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Decision No. 74307

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all common carriers, highway carriers, and city carriers relating to the transportation of petroleum and petroleum products in bulk (commodities for which rates are provided in Minimum Rate Tariff No. 6-A).	Case No. 5436 Petition for Modification No. 84 (Filed November 6, 1967)

Arlo D. Poe, J. C. Kaspar and H. F. Kollmyer, for California Trucking Association, petitioner.
Richard N. Cooledge, Roland B. Ernst, Robert Hildreth, Jack W. Vogt, for various for-hire carriers, respondents.
Charles G. Adler, Glen R. Baker, R. Canham, by A. A. Wright, James W. Curtright, M. Robert Day, Lowell J. Hedrick, Warren P. Maynugh, for various petroleum companies, protestants.
Hugh N. Orr and Glenn L. Wilkes, for Petro Chemical Traffic Service; John T. Reed, for California Manufacturers Association; protestants.
W. J. Knoell, for Western Motor Tariff Bureau, Inc.; Robert L. McHue, G. E. Motal, and George Watson, for various petroleum companies; interested parties.
E. H. Burgess, for the Commission's staff.

O P I N I O N

By this petition California Trucking Association (CTA) seeks amendment of the rules relating to demurrage or detention charges set forth in Item No. 160 of Minimum Rate Tariff No. 6-A (MRT 6-A). That tariff contains minimum rates and rules for the transportation of petroleum and petroleum products in tank truck equipment over the highways of this state.

Public hearing of the petition was held before Examiner Bishop at San Francisco and Los Angeles on February 28 and 29, 1968, respectively. Evidence on behalf of petitioner was presented through

the director of its division of transportation economics. Evidence was also offered by protestants Standard Oil Company of California and Petro Chemical Traffic Service.

The first sentence of paragraph 1 of Item No. 160 reads as follows:

> "A charge of $2.20 for each one-quarter hour, or fraction thereof, shall be assessed for the time carrier's equipment is detained through no fault of the carrier to complete loading or unloading in excess of the free time specified in paragraphs (a), (b) or (c)."

Paragraph (a) provides that the free time for refined petroleum products, for example, shall be one hour for loading and one and one-half hours for unloading.

Petitioner proposes to make the above-quoted provision subject to a note in which shall be incorporated definitions, as follows:

> "(a) LOADING TIME means that time which commences when carrier's equipment arrives at point of origin and terminates when carrier's equipment is released for departure from point of origin. Carrier shall be deemed to arrive at point of origin when carrier's equipment has been presented for admission at shipper's premises.
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> "(b) UNLOADING TIME means that time which commences when carrier's equipment arrives at point of destination and which terminates when carrier's equipment is released for departure from point of destination. It also includes time spent in weighing, sampling and/or the process of sampling, even though such time may be spent prior to the placement of the equipment in the position to unload. Carrier shall be deemed to have arrived at point of destination when carrier's equipment has been presented for admission at consignee's premises." 1/

Items Nos. 10 and 11 (Definition of Technical Terms) now contain the following definitions, respectively:

> "LOADING TIME means that time which commences when carrier's equipment is placed in position to load and which terminates when carrier's equipment is released for departure from point of origin."

1/ Item No. 160, as proposed to be changed, is set forth in its entirety in Exhibit A, attached to Petition for Modification No. 84.

> "UNLOADING TIME means that time which commences when carrier's equipment is placed in position to unload and/or spread and which terminates when carrier's equipment is released for departure from point of destination. It also includes time spent in weighing, sampling and/or the processing of samples even though such time may be spent prior to the placement of the equipment in position to unload or spread."

These latter definitions are generally applicable throughout the tariff (including Item No. 160) wherever they are used.

The research director testified that the proposed new note in Item No. 160 is intended to provide compensation to the carrier for a period of time which is not covered by the existing tariff provisions. This situation, assertedly, occurs when delays are encountered after the carrier's equipment is presented for admission at shipper's or consignee's premises and before such equipment is placed in position to load or unload. He pointed out that it has consistently been the policy of the trucking industry that the line haul rates should cover those services which are customarily performed by the carrier and that extraordinary or unusual services shall be compensated for by accessorial charges, which shall be borne by those parties for whose benefit said services are rendered.

