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ORIGINAL

Decision No. 73719

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Western Motor Tariff Bureau, Inc., under the Shortened Procedure Tariff Docket to publish for and on behalf of certain of its participating carriers tariff provisions resulting in increases because of the publication of a new rule providing for circuitous routing.	Application No. 49401 (Filed May 25, 1967; Amended October 17, 1967)

Arlo D. Poe and William J. Knoell, for applicant.
John T. Reed, for California Manufacturers Association.
Joseph C. Matson, for the Commission staff.

O P I N I O N

This application was heard and submitted December 11, 1967 before Examiner Thompson at San Francisco. Notice of hearing was served in accordance with the Commission's procedural rules.

Western Motor Tariff Bureau is the tariff publishing agent for a number of common carriers of bulk petroleum products. It seeks authority to publish, on behalf of those carriers, in its Tariffs Nos. 16, 18 and 19 a rule providing that when a shipment, because of road conditions or any other condition beyond the control of the carrier, must move over a route which results in a greater mileage than the shortest distance applicable in the governing distance table and the circuitous routing mileage exceeds the short-route mileage by five percent, the charges for transportation will be assessed over the actual route of movement.

This application, when originally filed under the shortened procedure tariff docket, proposed a rule for computing the charges

via actual route of movement regardless of the extent of curcuitry of route. California Manufacturers Association notified the Commission and applicant that it was not opposed to the principle involved in the application; however, the additional mileage resulting from circuitous routing should be more than minute. Applicant amended its application to provide that the rule be applicable only when the additional mileage exceeds the short-route mileage by at least five percent.

Tariff No. 16 names rates for the transportation of liquid petroleum gas (L.P.G.), Tariff 19 applies on asphalt and road oil, and Tariff 18 provides rates for other petroleum products. The general manager of applicant testified that all of the participating carriers in said tariffs have certificates authorizing petroleum irregular route carrier operations and approximately one-fourth of them also hold highway common carrier operative rights. Said latter rights, according to the general manager, in almost every instance provide for operations on, along and within a certain number of miles laterally from certain named highways. He stated that not long ago one of the carrier members of the applicant had accepted a shipment destined to Lake Tahoe and because of weather and road conditions was required to go by a very circuitous route to the destination. At a committee meeting of the applicant that carrier mentioned the circumstances and other members stated that they had encountered similar circumstances. That led to the filing of this application.

The Commission staff and the examiner questioned the general manager concerning the application of the proposed rule. Counsel for California Manufacturers Association stated that he had directed the attention of the membership to the application as

amended, that he consulted with several members who engage carriers subject to the tariffs here involved, and that no member objected to the proposed rule. He said that his organization supports the applicant's proposal.

The Commission staff is opposed to the establishment of the proposed rule. It contends that the phrase "because of road conditions or any other condition beyond the control of the carrier" is so indefinite as to provide the carrier with virtually unlimited authority to depart from a short-line route and charge the shipper for the diversion. It also contends that the rule is incompatible with the certificates of highway common carriers that may specify routes which are not the short-line routes on which constructive mileages are determined.

Applicant contends that because the carriers are authorized to serve all points via any route or via wide lateral routes, the proposed rule would not be inconsistent with the certificates of the carriers.

With respect to the alleged indefiniteness of the proposed rule, applicant asserts that there are other rules in the tariffs that call for the exercise of judgment by the carrier and it is not feasible to list every conceivable circumstance which, through no fault of the carrier, requires a departure from the usual or ordinary route.

The questions asked the witness by the examiner indicate that he was concerned with the apparent anomaly of the proposed rule providing charges for transportation via circuitous routings when neither the tariffs nor the governing distance table specify any direct routes.

The intent of the proposed rule is to provide compensation to the carrier for effecting a delivery of a shipment via a circuitous route when because of road conditions or other circumstances beyond the carrier's control the usual or ordinary route is not available. The proposed rule would have the result, however, of prescribing routings for distance rates and point-to-point commodity rates set forth in the tariff. The route prescribed by the proposed rule for any rate would be that which provides the constructive mileage specified in the distance table as the shortest constructive mileage between the points involved. Under the proposed rule the higher rate or charge would be applicable whenever a shipment: (1) because of circumstances beyond the carrier's control must move over a route other than the route providing the shortest constructive mileage, and (2) actually moves via a route having a constructive mileage in excess of 105 percent of the constructive mileage set forth in the distance table as the shortest constructive mileage between the points involved.

The proposed rule is impractical, unreasonable, unsound and unnecessary. It is in conflict with other provisions of applicant's tariffs. Three premises underlying the proposal are (1) the carrier must effect delivery of the goods at the destination, (2) the distance table specifies the routes over which the constructive mileage is calculated, and (3) the routes usually and ordinarily traversed by the carriers are those which provide the shortest constructive mileage. None of those premises is valid.

The rules contained in the three tariffs are substantially the same. The items mentioned herein will be those in Tariff No. 18.[1/]

Item 240 states, "Nothing in this tariff shall require the carrier to transport a shipment when in the carrier's judgment it is impractical to operate because of the condition of highways, streets, roads or alleys." Item 310 states, "The carriers, parties hereto, do not agree to transport shipments on any particular piece of equipment nor in time for any particular market or otherwise than with reasonable dispatch." Item 320 specifies rules and charges for shipments diverted in transit and Item 255 sets forth rules and charges for shipments returned at the request of consignor or consignee.

