

Decision S2 12 028 DEC 1 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 316  
(Filed January 29, 1982)

J. M. Jenkins and James D. Martens, for  
California Dump Truck Owners Association,  
applicant.  
Charles A. Ciapusci, Dorothy J.  
Planders, and Jack Lepinski, for  
themselves; C. D. Gilbert, for California  
Trucking Association; Graham & James, by  
James B. Henly, for California Carriers  
Association; Jerry Hansen, Attorney at  
Law, for Jerry Hansen Trucking; Sue  
Helberg, for Fred Helberg  
Trucking; Richard T. Karcher, for Karcher  
Trucking; Willy Miller, for H&M and BE  
Enterprises; John Regan, for Associated  
General Contractors; Lynda Spangler, for  
Wendell Spangler Trucking; and Linda  
Wrobel, for Bill Wrobel Trucking;  
interested parties.  
Neil V. Mahoney and Edward C. Cole, for  
the Commission staff.

O P I N I O N

Minimum Rate Tariff (MRT) 7-A contains rates applicable to transportation performed by dump truck carriers. Item 390 of MRT 7-A names rates on an hourly basis applicable within the Northern Territory. The Northern Territory rates are further categorized into Northern Region and San Francisco Bay Area Region (Bay Area Region) rates. The Bay Area Region rates are higher than the Northern Region rates by varying amounts, depending upon the number of axles per unit of equipment used, weekday versus holiday use, et cetera.

By this petition California Dump Truck Owners Association (CDTOA) requests that the territorial description contained in Item 380 of the tariff be revised to include all of Sonoma County in the Bay Area Region. Copies of the petition were served upon three trucking associations and three shipper associations, as well as the California Teamsters Public Affairs Council. Notice of filing of the petition appeared on the Commission's Daily Calendar of February 4, 1982. No protests to the petition were received; however, as the change in territorial description would have the effect of increasing transportation charges on shipments originating in the northern portion of Sonoma County, the Commission staff requested that the matter be set for public hearing. Accordingly, a duly noticed public hearing was held in San Francisco before Administrative Law Judge (ALJ) John Lemke on July 30, and was submitted upon the receipt of late-filed Exhibit 7 on August 4, 1982.

Evidence

James D. Martens, general manager of CDTOA testified initially. He recited some of the recent history concerning the sought authority. He stated the request was originally filed in the 1981 rate offset proceeding (Petition 314); and that while there were no protestants to the requested zone change, the Commission decision stated that the request should be the subject of a separate petition. He testified that CDTOA has 21 chapters located throughout the State, one of which is located in Santa Rosa and which covers all the territory involved in this request. The Santa Rosa chapter brought before CDTOA some three years ago the problems arising from having Sonoma County arbitrarily divided in half. These problems, Martens testified, are essentially as follows:

1. The vast majority of the rock and sand transported within Sonoma County originates in the Healdsburg-Windsor area on the Russian River, which currently lies in the lower-rated Northern Region of the Northern Territory. It is mainly transported to destinations in the Bay Area Region of the Northern Territory.
2. Carriers located, for example, in Petaluma, lying within the Bay Area Region, start off on a daily basis, travel empty northward into the lower-rated Healdsburg-Windsor Area, where they report for service. Rock, sand, and gravel are then transported back into the Bay Area Region. The provisions of Item 380 require that the applicable minimum rate to be charged by carriers shall be the one for the district within which the equipment and driver report for service by shipper's order.

3. There is a similar request before the Commission in Case 5330, Petition 116, where the California Moving and Storage Association is seeking to amend the territorial description in MRT 4-B, containing rates for the transportation of used household goods.
4. The hourly rates in Item 390 are the only rates involved; there would be no effect on distance (tonnage) rates.

J. M. Jenkins, a consultant retained by CDTOA, testified. Jenkins was employed on the Commission staff for 30 years as a transportation engineer and participated extensively in the development of costs for the various Commission dump truck tariffs.

