

Decision No. 59620**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 WESTERN MOTOR TARIFF BUREAU, INC.,
 for and on behalf of highway common
 carriers and petroleum irregular
 route carriers, parties to Western
 Motor Tariff Bureau, Inc., Local
 Freight Tariff No. 3-D, Cal. P.U.C.
 No. 25 (Elmer Ahl, Agent, Series),
 and Local Freight Tariff No. 30A,
 Cal. P.U.C. No. 26 (Elmer Ahl, Agent,
 Series), for authority to increase
 hourly rates.

Application No. 41629

Arlo D. Poe and W. J. Knoell, for Western Motor
 Tariff Bureau, Inc., applicant.

J. K. Miller and James Quintrall, for California
 Trucking Associations, Inc.; W. H. Adams and
W. J. Haener, for Shell Oil Company; Dale
Finley by H. M. Long, for General Petroleum
 Corporation; Ronald E. Thornton, for Tidewater
 Oil Company; John Ennis, for Union Oil Company
 of California; Warren Goodman, for Orr Tank
 Lines, interested parties.

O P I N I O N

Western Motor Tariff Bureau, Inc., publishes tariffs on behalf of most of the highway common carriers and petroleum irregular route carriers engaged in the transportation of petroleum products in bulk within California. Its Local Freight Tariffs Nos. 3-D and 30A, contain, in addition to other rates, hourly rates that apply in lieu of distance and zone rates when a shipper or consignee requests service on an hourly basis. By this application, filed November 2, 1959, authority is sought to increase those hourly rates to \$8.00 per hour that are now lower than that amount.^{1/}

^{1/} The hourly rates at present range from \$6.00 per hour to \$8.95 per hour, depending on the type and size of equipment involved.

Public hearing on the application was held before Examiner William E. Turpen at Los Angeles on December 15, 1959. Evidence was presented in support of the application by applicant's tariff publishing agent, by a representative of the California Trucking Associations, Inc., and by representatives of most of the major oil companies.

Increases in these hourly rates have been sought twice before and denied by the Commission.^{2/} In the previous decisions involving these hourly rates, it was stated that applicant's agent testified that the rates are intended to apply mainly in circumstances where transportation is performed under such difficult operating conditions that assessing the rates that normally would be charged would not return revenues commensurate with the costs incurred by the carriers, and that in practice the hourly rates have provided an equitable and practical basis of charges that has met the needs of the carriers and has been acceptable to shippers and consignees in circumstances where other rates clearly are not suitable. The previous denials were based on two factors. One was that the tariff regulations governing applications of the hourly rates do not define the transportation conditions under which the rates apply. The other factor was the conclusion that the hourly rates would violate Sections 453 and 460 of the Public Utilities Code and Section 21 of Article XII of the State Constitution by being discriminatory and providing for greater charges for the transportation of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction. Both of these conclusions are discussed in detail in Decisions Nos. 51607 and 58211, and there is no need to repeat the discussions here.

^{2/} Decision No. 51607, dated June 28, 1955, in Application No. 36683, and Decision No. 58211, dated March 31, 1959, in Application No. 40554.

Applicant's tariff agent testified to the reasons behind the establishment and use of the hourly rates, substantially the same as mentioned above in the previous proceedings. He also testified that he has found it impossible to devise a tariff rule to cover adequately the use of the hourly rates. In answer to the conclusions in the previous decisions that agreement of the shipper or consignee to use of the hourly rates is not sufficient delineation of the services to be performed and that assessing of different rates for the same transportation, depending on whether the shipper or carrier agrees, is discriminatory the witness pointed out that the Commission has established in several of its minimum rate tariffs alternative scales of monthly or hourly rates, the use of which depend on agreement between shipper and carrier.

In support of the sought increase to \$8.00 per hour, a representative of the California Trucking Associations, Inc., presented a study showing that, based on the revenues and hours of service as shown by the records of 14 carriers during the year 1958, the average revenue per hour amounted to \$9.86. The witness said it would be extremely difficult to develop hourly costs in the usual manner due to the great variations in length of haul under the hourly rates. He also said that since the present hourly rates were established in 1950 his studies show that labor costs have risen 50 percent.

Representatives of several of the major oil companies testified as to the need for the hourly rates as published by applicant, and in support of the sought increase. Their testimony was to the general effect that the oil companies recognize that under certain conditions the normal rates would not return sufficient revenue to a carrier, and that in such instances another basis

of assessing charges is necessary. They have found that the hourly rates adequately meet this need. These witnesses described in detail a number of examples where they have made use of the hourly rates. The situations described can be put into two categories. An example of the first is where products are transferred between two storage tanks located near each other, and the distance traveled is very short but the time consumed in pumping is lengthy. The other category involves those instances where a movement is to or from a relatively inaccessible point and an undue length of time is taken. An example of the latter instance, as related by one of the witnesses, involved a delivery to an industry located in the hills and off the regular roads. In this case it was necessary to disconnect the truck and trailer, haul the truck up the hill with a caterpillar tractor, unload, return down the hill, transfer the contents of the trailer to the truck and again haul it up the hill.

The record in this proceeding has given us a better understanding of the hourly rates as published by applicant than we had in the two previous proceedings in which they were at issue. It is clear that the type of situations described by the oil companies' witnesses involve transportation conditions not contemplated in establishing the minimum rates. In some similar cases involving other types of freight transportation, commodities or certain types of transportation have been exempted from the minimum rates and permit carriers have then been free to negotiate and charge what they felt necessary. However, the present situation involves common carriers who must observe the rates and charges set forth in their tariffs. We do not change our opinion previously expressed, that this type of tariff publication generally is objectionable because its application is not definite, but in the circumstances here

involved it appears to be the best means to meet the problems involved. Insofar as discrimination is involved, Section 21, Article XII of the State Constitution states: "No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons." In view of the conditions under which the hourly rates apply, as disclosed by the record in this proceeding, it does not appear that there would be violations of this provision. Likewise, it does not appear that application of the hourly rates would grant any preference or advantage to any shipper or subject any shipper to prejudice or a disadvantage in violation of Section 453 of the Public Utilities Code. Although these tariff provisions result in a difference as to rates and charges between localities, such difference, under the circumstances, is not unreasonable. As for the question of long- and short-haul violations, applicant asks for the necessary relief from these provisions. The circumstances indicate, and we so find, that relief from the long- and short-haul provisions is warranted and should be granted.

The record shows that the sought increases will still produce revenues lower, on an over-all basis, than what the carriers would be receiving under other rates. It therefore appears, and we so find, that the sought increases are justified. The application will be granted.

O R D E R

Based upon the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED:

(1) That Western Motor Tariff Bureau, Inc., be and it is hereby authorized to publish and file, on not less than five days'

notice to the Commission and to the public, in its Local Freight Tariffs Nos. 3-D and 30A, the hourly rates as set forth in Exhibit A attached to Application No. 41629.

(2) That the authority herein granted shall expire unless exercised within sixty days after the effective date of this order.

(3) That common carriers, in establishing and maintaining the rates authorized hereinabove, be and they are authorized to depart from the provisions of Article XII, Section 21, of the State Constitution, and Section 460 of the Public Utilities Code, and that schedules containing the rates published under this authority shall make reference to this order.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 1st day of February, 1960.

Everett D. Pease
President

John E. Wheeler

William J. Pooling

John L. Fox

Theodore J. Jenner
Commissioners