

Decision 83 02 031

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Amendment to application of George Kishida, Inc., a California corporation, for authority to depart from the rates, rules and regulations of Minimum Rate Tariff 7 pursuant to the provisions of Section 3666 of the Public Utilities Code, for the transportation of silica sand from Ione, California, to Kingsburg, California, for Guardian Industries Corporation.

Application 82-02-04  
(Filed February 4, 1982;  
amended April 5, 1982)

In the matter of the application of AMERICAN TRANSFER CO., a California corporation, for authority to charge at a rate less than those prescribed in Minimum Rate Tariff No. 7A, for transportation of Silica Sand from OWENS ILLINOIS at Ione, California, to PPG INDUSTRIES, INC. at Fresno, California, pursuant to Section 3666 of the Public Utilities Code.

Application 82-03-50  
(Filed March 11, 1982;  
amended July 7, 1982  
and August 12, 1982)

In the matter of the application of AMERICAN TRANSFER CO., a California corporation, for authority to charge at a rate less than those prescribed in Minimum Rate Tariff No. 7A, for transportation of Silica Sand from OWENS ILLINOIS at Ione, California, to GUARDIAN INDUSTRIES at Kingsburg, California, pursuant to Section 3666 of the Public Utilities Code.

Application 82-03-51  
(Filed March 11, 1982;  
amended July 7, 1982  
and August 12, 1982)

Application of T & T Trucking, Inc., to deviate from rates in MRT 7-A for the account of Owens-Illinois, Inc. under Section 3666 of the Public Utilities Code.

Application 82-03-82  
(Filed March 23, 1982;  
amended August 12, 1982)

Application of T & T Trucking, Inc., to deviate from rates in MRT 7-A for the account of PPG Industries, Inc., under Section 3666 of the Public Utilities Code.

Application 82-04-35  
(Filed April 15, 1982;  
amended August 11, 1982)

Silver, Rosen, Fischer & Stecher, by Ellis Ross Anderson, Attorney at Law, for George Kishida, Inc., applicant in A.82-02-04 and interested party in A.82-03-50, A.82-03-51, A.82-03-82, and A.82-04-35.  
Handler, Baker, Greene & Taylor, by Marvin Handler, Attorney at Law, for American Transfer Co., applicant in A.82-03-50 and A.82-03-51 and interested party in A.82-02-04 and A.82-04-35.  
Graham & James, by David J. Marchant, Attorney at Law, and Jim Henly and C.F. Associates, Inc., by Harold F. Culy, for T & T Trucking, Inc., applicant in A.82-03-82 and A.82-04-35 and interested parties in A.82-02-04, A.82-03-50, and A.82-03-51.  
C. D. Gilbert and J. D. Anderson, for California Trucking Association; James D. Martens, for California Dump Truck Owners Association; Charles M. Coffman, for PPG Industries, Inc.; and Sharon Testman, for Sunrise Transportation; interested parties.  
Harry E. Cush, for the Commission staff.

O P I N I O N

Minimum Rate Tariff (MRT) 7-A provides minimum rates for the transportation of various commodities including silica sand and limestone when transported in dump truck equipment.

By these applications, George Kishida, Inc. (Kishida), American Transfer Co. (American), and T & T Trucking, Inc. (T & T) seek authority to assess less than the minimum rates for the transportation of silica sand originating at Ione as follows:

<u>Applicant</u>	<u>Destination</u>	<u>Rate Per Ton</u>	<u>Minimum Tonnage Per Shipment</u>
Kishida	Kingsburg	\$11.50	26.5
American	Fresno	10.75	28
American	Kingsburg	11.50	28
T & T	Oakland	8.10	27
T & T	Fresno	10.75	26

T & T also seeks authority to assess less than a minimum rate of \$8.30 per ton, minimum weight 27 tons for the transportation of limestone, crushed or pulverized, from Ione to Oakland.

