDTOA and staff exhibits, primarily because of the difficult terrain in which he operates.

Joseph Solomon testified in support of the petitions. Solomon's dump truck business grossed about $382,000 during 1981. Most of this revenue was earned under MRTs 7-A and 20. He has been a dump trucker in the Bay Area for about 10 years and operates four units of equipment. Solomon testified essentially that his costs are up and that he needs an increase in revenue to make ends meet. He believes the reason the protesting carriers in these proceedings are opposing the rate increases is due to their heavy use of subhaulers.

<u>California Asphalt and Pavement Association</u>

Harry Phelan made a statement on behalf of the members of the California Asphalt and Pavement Association (CAPA). He stated that the majority of the membership in CAPA are also members of AGC. Phelan stated that the asphalt industry in southern California is almost entirely dependent on for-hire dump truck carriers; that about 90% of the carriers who transport asphaltic concrete are owner-operators. He noted that the separate cost studies submitted by CDTOA and staff have followed the format recognized by the Commission for many years. He opposes any change in that format. He believes if it is determined that costs have increased, then rates ought to be increased accordingly.

Protestants

Les Calkins has been a dump trucker for many years. His company owns 30 sets of bottom dump trailers. He pulls 19 of these with his own tractor equipment. The other trailers are operated by "pullers" - owner-operators/subhaulers. Exhibit 14 is a cost exhibit applicable to Calkins' operations in the northern territory. The exhibit shows that his labor cost, including benefits, is considerably lower than the labor cost appearing in the CDTOA or staff exhibit. The total labor cost shown in the staff and CDTOA exhibits is $18.446; Calkins' is $12.08 per hour. The total hourly cost shown in Calkins' exhibit including labor, equipment costs, running costs, indirect expense, and profit is $42.553 per hour. This compares with the current hourly rate shown in MRT 7-A for northern territory in MRT 7-A of $41.820. Calkins testified that during 1982 he eliminated any provision for payment of overtime. Nor does he pay drivers for vacation or holidays.

Calkins stated that there is a good deal of rate-cutting occurring in the northern territory. He objects to any increases in the rates in the three tariffs. He would prefer to see stricter rate enforcement by the Commission's field section, rather than an increase in rates. Calkins observes that rather than asking the Commission for an increase in rates, he has effected improvements in labor costs, insurance costs, worker's compensation, tire costs, etc. He conceded that there is an advantage in being a fleet operator when purchasing fuel and equipment. His cost for diesel fuel is $1.11 per gallon when purchased in tank-truck-and-trailer quantities.

Calkins did not operate under MRT 17-A during 1981, and only a very little before that. The costs shown in his Exhibit 14 are applicable only in connection with one transportation project involving a clay haul from Indian Hill to Permanente.

Michael Lindeman, president of Lindeman, opposed the petitions. Lindeman owns 49 sets of bottom dump trailers and 14 2-axle tractors. He is also the president of Yuba Trucking. The latter company owns 16 sets of bottom dumps and four tractors. Lindeman's gross revenue was about $2-1/2 million in 1981; Yuba Trucking's about $2 million. Lindeman opposes the petitions basically because he believes:

1. CDTOA's cost figures are invalid; but that if any increases are granted they should be limited to those costs which have occurred since our decision in Pet. 314, effective September 25, 1981.
2. Business conditions in the construction industry have worsened; there is no prospect of improvement in 1982.
3. The tariffs in question are minimum rate tariffs; rates may be raised by truckers independently without authority from the Commission.
4. Present rates are already too high; enforcement activity is practically nil, and rate-cutting is epidemic.
5. The threat of proprietary trucking is great because during the last six months proprietary truckers have experienced little or no cost increases.
6. Deregulation is imminent.
7. Unwarranted increases encourage marginal operators to stay in business.
8. An operating ratio of 92 (an 8% profit in the rates) is too high during a severe recession.

Lindeman observes that CDTOA witnesses have supported the petitions principally because truck payments are due and trucks are in need of repair; but that no efforts have been made to drastically reduce costs. He further believes that these witnesses are operating equipment much more expensive than required. He states that not one of the witnesses has presented an exhibit of any kind to show actual costs or losses. He strongly believes that there has been no evidence indicating that the industry is losing money. He further believes that the labor contracts upon which CDTOA and staff exhibits are based apply exclusively to proprietary trucking operations, and, therefore, are improper for use as a guideline in for-hire carrierratemaking. He further states that CDTOA and staff should make a greater effort to determine the level of wages and fringe benefits actually being paid in the for-hire dump truck industry rather than using proprietary hauling contracts for this purpose. He also points out that the five labor contracts upon which labor rates are based for the northern territory in MRT 7-A are still weighted according to tonnage transported in 1967. He objects to the fuel and tire costs used by CDTOA and staff. He points out that insurance costs appear to be far above normal. He notes that the standard rate for worker's compensation insurance, 10.57% per $100 of wages, was used without consideration of any individual carrier experience. He objects to the fact that there have been no current tests performed by CDTOA or staff concerning running times, miles per gallon, terminal end times, repair costs, and historical equipment costs. In sum, Lindeman objects to the use of average cost figures employed by CDTOA and staff in calculating their costs.

Lindeman sponsored several exhibits. Exhibit 15 depicts Lindeman's, Calkins', and staff's hourly costs applicable in Northern Territory. The information on this exhibit is summarized as follows:

Summary	Lindeman	Calkins	Staff
Wage Cost Per Hour	$16.02	$12.08	$19.16
Depreciation Per Hour	1.68	2.80	3.10
Tax & License Per Hour	1.01	1.12	.72
Insurance Per Hour	3.03	1.19	2.06
Fuel & Oil Per Hour	8.70	9.99	7.67
Tires Per Hour	1.10	1.64	2.05
Repair & Maintenance Per Hour	6.60	6.20	6.07
Total Running Cost Per Revenue Hour - Revised By Adding $161 Federal Use Tax	$37.52	$35.02	$40.83
Annual Hours	1,108.75	1,064.96	1,650.00

The information relating to Lindeman's costs are those experienced in connection with the operation of four complete units of equipment during 1981.

