

Decision 83 16 021 OCT 5 - 1983

**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)

(For appearances see Appendix A.)

## OPINION ON REHEARING

## Background

California Dump Truck Owner's Association (CDTOA) filed the above petitions to adjust rates in Minimum Rate Tariffs (MRT) 7-A, 17-A, and 20 in January 1982. The tariffs contain rates applicable to commodities transported in dump truck equipment.

Ten days of hearing were held commencing in March 1982. By Decisions (D.) 82-10-028, D.82-10-029, and D.82-10-030 dated October 6, 1982 rate increases of approximately 5% (6 percentage points) were granted in each of the three tariffs, effective October 17, 1982.

CDTOA had requested and the staff recommended increases in MRT 7-A averaging approximately 10.5% in hourly rates and 12% in distance rates, increases in MRT 17-A, averaging approximately 7%, and increases in MRT 20 of approximately 15%.

Lindeman Bros., Inc. (Lindeman) filed its application for rehearing on October 14, 1982. We granted rehearing of the above decisions by D.82-12-092 dated December 15, 1982, limited to:

1. The use of Exhibit 6 from Case C.5437, Petition 314 et al.;
2. The use of 1981 annual reports of the 60 carriers listed in Exhibit 6, C.5437, Petition 314 et al.;
3. The use of this information as the basis of the decision.

The order granting limited rehearing did not suspend the 5% increases.

On January 14, 1983 Lindeman filed a petition for reconsideration and suspension of D.82-12-092. By D.83-02-023 dated March 2, 1983, we granted Lindeman's petition and directed that rehearing of D.82-12-092 should be consolidated with the limited rehearing.

Duly noticed public hearings were held in Los Angeles before Administrative Law Judge (ALJ) John Lemke on July 6 and 7, 1983. The matter was submitted subject to the receipt of written closing statements by August 6, 1983.

The principal issue before us in this proceeding on rehearing is whether we erred in our consideration of operating ratio information in arriving at D.82-10-028, et al.

The ALJ also allowed evidence concerning antitrust allegations raised by Lindeman with respect to operations conducted under MRT 17-A. Basically, Lindeman had stated that MRT 17-A causes anticompetitive results and should therefore be canceled. Neither Lindeman nor any other party presented evidence concerning antitrust implications.

By D.82-07-042 dated July 7, 1982 in Case (C.) 9819 (Petition 15), relating to operations performed under MRT 17-A, we found:

"8(a) The weight of the evidence shows the use of zone rates in the areas in question will not have anti-competitive effects."

Evidence

Firmo Garcia, an Associate Transportation Engineer with the Commission's Transportation Division, Freight Economics Branch, sponsored Exhibit 1. He stated that this Commission as well as the Interstate Commerce Commission has historically used operating ratios to gauge the profitability of motor carriers and other carriers. He listed the 60 carriers used in Exhibit 6 from the Petition 314 proceeding, as well as the 1981 operating revenues and operating expenses for 58 of those carriers, their 1980 and 1981 operating ratios, and the average and median operating ratios for the 58 carrier group for both 1980 and 1981. The 1981 average operating ratio for the group is 100.4%, the median, 99.55%. For 1980 the average was 97.3%, the median 98.0%.

Michael Lindeman, President of Lindeman Trucking, Inc., sponsored Exhibit 2, a list of 38 additional dump truck carriers. His purpose in offering the exhibit is simply to point out to the Commission that there was a sizeable block of large dump truck

carriers not included in the 60 who were considered in D.82-10-28, et al. But Lindeman argued that neither of the above carrier groups is representative of the industry because neither includes carriers who are primarily independent owner-operators.

Lindeman took particular exception to the inclusion of three carriers shown in Exhibit 1. Of these, only one--Asta Construction--appears to be improperly included. This is because in its annual report Asta describes its operations primarily as those of a mud and waste water hauler rather than a dump truck carrier. Asta's indicated operating ratio for 1981 is 90.8%. Lindeman questioned expenses contained in the reports of two other carriers, but offered no evidence that the expenses were improperly shown.

Official notice was taken by the ALJ of the 1981 annual reports of the carriers shown in Exhibit 2. Thirty-six of those 38 carriers filed reports for 1981. The average operating ratio for those 36 carriers is 98.7%. The average 1981 operating ratio for the combined 94 carriers shown in Exhibits 1 and 2 is 99.8%.

The 5% increases granted are supported by Southern California Rock Products Association.

Associated General Constructors, originally a protestant, argued that while the increases should not have been ordered, they should not now be canceled because they have been in place for almost a year and the marketplace has adjusted to the new rates.