All three applicants intend to use underlying carriers, in addition to their own drivers to perform the transportation.

The matters were consolidated for hearing which was held at San Francisco on July 14, and 15, and August 16, 17, and 18, 1982, before Administrative Law Judge O'Leary. The matters were submitted with the filing of written closing statements on September 15, 1982.

MRT 7-A provides both minimum distance rates and minimum hourly rates for the transportation which is the subject of these applications. Both the distance and hourly rates are subject to a surcharge of 22-1/2%. (At the time of the hearing the surcharge was

16-1/2%.) The surcharge is set forth in Supplement 21 of MRT 7-A. It requires that the amount of charges computed in accordance with the tariff rates be increased by the 22-1/2% surcharge. For ease of discussion in this decision, we will increase the minimum rates by the amount of the surcharge.

The minimum distance rates per ton which apply to silica sand and limestone from Ione are as follows: (1) to Kingsburg, \$14.69; (2) to Fresno, \$13.93; and (3) to Oakland, \$9.41. These rates are subject to a minimum weight of 24 tons per shipment. The minimum hourly rate is \$43.98 per hour.

Prior to March 1982, the movements of silica sand from Ione to Kingsburg transported by Kishida and the movements of silica sand and/or limestone from Ione to Fresno and Oakland transported by T & T moved at alternative rail rates, which rates were approximately 10% to 15% below the rates set forth in MRT 7-A. In March 1982, the rail rates were increased to a level above the rates set forth in MRT 7-A.

Subsequently, the shippers, Owens-Illinois for the Oakland hauls, Pittsburgh Plate Glass for the Fresno hauls, and Guardian Industries (Guardian) for the Kingsburg hauls approached T & T and Kishida to seek rate relief because the increase substantially increased the shippers' transportation costs from Ione.

In an attempt to ameliorate the effect of the rail rate increase, the carriers performing the transportation assessed the hourly rates in MRT 7-A which produced lower charges than the distance rates. The hourly rates are not satisfactory to the shippers or to the carriers for these hauls. The shippers cannot be certain what the transportation costs will be because the time of movement can vary due to traffic conditions encountered along the route. The carriers, on the other hand, have difficulty because there is no incentive for the drivers to expedite the service and it is difficult for the carriers to keep track of loading, transit, and unloading times.

For a long period of time American has been transporting dolomite for PPG and Guardian. Since silica sand has almost identical transportation characteristics as dolomite, and since PPG and Guardian expressed a desire to engage a second carrier for the transportation of silica sand, American entered into discussions concerning the transportation. Those discussions prompted the filing of the applications by American.

All three of the applicants intend to engage underlying carriers who have been named in the applications in addition to their own drivers to perform the transportation. The underlying carriers will furnish tractors only to pull applicants' trailers.

T & T and Kishida propose to pay the underlying carriers 75% of the proposed rates which is the same percentage as under the provisions of MRT 7-A (Items 126 and 210). American proposes to pay the underlying carriers 85% of the proposed rate by reducing the trailer rental charge to 10% rather than the 20% authorized by MRT 7-A.

The applications are not protested. Applicants take no position with respect to the applications of the others. The California Dump Truck Owners Association (CDTOA) appeared as an interested party and actively participated through cross-examination of applicants' witnesses. The Commission staff (staff) also cross-examined applicants' witnesses and presented evidence in its own behalf.

Evidence presented by the applicants discloses that the times involved for the transportation are as follows:

<u>Time to</u>	<u>Loading</u>	<u>Unloading</u>	<u>Transit (Round Trip)</u>	<u>Total</u>
Fresno	0:30	0:15	6:30	7:15
Kingsburg	0:30	0:15	7:00	7:45
Oakland	0:30	0:15	4:30	5:15

Based upon these times, there is no dispute by any of the parties that the transportation at the proposed rates would be compensatory to applicants. CDTOA is concerned that the operations of the underlying carriers will not be compensatory at 75% of the proposed rates; however, it did not present any evidence to refute the evidence presented by applicants which shows that the underlying carriers' operations will be profitable at the proposed rate. The underlying carriers support a grant of the requested authorities.

