

Decision 83 10 080 OCT 19 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 trans-
portation of rock, sand, gravel, and
related items in bulk, in dump truck
equipment in Southern California as
provided in Minimum Rate Tariff 17-A
and Southern California Production
Area and Delivery Zone Directory 1,
and the revisions or reissues thereof.)

Case 9819
Petition for Modification 58
(Filed February 7, 1983)

Lawrence E. Weitzman, Attorney at Law,
for Paul Eurns Construction Company,
petitioner.

Brian W. Ferris, for Conrock Company;
James D. Martens, for California Dump
Truck Owners Association; Keith L.
Allen, for A-100, Incorporated; and
William H. Thomas, Jr., and James
R. Foote, for Associated Independent
Owner Operators, Incorporated,
protestants.

Harry Phelan, for California Asphalt
Pavement Association; and Dennie Reed
and Larry Farrens, for California
Carriers Association; interested parties.
Joseph Braman, for the Commission
staff.

O P I N I O N

Minimum Rate Tariff 17-A (MRT 17-A) names rates for the transportation of rock, sand and gravel, asphaltic concrete, etc. in dump truck equipment between various production areas and delivery zones in southern California. Boundary descriptions for the various production areas and delivery zones are contained in Southern California Production Area and Delivery Zone Directory No. 1 (Directory).

By this petition Paul Hurns, doing business as Paul Hurns Construction Co., requests revision of the Directory with respect to the existing boundaries of Production Area 19-A in Los Angeles County, and the establishment of revised zone rates in MRT 17-A for the transportation of rock, sand and gravel from Production Area 19-A to delivery zones located within Los Angeles and Ventura Counties.

The petition was protested by Conrock Company (Conrock), California Dump Truck Owners Association (CDTOA) and by Associated Independent Owner Operators, Inc. (A-IOO). A duly noticed public hearing was held in Los Angeles on June 23 and 24, 1983 before Administrative Law Judge (ALJ) John Lemke. The matter was submitted upon the receipt of written closing statements July 20, 1983.

Production Area 19-A is located in the San Fernando Valley area of Los Angeles County. The Hurns plant is located approximately one and one-quarter air miles north of the northern boundary of Production Area 19-A. The Hurns plant has been in operation for approximately two years. The petitioner acknowledges that if we are to amend the boundary description of Production Area 19-A, the present centroid for the area should also be relocated. The centroid is the point within a production area from which traverse data to various nodes (thoroughfare intersections) are measured. By relocating the centroid northward, and including Hurns' plant within the proposed newly described area, freight bill payers presently shipping aggregates from Production Area 19-A in a southerly direction would have their transportation charges increased but on shipments to delivery zones located to the north, charges would be reduced. Hurns' clientele would have charges reduced on shipments to the south or north because they will have the benefit of lower zone rates contained in MRT 17-A.

Evidence

Paul Hurns testified initially as follows:

1. He operates a production facility for rock, sand and gravel in the Hansen Dam area of the San Fernando Valley.

2. He employs for-hire dump truck operators extensively to haul his products; but some customers pick up his products in their own trucks.

3. His plant is not presently located in a production area. MRT 7-A tonnage rates are paid on shipments transported from his plant by for-hire dump truck carriers.

4. To the best of his belief only one plant, operated by Conrock, is presently within the boundaries of Production Area 19-A. At one time there may have been five plants operating within the area.

5. Hurns competes primarily with Conrock in marketing his rock, sand and gravel products.

6. Hurns operates in the Hansen Dam area under a license issued by the Army Corp of Engineers. The license authorizes Hurns to clean out the buildup of sediment in the dam, and is for a term of five years. Hurns moves between a half-million and a million cubic yards of sediment from the dam site annually.

Hurns requests that a new centroid and tie-in node be developed with respect to the proposed, newly described Production Area 19-A. This is because many of the shipments from his plant are to the south, and if carriers pick up at his plant but are compensated only on the basis of traverse times and distances from the present centroid, situated several road miles south of his plant, such carriers would not be adequately compensated.

Hurns stressed that removing the material from the Hansen Dam site is a benefit to the public and enhances public safety. This is because the dam is a flood control basin which tends to fill up with debris every winter. His contract with the Army is for the removal of the debris in order that the dam may be maintained as a functional facility. Hurns stated that his plant had been inundated in March because of the heavy rains; that if it were not for continuing excavating operations, flooding in the entire area could be a result. Five of Hurns' customers furnished letters supporting his

request. All five are situated in the vicinity of San Fernando Road and Tuxford Street, a point approximately five to six road miles south from his plant.

