

ORIGINAL

Decision No. 67115

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
 into the constructive mileages, and
 related rules and provisions of all
 common carriers, highway carriers and
 city carriers relating to the trans-
 portation of any and all commodities
 between all points in California
 (including, but not limited to,
 constructive mileages provided in the
 Distance Table).

Case No. 7024
 (Petition for Modification
 No. 7)

A. D. Poe, J. C. Kaspar, and J. Quintrall, for California
 Trucking Association, petitioner.

John F. McSwaney, for Delta Lines, respondent.

George V. Leonard, for American River Constructors,
 protestant.

Kenneth M. Robinson and W. P. Pierce, for Kaiser Steel
 Corporation; Kenneth M. Robinson, for Henry J. Kaiser
 Company; Richard Canham, by Frank Davis, for Standard
 Oil Company of California; Meyer Kapler, for Stockton
 Box Company; Eugene A. Read, for California Manufacturers
 Association; Ralph Hubbard, for California Farm Bureau
 Federation; interested parties.

A. A. Lubich, John R. Laurie, and Edward E. Tanner, for
 the Commission staff.

INTERIM OPINION

By the above-numbered petition for modification, California
 Trucking Association seeks the establishment of constructive mileages
 in Distance Table No. 4 between Foresthill, Placer County, and
 certain facilities easterly thereof located on, or in the vicinity
 of, the Middle Fork of the American River.^{1/} None of the points in
 question, other than Foresthill, is included in said distance table
 nor are the roads connecting with them shown on the maps which
 constitute a portion of the distance table. The rules of the

^{1/} The locations in question are identified as Ralston Power Plant,
 Middle Fork Power Plant, Long Canyon Dam, Hell Hole Dam, French
 Meadows Power Plant, French Meadows Dam and Duncan Creek Dam.

distance table currently provide that actual highway mileages shall be used in such circumstances.

Public hearings of the petition were held before Examiner Bishop at San Francisco on November 7, and December 12, 1963. Evidence was presented by the director of the Research Division of California Trucking Association on behalf of petitioner, by traffic officers of Kaiser Engineers^{2/} and Kaiser Steel Corporation, respectively, and by two members of the Commission's Transportation Division staff.

Filing of the petition herein, the record shows, was prompted by the initiation of a \$100,000,000 project for the construction of a series of dams and hydroelectric power plants in the area hereinbefore described. The project is under the sponsorship of the Placer County Water Agency. American River Constructors, a joint venture, is the general contractor. Among the companies which make up the joint venture is Kaiser Constructors. It has management responsibility for all construction of the project.

Preliminary work on the project began in 1963 and it is expected that all construction will be completed by 1966. Heavy movements of materials and equipment will take place during 1964 and 1965, after which the volume of traffic will decline sharply. Transportation into the area involves substantial quantities of cement, structural steel, petroleum, explosives, contractors' equipment, machinery and electrical equipment. Additionally, there is a regular but smaller movement of incidental supplies. All of these

^{2/} The evidence adduced through the traffic manager of Kaiser Engineers was offered on behalf of American River Constructors, which latter organization appeared in opposition to the proposed distance table adjustments.

commodities, except the equipment for the hydroelectric plants, will move from California points to the construction sites. The hydroelectric equipment will move from eastern interstate points.

At the outset of the undertaking the area in question was served by a single public road, which extended eastward from Foresthill as far as the site of Long Canyon Dam, a distance of 46 miles. This road was to be extended for an additional distance of 19 miles and several access roads were to be constructed connecting with certain of the proposed facilities which would be located some distance from the main road. The first 20 miles of the existing road was paved and during 1963 improvements were being made in the remainder; also, work was carried forward on the extension and the access roads.