CDTOA suggests that perhaps the Commission should investigate the proper level of the division of revenues in applications such as these; however, CDTOA does not present any evidence that the division here is not reasonable. Without that evidence, such an investigation is not warranted, especially when the evidence discloses that the operations of the underlying carriers will be compensatory at the proposed rates.

Staff recommended that the following rates be authorized rather than the rates applied for:

<u>To</u>	<u>Rate per Ton</u>	<u>Minimum Weight</u>
Fresno	\$11.74	26 tons
Kingsburg	12.25	26 tons
Oakland	8.23	26 tons

The staff studies are not based upon samples of actual movement, or actual costs when compared with the cost studies of applicants. Therefore, the staff studies are not adopted herein..

Findings of Fact

1. Applicants possess dump truck carrier permits.
2. Applicants seek authority to assess less than the minimum rates set forth in MRT 7-A for the transportation of silica sand from Ione as follows:

<u>Applicant</u>	<u>Destination</u>	<u>Rate Per Ton</u>	<u>Minimum Tonnage Per Shipment</u>
Kishida	Kingsburg	\$11.50	26.5
American	Fresno	10.75	28
American	Kingsburg	11.50	28
T & T	Oakland	8.10	27
T & T	Fresno	10.75	26

3. Applicant T & T also seeks authority to assess a less than minimum rate of \$8.30 per ton, minimum weight 27 tons for the transportation of limestone, crushed or pulverized, from Ione to Oakland.

4. Prior to March 1982, the movements were transported by T & T and Kishida at the alternative rail rates.

5. In March 1982, the alternative rail rates were increased to a level higher than the distance rates in MRT 7-A.

6. Cost data submitted by the applicants disclose that the transportation at the proposed rates will be compensatory for the applicants and underlying carriers they intend to engage for the transportation.

7. The proposed rates are reasonable.

Conclusions of Law

1. The applications should be granted.
2. Since there is an immediate need for the sought relief, the effective date of the order should be today.
3. Since transportation conditions may change, these authorities should expire in one year.

O R D E R

IT IS ORDERED that:

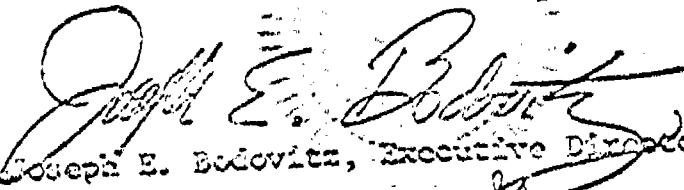
1. T & T Trucking, Inc. may depart from the rates in MRT 7-A by charging not less than the rates in Appendix A.
2. George Kishida, Inc. may depart from the rates in MRT 7-A by charging not less than the rates in Appendix B.
3. American Transfer Co. may depart from the rates in MRT 7-A by charging not less than the rates in Appendix C.
4. These authorities expire one year after the effective date of this order.

This order is effective today.

Dated FEB 2 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President  
VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
Commissioners

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

  
Joseph E. Badovitz, Executive Director



APPENDIX A  
Page.1

Carrier: T & T Trucking, Inc.

Commodity: Silica Sand

Origin: Owens-Illinois, Inc., Ione, California

Destination: Owens-Illinois, Inc., Oakland, California

Rate: \$8.10 per ton

Minimum Weight: 27 tons

Commodity: Limestone, crushed or pulverized (common lime) ✓

Origin: Owens-Illinois, Inc., Ione, California

Destination: Owens-Illinois, Inc., Oakland, California

Rate: \$8.30 per ton

Minimum Weight: 27 tons

Commodity: Silica Sand

Origin: Owens-Illinois, Inc., Ione, California

Destination: PPG, Fresno, California

Rate: \$10.75 per ton

Minimum Weight: 26 tons

Payments to Subhaulers

For this transportation the below-listed subhaulers shall be paid in accordance with the provisions of Items 126 and 210 of MRT 7-A except that the percentages set forth in those items shall apply to rates authorized herein rather than the applicable minimum rates.