The witness stated that he prepared the cost studies and the rate proposals on which MRT 6-A was predicated;[2/] that the hundredweight rates in the tariff reflected the cost of moving the equipment from origin to destination plus an allowance of a certain amount of time for loading and unloading; and that any time consumed at point of origin or destination in excess of such loading time was to be compensated for by the provisions of Item No. 160.

2/ MRT 6-A, which cancelled Minimum Rate Tariff No. 6, effective June 1, 1964, was established by Decision No. 67154, dated April 28, 1964, in Petition for Modification No. 50, in Case No. 5436.

The witness cited instances in which delays over which the carrier has no control are experienced at shipper's or consignee's premises. These included delays caused by preference given by the shipper to the loading of its own trucks while the carrier's equipment waits; a shortage of shipper's loaders because of illness; a broken pipe, resulting in contamination of a commodity; a shipper's ordering several trucks, but not having a sufficient number of loading spots in working order to accommodate all the trucks at one time.

It appears that delays here under consideration occur with some frequency. However, the witness did not expect that substantial additional revenues would accrue to the carriers if the proposed changes are adopted. He expects that such changes will result in improved efficiency on the part of shippers and receivers, in order to avoid payment of the detention charges provided in the rule in question.

Granting of the petition was opposed by California Manufacturers Association, by Petro Chemical Traffic Service (Petro Chemical) and by five petroleum companies. Evidence was presented by Petro chemical and by Standard Oil Company of California (Standard). None of the representatives of the four other protesting petroleum companies actively participated in the proceeding.3/

The assistant manager of Standard's traffic and distribution department testified that his company's concern is with the application of the proposed definitions of loading and unloading time in circumstances over which the shipper or consignee has no control. He recognized that on occasion the carriers do experience delays in loading and unloading and that some of the delays are

3/ Three additional petroleum companies appeared as interested parties; their representatives took no active part in the proceeding.

attributable to the shipper or the consignee. Standard, he said, has never refused payment of a carrier billing for a detention charge, when a delay in excess of the free time had been caused by circumstances over which that company had control. It strenuously objects, however, to what it sees as an attempt by the carriers, through this proceeding, to compel the payment of detention charges arising from situations over which Standard has no control.

With few exceptions, the witness testified, all of the company's major truck loading terminals are open to the carriers for loading twenty-four hours per day. Heavy investment has been made in facilities so designed as to permit maximum utilization of carriers' equipment by enabling them to load at any time of their choice to meet specified delivery dates. There are times, the witness testified, when Standard will request a carrier with more than one tank unit to deliver several loads to a particular destination. If the carrier dispatches the units for loading at the same time, or too close together, they will bunch up, he asserted, on arrival at the loading point; and consequently, because of the carrier's dispatching practices, his company will be required to pay added demurrage costs.

This witness cited other situations in connection with loading and unloading of tank truck shipments in which Standard assertedly would be penalized under the proposed definitions, under circumstances over which it has no control. He pointed out that the proposals make no exception for:

1. Delays caused by carriers bunching their equipment waiting to load after admission to Standard's premises.

2. Dirty and/or unsuitable equipment.

3. Vehicles which, upon inspection, do not meet cargo tank specifications as required by governmental regulations.

4. Carrier equipment breakdown after admission to Standard's premises.

If the petition is granted, the witness further stated, the effect will be to force his company to establish carrier truck-loading schedules at all primary loading terminals and to insist that the carriers observe them. If, as Standard foresees, the carriers cannot observe the schedules, its costs will rise under the new rules; this, he said, would cause his company to increase its proprietary trucking operations in order to control the situation.

The owner of Petro Chemical testified that his company audits freight bills for three major oil companies and provides traffic services for certain smaller companies; that generally the carriers have observed the definitions of loading and unloading times as set forth in Items 10 and 11 of MRT 6-A, above; that some carriers, however, attempt to bill from the time the truck arrives at the shipper's or consignee's plant gate; and that, in his review of billing, particularly for the major oil companies, he has brought to light several thousands of dollars of overcharges based on that premise. In his opinion, the adoption of the proposed tariff changes would result in a material increase in transportation charges.