Jenkins sponsored six exhibits. The first is a map showing the area in question. Jenkins testified that a principal reason for establishment of the different rate regions was the cost of labor. However, in the Northern Region there was also a different cost development due to the lower use hours involved. Jenkins noted that the territorial divisions for Northern and Southern territories in MRT 7-A generally follow county lines. He pointed out that the present boundary at the northern end of the Bay Area Region commences at the north end of Marin County; then it continues east to the Sonoma County Line and then southerly. CDTOA's request in this petition is simply to move the northern boundary farther north to include all of Sonoma County.

Exhibit 2 is a printout list of dump truck carriers domiciled in Marin and Sonoma Counties. It was obtained from Commission files. There are about 200 carriers on this list. Many are domiciled in Santa Rosa, Sebastopol, Windsor, and Healdsburg, communities located in the lower-rated Northern Region portion of the Northern Territory.

Exhibit 3 consists mainly of a map indicating the principal producers in Sonoma and Marin Counties of rock, sand, and gravel. Of the 15 producers indicated on the map, 12 are situated in the lower-rated Northern Region, most of them along the Russian River riverbed.

Exhibit 5 purports to demonstrate the effect of the proposed boundary change upon existing costs as they appear in the datum plane underlying the present rate levels in MRT 7-A. It is a recalculation of the weighting of labor costs in the Northern Territory. Jenkins testified that the current weighting derives from the original Case 5437, OSH 213 proceeding, where the portion of Northern Territory which includes the Northern Region production was given a weighting of 62%. He stated that the 62% factor was applied to the labor cost for Local 137 at that time. Jenkins testified that by removing the northern Sonoma County production from the tonnage used in the OSH 213 proceeding, a new factor of 61% would be applicable. In doing this, he removed 1,159,000 tons from the total tonnage figure used in the OSH 213 proceeding. He then applied the new percentage figure to the base labor rate presented by CDTOA in the current MRT 7-A offset proceeding (Case 5437, Petition 315). The new labor cost of \$11.631 is only 6 mills less than that derived from the 62% weighted figure shown in Exhibit 1 in Petition 315.

Jenkins also sponsored Exhibit 6, which shows production figures reported by the California Division of Mines for sand, gravel, and crushed stone in Sonoma and Marin Counties during the period 1967-1980. The exhibit shows that production of these commodities takes place preponderantly within northern Sonoma County.

Jenkins remarked that it is very unusual to have a boundary bisecting a populated area when there is a great amount of traffic traversing such a boundary. He also developed figures for population growth within Marin and Sonoma Counties. He determined that populations have doubled in both cases since 1970.

Jenkins testified that several fleet operators transport rock from the northern Sonoma County plants. Late-filed Exhibit 7 is a copy of a labor agreement under which work is performed by Skoff

Trucking (Skoff), a fleet operator domiciled in Petaluma. The contract calls for Skoff to pay a rate of \$12.99 per hour in connection with commodities transported in dump trucks, eight yards and over capacity, effective January 1, 1982. This rate is about a dollar over the labor rate used by CDTOA in Petition 315 for the Northern Region.

Jenkins stated that at the time of the OSH 213 proceeding, the differences in costs between the Northern Region and the Bay Area Region were attributable to labor contracts, insurance costs, and running costs. He also noted that several of the rock producers shown in Exhibit 3 are signatories to Teamsters labor contracts which apply to transportation performed in the Bay Area Region. This contract contains wage levels somewhat higher than the levels paid under the Local 137 agreement which was used for the Northern Territory rates in the OSH 213 proceeding.

Jack Lepinski is currently president of CDTOA, and is a dump trucker operating in the Marin-Sonoma County area. He testified that in a discussion recently with staff personnel in the Commission's Santa Rosa office, he was told that the present boundary line was responsible for a good portion of the enforcement violations encountered by the staff in that area.

Richard Karcher testified for CDTOA. He is an owner-operator subhauler with 19 years experience in the dump truck business. He stated that about 90% of his business originates in the Healdsburg area; about 70% is delivered into southern Sonoma, Marin, and other Bay Area Region Counties.