Lindeman objects to the fact that no current operating ratio information has been offered by staff in this proceeding.

Lindeman's Exhibit 17 compares costs introduced by CDTOA in Pet. 314 with comparable Pet. 315 costs. The exhibit purportedly demonstrates that there has been an increase of approximately 1% in MRT 7-A operating costs between January 1, 1981 and January 1, 1982. This is true for all regions except the San Francisco Bay Area Region, where an increase in labor costs of $2.73 has occurred. Lindeman concluded that CDTOA is asking for increases of about 1% or 2% more than were requested in the 1981 proceeding, the balance coming from increases that were denied by D.93523.

In order to demonstrate the impact of increased competition in the construction industry, Lindeman introduced Exhibit 20. This document sets forth all construction jobs exceeding $1 million on which the California Department of Transportation (CalTrans) accepted bids for the period May 27, 1981 through February 3, 1982. The exhibit shows that prior to September 26, 1981, the date of the increase authorized under D.93523, CalTrans engineering estimates totaled $62,190,000 on these jobs. The low bids on the same jobs totaled $62,100,000--a difference of .14%. From the period September 26, 1981 to February 3, 1982, CalTrans engineering estimates totaled $186,657,000, while low bids totaled only $153,411,000--a difference of 17.8%. There were 15 jobs bid in the first period and 18 in the second period.

Lindeman also sponsored several exhibits consisting of newspaper articles reporting on a variety of subjects concerning economic conditions such as falling prices and unemployment in the State. Exhibit 24 is a reproduction of an article from the Wall Street Journal dated March 2, 1982 reporting that Teamsters Union members had approved a 37-month labor agreement granting major concessions on wages and work rules in an effort to aid the troubled trucking industry. These concessions purportedly will protect teamster jobs and hopefully restore losses caused by deregulation of the trucking industry. According to the exhibit, the new teamster agreement scaled back to once a year the cost-of-living payments made by employers. It diverted part of those payments from the teamsters to help defray employer costs for health and pension benefits. Under the agreement members were to receive a 72-cent hourly cost of living payment April 1, 1982. However, 25 cents of this amount will be used to help cover employer payments for health, welfare, and pension costs. In addition, future inflation payments will be made once each year during the agreement, whereas under the old contract such payments were made twice yearly during the first two years and once in the final year.

Lindeman testified that it is his experience that subhaulers often get more than PUC rates. He introduced Exhibit 25, a portrayal of rates of pay received by Yuba Trucking during 1981 on hauling projects producing over $5,000 in revenue. This exhibit compares the rates of pay received by Yuba Trucking with applicable PUC rates. It shows that in many instances the prime carrier received tonnage or hourly rates in excess of the applicable MRT 7-A rates. Lindeman also introduced Exhibit 27, which shows all transportation projects performed by Lindeman in 1981 where revenues exceeded $5,000. He stated that when he received rates over the minimum, his subhaulers also received higher rates.

Lindeman introduced Exhibit 29, which shows diesel fuel prices in the Sacramento area over a three-week period, most of which are less than the fuel prices used by the staff and CDTOA in their cost exhibits.

Exhibit 31 is a portrayal of Lindeman's insurance expense indicating how Lindeman reduced annual insurance costs from over $30,000 in 1981 to a little over $12,000 for the same equipment in 1982. But the deductible factor was raised from $250 to $500 in the second policy.

Lindeman believes that due to the continuing economic slump experienced in the construction industry, CDTOA should be exploring methods for reducing costs of labor, parts, and insurance, et cetera, and even advising certain carriers to go out of business. He testified that widespread rate-cutting proves that MRT 7-A rates are too high. He introduced Exhibit 32, containing information relating to a dump truck hauling project in Sacramento County. Five dump truckers bid on the job, involving the transportation of base rock and asphaltic concrete. Four of the bids on the base haul and two of the bids on the asphaltic concrete were lower than minimum. He introduced Exhibit 33, a letter he received in March 1982 concerning staff's enforcement program with respect to dump truck activity during 1980 and 1981. The exhibit shows that during 1980 informal penalty actions consisted of four undercharge citations and three citation forfeitures; and during 1981 there were two undercharge citations and six citation forfeitures. The Commission issued one decision in 1980 and another in 1981 at the formal level with respect to dump truck hauling. And, at its conference of March 2, 1982 the Commission issued an Order Instituting Investigation into the operations of a dump truck carrier.

Lindeman has no provisions for vacation or retirement payments to his drivers. He was paying $1.14 for fuel. During 1980 Lindeman's dump truck revenues totaled $4.6 million. About $4.2 million of this came through the use of subhaulers and trailer rental. He included in his cost exhibits no element for indirect (overhead) expenses. Neither did Lindeman give any consideration to expenses associated with nonrevenue hours in the development of costs for his own trucking equipment.

Lindeman believes that by denying any increases, the Commission will be signaling marginal operators at this time to get out of business.

Lindeman conceded on cross-examination that he did not transport under MRTs 17-A or 20 during 1980, 1981 nor does he work under those tariffs at the present time. The same is true for Yuba Trucking. Lindeman stated his philosophy concerning appropriate rate levels: when costs increase, the marketplace will know it and will provide increases as necessary; so that cost data have no real place in the setting of rates for dump truck for-hire transportation.