Petitioner alleges that the use of actual mileages between the points involved, for the determination of minimum rates, is unreasonable and insufficient, and that the distance rates so determined are correspondingly unreasonable and insufficient. Petitioner is aware that as a result of Order Setting Hearing dated December 20, 1960, in this case the Commission's staff has developed more current constructive highway mileages, for statewide use, than those set forth in Distance Table No. 4. Said mileages have been incorporated in Distance Table No. 5, adopted by the Commission pursuant to Decisions Nos. 64802, 65308, 66288 and 66572.^{3/} Petitioner alleges, however, that the complexity of the major investigation and the related coordinated hearings will not permit implementation of the provisions of Distance Table No. 5 before the

^{3/} None of the points involved herein, other than Foresthill, is named in Distance Table No. 5. Under the provisions of that publication, constructive mileages between said points will be 1.3 times the actual highway mileages.

completion of the principal traffic movements into the aforementioned American River project territory.^{4/}

Petitioner's research director testified, moreover, that attempts by carriers to determine actual highway distances between the points involved for the making of bids on traffic destined to the construction sites have resulted in conflicting, and in some instances, erroneous minimum rate determinations. The granting of the relief sought herein, he asserted, would eliminate those difficulties.

An associate transportation engineer of the Commission's staff presented constructive highway distances between the points here in issue which he had developed in accordance with a formula regularly used by the Commission in making such determinations. The constructive mileages for the existing road were based on observations made in traversing same in a State car. The mileages for the proposed extension and for the proposed access roads were predicated on profile maps which showed the proposed grades and widths of those roads. The constructive highway distances thus developed for the various segments of road exceed the actual or planned highway distances by amounts ranging from 51 to 240 percent.

The engineer testified that the roads included in the aforesaid Distance Table No. 5 were selected on the basis of being

^{4/} By Decisions Nos. 66625 (dated January 14, 1964) and 66788 (dated February 11, 1964) Minimum Rate Tariffs Nos. 14 (hay, fodder and straw) and 3-A (livestock), respectively, were made subject to the provisions of Distance Table No. 5. All other minimum rate tariffs naming distance rates are still governed by Distance Table No. 4. By Petitions for Modification Nos. 324, in Case No. 5432, and 10, in Case No. 7024, filed February 13, 1964, California Trucking Association seeks the establishment of Distance Table No. 5 as the governing distance table for Minimum Rate Tariff No. 2 (general commodities).

used frequently enough to be of some importance and the points named in that distance table were selected as being the points of origin or of destination of significant amounts of freight. In his opinion, the roads and points involved herein would not meet these criteria except for the temporary period required for the construction of the dams and power plants. He further stated that the fact that the staff had developed constructive highway distances for the points involved should not be construed as a recommendation that those points and the roads connecting them should be added either to Distance Table No. 4 or to Distance Table No. 5.

An associate transportation rate expert testified concerning an economic study which he had made of the problem here under consideration. He characterized the advantages and disadvantages of establishing constructive highway distances to construction job sites. The advantages he stated to be: (1) rates determined by use of actual mileages over secondary roads now shown on the distance table maps may not provide sufficient compensation to the carriers for transportation performed under comparatively adverse operating conditions and the establishment of constructive mileage distances will result in rates that are more closely related to costs of operation; (2) the establishment of constructive mileage distances makes mileage computation definite and certain and facilitates the determination of the applicable minimum rates.

The rate witness enumerated the following objections to the establishment of constructive mileage distances to construction job sites: (1) contractors awarded a fixed price contract without escalatory provisions would be forced to absorb increases in freight charges resulting from the establishment of constructive mileages after award of contract; (2) because roads to job sites might be improved and extended during the period of project construction, a

survey of roads made prior to such improvements could result in the establishment of greater constructive distances than would be ultimately justified; (3) although constructive mileages have been established to a few job sites, there are other job sites to which constructive mileages have not been established; (4) constructive mileages applicable in connection with intrastate shipments may not be applicable in connection with shipments originating outside the State. Thus, the California producer may be placed at a disadvantage, mile for mile of movement beyond railhead, as compared with the out-of-state shipper.

