

ALJ/rr/bw

ORIGINAL

Decision 93523 SEP 1 1981

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 314
 (Filed February 18, 1981)

And Related Matters.

Case 9819
 Petition for Modification 47
 (Filed February 18, 1981)

Case 9820
 Petition for Modification 19
 (Filed February 18, 1981)

(For appearances see Appendix A.)

O P I N I O N

Petitioner California Dump Truck Owners Association (CDTOA) requests that rates and charges be increased in the Commission's three minimum rate tariffs (MRTs) applicable to commodities transported in dump truck equipment. The tariffs are MRTs 7-A, 17-A, and 20. The approximate percent increases and resulting new annual revenue are: 11.3% or \$34,604,000 in MRT 7-A; 8.2% or \$6,465,000 in MRT 17-A; and 8.7% or \$3,769,500 in MRT 20.

Rates and charges in MRTs 7-A, 17-A, and 20 were last generally adjusted effective November 1, 1979 by Decisions (D.) 90854, 90855, and 90857, respectively. At that time labor costs were increased to reflect conditions as of September 1, 1979. Additionally, historical equipment costs were updated through December 1977. Since the above decisions were issued, rates in these tariffs have been increased several times to compensate carriers for increased fuel costs.

CDTOA alleges that since the last general rate increases were authorized in these tariffs, costs for labor and equipment have escalated to the point where carriers need additional relief. It also requests that the higher hourly rates contained in MRT 7-A for transportation within the Bay Area Region of Northern Territory be broadened in their application to include all of Sonoma County. Petitioner alleges that most of the hauling of rock, sand, and gravel within Sonoma County is done in the Russian River area under the same higher labor contracts used in the development costs for the Bay Area Region rates.

The petitions were formally protested by the Associated General Contractors of California, Inc. (AGC), on the basis that CDTOA's petition does not contain sufficient information to allow the Commission to proceed in the ex parte manner requested. Lindeman Bros., Inc. (Lindeman) also protested ex parte handling. Accordingly, duly noticed public hearings were held in San Francisco on July 13, 14, and 15 before Administrative Law Judge (ALJ) John Lemke, and the matter was submitted.

Petitioner and Supporting Parties

James D. Martens appeared and testified for CDTOA. His organization consists of about 860 members, most of whom are owner operators.

CDTOA requested in its petitions that the Commission staff develop current labor costs since it has access to the appropriate contracts. It also requested that equipment and tire costs be updated to current levels and be reflected in the datum planes underlying costs and rates in the three tariffs.

CDTOA states that it requested no increases in the rates in these MRTs during 1980, except for those which were sought to offset increases in fuel costs. This was done in order to go along with then President Carter's request for everyone to "bite the bullet" as the best way to fight inflation. Also, the dump truck industry went into a slight recession in 1980, which has continued into 1981.

CDTOA asserts that the Commission staff has gone to the Department of Motor Vehicles (DMV) in previous proceedings to acquire its cost data for motor truck and trailer equipment. However, the DMV has adopted a new computer program not accessible to our staff and CDTOA has decided to use information developed through contacts with dump truck equipment manufacturers. Data from six manufacturers were supplied to the staff for use in developing equipment costs. CDTOA requested that the staff use information from the current Producers Price Index (PPI) as the basis for increasing tire costs, and to verify that costs for dump truck equipment have increased.

J. M. Jenkins, an associate engineer in the Commission's Transportation Division, sponsored Exhibits 2, 3, and 4, in which he has developed estimated costs as of July 1, 1981 for Tariffs 7-A, 17-A, and 20, respectively. Labor costs were updated to reflect known contract and legislative changes in effect as of January 1, 1981. Vehicle fixed costs were revised to reflect average equipment investment costs for the periods 1971 to 1980 for trucks, and 1969 to 1980 for trailing equipment. This revision was based upon Commission Data Bank reports and those industry costs supplied by petitioner. Tire costs were increased by using information contained in the PPI. Fuel costs were increased in accordance with D.93111 effective June 7, 1981.

The increased costs were used by Associate Rate Experts Jerald Kerschman and Russell Corning in developing rate recommendations for the three tariffs. Rates are proposed reflecting a theoretical profit factor of 8 percent, in accordance with the long standing method applied in connection with development of dump truck rates.