Questioned whether he had ever attempted to get a deviation from MRT 7-A rates, Lindeman stated that he has attempted to get at least one deviation and possibly two, but was dissatisfied with the results. He stated that he is contemplating the filing of a rate deviation for his company to be applicable in any area of the state.

Allen Mercer, manager of the Mobil Equipment Division of A. Teichert & Son, a construction company in Sacramento, testified in opposition to the petitions. Mercer states that Teichert operates 28 units of dump truck equipment to transport aggregates between Teichert's aggregate plants and construction job sites. Mercer states that there has been little or no increase in Teichert's operating costs over the last six months. Mercer attributes the lack of increase to stabilization of costs caused by more competition between vendors of parts and supplies, and to decreasing fuel costs. A drop in oil and grease prices is anticipated. There has been no labor increase for their bottom dump drivers; however, drivers of transfer and 10-wheel trucks received a 4% cost-of-living increase in

November 1981. While Mercer testified that Teichert's truck costs have not increased, he was unable to furnish any specific details concerning those costs.

James Hyde, branch manager of the Sacramento operation of Granite, testified in opposition to the petitions. Granite operates 83 units of dump truck equipment in the transportation of aggregates from its plants to construction job sites. Hyde states that Granite has experienced little if any increase in trucking costs in the preceding six-month period. The drivers received a 4% increase in wages in northern California but no increase in southern California. Hyde did not know the specific cost levels for the different components making up his company's truck costs. However, he stated that he knew that neither tire nor insurance costs had increased; that fuel costs had decreased during the last six months. Hyde stated that the labor increase of 4% experienced in November 1981 is part of a contract which will expire in June 1983 and which contains annual increase provisions.

William Mauk, transportation manager with Granite in Watsonville, is opposed to the petition relating to MRT 7-A. Granite operates 21 vehicles, 14 of which are rock, sand, and gravel trucks. It engages for-hire truckers in addition to operating its own equipment. Mauk observed that economic conditions in the construction industry in his area are largely controlled by the amount of dollars available. He cited as an example public works projects where transportation is performed to the extent a set amount of dollars allows. If rates are increased, then less work is performed. Mauk testified that his truck operations experienced operating ratios for 1980 and 1981 of 85 and 93, respectively. His seven union drivers averaged a total of 1,972 hours per year during 1981, compared with 1,774 driver hours per year shown in Table 1 of staff Exhibit 7. Mauk believes that a representative figure for labor costs pertaining to transportation performed in his territory would be the contract to which Granite is signatory, as well as other major truckers in the area. He says that the base rate for labor in that contract is currently $10.10 per hour.

John Regan testified against the petitions on behalf of AGC. He is director of Engineering and Construction for that association. While Regan feels strongly about maintaining a healthy for-hire dump truck industry, he believes that at the present time it would be unwise to increase the rates in the various tariffs because of the inability of the marketplace to bear the increased costs.

Regan introduced Exhibit 42, a summary of information from the "CTA Researcher," a document issued by the California Trucking Association setting forth operating revenues and expenses for the various segments of the for-hire industry. The exhibit shows that during 1980, Class I and II carriers of property received $178.5 million in revenues and incurred $174.4 million in operating expenses, resulting in an operating ratio of 97.7. Operating ratios are shown for 1979, 1978, and 1977 of 96.8, 96.3, and 97.8, respectively. Regan sponsored Exhibit 43, a document entitled "Why Operating Ratios Shown in Annual Reports Filed with the PUC Should Be Adjusted Downward for Rate-Making Purposes." The intent of this document is to demonstrate that since the dump truck industry in California is composed entirely of privately owned companies, the goal of these companies is not only to build an equity in the business and generate reasonable income but also to minimize the payment of federal and state income taxes. Regan states that truck owners have the ability to minimize payments of these taxes by awarding bonuses to employees and officers and replacing equipment and parts, inasmuch as operating ratios are calculated before income taxes. Regan pointed out the information in Exhibit 43 showing that during 1979 when revenue jumped to $230 million from $135 million during 1978, the industrywide operating ratio increased from 96.3 to 96.8. A portion of the exhibit demonstrating industrywide annual revenues and operating ratios during the period 1977 to 1980 is set in Table 1:

Table 1

	1978 $	1978 %	1979 $	1979 %	1980 $	1980 %	3 Year Total $	3 Year Total %	3 Year % X 1.10	12 Comp. Combined 1980 Actual	12 Comp. Combined 1980 Adjusted	12 Comp. Combined Actual %	12 Comp. Combined Adjusted %
GROSS REVENUE	135158301	100.00	230062274	100.00	178515523	100.00	543736704	100.00		43665350	43665350		
TOTAL EXPENSES										41518103	38335455		
NET										2147247	5269895		
OPERATING RATIO										95.1%	88.0%		
SALARIES Officers & Superv.	3193302	2.36	4358286	1.89	4006377	2.24	11557965	2.125	2.32	1493502	1013335	3.43%	2.32%
OTHER FRINGES	2176281	1.61	4830487	2.10	3432971	1.92	10439733	1.92	2.03	1120858	912607	2.57%	2.03%
VEHICLE PARTS & VEH. MAINTENANCE OUTSIDE VENDORS	4346457	3.22	8278756	3.59	5451441	3.05	18076654	3.32	3.65	2549717	1593784	5.84%	3.65%
TIRES & TUBES	1770817	1.31	2864351	1.25	2192920	1.23	6827338	1.255	1.39	1010713	606983	2.31%	1.39%
DEPRECIATION & AMORTIZATION	3217341	2.38	4984755	2.12	3919090	2.20	12021186	2.21	2.46	2141941	1071170	4.90%	2.46%
TOTAL							58923523	10.84	11.91	8320731	519908	19.05%	11.91%

Regan points out that in 1979 when annual revenue increased by 70% over the 1978 revenue, operating ratios were .5% higher; but that in 1980 when annual revenues fell by 22.4%, operating ratios increased only .6% over 1979. Regan believes this result is due in large measure to efforts by the industry to minimize the payment of federal and state income taxes in good years and to forgo certain expenses in lean years.