The rate witness pointed out that it is impracticable for the Commission to fix minimum rates which are reasonable and sufficient for every circumstance, and as a corollary, that it is impracticable to provide a reasonable and sufficient constructive distance for every conceivable transportation movement. There are many secondary roads, he said, for which constructive mileage distances have not been determined. Although in some instances such roads may not be suitable for the operation of heavy truck equipment, he stated, most of them are occasionally used by for-hire carriers and some may be used frequently for short periods of time.

This witness further pointed out that it is impracticable to revise constructive mileages on segments within the network of highways shown on the distance table maps except at a time of general revision of the distance table,^{5/} and asserted that to add, on a piecemeal basis, constructive mileages and highway segments in a peripheral area outside the network, such as is here involved, would discriminate against other areas not so situated. It was the rate expert's opinion that the distance table should not be

^{5/} A change in the constructive mileage over a single highway segment shown on the distance table maps may require at the same time, extensive revisions of specifically published distances throughout the distance table.

subjected to piecemeal amendments, but should remain stable for a period of time, then be reviewed as a whole, perhaps at intervals of approximately two years. It was his recommendation that the Commission not establish the constructive mileage distances sought by petitioner and that such distances be not established under similar conditions in the future.

The aforesaid traffic manager of Kaiser Engineers, testifying on behalf of American River Constructors, protestant, described the commodities to be transported, the quantities involved, the expected duration of movements and the contractual arrangements with shippers and with carriers. He also testified that some improvements had been made in the existing road subsequent to the time of the Commission staff survey^{6/} and that an alternate lower road was under construction which would serve certain of the project sites, and would result, in some instances, in shorter distances than over the existing road.

This latter testimony was given at the initial hearing. The adjourned hearing was scheduled to give the staff an opportunity to make a field study of the alternate road, on the basis of which to develop such revised constructive mileage distances as should appear proper in the circumstances. However, at the adjourned hearing a staff representative explained that it had been impracticable to develop the desired information during the intervening weeks since delays, due to bad weather or other factors, had prevented completion of the alternate road. The record indicates that said road might not be completed until early spring of 1964, depending upon weather conditions.

The traffic manager of Kaiser Steel Corporation testified that his company has a contract to furnish some 3,000 tons of the

^{6/} The staff field survey was made in June, 1963.

total quantity of 10,000 tons of fabricated steel to be used in the dam construction project. All of the Kaiser tonnage will move from Rocktram, Napa County, via a for-hire carrier at minimum rates or higher. If the minimum rates should be increased by reason of increases in the constructive distances under the proposal herein, the charges to be paid by Kaiser to its carrier will be increased to conform to the minimum rate requirements.

Counsel for the Kaiser interests argued that traffic has moved to many other similar construction projects in the past without the addition of points, roads and constructive mileages to the distance table, that where carriers have felt that the minimum rates based on actual highway distances were insufficient for movements in mountainous terrain said carriers have assessed rates higher than the minimum, and that the same procedure can be followed in connection with the American River projects. The aforesaid Commission staff representative stated his understanding, on advice from the Roads and Trails Division of the U. S. Forestry Service, that the aforesaid alternate road will be obliterated, in part, upon completion of the dam and power plant project. The engineering staff, he said, does not consider said road to be of the type which should be included in the distance table, and further recommends that the petition herein be denied.

Counsel for petitioner pointed out that the constructive distances developed by the staff are substantially greater than the actual distances between the points in issue, that the actual mileages do not reflect the distance factors upon which the Commission's minimum rates are based, that the roads in question will be used for a large volume of traffic for several years, and that in order to maintain the integrity of the minimum rates the sought

adjustment is required. He recognized that no system as wide-spread as the minimum rate structure can be perfect, pointing out that the best the Association can do is to bring to the Commission's attention, as in the instant proceeding, situations that appear to require adjustment.