The California Teamsters Public Affairs Council offered no evidence, but supported CDTOA's petitions in its opening statement. California Trucking Association (CTA) supported the petitions in its closing statement.

Protestants

Appearing in opposition to any increases in the three tariffs was Michael Lindeman of Lindeman. He testified essentially as follows:

1. Market conditions have been and continue to be quite bad in the construction industry.
2. There is no ongoing program either to build new or to repair existing highways.
3. Cities and counties have little or no money for road building.
4. There is some dam building going on in California, but programs have been hindered by environmentalists.
5. Construction in the private sector has been discouraged by high interest rates.
6. The effect of this reduced activity in the industry has been the development of widespread rate-cutting by dump truck carriers.
7. The labor contracts used by the staff in its cost development are outdated, and should be updated before rates are increased.
8. The staff erred in developing equipment costs in the manner it has.

Lindeman believes that if the volume of available construction business has been reduced significantly, the Commission should not respond by increasing rates. He thinks that this would simply cause an increase in proprietary trucking.

Michael Lindeman was testifying in this proceeding for his own company and as a witness for the AGC. He sponsored Exhibit 6, a listing of operating ratios for the years 1978 through 1980 for 60 dump truck carriers who operate throughout the state under rates in MRTs 7-A, 17-A, and 20. The information was taken from the CTA "Researcher," a document published by CTA. CTA, in turn, determines the information from annual and quarterly reports filed with this Commission. Composite average operating ratios for the carrier group named in Exhibit 6 are shown in Table I for each of the three years represented:

Table I
Average Operating Ratios - Approximately 60 Carriers

1978 -	96.6
1979 -	96.3
1980 -	97.4

Michael Lindeman testified that about a year and a half ago, when the industry was much busier and there was a greater demand for carrier services, the going rates for transportation often exceeded those published in the dump truck tariffs. He observed that the rates in Tariffs 7-A, 17-A, and 20 are minimum rates, and that the rates charged may be raised at any time by carriers. Lindeman operates principally as an overlying carrier. It pays its own drivers an hourly wage less than those used by the staff in developing its costs.

Ken Morgan, transportation manager of Gordon Ball, Inc., a general contractor, testified on behalf of AGC in opposition to the petitions. This contractor is currently doing a considerable amount of work on the Warm Springs Dam. Morgan testified that if the petition in MRT 7-A were granted, his company would consider using its own equipment to haul riprap and filter material.

J. S. (Sam) Shafer, Jr. appeared for Trucking by J. S. Shafer as well as on behalf of California Carriers Association (CCA). CCA is an organization of dump truck overlying carriers consisting of about 50 members. Shafer testified that because of the current depressed state of the construction industry, especially in northern California, there should be only a moderate increase granted in the near future. If industry conditions improve, another increase could be considered, perhaps in March 1982. He echoed Lindeman's testimony that the possibility of contractors using their own equipment, if rates are raised as proposed, is real. He recommended that a surcharge of four percentage points be added to the present fuel surcharge. He emphasized that any increase should be granted with sufficient lead time in order to allow shippers an opportunity to consider them in connection with jobs where bidding is required.

The 4% figure recommended by Shafer is based upon the operating ratio information contained in Exhibit 6. Shafer had estimated an average operating ratio of 95-97 in 1980 for 60 carriers listed. He testified that he, too, is aware of rate-cutting occurring throughout the state.

In summary, the petitions filed by CDTOA were supported by the California Teamsters Public Affairs Council and CTA, as well as by the staff. Opposed to any increase were Lindeman and the AGC. CCA, Shafer, and Les Calkins appearing for Les Calkins Trucking, favored a moderate increase in the near future.

Discussion

The original datum planes, that is, the costs and performance underlying the rates named in MRTs 7-A and 17-A, were developed at extended hearings held mainly during 1972 in Case (C.) 5437, Order Setting Hearing 213, D.82061 in that proceeding found, inter alia:

- "10. About 90 percent 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 the 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."

