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Decision No. 73685

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).	Case No. 5432 Petition for Modification No. 474 (Filed September 15, 1967)

John T. Reed, for California Manufacturers Association, petitioner.
C. H. Costello, for Continental Can Co., Inc.; Frank A. Small, for Philadelphia Quartz Company of California; W. Paul Tarter, for Wm. Volker & Company; and David B. Porter, for Del Monte Corporation, interested parties.
Richard W. Smith, A. D. Poe and H. F. Kollmyer, for California Trucking Association, protestant.
T. H. Peceimer, for the Commission staff.

O P I N I O N

Minimum Rate Tariff No. 2 provides accessorial charges (Items Nos. 140, 240 and 241) for services performed by highway carriers which are not authorized to be performed under the line-haul rates named in the tariff nor included in alternatively applied common carrier rates. Such accessorial service charges are based upon the weight upon which the transportation rates are computed. By Petition for Modification No. 474, the California Manufacturers Association (CMA) proposes that the accessorial charges provided in Items Nos. 140, 240 and 241 of the tariff be made applicable only to that portion of the shipment for which the carrier actually performs an accessorial service.

Public hearing was held before Examiner Gagnon at San Francisco on December 14, 1967, and the matter was submitted on that date. Oral testimony in support of the CMA petition was presented by two shipper witnesses. The California Trucking Association opposed the adoption of CMA's proposed tariff amendments and the Commission's staff similarly expressed its disapproval thereof. The petitioner contends that the existing tariff provisions which require that accessorial charges be predicated upon the weight upon which the transportation rates are computed, even though only a small portion of the shipment may have been accorded an accessorial service by the carriers, are contrary to the time honored principle that a carrier should be reasonably compensated for services performed. To remedy what CMA believes to be an unreasonable situation, it suggests that Minimum Rate Tariff No. 2 be amended as follows:

PROPOSED AMENDMENT TO ITEM 140

Last Paragraph - Delete the words "weight upon which the transportation rates are computed" and substitute the words "actual weight on which the accessorial service is performed".

PROPOSED AMENDMENT TO ITEM 240

Paragraph 2 - Delete the words "weight on which transportation charges are determined" and substitute the words "actual weight on which the accessorial service is performed".

PROPOSED AMENDMENTS TO ITEM 241

Paragraph 3 - Delete the words "weight on which transportation charges are determined" and substitute the words "actual weight on which the accessorial service is performed".

Paragraph 4 - Substitute the following for the present wording: "When a portion of a shipment is loaded and/or unloaded under one provision of this item and another portion or other portions are loaded and/or unloaded under different provisions of this item, charges for loading and/or unloading shall be assessed in accordance with the provisions of this item separately for each such portion."

As justification for the proposed tariff amendments, petitioner's supporting witnesses stated that under the present wording of Items Nos. 140, 240 and 241 of Minimum Rate Tariff No. 2, whereby accessorial charges must be "assessed on the weight on which transportation charges are determined", it is mandatory for the carriers to collect charges for services which they allegedly do not perform. The witnesses contend that there is no justification for paying a carrier for services which it does not actually perform. This latter alleged objectionable feature of the tariff rules would, according to petitioner, be eliminated should the proposed tariff amendments be adopted.

Petitioner's objections to the existing accessorial service provisions of the tariff were specifically illustrated by both CMA witnesses in connection with the alternative use of common carrier rates, which do not include accessorial loading or unloading services performed by the carrier. For example, one shipper power loads, without carrier assistance, 40,000 pounds of a given shipment and then has the carrier's driver hand load the remaining 100 pounds of the shipment. Another shipper requires the carrier's assistance to load an entire shipment weighing 40,000 pounds. In both instances, the shipper is assessed, under the existing provisions of the tariff, accessorial charges based on the total weight of the shipments. The

CMA claims that such a method for determining charges places an extreme penalty against the shipper who power loads the majority of his tonnage and requires very little assistance from the carrier.

The petitioner did not introduce any evidence relative to what, if any, changes should be made in either the level or format of the present accessorial charges. It is CMA's position that if the highway carriers believe the established charges to be insufficient or otherwise inadequate, should petitioner's proposed tariff changes be adopted, the carriers can petition the Commission for the relief deemed necessary and appropriate in the circumstances.