Subhaulers

T-Number

Daniel Joe Bavender

T-136,788

Pete W. Beck,  
dba Pete Beck & Son

T-136,773

C. E. Culver  
E. M. Culver  
Donald R. Culver,  
dba Culver Trucking

T-122,506

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John Dondero, Jr.	T-99,572
Wayne A. Gregg, dba W. A. Gregg Trucking	T-125,353
Otis Harp, dba Otis Harp & Son Trucking	T-128,002
Anthony Leonardo William A. Silva Richard L. Nunes, dba Mountain Pass Express	T-109,846
Arthur Lobenberg	T-120,384
Carlos E. Marchbanks, dba Marchbanks Trucking	T-136,304
William J. McCall	T-132,224
Aubrey Overturf, dba Overturf Trucking	T-88,950
Patrick Padilla	T-90,779
Glenn A. Pierce, dba Jackpot Trucking	T-134,275
Jerry Dennis Pietzke	T-128,922
Floyd L. Rankin, dba F. L. Rankin & Sons	T-122,885
Raymond Richard Rexroth Violet Jane Rexroth	T-128,142
Paul E. Richmond, dba Richmond Trucking	T-112,850
Albert Rios	T-133,304
Jeff Rydberg, dba Jeff Rydberg Trucking	T-133,946
George P. Solari, dba George P. Solari Trucking	T-128,249
Terry M. Tarditi	T-121,088
James Wayne Wadell	T-118,556
Forrest L. Wyman, dba F. L. W. Trucking	T-92,416

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Page 3

Preston Ray Bowlin	T-137,353
Terry Arthur Dinsdale	T-138,122
J. W. Finley	T-128,093
Douglas E. Moody	T-109,899
Mark Joseph Muller	T-137,721
Orland Pacheco	T-130,615
Scot Rushing, dba Rushing Trucking	T-122,097
Virgil James Sherrell	T-137,413
Ben E. Stiles	T-123,900
Charles Sutton, dba Bill Sutton Trucking	T-137,820
Thomas M. Sweat	
Clyde J. Wilkerson, dba T & C Trucking	T-137,767
John Beck	T-138,736

Subhaulers other than the above shall be paid in accordance with the provisions of MRT 7-A.

In all other respects, the rates and rules in MRT 7-A shall apply.

(END OF APPENDIX A)

APPENDIX B

Page 1

Carrier: George Kishida, Inc.

Commodity: Silica Sand

Origin: Owens-Illinois, Inc., Ione, California

Destination: Guardian Industries, Kingsburg, California

Rate: \$11.50 per ton

Minimum Weight: 26.5 tons

Payment to Subhaulers:

The below-listed subhaulers shall be paid in accordance with the provisions of Items 126 and 210 of MRT 7-A except that the percentages set forth in those items shall apply to rates authorized herein rather than the applicable minimum rates.

Subhaulers

T-Number

Jim Yamauchi

T-93,641

Wesley Lawce

T-93,642

Louis J. Rivera

T-82,318

Geo. Moore

T-127,316

Kenneth Cossins

T-97,574

Nobuo Kishida

T-18,093

Gary Grimes

T-110,604

Tom Kiriu

T-93,630

Ralph Jensen

T-130,756

Donald Hieb

T-93,627

Dave Buell

T-134,197

Joe Utz

T-119,697

John Boggs

T-123,308

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Page 2

Paul Leary	T-135,300
Chattin Soule	T-124,178
Lonnie Vaux	T-134,300
Jeff Keaster	T-132,040
Mickey Shirakawa	T-93,636
Ramon Gonzalez, Jr.	T-117,674
Antonio Gonzalez	T-111,305
Albert Berchtold	T-111,305

Subhaulers other than the above shall be paid in accordance with the provisions of MRT 7-A.