At the adjourned hearing counsel for the Kaiser interests moved that the hearings be continued until such time as it is practicable for the staff to make a survey of the alternate road for constructive mileage purposes. At the conclusion of said hearing the petition was removed from the Commission's calendar for consideration of the record thus far made, the proceeding to be kept open in the event that further consideration of the matter should be desired by the Commission relative to constructive mileages over the alternate road.

Discussion, Findings and Conclusions

A constructive mileage is an increased mileage obtained by adding an increment to the actual highway mileage. This increment is intended to compensate, in the application of distance minimum rates, for adverse physical conditions of the highway, such as grades, curvatures, poor surface, and congestion, which add to the cost of truck operation *over and above the normal expense* encountered in operating over highways without such adverse physical conditions. Where adverse physical conditions prevail, the absence of constructive mileages reflective of those conditions results in the application of distance minimum rates which fall short of compensating the carriers for the added costs involved.

A review of decisions issued in the early years of minimum rate making indicates that it was originally the Commission's plan to provide constructive highway distances for all public roads

in the State. This, of course, could not be accomplished in a short period of time.^{7/} It was contemplated that the less important roads would be included in the distance table network as work schedules would permit. Later, however, it was found impracticable to include all public roads; and those over which little, if any, traffic of for-hire carriers is carried have been omitted from the distance table.

The criteria which the Commission has generally applied in adding points and roads to the distance table are that the roads are used so frequently as to be of some importance and that the points originate or terminate a significant amount of freight. The record clearly shows that the roads and points involved in the instant petition satisfy those criteria. Except when winter snows prevent it, there is a regular and heavy movement of commodities to the construction sites. This movement began last year and will continue in volume into 1966, if not longer. The magnitude and duration of the movements are such as to justify the publication of the constructive mileage distances developed by the staff engineer. The importance of such publication is emphasized by the adverse physical conditions encountered in the area, as reflected by the magnitude of percentages by which the calculated constructive distances exceed the actual distances.

As hereinbefore indicated, Distance Table No. 5, adopted by the Commission but not yet made applicable in connection with most of the minimum rate tariffs, constitutes a general revision and modernization of the distances and highway network of Distance Table No. 4. The staff studies which culminated in Distance Table

^{7/} Attention is directed to the discussion on pages 4 and 5, including Footnote 4, of Decision No. 31605, dated December 27, 1938, in Cases Nos. 4088 "Part N", 4145 and 4246 (printed but not reported).

No. 5 were begun as early as 1958. All the evidence in that phase of Case No. 7024 had been received by October 1961. The movement of traffic here in issue did not begin until 1962. Although exclusion of the points embraced by the instant petition from the staff proposals for Distance Table No. 5 may originally have been justified, on the basis that plans for dam and electric plant construction and the potential traffic volume were unknown, it is apparent from the record in this proceeding that said points should be added thereto at an appropriate time.

A petition seeking the establishment of Distance Table No. 5 as the governing distance table for Minimum Rate Tariff No. 2 has been filed subsequent to the time this matter was heard. The petition is to be set for hearing and a decision is to be rendered. Thus, the propriety of seeking at this time amendment of Distance Table No. 4 is apparent. Since the area in question is peripheral with respect to the networks of roads and constructive mileages presently contained in the distance tables, the proposed mileages can be added by supplement without affecting any of the mileages now set forth in either of those publications.

The witness for protestant American River Constructors testified as to the alleged adverse effect increased transportation costs resulting from granting of the petition would have on his company. The record shows, however, that the heavy-moving commodities, including the electrical equipment for the plants, are or will be supplied by the vendors or the subcontractors on a delivered basis to the job sites. The record also shows that contracts for some future movements will be made as the work progresses.

The improvements in the old road and the construction of the alternate road may require some modifications in the constructive mileages developed by the staff on the basis of its 1963 field study. Accordingly, the staff should, at the earliest practicable date after completion of the alternate road, make a new survey of the area, bringing to the Commission's attention such modifications in the constructive mileages heretofore developed as may be required by the changed circumstances.

