

Decision No. 73351

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the petition of)
WESTERN MOTOR TARIFF BUREAU, INC.,)
for suspension of trailer allowance,)
as shown in Item 265, Supplement 65)
of Pacific Southcoast Freight Bureau)
Tariff 294-E.)

I&S Case No. 8720
(Filed November 3, 1967)

ORDER OF INVESTIGATION AND SUSPENSION

By petition filed November 3, 1967, Western Motor Tariff Bureau, Inc., Agent, on behalf of various highway carriers participating in certain of its tariffs, seeks suspension and investigation of a tariff rule pertaining to terminal allowances.¹ The rule would provide that an allowance of \$20.00 per trailer be made to the consignor by the origin line when consignor or his agent accepts an empty trailer at a point adjacent to railroad ramp and loads the trailer at his own expense and tenders such loaded trailer to carrier at a location adjacent to the same railroad ramp of the origin carrier. The rule would also provide that the same allowance be made to the consignee or his agent when he or his agent accepts a loaded trailer, unloads it and returns the empty trailer to the destination line under similar conditions.

¹ The tariffs in which the highway carriers are participants are Western Motor Tariff Bureau, Inc., Agent, Local, Joint and Proportional Freight and Express Tariffs Nos. 109 and 111, Cal.P.U.C. Nos. 13 and 15, respectively. The rule is set forth in Item 265 of Supplement 65 to Pacific Southcoast Freight Bureau Freight Tariff 294-E (Tariff 294-E).

Petitioner alleges that Section 460 of the Public Utilities Code is violated for the reason that shippers or consignees located at intermediate points where the railroad maintains no ramp facility are not accorded the same allowances at their respective origin or destination points as shippers or consignees located at points, which have a railroad ramp facility.

Petitioner avers that the protested matter is unreasonable in that the allowance of \$20.00 was established on an arbitrary basis and bears no relationship to cost or value. Petitioner asserts that this allowance is discriminatory in that a consignee located closer to point of origin must pay a higher net charge than one located at a greater distance and that it is preferential in that the consignee located at the more distant point receives the benefit of the lower net charge.

Petitioner contends that Rule 5.14 of the Commission's General Order No. 125 is violated inasmuch as the proposed rule contains an indefinite statement of rates, which reads as follows:

"In the event a trailer is damaged while in the possession of consignor, consignee or his agent, consignor, consignee, or his agent shall by repair, restore it to the condition in which it was received and in event of failure of such party to make such repair, it shall, nevertheless, be responsible for the cost thereof, but in no case for any amount greater than the actual cash value of such trailer before damage."

Petitioner states that, inasmuch as no provision is made to determine the conditions in which the trailer was received nor to determine the cost of the trailer, damage to or a complete loss of the trailer would be a matter of negotiation that would result in charges or allowances that are not stated and thus are not clear nor explicit.

Petitioner declares that Section Section 452 of the Public Utilities Code is violated in that double reductions would prevail if the proposed rule becomes effective. Petitioner avers that presently no allowance is made to the shipper if he makes a pickup at the origin ramp of an empty trailer and returns it fully loaded to such ramp for further movement except that he does not have to pay the loading charge of 5 cents per 100 pounds as provided in Tariff 294-E. Petitioner alleges that, under the proposed rule, the loading charge of 5 cents per 100 pounds would not be required and that an additional allowance of \$20.00 per trailer would be made. Petitioner contends that the cost of performing pickup or delivery service does not come near the charges, which would result as a saving to the shipper under the aforementioned double reduction.

Reply was filed by M. A. Nelson, Chairman, Pacific Southcoast Freight Bureau for and on behalf of carriers participating in Tariff 294-E.

Respondent states that the protested publication is not in violation of Section 460 of the Public Utilities Code as the terminal allowance of \$20.00 per trailer would be available to any shipper or receiver at all stations to which rates are published in Tariff 294-E or are applicable under the intermediate-application provisions of said tariff. Respondent declares that the consignee located at an intermediate point would be equally entitled to the \$20.00 terminal allowance provided that he also accepts the trailer at a point adjacent to the nearest ramp site. Respondent avers that it has been long established that shippers or receivers are not prejudiced if, because of their peculiar circumstances, they are unable to take advantage of rates, charges and allowances published in tariffs as long as those rates, charges and allowances are applicable equally to all.

Respondent alleges that the \$20.00 allowance is not discriminatory nor preferential for the reason that this allowance is available to any shipper or receiver at any station where rates are applicable. Respondent declares that this allowance was established based on the estimated average cost of handling trailers to and from ramp sites and has been maintained uniformly throughout Mountain Pacific and Transcontinental Territories.² Respondent states that this allowance is already in effect in Union Pacific Trailer on Flat Car Tariff 8000-H and is scheduled to become effective in the near future in interstate Trailer on Flat Car Tariff 293-E, which is applicable from and to points in California. Respondent contends that suspension of the proposed rule would actually result in discrimination against shippers and receivers moving traffic in trailer-on-flat-car service between points in California.

Respondent avers that the protested rule is not in violation of Rule 5.4 of the Commission's General Order No. 125 but is, in fact, similar to provisions set forth in petitioner's Local, Joint and Proportional Freight and Express Tariff No. 109, Cal.P.U.C. No. 13. Respondent alleges that similar provisions are already in effect in Paragraph (2) of Item 790 of Tariff 294-E and that those provisions would be incorporated in the protested item primarily for the purpose of tariff clarification.

Respondent states that Section 452 of the Public Utilities Code has not been violated by providing double reductions inasmuch as the rates in Tariff 294-E include the service of one man only for loading into or unloading from carriers' equipment and the

² According to respondent, Items 580, 1310-C and 658-A of Pacific Southcoast Freight Bureau Tariffs 290-G, 293-E and 295-J, respectively, provide the same \$20.00 allowance in connection with various rates between points in Mountain Pacific Territory and Items 1265 and 415-A of Transcontinental Freight Bureau Tariffs 11-J and 23-H, respectively, provide the same allowance in connection with various rates between points in Transcontinental Territory.

5-cent-per-100-pound charge referred to by petitioner is not applicable except in instances where special services are performed. Respondent contends that, under the current tariff provisions, no savings accrue to the consignor or consignee when he performs the service to or from carriers' ramp sites and that the protested allowance of \$20.00 would not result in double reductions.

Respondent asserts that petitioner fails to establish or sustain any sound basis or cause for suspension and requests that the proposed rule not be suspended.

The Commission is of the opinion and finds that the effective date of the rule herein in issue should be postponed pending a hearing to determine its lawfulness.

Good cause appearing,

IT IS ORDERED that:

1. The operation of Item 265 in Supplement 65 to Freight Tariff 294-E of Pacific Southcoast Freight Bureau, Agent, filed to become effective November 18, 1967, is hereby suspended and the use thereof deferred until March 17, 1968, unless otherwise ordered by the Commission, and that no change shall be made in said tariff item during the period of suspension or any extension thereof unless authorized by special permission of the Commission.

2. Copies of this order shall be served upon Pacific Southcoast Freight Bureau and upon petitioner herein.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 14th day of November, 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

*I would not suspend.
H. M. Burns*