A representative of the Commission's Transportation Division Rate Branch staff and the traffic manager of California Manufacturers Association (CMA), protestant, assisted in the development of the record by examination of petitioner's witness. In a closing statement, in which he spoke for all of the petroleum interests which appeared in the proceeding, the CMA representative said that his principals were in agreement with the premise that those shippers

who cause undue delays to equipment should bear the cost of such delays, rather than having such costs averaged out in the hundredweight rates. His group thought, however, that the particular tariff changes proposed had not been justified, that the petition should be denied, and that the carrier and shipper interests should, through negotiations, attempt to arrive at a tariff adjustment which would be agreeable to both.

Counsel for petitioner expressed the view that granting of the sought relief had been fully justified, that the carriers were not attempting to secure additional revenue for ordinary loading and unloading time, for which compensation is already incorporated in the hundredweight rates, but to correct what the carriers consider a defect in present tariff provisions which assertedly fail to compensate the carriers for unusual delays occurring beyond their control at shippers' or consignees' premises.

Discussion, Findings and Conclusions

Demurrage or detention charges were first provided in the Commission's minimum rate tariff for bulk petroleum products in Item No. 140 of City Carriers' Tariff No. 5 - Highway Carriers' Tariff No. 6 (First Revised Page 11), effective March 1, 1948[4], pursuant to Decision No. 41146 (476 C.P.U.C. 688).[5] Initially the item applied only on liquefied petroleum gas. The item provided that a charge of $1.50 for each half hour, or fraction thereof, should be assessed for the time carrier's equipment was detained "through no fault of the carrier" to complete loading or unloading in excess of the free time

4/ The tariff identified above was subsequently designated as Minimum Rate Tariff No. 6 and later superseded by MRT 6-A. Item No. 140 in the former tariff became Item No. 160 in the latter tariff.

5/ Official notice is hereby taken of this decision and of all other Commission decisions, including minimum rate tariff items, to which reference is hereinafter made.

specified in the item. The item further provided that "free time shall commence when carrier's equipment is ready for loading or unloading. Two (2) hours free time shall be allowed for loading and three (3) hours free time shall be allowed for unloading." Except for the amount of the charge and the time unit employed, the language of the first sentence in Item No. 140 of the former tariff was essentially the same as that now utilized in the opening sentence in Item No. 160 of the current tariff.

Subsequent to the time of the initial publication the scope of Item No. 140 series was broadened to include asphalt and road oil (effective October 22, 1951, by Decision No. 46203) and refined petroleum products, black oils and crude oil (effective August 1, 1953, by Decision No. 48756). The addition of asphalt and road oil to the item prompted inclusion also of provisions concerning spreading of those commodities. Also subsequent to initial publication of the rule the penalty charge time unit was changed from one-half hour to fifteen minutes and, at intervals, the level of the charge was increased, as costs of operation rose.

Effective February 1, 1958 (Decision No. 55964) Item No. 10 series of Minimum Rate Tariff No. 6 (M.R.T. 6) was amended to include definitions of loading time and unloading time. The wording adopted then has remained unchanged to the present time, as hereinbefore set forth in connection with the corresponding provisions in Items Nos. 10 and 11 of M.R.T. 6-A. Concurrently, with the publication of said definitions in Item No. 10 of M.R.T. 6, the provisions in Item No. 140 series specifying when the free time for loading and unloading begins and ends were cancelled. These modifications had the effect of changing the start of loading and unloading times (for the purpose of calculating detention charges, if any) <u>from</u> the time

when carrier's equipment arrives at loading or unloading point and carrier's employee reports that the equipment is ready for loading or unloading to the time when carrier's equipment is placed in position to load or unload. Decision No. 55964 indicates that the definitions added to Item No. 10 thereby were proposed by C. T. A. to eliminate existing uncertainty as to what was included in "loading" and "unloading" as those terms were used in the demurrage provisions (Item No. 140).[6/]

Effective May 8, 1965 (Decision No. 68814) Item No. 160 of M. R. T. 6-A was amended by reducing free loading and unloading times for all petroleum products except road oil and asphalt, as follows: for refined oils, black oils and crude oil, loading time from two hours to one hour, and unloading time from three hours to one and one-half hours; for liquefied petroleum gas, loading time from two hours to one and one-half hours, and unloading time from three hours to two hours. Decision No. 68814[7/] does not state the reasons on which these reductions of free time were based. Presumably the record established that the revised amounts of free time were sufficient under normal circumstances for loading and unloading of the commodities involved.