Exhibit 43 also purports to show the individual operations of 12 fleet operators, compared with industrywide results of operations. The 12 carriers shown in this exhibit were recommended to Regan for inclusion by another party; Regan himself had no information concerning the particular operations of each carrier. He did not know, for instance, what portion of the their operations derives from dump truck operations as opposed to cement operations. Neither did he furnish information for the record concerning the amount of earnings these 12 carriers derived from the use of subhaulers.

Regan conceded on cross-examination that the cost of replacing a 10-year-old dump truck has at least tripled. Regan also acknowledged that owner-operators are also faced with increased costs of living just as hired drivers are. He believes, however, that not only should the possibility of increased rates be considered by the Commission as the means for offsetting owner-operators' increased costs, but that they should be encouraged to streamline their operations as much as possible.

Bernie White, president of Fidelity Transportation, testified in opposition to the petitions. He sponsored Exhibit 26, a portrayal of about 30 hauling projects performed by Fidelity Transportation between April and October 1981. He testified that some of the jobs were in mountain areas, requiring more than the tariff charges and that in fact rates in excess of MRT 7-A rates were assessed on those jobs and higher rates were paid to subhaulers. However, he also testified that at least 40% of the hauls were in the valley areas. He stated the intent of the exhibit is to demonstrate that there was a marketplace which will allow carriers to earn charges in excess of minimum rates named in MRT 7-A. Fidelity Transportation operates 29 sets of bottom dumps and 12 transfer units. Nine of its own tractors are used to pull bottom dumps; "pullers" are engaged on the remaining 20. Only one of its own power units is operated with its transfer units; the other 11 are operated with the use of "pullers".

White testified he did not believe that if the minimum rates are increased Fidelity Transportation would lose business to proprietary transportation. Rather, he believes that if minimum rates are increased, Fidelity Transportation would probably secure more of its own power equipment and use subhaulers less. He testified that about 50% of Fidelity Transportation's volume, which was about $3 million during 1981, is transported at rates above MRT 7-A rates; that about half of that amount was transported in mountainous areas. Fidelity Transportation experienced an operating ratio in 1981 of 106.4.

John Shafer testified in opposition to the petitions both on behalf of CCA, an association of about 40 overlying carriers of which he is vice president, and also, in his own behalf, Trucking by J. S. Shafer. Essentially, Shafer believes that while some costs have increased and some relief is warranted, the full increase sought by CDTOA could not be absorbed by the marketplace at this time.

Shafer sponsored Exhibit 44, which lists the labor union agreements used to establish labor costs for minimum rates in MRTs 7-A, 17-A, and 20. The exhibit lists the union local number, the geographic area, effective date of the contract, the weighting assigned the particular agreement by D.82061 in 1973, and the various signatories to the agreement. Shafer stated that the signatories are primarily proprietary carriers, although most do at least a little for-hire transportation. Nevertheless, Shafer recommends that the agreements not be used as the bases for setting labor costs for the purposes of these proceedings. In this connection, he introduced Exhibit 45, entitled "CCA Driver Wage Survey". The exhibit demonstrates that 38 carriers were surveyed in the CCA investigation; 23 of these carriers responded; 15 of the 23 carriers employed drivers; the total number of drivers in the survey is 130; the average hourly wage (base) is $10.09; the average hourly wage for northern region drivers is $9.81 based on five northern region carriers employing 56 drivers; the average hourly wage for southern region drivers is $10.39 based on six southern region carriers employing 60 drivers.

Shafer is recommending that no increase in labor costs be recognized unless indicated by his survey. He is using for the purposes of his exhibits a labor rate based on his survey or at the level of the one recognized in Pet. 307 et al. (1979). Those labor costs are the rates upon which the current minimum rates are based. Shafer has applied payroll taxes at 1982 statutory levels. He recommends maintenance of the Pet. 307 level of datum plane values for health, welfare, vacation, and pension costs. With respect to running costs and historical vehicle costs, Shafer recommends that those introduced by petitioner and the staff be recognized, although he has some reservations regarding the validity of those costs. Specifically, Shafer believes that with respect to the areas of fuel, tires, and insurance, there is room for carriers to exercise prudent buying practices and improve their profitability. In Exhibit 46 Shafer has summarized the information from CDTOA's cost development except that relating to labor. Thus, Shafer has reconstructed

CDTOA's and the staff's exhibits, using updated costs for running and vehicle expenses from the appropriate CDTOA and staff tables and imputting the labor cost from Pet. 307 in 1979 or, if higher, the cost determined from his recent survey.

His resultant rate recommendations vary widely from slight reductions to increases of 13.3%.

Shafer believes that many operating costs are softening. He states that fuel prices have diminished and tires are available which produce greater mileages. He also noted the national labor situation where costs have lessened in many areas of the economy. He states that the industry needs work, but that there is no work when truckers price themselves out of the marketplace. He testified that at least 60% of the tonnage ratable under MRT 17-A moves on proprietary equipment.

Of the 15 carriers responding to Shafer's survey, five operated in the northern territory, three in the bay region, six in the Los Angeles area of the southern territory, and one in the San Diego area. None of the drivers operate under contracts with their employers. All the members of CCA, he testified, are overlying carriers.