The staff has developed costs and rates, insofar as they relate to labor expense, on the basis of the above findings for all three MRTs involved in these proceedings. It is not a new method for offsetting increased costs, having been used by the staff and the industry and found reasonable by this Commission in several rate offset proceedings since D.82061 was issued.

Protestants, while objecting to what they term outdated labor contract information and to the manner used by the staff in determining increased equipment costs, base their opposition to the petitions chiefly on the following:

1. The depressed state of the construction industry.
2. The threat of increased proprietary hauling if current rates are increased.
3. Widespread rate-cutting in the dump truck hauling industry because of current poor business conditions.

All parties are in accord concerning the allegations concerning the depressed state of the construction industry.

Protestant Lindeman has overlooked one critical consideration, i.e., that proprietary operators have also experienced increased operating costs. The argument that an increase in the MRT will result in a dramatic shift to proprietary carriage, resulting in a loss of business for for-hire dump truck carriers, is not a new argument in minimum rate increase proceedings. Our experience in evaluating this argument convinces us that the possibility of such a shift is not a reason to deny an increase in the MRT where representative operating ratios show an increase is necessary.

Rates in MRTs 7-A, 17-A, and 20 have increased since mid-1979 by approximately 30 percent. Most of these rate increases were authorized to offset increased labor costs, the balance in recognition of increases in fuel costs.

The increased costs in CDTOA's request and the staff's recommendations attributable to historical equipment costs are based upon information which CDTOA determined from manufacturers of dump truck equipment. There is no evidence concerning how much of this new, admittedly costlier, equipment has been purchased by for-hire dump truck carriers. Without such evidence we believe it would be improper to increase rates based upon those costs.

Exhibit 6 demonstrates that during 1980, 60 dump truck carriers had an average operating ratio of 97.4. If we increase the rates in Tariffs 7-A, 17-A, and 20 by five percentage points, this will restore the profitability of these carriers to a more reasonable level of approximately 7%.

After consideration, reason and caution dictate that a proper response to CDTOA's petitions at this time will be to increase the rates in MRTs 7-A, 17-A, and 20 by amounts something less than those requested in the petitions. A proper balance, in our opinion, would be an increase at this time in each tariff of five percentage points, to be added to the existing surcharges. This would create increases of something less than five percent, since the surcharges currently effective in Tariffs 7-A, 17-A, and 20 are 11½%, 11½%, and 12½%, respectively. This approach will give due consideration to the evidence of CDTOA and staff and to the positions of those carriers and shippers who are concerned about the current state of the construction industry. The rates in the tariffs are minimum rates. Testimony presented indicates that carriers are able to assess rates higher than minimum when business improves.

The evidence given by CDTOA concerning the need for expansion of the Bay Area Region rates in MRT 7-A to include all of Sonoma County is not persuasive on the record before us. It consists merely of testimony by CDTOA's general manager that most of the hauling performed in Sonoma County is done in the Russian River area under labor contracts used in the Bay Area Region. Before we amend MRT 7-A in this manner, we will require information based upon more substantive evidence than that received on this record. We suggest that a separate request be filed by CDTOA specifically on this issue. It should be supported with more information than offered thus far.

Since there has been demonstrated a need for some immediate relief, the order which follows will be made effective on the date this decision is signed.

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 by D.90854, 90855, and 90857, respectively. Those rates became effective November 1, 1979. Since that date rates in MRTs 7-A, 17-A, and 20 have been increased several times to compensate carriers for increased fuel costs.

3. Present rates contained in MRTs 7-A, 17-A, and 20 are based upon cost data developed by the Commission staff. These cost data reflect labor and allied payroll expenses as of September 1, 1979. They reflect average vehicle investment costs through 1977.

4. Since November 1, 1979 dump truck carriers operating under rates named in MRTs 7-A, 17-A, and 20 have experienced increased operating costs.

5. Operating ratios for the representative carriers listed in the CTA Researcher show that a 4½% increase in rates is necessary for carriers to maintain operating ratios, before taxes, of about 93%, which is a reasonable operating ratio.

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

7. The construction industry has been confronted with a reduced level of economic activity since 1980, continuing into 1981.

8. 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.

9. Some dump truck carriers have been unlawfully assessing rates less than the minimum, to a greater extent than that usually found, since the reduction of economic activity in the construction industry, and this practice would be exacerbated if the full amount of requested increase were granted.