The California Trucking Association contends that petitioner has failed to make a prima facie case and requests that the relief sought be denied. The position of the trucking association is premised upon the fact that CMA did not offer any evidence and at the hearing strongly objected to the receipt of any evidence pertaining to the adjustments, if any, required in the current accessorial charges to insure that carriers would be reasonably compensated for their services should CMA's tariff proposal be adopted. The Commission's staff also expressed the view that no action should be taken with respect to petitioner's tariff proposal in the absence of evidence clearly showing the accessorial charges deemed to be reasonable and justified under the revised basis for charges recommended by petitioner.

It is clear that petitioner's sought relief is predicated upon the erroneous assumption that the tariff rules involved are designed to overcompensate the carrier for its services; whereas the evidence of record in prior related proceedings demonstrates quite

the contrary to be the case.[1/] The loading and unloading cost information of record in such prior proceedings is available and could have been utilized by petitioner in the instant proceeding in an effort to meet the objections raised by the highway carrier and Commission staff representatives.

The fundamental reason why the accessorial service charges in issue herein was established subject to the weight upon which the rates are computed, rather than some other basis such as recommended by the CMA, was to provide a readily available basis upon which a simple flat accessorial charge may be uniformly applied. The use of the billed weight was further necessitated by the fact that carriers are requested to perform accessorial services in connection with either partial or total quantities of a shipment, the actual weight of which is unknown or rather difficult to determine at the time of shipment or when the service is performed by the carrier.

There is some merit to CMA's objection to the current tariff provision whereby accessorial charges are determined on the total billed weight of a truckload shipment when, in fact, the carrier performed accessorial services in connection with only a very small fraction of the total weight of the shipment. Such circumstances appear, however, to be the exception rather than the rule. If such is not the experience of petitioner, its failure to present any evidence relative to the accessorial service charges deemed suitable and proper in the circumstances is fatal to any possible favorable consideration by the Commission of CMA's proposal.

1/ The history of the charges provided in Items Nos. 240 and 241 as set forth in Decision No. 71553, dated November 9, 1966, in Petition for Modification No. 410 et al, in Case No. 5432; also in Decision No. 66981, dated March 17, 1964, in Case No. 5432 (62 Cal. PUC 499).

It should also be noted that CMA's concern relative to the application of the established accessorial charges to multiple lot shipments is not without merit; especially in those examples, as illustrated by CMA's witness, where the multiple pick-ups consisted of two or more maximum truckload lots which, except for one instance, were power loaded by the shipper without assistance or expense to the carrier. Here again, petitioner's failure to make any evaluation as to what, if any, adjustments should be made in the present accessorial charges, in the light of its proposal in this latter area, precludes any favorable consideration of CMA's sought relief.

In addition to the infirmities in petitioner's evidentiary showing noted above, no probative evidence was introduced by CMA relative to the performance by the carrier of accessorial services other than loading or unloading, such as stacking or sorting, for which the established accessorial charges named in Items 140, 240 and 241 also apply. What effect, if any, petitioner's proposed revisions in the tariff rules involved herein would have upon the various and sundry authorized accessorial services other than loading or unloading has not been established.

We find that:

1. The evidence submitted in support of the proposed revision in the rules governing the computation of accessorial charges named in Items Nos. 140, 240 and 241 of Minimum Rate Tariff No. 2 is insufficient and otherwise generally inconclusive.

2. It has not been established whether the existing level or format of accessorial charges in issue herein would be adequate and proper under the sought revision in the tariff rules governing the determination of such charges.

3. The application of certain accessorial services other than loading or unloading, presently authorized in Minimum Rate Tariff No. 2, has not been adequately considered or re-evaluated by petitioner insofar as such services would be affected by the adoption of the proposed revised tariff rules.

4. It has not been demonstrated whether, under petitioner's proposal, critical information pertaining to actual weight of shipment, including fractional lots thereof, is readily available or known at the time of and under the various circumstances in which the carrier is requested by the shipper to perform authorized accessorial services.

5. Petitioner's evidence generally fails to sustain the burden of proof necessary to establish the fact that the tariff proposals in issue herein are reasonable and otherwise justified by transportation conditions.

In view of the above findings, we conclude that Petition for Modification No. 474 should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 474 in Case No. 5432 is hereby denied.

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

Dated at San Francisco, California, this 6th day of FEBRUARY, 1968.

President

Commissioners

/- Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.