#### Discussion

Item 380 of MRT 7-A provides that the correct minimum rate, when equipment moves between two or more described regions, is the rate applicable at the point where the equipment and driver report for work. This is the chief reason for CDTOA's petition. Martens testified that most of the dump trucking performed from Sonoma County originates in the lower-rated Healdsburg-Windsor area at pits located on the Russian River. These hauls are mainly destined to points

situated in the higher rated southern Sonoma and Marin Counties. This higher-rated region is much more densely populated than northern Sonoma County. It was not so heavily populated in the late 1960s when the performance data underlying the costs developed for the original MRT 7-A proceeding were gathered. It is axiomatic that running costs increase with population density as traffic becomes more congested.

MRT 4-B, naming rates for the transportation of used household goods, contains an identically described Sonoma County territory where hourly rates are applicable (Item 210, MRT 4-B). But in that tariff we have provided that the correct rate is the one applicable for the highest-rated territory through or in which service is performed.

A boundary description of the type which presently outlines the Bay Area Region causes problems for carriers and shippers, as well as for Commission staff personnel. It is confusing in that it makes excessive use of streets and highways over a rather large expanse of territory, instead of more easily recognized county lines or natural boundaries. All territory boundaries in MRT 7-A, except the one in question, follow county lines.

This request is unopposed. California Carriers Association and the staff took a neutral position. The Northern California Engineering Contractors Association, by letter, supported CDTOA's request, stating that granting the petition will reduce the inequalities between northern and southern Sonoma County, i.e., base the determination of rate application on origin, rather than destination of a shipment.

The 5-axle Bay Area Region weekday hourly rate shown in Item 390 of MRT 7-A is \$40.41. It is the predominate hourly rate used in Bay Area Region hauling and is about 12.5% over the Northern Region rate of \$35.90.

Witness Jenkins testified that several major rock companies in the Northern Sonoma County area are signatories to contracts which pay their proprietary drivers wages comparable to those paid in the Bay Area Region. We have traditionally authorized rates in MRT 7-A with the labor portion referenced to local proprietary drivers' wages.

In light of the facts discussed above, we will grant the petition.

Findings of Fact

1. MRT 7-A names rates for the transportation of commodities hauled in dump truck equipment.

2. Item 390 of MRT 7-A names hourly rates for transportation performed within Northern Territory. Separate rates apply from origins located either in a described Northern Region, or in a separately described, higher-rated Bay Area Region.

3. The boundary line between these two regions is described principally in terms of city and county streets. All other territories in MRT 7-A are described on the basis of county lines.

4. The presently described boundary for the Bay Area Region causes confusion because it uses city and county streets over a large portion of Sonoma County, rather than county lines.

5. The petition is unopposed, and is supported by the Northern California Engineering Contractors Association.

6. Several major rock producing companies in northern Sonoma County pay their proprietary drivers wages on the level of those paid drivers operating in the Bay Area Region.

7. Labor costs for use in developing rates for MRT 7-A have traditionally been referenced to wage levels paid proprietary drivers operating in the same area.

8. It is reasonable to amend the description of the San Francisco Bay Area Region to include all of Sonoma County.

9. The rates authorized by the following order will result in just, reasonable, and nondiscriminatory minimum rates for the transportation involved.



10. The following order has no reasonably foreseeable impact on the energy efficiency of dump truck carriers.

Conclusions of Law

1. The petition should be granted.

2. The following order should be made effective the date of signature because a large number of carriers are affected and should be receiving the benefit of the higher-rated area.

O R D E R

IT IS ORDERED that:

1. MRT 7-A (Appendix B to Decision (D.) 82061, as amended) is further amended by incorporating Third Revised Page 38 and Third Revised Page 39, attached, to become effective December 12, 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 changes 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 on not less than five days' notice to the Commission and to the public.

4. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of Public Utilities 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.

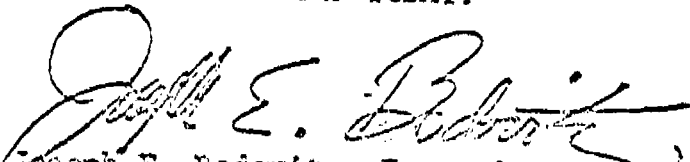
7. The Executive Director shall serve a copy of the tariff amendments on each subscriber to MRT 7-A.