Rebuttal Cost Data

In response to the conflicting testimony about the price of fuel currently paid by truckers and the method used by the staff in collecting average fuel costs, staff witness Andrew Kutches testified. He explained in great detail the precise methodology used by the staff for many years in securing a valid cross-section of fuel prices paid throughout the State. Essentially, the information is derived from approximately 6,600 questionnaires mailed out to randomly selected carriers. It is not necessary to describe the precise methods used by the staff in gathering this information. Suffice to say the technique employed has been observed for many years and determined by the Commission to be reliable.

Similar random sampling techniques were employed by the staff in its determination of historical equipment costs. Carrier groups representative of both fleet operators and independent owner-operators are used in determining fuel and equipment costs.

Jenkins was recalled by CDTOA and sponsored Exhibit 51. The purpose of Exhibit 51 is to demonstrate that costs appearing in CDTOA's three exhibits are understated. CDTOA is attempting to portray information here demonstrating that actual costs being incurred by the carriers are equal to or greater than those shown in the cost exhibits shown in either Pet. 314 or Pet. 315. Jenkins testified that the information shown in this exhibit was determined through a recent inspection of carrier records. The exhibit contains motor carrier equipment, fuel, oil, tire, and tire recap costs. The last page of the exhibit is a summary of carriers' hourly running costs developed from the verified survey sheets. The exhibit was introduced as rebuttal to protestants' position that no field checks whatsoever have been made to support either CDTOA's or the staff's cost presentations.

Lindeman and AGC joined in a motion to strike Exhibit 51 because they thought it was not really rebuttal, but new evidence. The ALJ deferred a ruling on the motion until a review of transcripts could be made. The review has been performed; the evidence in Exhibit 51 is responsive to allegations made by Lindeman and constitutes proper rebuttal testimony; the motion is denied.

Discussion

The plethora of evidence presented in the course of these proceedings was caused by two principal factors:

1. The continuing depressed economic conditions prevailing throughout the construction industry.

2. The fact that much of the important performance data recognized by the Commission as valid 10 or 12 years ago has become obsolete and therefore suspect.

Cost and performance data upon which rates in MRTs 7-A and 17-A were originally set were developed during extensive proceedings held during 1972 in C.5437, OSH 213. By D.82061, we found:

> "10. About 90% of the drivers of the dump truck equipment which is operated in for-hire carriage within this state are owner-operators who are not bound by labor contracts.
>
> "11. For the purposes of constructing minimum rates which give due consideration to costs assignable to owner-operators for their services, hourly labor costs should be imputed to the owner-operators which should correspond to the hourly rates of base pay which the owner-operators would receive for doing the same work for someone else.
>
> "12. The record sets forth several rates of base pay which might be adopted under such standard. However, considered in relation to the principal function of the dump truck carriers, namely, the performance of for-hire transportation services over the public highways, the base pay rates which are set forth in the so-called rock and sand labor contracts constitute a reasonable level of labor costs for the development of minimum rates for for-hire dump truck transportation services."

Evidence in these proceedings shows that the preponderance of dump truck transportation today is much the same as a decade ago - about 90% is performed by owner-operator drivers not working under labor contracts.

We have found the offset methodology employed by CDTOA and the staff proper in these and many other continuing minimum rate proceedings. (See D.76353, October 28, 1969, C.5432, Pet. 523.) But this is not to say this is the only technique usable in this type of proceeding. Indeed, in D.76353 we stated:

> "The Commission should not rigidly harness itself to any single cost offset procedure for adjusting its minimum rates and thereby preclude the presentation of evidence in justification of other desired cost offset proposals."

Cost increases presented by CDTOA and the staff have been developed in a manner consistent with past proceedings, are accurate, and would be usable for offset purposes in an economic climate approximating conditions prevalent a decade ago. But we must be mindful of the fact that we are establishing minimum rates. There is continuing evidence of willingness on the part of some shippers to pay rates in excess of minimum--particularly in connection with difficult hauls. There is also evidence of rate-cutting, especially in transportation performed under MRT 7-A.

Lindeman objects to any increase. He objected to the lack of operating ratio data, unavailable at the time of hearings. In the 1981 proceeding Lindeman presented an exhibit consisting of a list of about 60 carriers, showing their operating ratios for 1978 through 1980. The list is representative of carriers operating under these three tariffs. We take official notice of the 1981 annual reports of the carriers shown on that list and shall use those reports to derive the operating ratios which Lindeman stated should be considered.[1] The average operating ratio for that group of carriers was 99.5. We note Lindeman's own operating ratio for 1981 is 98.0; Yuba Trucking's 99.1. We find Lindeman's operating ratios highly probative in support of a modest increase in the MRT. Fidelity Transportation, a carrier opposing the petitions, had a ratio of 106.4 even though it received rates over MRT 7-A rates on a significant portion of its business. In the case of these carriers, the preponderance of revenues was derived through the use of owner-operator subhaulers, those for whom, primarily, we are setting rates here.

The information shown in Exhibit 43 relating to the use of operating ratios may suggest that carriers can pay bonuses and replace equipment in good years. But, the current economy is not good in the construction and dump truck industries.

The increases we are authorizing in this decision are primarily to restore truckers to a healthier position than is indicated by the operating ratios discussed above. The increase in the surcharges in each of the tariffs of six percentage points will accomplish this to some extent. But the petitions were filed early in 1982. Many carriers have likely been operating through the year at the same or lesser levels of profitability than experienced during 1981.

While we are authorizing increases of about 5%, we view them as modest in light of the evidence. It is true that two carriers (Lindeman and Calkins) submitted evidence showing individual costs lower than the average costs presented by CDTOA. Both are heavily involved in the use of subhaulers. Neither pays the fringe

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[1] The 1981 annual reports were not available when hearings were held in March 1982. We deem Lindeman's objection to failure to consider operating ratios as a waiver of any objection to our taking official notice of his own operating ratios.

benefits recognized in the labor contracts used by CDTOA and the staff. Both experienced an operating ratio of 98.0 or higher during 1981. We are establishing rates here, furthermore, for an industry consisting primarily of several thousand dump truckers owner-operators.