Upon consideration, we find that:

1. The traffic destined to the job sites embraced by the petition herein is and will be of such volume, and will continue for such period of time as to justify the establishment in Distance Table No. 4 of constructive mileage distances between Foresthill and said sites.

2. The constructive mileage distances developed by the aforesaid staff engineer and introduced into the record herein are reasonable and justified.

3. The proposed revisions of Distance Table No. 4, when applied in conjunction with minimum rate tariffs subject thereto, will result in just, reasonable and nondiscriminatory minimum rates for transportation governed by said tariffs.

4. To the extent that the provisions of Distance Table No. 4 heretofore have been found to constitute reasonable rules, regulations and distances for common carriers as defined in the Public Utilities Code, the provisions of said distance table as herein-after modified are, and will be, reasonable provisions for said carriers.

5. To this same extent, existing rules, regulations and distances which are maintained by said common carriers for transportation within California are and, for the future, will be

unreasonable, insufficient and not justified by the actual competitive rates of competing carriers or by the cost of other means of transportation insofar as they are lower in volume or effect than those set forth in Distance Table No. 4, as hereinafter modified.

6. The Commission's staff should, as soon as practicable after completion of the aforesaid alternate road, make a new survey of the roads involved in this phase of Case No. 7024, calculate such modifications in the constructive mileage distances hereinabove found reasonable as the changed conditions require, and bring said modified distances to the Commission's attention for the issuance of such supplemental order as may appear proper under the circumstances.

7. The Commission's staff should, at an appropriate time, bring to the Commission's attention the constructive mileage distances hereinabove found reasonable, modified as changed conditions may require, for the issuance of an order establishing said distances in Distance Table No. 5.

We conclude that the petition should be granted.

INTERIM ORDER

IT IS ORDERED that:

1. Distance Table No. 4 (Appendix "A" of Decision No. 46022, as amended) is further amended by incorporating therein, to become effective May 30, 1964, Supplement 12 attached hereto and by this reference made a part hereof.

2. Tariff publications required to be made by common carriers as a result of the order herein may be made effective not earlier than the tenth day after the effective date of this order on not less than ten days' notice to the Commission and to the public and shall be made effective not later than May 30, 1964.

3. Common carriers are hereby authorized to depart from the long- and short-haul provisions of Section 460 of the Public Utilities Code and from the provisions of Tariff Circular No. 2 and General Order No. 80-A to the extent necessary to carry out the effect of the order herein.

4. In all other respects said Decision No. 46022, as amended, shall remain in full force and effect.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21st day of APRIL, 1964.

William A. Bennett
 President

W. E. Wright

Wesley W. Hoyle

George A. Crover

Fredrick B. Hallock
 Commissioners

SUPPLEMENT NO. 12

(Supplements Nos. 4, 9, 11 and 12 Contain All Changes)

TO

DISTANCE TABLE NO. 4

CONTAINING

REGULATIONS, MILEAGE TABLES, AND MAPS

FOR THE DETERMINATION OF

HIGHWAY CONSTRUCTIVE MILEAGE

DISTANCES

BETWEEN

POINTS WITHIN THE STATE OF CALIFORNIA

Constructive mileage distances between the locations specified below are, and for the future will be, as shown below and these mileage distances shall be used as bases in determining the constructive mileage distances from and to Ralston Power Plant, Middle Fork Power Plant, Duncan Creek Dam, French Meadows Dam, Long Canyon Dam, Hell Hole Dam, and French Meadows Power Plant, as the case may be:

<u>Between Foresthill and:</u>	<u>Constructive Mileage Distances</u>
Ralston Power Plant	25
Middle Fork Power Plant	55
Duncan Creek Dam	58
French Meadows Dam	62
Long Canyon Dam	76
Hell Hole Dam	88
French Meadows Power Plant	89

Decision No. **67115**

EFFECTIVE MAY 30, 1964

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.