10. Rates contained in MRTs 7-A, 17-A, and 20 are minimum rates. Carriers have demonstrated an ability to negotiate rates higher than those named in MRTs 7-A, 17-A, and 20 when business conditions in the construction industry are better and there is a greater demand for carrier services.

11. Authorizing the full amounts sought in these petitions at this time would be unwarranted in light of Findings 7 through 10.

12. Authorizing an increase at this time of five 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.

13. CDTOA's request that Bay Area Region hourly rates in MRT 7-A be broadened in their application to include all of Sonoma County is not supported by probative evidence.

14. The rates and rules in MRTs 7-A, 17-A, and 20, as established in accordance with the provisions of this decision, are, and will be, just, reasonable, and nondiscriminatory minimum rates and rules for the transportation to which they apply.

15. Due to the demonstrated need by dump truck carriers performing transportation services under rates in MRTs 7-A, 17-A, and 20 for some immediate 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 20, attached, to become effective September 26, 1981.

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 hereto 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 Section 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.

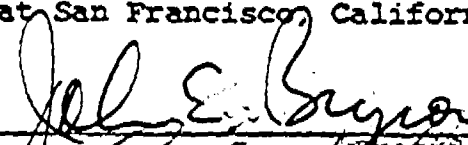
6. The Executive Director shall serve a copy of this decision on every common carrier, or such carriers' authorized tariff publishing agents, performing transportation services subject to MRT 7-A.

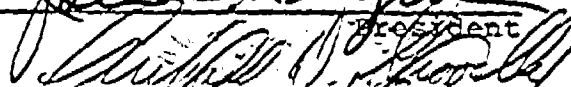
7. The Executive Director shall serve a copy of the tariff amendments on each subscriber to MRT 7-A.

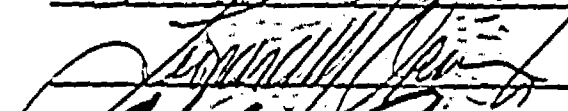
8. To the extent not granted, Petition for Modification (Pet.) 314 in C.5437, Pet. 47 in C.9819, and Pet. 19 in C.9820 are denied.


This order is effective today.


Dated SEP 1 1981, at San Francisco, California.



President







Commissioners

APPENDIX A

LIST OF APPEARANCES

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

Protestants: James S. Martin, Attorney at Law, for Associated General Contractors of California, Inc. in C.5437, Pet. 314; and Michael D. Lindeman, for Lindeman Brothers, Inc. in C.5437, Pet. 314.

Interested Parties: Don Reining, Attorney at Law, for Southern California Rock Products Association; Harry Phelan, for California Asphalt Pavement Association; Richard Austin, for Domtar Gypsum America, Inc.; Alan Edelstein, Attorney at Law, by Jack E. Thompson, for California Teamsters Public Affairs Council; James R. Foote, for Associated Independent Owner-Operators, Inc.; Paul S. Henson, for Associated General Contractors; J. S. (Sam) Shafer, Jr., for Trucking by J. S. Shafer; Graham & James, by David J. Marchant, Attorney at Law, for California Carriers Association; Charles D. Gilbert and Joel Anderson, for California Trucking Association in C.5437, Pet. 314; Arthur M. Ribe and William J. Mauk, for Granite Rock Co. in C.5437, Pet. 314 and C.9820, Pet. 19; Emil J. Bertana, for Lone Star Industries, Inc.; Les Calkins, for Les Calkins Trucking, Inc.; and Jack Lepinski, for himself.

Commission Staff: William Tait.

SURCHARGE SUPPLEMENT

SUPPLEMENT 20

(Cancels Supplement 19)

(Supplements 9 and 20 Contain All Changes)

TO

MINIMUM RATE CARIFF 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.

93523

EFFECTIVE

SEP 26 1981

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 thirteen (13) percent on charges computed at Column O rates set forth in Items 390 or 400;
2. By fourteen and three-quarter (14 3/4) percent on charges computed at Column P rates set forth in Items 390 or 400;
3. By sixteen and one-half (16 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. 93523
 1988/8/8 720

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