We are impressed with the cost savings achieved by individual carriers by "shopping around" - particularly with respect to insurance and tire costs. We urge all carriers to make efforts to achieve these savings and not look to the Commission to indemnify them against the hardships stemming from a slumping economy.

To ignore the interests of freight bill payers by granting larger increases would show a lack of sensitivity to our duty in administering the provisions of the Highway Carriers' Act. Public Utilities (PU) Code § 3502 declares, in part, the purpose of this act: "...to secure to the people just and reasonable rates for transportation by carriers operating upon such highways;..." In the circumstances, an increase of 5% at this time in the rates in MRTs 7-A, 17-A, and 20 will provide a reasonable level of earnings for dump truck carriers operating under those tariffs.

We take official notice of the 24 deviations currently in effect authorizing carriers to transport commodities in dump truck equipment at less than minimum rates. Several applications for similar authority have recently been filed. We encourage any carrier, such as Lindeman's operating in favorable cost circumstances to request authority to depart from the minimum rates contained in these tariffs. We would endeavor to process such deviation applications as expeditiously as possible.

Finally, we will comment on the use of vintage performance data by CDTOA and the staff in developing estimated costs. The staff has been the principal party undertaking the collection of this information for presentation in general rate proceedings for obvious reasons:

1. Its independent and unbiased position when gathering and constructing data for consideration by the Commission.

2. The requirements in the PU Code that carrier records be open to inspection by Commission employees. (PU Code §§ 3705 and 3706.)

However, interested parties other than staff have frequently presented recommendations for our consideration, based upon their own full-scale studies. Those recommendations have frequently been adopted.

The performance data underlying the rates in MRTs 7-A and 17-A are based largely upon carrier operations conducted in 1969. Continued use of them is certain to generate controversy and opposition of the sort presented in this proceeding. As indicated in the testimony, the type of equipment operated, the types of hauls available, and the annual driver hours and equipment use hours have changed materially in that decade. We urge interested parties to undertake studies for the purpose of developing fresh performance data, equipment and labor costs, etc. A number of parties appearing in this proceeding have demonstrated an ability to perform this type of study. We are nearing the time for consideration whether to continue our present minimum rate program in connection with these three tariffs. (C.5437, OSH 292, et al.) Development of fresh general study-type information could be very useful regardless of the direction we decide upon in that proceeding.

We are raising rates here through imposition of across-the-board increased surcharges. The increases are based upon an analysis of representative industry operating ratio data. Surcharges are odious to truckers and freight bill payers. They contribute to increased administrative costs and errors in calculating transportation charges. From a cost development standpoint they can cause or worsen skews in existing rate scales. We will put truckers and shippers on notice that when costs are developed for presentation in the next general study, increases and reductions will undoubtedly be indicated based, in part, upon the need to conform orderly rate scales with precisely developed data at various cost points.

Findings of Fact

1. MRTs 7-A, 17-A, and 20 contain minimum rates for the transportation of commodities in dump truck equipment. MRT 7-A contains mainly hourly and distance rates. MRTs 17-A and 20 contain zone rates.

2. Rates in MRTs 7-A, 17-A, and 20 were last generally adjusted in D.90854, D.90855, and D.90857, respectively. Those rates became effective November 1, 1979. Since that date rates in MRTs 7-A, 17-A, and 20 were increased by about 4-1/2% effective September 26, 1981 by D.93523, et al., based upon an analysis of representative 1980 industry operating ratio information.

3. The possibility that business may be lost by for-hire dump truck carriers as a result of an increase in the MRTs is not sufficiently great to justify a refusal to increase rates to a level which will result in reasonable operating ratios.

4. The construction industry has been confronted with a reduced level of economic activity since 1980, continuing into 1982.

5. Dump truck carriers who haul for the construction industry in California are confronted with less opportunity to perform for-hire transportation due to the recession in that industry.

6. A 5% increase in rates is necessary for carriers to maintain operating ratios, before taxes, of about 94.5, which is a reasonable operating ratio in these circumstances.

7. Authorizing the full amounts sought in these petitions at this time would be unwarranted in light of Findings 4 and 5.

8. Authorizing an increase at this time of six percentage points in the rates in MRTs 7-A, 17-A, and 20, to be added to currently effective surcharges, will provide just and reasonable rates for the transportation services performed by dump truck carriers. These surcharges should be folded into the rate items as soon as possible since they are already at a difficult to calculate level.

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

Conclusions of Law

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

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

O R D E R

IT IS ORDERED that:

1. MRT 7-A (Appendix B to D.82061, as amended) is further amended by incorporating Supplement 21, attached, to become effective October 17, 1982.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to D.82061, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered by this decision.

3. Tariff publications required to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than the effective date of the tariff pages attached.

4. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of PU Code § 461.5 to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are modified to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects, D.82061, as amended, shall remain in full force and effect.

6. The Executive Director shall serve a copy of this decision on every common carrier, or such carriers' authorized tariff publishing agents, performing transportation services subject to MRT 7-A.

7. The Executive Director shall serve a copy of the tariff amendments on each subscriber to MRT 7-A.

8. The staff is directed to prepare as soon as practical, new rate pages for the purpose of incorporating new surcharge levels in the appropriate rate items in MRTs 7-A, 17-A, and 20.

9. To the extent not granted, Pet. 315 in C.5437, Pet. 52 in C.9819, and Pet. 20 in C.9820 are denied.

This order is effective today.