With respect to the carrier that transported the shipment to Lake Tahoe via a circuitous route because of road conditions, the present provisions of the tariff (which are a part of the contract of carriage) enable the carrier to determine that because of those road conditions it is, or was, impractical to transport the shipment at the rates provided in the tariff. Assuming that the shipment was consigned on a straight bill of lading with charges prepaid, the procedure implied in the tariff is for the carrier to notify the shipper of that fact and inform him that the shipment will not be delivered to the consignee until the conditions are improved; or if it desires, the shipper may have the shipment diverted to another destination pursuant to Item 320 or returned to it pursuant to Item 255. In the event the shipper does not desire the shipment

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1/ Cross References to Comparable Items in the Tariffs

Subject Matter	Tariff No. 18	Tariff No. 16	Tariff No. 19
Impractical Operations	Item 240	Item 95	Item 160
Reasonable Dispatch	Item 310	Item 150	Item 220
Diversion of Shipments	Item 320	Item 160	Item 230
Returned Shipments	Item 255	Item 165	Item 235

to be rerouted, diverted or returned, the implication of the tariff provisions is that the carrier shall hold the shipment until conditions permit the movement. When the carrier decides, on his own account, to transport the shipment to destination via a circuitous route he has, in effect, made a judgment that it is not impractical because of road conditions to transport the shipment to destination.

That the rule would be impractical and unreasonable is apparent from one illustration. Assume that a carrier with terminal and office at Tracy has a regular haul from a refinery within the area covered by the basing point of Pinole to a point at French Camp. Because of the freeways via highway Interstate 680 and highway Interstate 580, and because the carrier desires his trucks, whenever possible, to be routed via the terminal, the usual and ordinary route taken by the trucks from origin to destination is via Tracy. According to the distance table the shortest constructive mileage between Pinole and French Camp is 79 miles (apparently via Brentwood) and the distance via Tracy is 85 constructive miles. If, on a day that the carrier transports a shipment, the section of State Highway 4 between Old River and Middle River is closed because of a bridge wash-out or some other road condition, the proposed rule would cause the following situation: Because of the highway condition, the route providing 79 constructive miles would be closed and the shipment transported by the carrier must move by some other route; the shipment actually moves via a route which is 85 constructive miles or 107 percent of the shortest constructive mileage. Under the aforesaid set of circumstances the proposed rule would require the carrier to charge and collect the appropriate rate for transporting the shipment 85 constructive miles and

this would be so whether or not applicant published a distance rate or a point-to-point commodity rate for transportation between Pinole and French Camp. Failure to charge and collect the appropriate rate would be unlawful and would subject the carrier to any or all of the penalties and forfeitures provided for in the Public Utilities Act. In the aforementioned illustration the carrier might not be aware of the road closing on Highway 4, but if a rate in his tariff depends upon such circumstance, it is the duty and responsibility of the carrier to know those things and the fact that he was not aware of the circumstance would not alter the fact that the rate to be charged and assessed would be the rate for 85 constructive miles. Under the aforementioned set of circumstances, however, the application of the higher rate for that one haul would be unreasonable.

The illustration given above is not an isolated or unusual example of circumstances with which a carrier may be confronted. It is well known by persons familiar with highway transportation that the usual or ordinary routes over which shipments are transported are not necessarily the routes that provide the shortest constructive mileages. This is particularly true with respect to the transportation of truckload shipments. It is also a fact that certain of the roads and bridges on the system of highways in the distance table are posted with weight limitations. In the case of a heavy truckload shipment transported between points where the shortest constructive mileage between origin and destination is via a posted bridge or restricted highway, under the proposed rule the rate would always be the distance rate via the route actually taken by the carrier even though there may have been some other route the carrier could have taken which would have produced a lower rate. Again, this could be unreasonable.

The proposed rule would also have some impractical results. As is apparent from the foregoing, if a carrier is to observe the rates and rules in his tariff, with respect to each and every shipment tendered to him the proposed rule would require him to ascertain: (1) the route on the system of highways that provides the constructive mileage specified in the distance table as being the shortest constructive mileage between the origin and destination and (2) whether at the time the shipment is to be transported road conditions or other circumstances are such as to enable him to transport the shipment via that route. The first requirement would be time consuming because of the multiplicity of routes between points. A computer was used to determine the shortest constructive mileages specified in the distance table. The second requirement would not only be time consuming, but almost an impossible task. One need only ask the question of how one can determine with certainty whether a vehicle can operate via a certain specified route at a particular time unless the attempt is made to operate the vehicle on that route at that time. From the foregoing it is obvious that the proposed rule would be impractical.

We find that it has not been shown that the increases that would result from the establishment of the proposed rule are justified. We conclude that the application should be denied.

A. 49401 ds

O R D E R

IT IS ORDERED that Application No. 49401 of Western Motor Tariff Bureau, Inc., is denied.

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

Dated at San Francisco, California, this 14th day of February, 1968.

Peter E. Mitchell, President

Thomas Moran

William Symons, Jr.

Vlad P. Mamissey

Commissioners