California Asphalt Pavement Association, a shipper association, recommended that the increases granted by D.82-10-028 be retained.

CDTOA, the original petitioner, concurred with Lindeman that operating ratios of overlying carriers should not be relied upon in establishing rate levels, and suggested that we go back to the original record and award the higher increases based upon the amounts indicated in its and the staff's cost exhibits.

Staff stresses that the information contained in annual reports is submitted as true and correct under penalty of perjury; that reports are routinely scrutinized for completeness, although seldom audited.

California Carriers Association (CCA) noted that we used operating ratio data merely as one economic indicator in arriving at our conclusion in D.82-10-028, et al., and that we found it necessary to limit the size of the increase to amounts less than indicated by the cost evidence only because of the reduced level of economic activity in the construction industry.

Discussion

CCA is correct in its observation. The principal reason we did not grant increases in the magnitudes indicated in both CDTOA's and the staff's cost exhibits was because of the slumping economy and its particularly harsh effects on the construction industry.

Although performance data used in cost development may become old, this does not mean it is unuseable. In many cases it is the best evidence of actual carrier costs until new studies are performed and new performance figures become available. We stated in D.82-10-028 (mimeo. page 29):

"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, Petition 523.)"

We also stated in D.82-10-028 (mimeo., page 30):

"Cost increases presented by CDTOA and the staff have been developed in a manner consistent with past proceedings, are accurate, and would be useable 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."

We stated in Finding 7 of this decision that to authorize the full amounts sought by petitioner at this time would be unwarranted because of the reduced level of economic activity experienced in the construction industry with the concomitant reduction in opportunity to perform transportation by for-hire dump truck carriers. ✓

We will affirm the increases granted by D.82-10-028, et al. We find the increases of approximately 5% are reasonable in light of the evidence adduced during the original hearings and on rehearing. This evidence consists of estimated increases in operating expenses shown in the CDT0A and staff cost exhibits and testimony concerning the devitalized state of the construction industry.

We find that the evidence concerning operating ratios of the carriers, excluding Asta, contained in Exhibits 1 and 2 is indicative of the financial health of a significant number of large dump truck carriers who perform substantial operations under these tariffs.

We also find that the increases we are affirming are reasonable, and produce reasonable rate levels, based on evidence excluding the operating ratio information contained in Exhibits 1 and 2.

We again state that we are not granting the full increases requested by petitioner because of the sensitive nature of the economy, particularly as it relates to the needs of the construction industry. By granting increases of 5% we are recognizing a temporary need for rates based not on traditional cost developments nor merely on operating ratio indicia, but on our estimate of the needs of this industry based upon the totality of evidence before us.

Lindeman protested that operating ratio data should not be used because no independent owner operators are included among the carriers shown. However, revenues of the 57 carriers used in Exhibit 1 total well in excess of \$100,000,000; and revenues of the 36 carriers in Exhibit 2 total nearly \$100,000,000. Thus, we have results of operations of a group of carriers, assumedly engaged primarily in dump truck hauling and grossing over \$200,000,000, operating at close to margin.

Lindeman's objection to use of the above operating ratio data echoes the concern expressed by Commissioner Grimes in his concurring opinion to D.82-10-028, where he stated his feeling that the group of carriers used did not reflect the needs of a large number of one-truck owner operators. But Commissioner Grimes stated that he would recommend a larger increase--8 or 10%--except for the oppressed state of the construction and road building industry. If we are erring in the amount of increases authorized we are doing so on the side of least harmful consequence since the rates we are concerned with are minimum, as opposed to fixed or maximum tariff rates.

#### Findings of Fact

1. By D.82-10-028, D.82-10-029, and D.82-10-030 we granted increases in MRTs 7-A, 17-A, and 20, respectively, of approximately 5%.

2. The CDTOA and staff cost estimates contained in exhibits introduced during the original hearings in these proceedings indicated that increases averaging between 10.5% and 12% in MRT 7-A, 7% in MRT 17-A, and 15% in MRT 20 were necessary in order that carriers may operate at the 8% profit margin adopted in prior proceedings revising minimum rates in these tariffs.

3. The estimated cost increases contained in the CDTOA and staff cost exhibits were accurately developed in a manner consistent with that found reasonable in past minimum rate offset proceedings.

4. Granting increases in the amounts indicated in the CDTOA and staff cost exhibits would not be reasonable in light of the devitalized state of the construction industry in the time frame of these proceedings.

5. The approximate 5% increases granted by D.82-10-028, et al. are reasonable, in view of the evidence of record.

6. No evidence has been brought to the Commission's attention concerning antitrust or anticompetitive practices resulting from the maintenance of zone rates in MRT 17-A.