Hurns' general sales manager, Peter Pouwels, alleged that there has been a decrease in the cost of materials originating in the area since the arrival of Hurns in 1981; that the new competitive situation between Conrock and Hurns has thus redounded to the benefit of the shipping and general public. Pouwels sponsored Exhibit 2, a portrayal of the one-way miles and running time between the Hurns scale and Node 30404, located at the intersection of Tuxford Street and San Fernando Road. The distance is 4.1 miles; the round-trip minutes 22. Both measurements are estimates because they are calculated in part via a yet-to-be-built road from the plant to Wentworth Street.

Pouwels testified that the net effect to the public, i.e., the delivered price, will be reduced if the petition is granted and if the centroid is relocated and parity with respect to transportation rates vis-a-vis Conrock is achieved. This is because the only differential with respect to the two sources of materials (Conrock and Hurns) will then be the cost of materials. If Hurns were to have its own separate production area in the northern sector of the Hansen Dam site, customers to the north would be favorably situated with respect to Hurns, but Hurns would not be competitive with Conrock on southbound shipments. The witness believes this latter situation would have the effect of creating two different monopolies, each producer being the sole producer in his respective production area, and able to charge customers whatever the traffic will bear.

Trucks would not be able to traverse the route from Hurns' scale to Node 30404 today via the route portrayed in Exhibit 2 because there is at present no actual roadway from Hurns' scale to Wentworth Street. Rather, trucks must exit Hurns' plant and move via a much more circuitous route. Pouwels stated that Hurns' business is a growing one; that an increasingly large number of customers are not

necessarily situated south and west of the plant, but east, north and northwest as well. Pouwels also testified that four out of five of the supporters of Hurns' petition buy their materials FOB Hurns' plant and transport it in their own trucking equipment. Pouwels stated that another company -- California Sand and Gravel Company -- recently located in the Hansen Dam area and is currently shipping aggregates. The witness also testified that while originally it was estimated 75% of Hurns' customers who receive shipments from his plant were situated south of Hansen Dam, a current estimate would be about 50%.

A witness called by A-100 testified that he had run traverse times recently from Conrock's Sun Valley plant and from Hurns' plant to the five customers submitting letters in support of Hurns' petition. The time in minutes from petitioner's plant to six destinations was 20 minutes in each case. The traverse time from Conrock's Sun Valley plant to the same destinations was either five or six minutes. These are one-way times, measured in transfer equipment under load. (Exhibit 3).

A witness for protestant Conrock testified that he measured the time and one-way miles from Hurns' plant to the same destinations measured by the A-100 witness, and determined times ranging from 26 to 32 minutes and distances ranging from 4.8 to 6.4 miles. The witness, Richard Martindale, is Conrock's service engineer and sales representative and also had worked as Conrock's transportation superintendent in the Sun Valley area (Production Area 19-A). He sponsored Exhibit 4, a summary of one-way miles and round-trip minutes between various production plants and six destinations. This information is set forth in the following table:

	Conrock Sun Valley Scale	Livingston Graham Scale	Blue Diamond Scale	Newman & Son Scale	Intersection San Fernando Rd & Tuxford	Conrock Blvd Scale	Hurns' Scale
1. Red- E- Crete	0.75 / 6	2.15 / 15	0.7 / 6	1.0 / 6	0.5 / 4	2.9 / 20	5.95 / 30
2. True- Cast	0.55 / 6	2.2 / 19	1.6 / 13	0.5 / 5	0.5 / 4	2.9 / 16	4.95 / 26
3. Sky- Line	0.5 / 6	2.2 / 18	1.6 / 12	0.45 / 4	0.5 / 3	2.9 / 16	4.95 / 28
4. Black- top Mtls	0.8 / 6	2.2 / 16	0.9 / 8	1.0 / 6	0.5 / 4	2.7 / 19	6.0 / 30
4A. Black- top Mtls	0.7 / 8	2.35 / 20	1.8 / 13	0.6 / 6	0.65 / 4	3.05 / 17	4.75 / 26
5. Owner Oper.	0.9 / 8	2.35 / 16	0.5 / 5	1.2 / 8	0.7 / 6	3.05 / 21	6.15 / 32
Inter- section San Fernando Road & Tuxford Street	0.2 / 2	1.65 / 10	1.2 / 10	0.5 / 3	0 / 0	2.35 / 15	5.45 / 29
<div>One-way Miles / Round-trip Time</div>							