In all other respects, the rates and rules in MRT 7-A shall apply.

(END OF APPENDIX B)

APPENDIX C

Carrier: American Transfer Co.

Commodity: Silica Sand

Origin: Owens-Illinois, Inc., Ione, California

Destination: PPG, Fresno, California

Rate: \$10.75 per ton

Minimum Weight: 28 tons

Commodity: Silica Sand

Origin: Owens-Illinois, Inc., Ione, California

Destination: Guardian Industries, Kingsburg, California

Rate: \$11.50

Minimum Weight: 28 tons.

Payments to Subhaulers

For this transportation the below listed subhaulers shall be paid 85% of the authorized rates when they furnish a tractor only and 95% of the authorized rate when they furnish a tractor and trailer.

<u>Subhaulers</u>	<u>T-Number</u>
L-K Livestock Trucking	T-94,845
James McLain	
Roland Allen McLain, dba McLain Trucking	T-138,813
Raymond W. Brown, dba Buo Brown Trucking	T-75,973

Subhaulers other than the above shall be paid in accordance with the provisions of MRT 7-A.

In all other respects, the rates and rules in MRT 7-A shall apply.

(END OF APPENDIX C)

Based upon these times, there is no dispute by any of the parties that the transportation at the proposed rates would be compensatory to applicants. CDTOA is concerned that the operations of the underlying carriers will not be compensatory at 75% of the proposed rates; however, it did not present any evidence to refute the evidence presented by applicants which shows that the underlying carriers' operations will be profitable at the proposed rate. The underlying carriers support a grant of the requested authorities.

CDTOA suggests that perhaps the Commission should investigate the proper level of the division of revenues in applications such as these; however, CDTOA does not present any evidence that the division here is not reasonable. Without that evidence, such an investigation is not warranted, especially when the evidence discloses that the operations of the underlying carriers will be compensatory at the proposed rates.

Staff recommended that the following rates be authorized rather than the rates applied for:

<u>Ione to</u>	<u>Rate per Ton</u>	<u>Minimum Weight</u>
Fresno	\$11.74	26 tons
Kingsburg	12.25	26 tons
Oakland	8.23	26 tons

The staff recommendation is based upon its cost study which is set forth in Exhibit 46. The staff cost study as to time for each movement is overstated by at least 3/4 hours and is deficient with respect to other costs as pointed out in the closing statements of applicants. There is no evidence to support the underlying assumptions set forth in the staff study.

*As per  
recommen*

APPENDIX A  
Page 1

Carrier: T & T Trucking, Inc.

Commodity: Silica Sand

Origin: Owens-Illinois, Inc., Ione, California

Destination: Owens-Illinois, Inc., Oakland, California

Rate: \$8.10 per ton

Minimum Weight: 27 tons

Commodity: ~~X~~Limestone, crushed or pulverized (common lime)~~X~~

Origin: Owens-Illinois, Inc., Ione, California

Destination: Owens-Illinois, Inc., Oakland, California

Rate: \$8.30 per ton

Minimum Weight: 27 tons

Commodity: Silica Sand

Origin: Owens-Illinois, Inc., Ione, California

Destination: PPG, Fresno, California

Rate: \$10.75 per ton

Minimum Weight: 26 tons

Payments to Subhaulers

For this transportation the below-listed subhaulers shall be paid in accordance with the provisions of Items 126 and 210 of MRT 7-A except that the percentages set forth in those items shall apply to rates authorized herein rather than the applicable minimum rates.

<u>Subhaulers</u>	<u>T-Number</u>
Daniel Joe Bavender	T-136,788
Pete W. Beck, dba Pete Beck & Son	T-136,773
C. E. Culver E. M. Culver Donald R. Culver, dba Culver Trucking	T-122,506