7. By D.82-07-042 we found, with respect to MRT 17-A, that the use of zone rates would not have anticompetitive effects.

Conclusions of Law

1. The increases granted by D.82-10-028, et al. should be affirmed.

2. It has not been shown that dump truck carrier or shipper operations under MRT 17-A result in antitrust or anticompetitive practices.

ORDER ON REHEARING

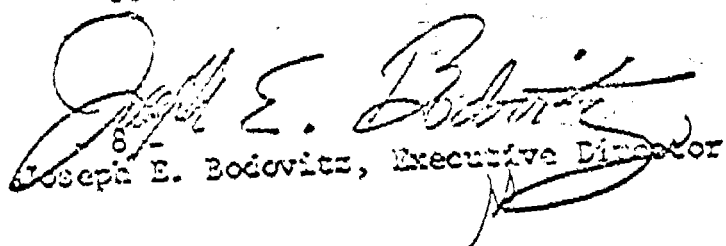
IT IS ORDERED that the increases granted by D.82-10-028, D.82-10-029, and D.82-10-030 are affirmed.

This order becomes effective 30 days from today.

Dated October 5, 1983, at San Francisco, California.

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

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

  
Joseph E. Boicovitz, Executive Director



APPENDIX A

List of Appearances

Petitioner: Michael Lindeman, for Lindeman Bros., Inc.

Protestant: James D. Martens, for California Dump Truck Owners Association.

Interested Parties: T. W. Anderson, for General Portland, Inc.; William Mitze, for Riverside Cement Company; George B. Shannon, for Southwestern Portland Cement Company; Howard D. Clark, for Asbury System; John Regan, for Associated General Contractors; Les Calkins, for Les Calkins Trucking; James R. Foote, for Associated Independent Owner-Operators, Inc.; Harry Phelan, for California Asphalt Pavement Association; E. O. Blackman, for C&M Trucking and Huntmix, Inc.; Dennie Reed, for California Carriers Association; A. Taylor Reid, for So. California Rock Products Association; Arvel G. Batchelor, for J.B.A. Co.; and Graham & James by James B. Henly, for California Carriers Association.

Commission Staff: Patricia A. Bennett, Attorney at Law, and Joe Braman.

(END OF APPENDIX A)

particularly in connection with difficult hauls. There is also evidence of rate-cutting, especially in transportation performed under MRT 7-A."

We stated in Finding 7 of this decision that to authorize the full amounts sought by petitioner at this time would be unwarranted because of the reduced level of economic activity experienced in the construction industry with the concomitant reduction in opportunity to perform transportation by for-hire dump truck carriers. 100

We will affirm the increases granted by D.82-10-028, et al. We find the increases of approximately 5% are reasonable in light of the evidence adduced during the original hearings and on rehearing. This evidence consists of estimated increases in operating expenses shown in the CDTOA and staff cost exhibits and testimony concerning the devitalized state of the construction industry.

We find that the evidence concerning operating ratios of the carriers, excluding Asta, contained in Exhibits 1 and 2 is indicative of the financial health of a significant number of large dump truck carriers who perform substantial operations under these tariffs.

We also find that the increases we are affirming are reasonable, and produce reasonable rate levels, based on evidence excluding the operating ratio information contained in Exhibits 1 and 2.

We again state that we are not granting the full increases requested by petitioner because of the sensitive nature of the economy, particularly as it relates to the needs of the construction industry. By granting increases of 5% we are recognizing a temporary need for rates based not on traditional cost developments nor merely on operating ratio indicia, but on our estimate of the needs of this industry based upon the totality of evidence before us.

4. Granting increases in the amounts indicated in the CDTOA and staff cost exhibits would not be reasonable in light of the devitalized state of the construction industry in the time frame of these proceedings.

5. The approximate 5% increases granted by D.82-10-028, et al. are reasonable, in view of the evidence of record.

6. No evidence has been brought to the Commission's attention concerning antitrust or anticompetitive practices resulting from the maintenance of zone rates in MRT 17-A.

7. By D.82-07-042 we found, with respect to MRT 17-A, that the use of zone rates would not have anticompetitive effects.

Conclusion of Law

1. The increases granted by D.82-10-028, et al. should be affirmed.

2. It has not been shown that dump truck carrier or shipper operations under MRT 17-A result in antitrust or anticompetitive practices.

ORDER *on Rehearing* KR

IT IS ORDERED that the increases granted by D.82-10-028, D.82-10-029, and D.82-10-030 are affirmed.

This order becomes effective 30 days from today.

Dated OCT 5 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners