

ORIGINAL

Decision No. 75168

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Kaiser Cement & Gypsum Corporation,
Complainant,

vs.

A. W. Hays Trucking, Incorporated,
Defendant.

Case No. 8851
Filed October 1, 1968;
Answer filed Nov. 1, 1968.

O P I N I O N

The complaint herein states that complainant (Kaiser Cement & Gypsum Corporation) tendered shipments of sacked cement to defendant (A. W. Hays Trucking, Incorporated), a cement carrier, which were transported from Permanente to Long Canyon Warehouse and French Meadows Recreation Area.¹ The complaint further states that the applicable transportation charges are determined under the provisions of Western Motor Tariff Bureau Tariff 17; that complainant and defendant are in agreement as to the charges which are applicable under said tariff; that defendant was instructed by an undercharge letter from the Secretary of the Commission to collect undercharges on the shipments in question; that complainant and defendant do not believe that said undercharge letter correctly reflects the proper application of WMTB Tariff 17.

The complaint alleges that the published rates for the transportation service, as interpreted in the undercharge letter,

¹ The complaint contains, in Exhibit A, a list of the freight bills for the shipments in question, showing the point of destination, the date of shipment, the quantity transported, and the rates and charges billed and assessed.

are excessive and unreasonable to the extent that "rates and charges exceed those contemplated for relief under the long- and short-haul provisions of Section 460 of the Public Utilities Code." The complaint seeks the waiver of the undercharges billed by defendant to complainant in compliance with the undercharge letter.

The Answer to the complaint states that defendant agrees with complainant as to the rates applicable to the shipments herein.

The rates, charges and rules set forth in WMTB Tariff 17 are generally on the level of the minimum rates for cement hauling established by this Commission. One exception is the provisions of Item No. 2020 of WMTB Tariff 17, which provide for the assessment of combination rates to and from points located in Northern Mountain Territory and not located on the system of maps in the governing distance table.² Long Canyon Warehouse and French Meadows Recreation Area are not points shown on the distance table maps. Said points are in Northern Mountain Territory as described in WMTB Tariff 17.

Item No. 2110 of WMTB Tariff 17 is entitled "Computation of Distances - Exceptions", and contains a table of mileages between Foresthill, a point shown on the distance table maps, and several other points, including Long Canyon Dam and French Meadows Dam. The listed points (other than Foresthill) do not appear on the distance table maps. The points of destination involved herein assertedly are intermediate via route of movement to Long Canyon Dam or French Meadows Dam.

² The governing distance maps are identical to those contained in the Commission's distance table, applicable in connection with Minimum Rate Tariff No. 10, which contains minimum rates on cement.

Item No. 2020 of WMTB Tariff 17 provides, in part, as follows:

"In the event that a point of destination (or origin or both origin and destination) is not located on the system of maps referred to in the governing distance table and is located in Northern Mountain Territory as described in note and no other specific provision is contained herein for the computation of the applicable rate to (or from) such a point, the charges to (or from) such a point or points shall be computed as follows (see exception):

"Assess combination of local rates over the last point or points located on the system of maps referred to in the governing distance table nearest to the off highway point or points to or from which the through rate is being computed.

"Exception: In the event that such point of destination (or origin) is located directly intermediate (via the route physically traversed), to (or from) a point to (or from) which a specific rate is named, the rate to (or from) such specifically named point shall apply as a maximum rate to (or from) such intermediate point."

Complainant and defendant urge that the proper interpretation of Item No. 2020 would require that transportation charges be determined under the "exception" in said item. The charges required to be billed, as set forth in the undercharge letter, are based on the combination of the local rate from Permanente to Foresthill, and the local rate from Foresthill to destination.

After consideration, the Commission finds as follows:

1. Complainant is a shipper of cement, with a plant at Permanente.
2. Defendant is a cement carrier, a common carrier, and a public utility.
3. Complainant shipped, and defendant transported, shipments of cement from Permanente to Long Canyon Warehouse and French

Meadows Recreation Area, in the period between December 14, 1965 and November 4, 1966, as shown in Exhibit A to the complaint.

4. Complainant bore the freight charges on the shipments in question.

5. Defendant was issued an undercharge letter directing it to collect the undercharges as shown in said letter; to review other similar shipments transported by defendant for complainant; and, if undercharges appeared, to collect undercharges on said shipments.

6. The applicable transportation charges for the shipments in question are those determined under the provisions of Western Motor Tariff Bureau Tariff 17, Cal. PUC No. 21, of Western Motor Tariff Bureau, Inc., Agent. Defendant is a participant in said tariff.

7. The undercharges directed to be collected are based on an interpretation of the provisions of Items Nos. 2020 and 2110 of said tariff which would require the assessment of combinations of rates, constructed by using the mileage rate from Permanente to Foresthill, and the mileage rate from Foresthill to destination (plus surcharge where applicable).

8. The points of destination of the shipments herein are located in Northern Mountain Territory, as described in Item No. 2020 of WMTB Tariff 17. Said points of destination are not located on constructive mileage maps in the governing distance table.

9. The points of destination here involved are intermediate to either Long Canyon Dam or French Meadows Dam. Constructive mileages between the latter points and Foresthill are set forth in Item No. 2110 of WMTB Tariff 17.

10. The applicable rates in WMTB Tariff 17 from Permanente to Long Canyon Dam and French Meadows Dam are determined by first combining the constructive mileages from Permanente to Foresthill with the constructive mileage from Foresthill to either Long Canyon Dam or French Meadows Dam, and then applying the applicable distance rate for the total constructive mileage (plus surcharge, where applicable).

11. Long Canyon Dam and French Meadows Dam are "points to which a specific rate is named" within the meaning of that phrase in the "Exception" in Item No. 2020 of WMTB Tariff 17.

12. The applicable rates for the transportation of the cement shipments involved herein are determined under the "Exception" in Item No. 2020 of WMTB Tariff 17, which provides that when the point of destination is located directly intermediate (via the route physically traversed) to a point to which a specific rate is named, the rate to such specifically named point shall apply as a maximum rate to such intermediate point.

13. The appropriate method for determining the applicable rates for the shipments in question is that contended for in the complaint and answer herein.

14. A public hearing is not necessary.

The Commission concludes as follows:

1. The undercharge letter issued by the Secretary of the Commission to defendant should be withdrawn.

2. The freight charges on the shipments involved in the complaint should be revised in accordance with the findings set forth above.

3. Defendant should be ordered to collect freight charges on the shipments in question in accordance with said findings. Amounts

billed to complainant in excess of the freight charges determined in accordance with the findings herein should be waived or refunded; amounts less than those determined in accordance with said findings should be billed to complainant and collected by defendant.

O R D E R

IT IS ORDERED that:

1. The undercharge letter from the Secretary of the Commission to defendant A. W. Hays trucking, Inc., with respect to shipments of cement transported by defendant for complainant Kaiser Cement & Gypsum Corporation from Permanente to Long Canyon Warehouse and French Meadows Recreation Area, is withdrawn.

2. Defendant shall recompute freight charges on shipments of cement transported for complainant, as described in Exhibit A to the complaint, in accordance with the findings set forth in the preceding opinion. Freight charges billed but not collected in excess of the charges determined in accordance with such findings shall be waived; freight charges billed and collected in excess of the charges determined in accordance with said findings shall be refunded; freight charges less than those determined in accordance with said findings shall be billed and collected.