The only evidence in the record of the current petition as to how much time and service at point of origin and destination are included in the costs on which the hundred pound rates in M. R. T. 6-A are based is the general statement, hereinbefore mentioned, made by

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6/ The proceeding which resulted in Decision No. 55964 (unreported) was Petition for Modification No. 20 in Case No. 5436.

7/ Pursuant to Petition for Modification No. 66 in Case No. 5436, et al.

petitioner's witness, who also testified that he had made the cost and rate studies in question. The exhibits from prior proceedings in which the results of basic studies are reflected were not presented.[8/] The foregoing review of the history of the tariff provisions shows that the definitions of loading and unloading time now contained in Items Nos. 10 and 11 of M.R.T. 6-A grew directly from problems of interpretation of the detention provisions as then worded (prior to February 1, 1958). The review discloses, moreover, that for the protection of the carriers, petitioner is, in effect, now seeking to restore to the tariff the rule for the commencement of free time that existed prior to February 1, 1958.

Petitioner's evidence establishes the need for some modification in the provisions of M.R.T. 6-A which will assure compensation to the carriers for expenses incurred due to delays at premises of shippers and consignees over which the carriers have no control. However, careful consideration of the proposed modification of Item No. 160 discloses that certain objections of protestants to the method by which it is proposed to correct the deficiency in the subject provisions are valid.

It is obvious that Item No. 160, as it was originally established in 1948 (as Item No. 140 in the predecessor tariff) and as it is set up today, was and is intended to accomplish the objective set forth in the immediately preceding paragraph. However, the proposed addition to the item of definitions of loading and unloading time would have the effect of going beyond the expressed intent of petitioner. These definitions are absolute, in that they, in effect, define the period during which free time shall run, regardless of

8/ A cost exhibit from a recent wage-offset proceeding for M.R.T. 6-A, officially noticed at request of a protestant herein, does not show this information.

what happens during that period, including delays for which the carrier is responsible. This would be manifestly unfair to shippers and consignees. These latter parties should not be required to pay for delays caused by carriers any more than the carriers should incur uncompensated operating costs as a result of delays for which shippers or consignees are responsible. Further study should be given to the problem, to the end that a proposal for revision of the pertinent tariff provisions may be formulated which will eliminate inequities to all concerned parties.

We find that:

1. The costs on which the cents per hundred pounds rates named in Minimum Rate Tariff No. 6-A are based do not include costs incurred by the carriers as a result of abnormal delays to equipment at premises of shippers or consignees due to circumstances beyond the control of the carriers. Compensation to the carriers for such costs is intended to be effected by the provisions of Item No. 160 of that tariff.

2. The provisions of Item No. 160 of said tariff, coupled with the definitions of "loading time" and "unloading time" set forth in Items Nos. 10 and 11, respectively, of the tariff, do not unequivocally assure the compensation to the carriers for which said provisions were designed.

3. Adoption of the modifications in Item No. 160 proposed by petitioner would go beyond the expressed intent, in that it would subject shippers and consignees to the payment of penalty charges for delays beyond the free time even when such delays were chargeable to the carriers.

4. Adoption of the proposed modifications would, under the circumstances stated in Finding 3, above, result in the establishment

of unjust and unreasonable minimum rates and charges for the transportation here in issue.

5. The proposed modifications in Item No. 160 of said tariff have not been justified.

We conclude that the petition should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 84 in Case No. 5436 is denied.

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

Dated at San Francisco, California, this 25th day of JUNE, 1968.

President

Commissioners