This order is effective today.

Dated DEC 1 1982, at San Francisco, California.

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

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

  
Joseph E. Bodovick, Executive Director

SECTION 3--HOURLY RATES (Continued)	ITEM
<p align="center"><b>APPLICATION OF HOURLY RATES</b></p> <p>Rates in this section are hourly rates and apply from, to and between points in Southern and Northern Territories as described in Item 160. Hourly rates apply only when a debtor or his agent and a carrier or his representative enter into a written agreement, before the transportation commences, that the hourly rate provisions apply. Hourly rates apply only for the transportation of property as described in Items 30, 40, 60 and 400, except as otherwise provided and for accessorial services performed in conjunction with such transportation, only for one debtor in one unit of equipment. The rates include the wages of driver only. In the absence of an hourly agreement, rates otherwise provided in this tariff shall be assessed. When hourly rates only are provided in this tariff and in the absence of an hourly agreement, rates shall be assessed in accordance with the provisions of the applicable minimum rate tariff.</p> <p>The determination of chargeable time in the application of the hourly rates shall include the following:</p> <p>(a) From time reporting for work to the time completed hourly service.</p> <p>(b) Allowances may be made only for delays caused by failure of carrier's equipment or for time taken out for meals. Time to be charged shall include time for transportation in both directions, time for loading and unloading and waiting or stand-by time at origin and/or destination. Total chargeable time shall be computed to the nearest six (6) minutes or one-tenth of an hour.</p> <p>(c) In the event that a carrier is released by the shipper from further service and is re-engaged by the same shipper at a point other than the point of such release within the same 24 hour period (computed from 12:01 A.M. on the date the unit of equipment initially reports for service) hourly rates shall be assessed for the traveling time from the point of release to the subsequent origin point.</p>	360
<p align="center"><b>MINIMUM CHARGE UNDER HOURLY RATES</b></p> <p>The minimum charge for services performed under the hourly rates in this section shall be the charge for one hour at the applicable rate. (See Exception)</p> <p><b>EXCEPTION--</b>When debris cleanup is performed by a carrier at the hourly rates in Section 3, and when said service is performed at a job site as an incidental service to the carrier's transporting asphaltic concrete to said job site under zone rates in Minimum Rate Tariff 17-A, the minimum charge shall be that for one-half hour at the applicable hourly rate.</p>	370
<p>No change on this page, Decision No. <b>82 12 028</b></p>	
EFFECTIVE <b>DEC 12 1982</b>	
<p align="center">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	

ITEM	SECTION 3--HOURLY RATES (Continued)
c380	<p data-bbox="669 323 958 355">INTER-REGIONAL MOVEMENTS</p> <p data-bbox="338 366 1387 452">1. When dump truck equipment moves between two or more regions named in this item during one day's engagement at hourly rates, the rates applicable shall be that for the district within which the unit of dump truck equipment and driver reported for service pursuant to the shipper's order.</p> <p data-bbox="396 463 1148 495">2. Northern Territory is divided into two regions as follows:</p> <p data-bbox="446 506 1362 571">a(a) San Francisco Bay Area Region consists of the City and County of San Francisco and the Counties of Alameda, Contra Costa, Marin, San Mateo, Santa Clara and ** Sonoma.**</p> <p data-bbox="454 582 1346 636">(b) Northern Region consists of all of the counties in Northern Territory (See Item 160) except as provided in (a) above.</p> <p data-bbox="396 646 1148 679">3. Southern Territory is divided into two regions as follows:</p> <p data-bbox="454 689 1065 722">(a) San Diego Region consists of San Diego County.</p> <p data-bbox="454 733 1346 776">(b) Southern Region consists of all of the counties in Southern Territory (See Item 160) except San Diego County.</p>
	<p data-bbox="388 862 1073 916">d Change -- Eliminated ) Decision No. 82 12 028</p>
Correction	<p data-bbox="1040 1714 1395 1757">EFFECTIVE DEC 12 1982</p> <p data-bbox="586 1767 1412 1821">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>