Martindale testified that Conrock's Sun Valley plant is presently active; Livingston Graham is inactive; Blue Diamond is still situated within the production area but he has not seen it operating recently; Newman and Sons is active and Conrock's Boulevard Plant is presently inactive. He stated that Newman and Sons produces a material known in the industry as crushed miscellaneous base, a recycled product cheaper than many of the base products produced by companies such as Conrock. He also testified that there are three producers of asphaltic concrete located within Production Area 19-A; one of these, Black Top Materials, operates two plants within the area. Martindale testified that Conrock's Sun Valley Plant is able to operate in the middle of even the worst weather conditions although sometimes at a substantially reduced level. He also testified that there is aggregate remaining in the ground at the Blue Diamond plant and at Conrock's Boulevard plant and the Livingston Graham plant. Most of the transportation from Conrock's plant is performed in for-hire equipment, although some transportation is performed by customers with their own equipment. The reason the Livingston Graham and Blue Diamond plants are not currently operating may be due to the depressed state of the construction industry at the present time, he added.

The ALJ was requested to, and took official notice of Decision (D.) 76810, involving circumstances similar to those found here where there are producers of rock, sand and gravel and asphaltic concrete located within the boundaries of a described production area. In that decision the centroid was relocated for ratemaking purposes in connection with the rock, sand and gravel, but was not relocated for ratemaking purposes in connection with the transportation of asphaltic concrete.

A consultant appearing for Conrock prepared cost-per-ton information for transportation performed from Conrock's Sun Valley plant to six locations, and from petitioner's plant to those same locations. This information is shown in Tables 1 and 2 of Conrock's protest. The data depict distances much farther, and times much

longer for transportation from Hurns' plant because of the circuitous route required for travel at the present time. The costs-per-ton, therefore, shown from Hurns' plant are approximately double the costs shown from Conrock's plant. This witness also calculated (Table 3) the average cost from the five plants presently located in Production Area 19 to Node 30404. He then developed the average cost-per-ton which would be applicable if Hurns' facility were included as a production plant. The average cost for the haul from the five plants included within the presently described Production Area 19-A is 61¢ per ton; and the cost if Hurns' plant were included within 19-A, 70¢ per ton.

Conrock's cost witness also prepared Exhibit 6, which portrays the cost-per-ton from Hurns' plant to Node 30404 via the present circuitous route of movement, on the one hand, and the separate cost-per-ton from each plant presently situated in Production Area 19-A to Node 30404, on the other hand. The cost from petitioner's plant is \$1.13 per ton; the costs from the five plants presently included in Production Area 19A range from 47¢ to 77¢ per ton.

There was considerable conflicting testimony about the use of Wentworth Street as a route of movement from Hurns' plant whenever he might be able to build a haul road from his scale southerly to that street. A final determination on the question of whether Wentworth Street might flood to the extent that it would impede the progress of a truck under severe weather conditions is not possible based on this record, and is unnecessary for the purposes of this decision.

Hurns testified that he has built many roads in his construction experience over the years and that in his opinion it is possible to build an all-weather road from his scale to Wentworth Street, one which would be traversable in all situations except a major flooding condition of the kind experienced during the past winter and spring seasons. Hurns has the equipment and facilities available to build the road, and has discussed that prospect with the Army. He estimates he can build the road in one or two weeks.

Hurns testified that in 1982 when the City of Los Angeles was requesting bids from various suppliers of rock, sand and gravel, his bid was significantly under that of Conrock; but on the second round of bids Conrock lowered its price by about \$1.00 per unit, and the City of Los Angeles thereby saved a great deal of money simply because of this competition from Hurns. Hurns also testified that Newman and Sons, the producer of recrushed base, is presently producing approximately 10,000 to 20,000 tons of material per month; whereas his production capability amounts to about 60,000 tons per week.

Discussion

After considering the evidence and circumstances surrounding this request, we have decided to deny Hurns' petition.

If we were to expand Production Area 19-A to include Hurns' plant, without relocating the centroid, carriers transporting loads southward would not be compensated adequately for shipments from his plant (assuming shippers paid no more than minimum rates.) This is because the route of movement from Hurns' plant, even via his proposed haul road and Wentworth Street, would add several miles and many round-trip minutes to the traverse data upon which present rates from existing plants are based.