Dated October 6, 1982, at San Francisco, California.

I will file a concurring opinion.

/s/ LEONARD M. GRIMES, JR.
Commissioner

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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

[illegible] E. Bodovitz, Executive Director

APPENDIX A

E. O. Blackman and James D. Martens, for California Dump Truck Owners Association, petitioner.

Michael Lindeman, for Lindeman Bros., Inc.; Arthur M. Ribe and William M. Mauk, for Granite Rock Company; and John Regan, for Associated General Contractors; protestants.

T. W. Anderson, for General Portland Inc./California Division; Les Calkins, for Les Calkins Trucking, Inc.; James R. Foote, for Associated Independent Owner-Operators, Inc.; Graham & James, by David J. Marchant and James B. Henly, Attorneys at Law, and Charles Touchatt, for California Carriers Association; Fred P. Hughes, for Southern California Rock Products Association; Herbert W. Hughes and C. D. Gilbert for California Trucking Association; H. A. Lane, for AIOO; William Mitze, for Riverside Cement Co.; Harry Phelan, for California Asphalt and Pavement Association; George B. Shannon, for Southwestern Portland Cement Company: Emil Bertana, for Lone Star Industries; Lou Ciardella, for Ciardella Trucking; K. W. Johnson, for Domtar Gypsum America, Inc., W. C. Spangler, for Spangler Trucking; Arvel G. Batchelor, for J.B.A. Co., Inc.; and Dorothy J. Flanders, Jack Lepinski, and Keith L. Allen, for themselves; interested parties.

Joseph Braman and Russell D. Corning, for the Commission staff.

(END OF APPENDIX A)

SUPPLEMENT 21

(Cancels Supplement 20)

(Supplements 9 and 21 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 No. 82 10 028

EFFECTIVE 10/17/82

Issued by the
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
State Building, Civic Center
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 as follows: (See Exception)

1. By nineteen (19) percent on charges computed at Column O rates set forth in Items 390 or 400;

2. By twenty and three-quarters (20-3/4) percent on charges computed at Column P rates set forth in Items 390 or 400;

3. By twenty-two and one-half (22-1/2) percent on all other rates and charges.

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 90 - Accessorial charges;

2. Items 100 and 110 - (Railhead-to-railhead charges only);

3. Item 120 - Bridge and Ferry Tolls;

4. Item 260 - Additional charge for service.

THE END

◇ Increase, Decision No. 82-10-028

C.5437, Pet 315 et al. D.82-10-028
C.9819, Pet 52 D.82-10-029
C.9820, Pet 20 D.82-10-030

COMMISSIONER LEONARD M. GRIMES, JR., Concurring:

I concur with the proposed 5% across-the-board increases in MRT 7A, MRT 17-A, and MRT 20 with these reservations. First, I strongly feel that the 5% is a token increase and will not adequately satisfy the dump truckers, especially those with substantial low incomes. There hasn't been an increase in these tariffs since September, 1981. Inflation, fuel, and running costs have escalated dramatically and 5% would not resolve the problem. I would like to have seen a larger increase -- 8% or even 10% -- but I am led to believe that the larger increase would be detrimental at this time, especially with the oppressed state of the construction and road building industry. Secondly, I strongly feel that the representative group of truckers used to obtain the operating ratios that the administrative law judge and staff used to base their proposed increases does not reflect the needs of a large sector of the industry who are one truck owner operators.

In addition, I would like to see more enforcement directed toward the dump truck industry as long as we remain the regulator. It is an open secret that there is rampant rate cutting and unscrupulous deals being cut under our very nose. Appeals are made to me for help by truckers that I have occasion to meet. Such appeals are especially loud among the minority truckers. I realize that we have installed a hot line for getting information of wrong doings but that will not get past the "barrier of fear" of being denied access to the market place if you are caught "squealing" to the PUC. I know we are short of staff but maybe a few more timely audits, these can be picked at random, and some subsequent fines might signal the industry that our rules are to be obeyed.

LEONARD M. GRIMES, JR., Commissioner

San Francisco, California
October 6, 1982

recommended increases, employed offset techniques recognized by the Commission for many years. The reasons we did not award the full amount of increases recommended by CDTOA and the staff in those proceedings were essentially as follows:

1. The construction industry had been faced with a severely reduced level of economic activity since 1980, continuing into 1981.

2. Dump truck carriers had been unlawfully assessing rates less than the minimum to a greater extent than usual since the reduction of economic activity in the construction industry. The practice would increase if the full amount of requested increases were granted.

3. Rates contained in the three tariffs are minimum rates. Carriers had demonstrated an ability to negotiate rates higher than minimum when business conditions in the construction industry are better and there was a greater demand for their services.

During the course of these proceedings an abundance of evidence was presented to the Commission. It consisted of individual carrier testimony, operating expense data, industry profile statistics, and construction industry information. 55 exhibits were introduced. The testimony presented by CDTOA and protestants, and the parties joining in their respective recommendations, comprises easily the lengthiest, most contradictory and complex record received for evaluation in a dump truck offset proceeding. Because of the importance to the parties and the Commission, much of the evidence received will be recited in this decision.

<u>Summary</u>

55 We are adopting an ~~immediate~~ increase in each of the three MRTs of about 5%. This figure is the result of the addition of six percentage points to the tariff surcharges presently applicable. It is arrived at, as we will see, through an analysis of representative operating ratios derived from the annual reports on file with the Commission of a representative group of truckers.

establishing datum plane cost information in connection with the for-hire dump truck industry. In developing the costs underlying CDTOA's rate proposal in these proceedings, Jenkins employed the same methodology used by the staff and CDTOA, and approved by the Commission in labor and other offset proceedings in these continuing minimum rate cases for many years.

In developing his labor cost data, Jenkins relied upon essentially the same labor contracts used in the 1973 OSH 213 proceeding. He stated that the labor rates named in those various contracts provided the basis for the labor cost component for that base study and the several labor offset proceedings considered by the Commission during the intervening years. The effective date for the current labor rates appearing in these contracts, he stated, is predominently August 1981.

Jenkins testified that while there was an increase of $2 per hour in the San Diego region 1981 labor contract, he did not include that increase, based upon the judgment of CDTOA that to do so would be imprudent at this time. However, a similar $2 increase in the San Francisco Bay Area Region contracts was used in the cost development for the rates in MRT 7-A applicable within that area. The authority for this decision was really Martens' and he addressed this issue. He said that while it is true that his directions to Jenkins were to adjust costs from the previous 1981 exhibits presented in Pet. 314, and update the allied payroll expenses, in considering the San Diego cost increases the total was going to develop into a figure which he deemed exorbitant. He contacted the carriers in the San Diego area, presented his analysis to them and was advised that indeed the resultant increases would be excessive.

Martens stated that the hourly rate for the San Diego area would have been about $53, as opposed to the present rate of about $45. He further stated that in his opinion the best possible minimum rate for publication in MRT 7-A would be about 2% to 4% less than a contractor's actual cost.

insurance but is unable to afford any kind of a personal pension to supplement social security. He was paying $1.22 per gallon for diesel fuel, including taxes, during the month of March 1982. Costs have increased for tires and maintenance, he testified. He worked 1,283 revenue hours during 1981, which was somewhat down from 1980, which he estimated at about 1,500. He believes that his revenue hours will increase during 1982 but that they will not come back to the 1980 figure. He does not believe that an increase in the rate levels in these tariffs would make an appreciable difference in the amount of work available to the for-hire trucking industry. He estimated that about 70% of his operations are as a subhauler and 30% as a prime carrier. Over 90% of his subhauling is done at the minimum rates. Robinson estimates his actual operating costs, less wages, profit, and any major overhaul costs, at about $32 per hour. He included no depreciation in that figure.

Linda Spangler also testified in support of the petitions. She does bookeeping and dispatching for her husband who operates a 1979 3-axle Peterbilt tractor and a 1979 semi-end dump trailer. The tractor cost $84,000 including interest, life insurance, license, and sales tax: the trailer about $29,000. She judges that their business has been operating at a loss because at the end of 1981 there was no money left in their savings account.

She and her husband have been in the dump trucking business since 1969. They ran a 10-wheeler for about 10 years and then saw that a lot of the 10-wheeler work was going into semi-end dump operations. They felt that the purchase of new different type equipment would make them more competitive and hopefully increase their use hours, but this has not been the case. The Spanglers' total insurance cost is currently $2,367 per year. She conceded that this is somewhat less than the cost shown in the staff cost study of $3,159. The Spanglers'

> "The Commission should not rigidly harness itself to any single cost offset procedure for adjusting its minimum rates and thereby preclude the presentation of evidence in justification of other desired cost offset proposals."

Cost increases presented by CDTOA and the staff have been developed in a manner consistent with past proceedings, are accurate, and would be usable for offset purposes in an economic climate approximating conditions prevalent a decade ago. But we must be mindful of the fact that we are establishing minimum rates. There is continuing evidence of willingness on the part of some shippers to pay rates in excess of minimum--particularly in connection with difficult hauls. There is also evidence of rate-cutting, especially in transportation performed under MRT 7-A.

In view of the fact that 90% of the transportation under these tariffs is performed by owner-operators, we are essentially raising the wages of these truckers when we increase rates because their final compensation is the difference between operating expenses and operating revenues.

KL

Lindeman objects to any increase. He objected to the lack of operating ratio data, unavailable at the time of hearings. In the 1981 proceeding Lindeman presented an exhibit consisting of a list of about 60 carriers, showing their operating ratios for 1978 through 1980. The list is representative of carriers operating under these three tariffs. We take official notice of the 1981 annual reports of the carriers shown on that list and shall use those reports to derive

9. Due to the demonstrated need by dump truck 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.

SS

Conclusions of Law

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

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

O R D E R

IT IS ORDERED that:

1. MRT 7-A (Appendix B to D.82061, as amended) is further amended by incorporating Supplement 21, attached, to become effective ~~September 22, 1982.~~ October 17, 1982.

SS

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to D.82061, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered by this decision.

3. Tariff publications required to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than the effective date of the tariff pages attached.

4. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of PU Code § 461.5 to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are modified to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects, D.82061, as amended, shall remain in full force and effect.

6. The Executive Director shall serve a copy of this decision on every common carrier, or such carriers' authorized tariff publishing agents, performing transportation services subject to MRT 7-A.

7. The Executive Director shall serve a copy of the tariff amendments on each subscriber to MRT 7-A.

8. The staff is directed to prepare as soon as practical, new rate pages for the purpose of incorporating new surcharge levels in the appropriate rate items in MRTs 7-A, 17-A, and 20.

9. To the extent not granted, Pet. 315 in C.5437, Pet. 52 in C.9819, and Pet. 20 in C.9820 are denied.

This order is effective today.

Dated OCT 6 1982, at San Francisco, California.

I will file a concurring opinion.
/s/ LEONARD M. GRIMES, JR.
Commissioner

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

◇ 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 eighteen (18) percent on charges computed at Column O rates set forth in Items 390 or 400;

2. By nineteen and three-quarters (19-3/4) percent on charges computed at Column P rates set forth in Items 390 or 400;

3. By twenty-one and one-half (21-1/2) percent on all other rates and charges.

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

THE END

◇ Increase, Decision No. 82 10 028