While we do not have the benefit of precise measurements from Hurns' scale to tie-in Node 30404 via his proposed haul road to Wentworth Street, thence southwesterly, we have the estimate shown in Exhibit 2 which indicates a distance of approximately 4.1 miles for that mileage segment. The distance from Conrock's Sun Valley plant is only 0.2 miles.

Hurns concedes this, and therefore asks that we relocate the centroid, in effect averaging the traverse data from his plant with the data from the other plants presently processing rock, sand and gravel in the area. However, if we do this, freight bill payers on shipments moving from plants in Production Area 19-A to destinations located to the south will experience increases in freight charges over

those presently applicable for no other reason than Hurns' comparatively recent arrival in the area.

The correct solution for Hurns appears to be the establishment of a new production area, with his scale as the center point from which traverse data can be measured. In this manner debtors on shipments from Hurns' plant will pay, and carriers will receive, precisely the amounts they should in connection with every shipment to a described delivery zone, regardless of the direction from Hurns' plant.

Hurns alleges that Conrock is, in effect, the only producer presently situated in this production area who currently ships rock, sand and gravel, and that such a situation does not serve the interests of the marketplace, which can be best met through competitive bidding. While this argument has some merit, fostering competition between shippers by equalizing shipment charges is not our paramount interest in setting minimum rates. In D.76810, dated February 17, 1970 (C.5437, Pet. 167, et al.) we commented, in connection with the proposed expansion of a similar production area:

"...a group or production area should not be enlarged to equalize a geographical advantage when the results are unreasonable or inconsistent with the maintenance of reasonable rates."

We do not think it would be reasonable to cause an increase in rates on shipments from producers presently situated in a production area of long standing description simply due to the advent of a new shipper in the general area. Furthermore, we will point out that many, perhaps most, of the production areas described in the Directory include only one production plant.

If Hurns believes he is disadvantaged by his relative geographical location, that is a circumstance he ought to have considered before establishing his plant where it is presently situated. But while such a disadvantage may have existed, or been thought to exist at the time Hurns prepared his petition, that is

apparently not the present situation. In his petition Hurns estimated that 75% of his clientele were located south or southwest of his production facility. However, Pouwels now informs us that estimate is closer to 50%. This information, coupled with Pouwels' previous testimony concerning clientele located in the Newhall-Valencia area, strongly suggests that a proper course for Hurns would be to exploit his own geographical advantage in those areas to the north by seeking the establishment of a production area for his plant in the Directory, and rates in MRT 17-A from such area to the appropriate delivery zones. CDTOA has informed us it will work with Hurns to this end. Our staff will also assist Hurns in such an undertaking.

Findings of Fact

1. Hurns' production facility is not presently included within a described production area as shown in the Directory.

2. Shipments of rock, sand and gravel transported in dump truck equipment from Hurns' facility must move at MRT 7-A rates rather than at lower MRT 17-A zone rates.

3. Hurns requests that Los Angeles County Production Area 19-A be redescribed to include his facility, located about one and one-quarter air miles, and several actual road miles, north of the northern boundary of Production Area 19-A. ✓

4. Production Area 19-A includes several production facilities; some are active, some presently inactive.

5. Redescribing Production Area 19-A and including Hurns' plant, without relocating the centroid, would result in less than reasonable minimum rates in connection with transportation performed from Hurns' plant southward.

6. Redescribing Production Area 19-A to include Hurns' plant, and relocating the centroid northward, would result in increases in freight charges on shipments originating at plants presently included in Production Area 19-A destined to points situated southward.

7. The increases described in Finding 6 would not be justified or reasonable in light of the circumstances surrounding this request.

Conclusion of Law

The petition should be denied.

O R D E R

IT IS ORDERED that Petition 58 is denied.

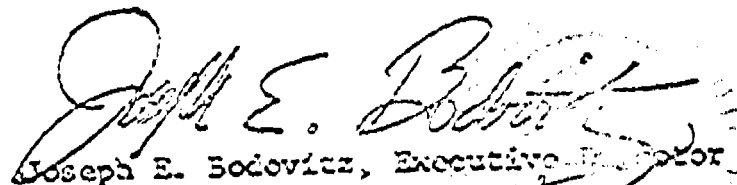
This order becomes effective 30 days from today.

Dated OCT 19 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. Bodovitz, Executive Director

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