

ORIGINAL

Decision No. 76544

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 relating to)
the transportation of sand, rock,)
gravel and related items (commodi-)
ties for which rates are provided)
in Minimum Rate Tariffs Nos. 7 and)
17).

Case No. 5437
Petition for Modification
No. 170
Filed October 30, 1968

E. O. Blackman, for California Dump Truck Owners Association, petitioner.
E. J. Bertana, for Pacific Cement and Aggregates;
Richard E. Brown, G. Ralph Grago and E. O. Blackman, for Associated Independent Owner Operators, Inc.; Ernest E. Gallego, for Southern California Rock Products Association and Southern California Ready Mix Concrete Association; Richard W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association; Harry C. Phelan, Jr., and Ernest E. Gallego, for California Asphalt Pavement Association; Fred Imhoff, by Harry C. Phelan, Jr., for Industrial Asphalt, Inc.; Arnold Abrott and Robert A. Good, for Kaiser Sand & Gravel, Inc.; and Jacob Franzer, for Gordon H. Ball, Inc., interested parties.
Robert E. Walker, for the Commission staff.

O P I N I O N

In this petition, the California Dump Truck Owners Association (CDTOA or petitioner) requests modification of Minimum Rate Tariff No. 7 (MRT 7) and Minimum Rate Tariff 17 (MRT 17) by increasing all the rates and charges therein by 11 percent, and revising the credit and the payments to underlying carriers' provisions of said tariffs to provide for a 10 percent reduction when payment of freight charges is accomplished within the time periods specified in said provisions.

Public hearing was held before Examiner Mallory at San Francisco on February 20, 21 and October 16, 1969. The matter was submitted on October 22, 1969, upon receipt of a letter from the California Trucking Association (CTA) indicating that additional days of hearing scheduled at CTA's request would not be necessary.

Evidence was adduced on behalf of petitioner by three witnesses. A witness for a rock and gravel producer testified concerning the effect the proposed rule would have upon shippers of concrete aggregates under MRT 7 rates. A closing statement was made on behalf of another rock and gravel producer pointing out difficulties that shippers would encounter if the proposals herein were adopted. By letter dated October 22, 1969, the Southern California Rock Products Association and Southern California Ready Mix Concrete Association advised the Commission of their opposition to the proposals with respect to transportation of rock, sand and gravel in Southern Territory. CTA, in its letter referred to in the preceding paragraph, advised the Commission that it takes no position in this matter. The Commission staff also took no position with respect to the relief sought.

MRT 7 contains minimum hourly, mileage and zone rates for the transportation of rock, sand, gravel, earth, asphaltic concrete, and several other specified commodities when transported in bulk in dump truck equipment throughout the State, except in the area covered by MRT 17. The latter tariff contains minimum rates on rock, sand, gravel, asphaltic concrete, decomposed granite and slag when transported in bulk in dump truck equipment between points in the so-called "core area" which includes all or portions of Los Angeles, San Bernardino, Orange, Santa Barbara and Ventura Counties. Each tariff contains rules which specify the circumstances under which

credit may be extended by carriers subject to those tariffs. Said rules provide that overlying carriers may issue a single freight bill for all transportation performed in a single calendar month and must collect freight charges for such transportation within 15 days after the end of said month. An additional 5-day credit period is allowed for settlement between overlying carriers and underlying carriers.

Witnesses for CDTCA testified that practically all services performed under MRT 7 and MRT 17 are conducted on a credit basis; that, because of the monthly billing procedures, the amount of indebtedness becomes substantial, even to carriers with a single truck; that, in most cases, carriers eventually have the protection of their receivables through existence of mechanics' lien rights, bonds on public works projects, and the subhaul bond provisions of the Commission's General Order No. 102; but that collection procedures under any of the foregoing are time consuming and expensive.

The witnesses further testified that neither overlying nor underlying carriers have sufficient working capital to continue operations when freight charges are not paid within the credit period. Moreover, if carriers are required to resort to collection agencies or suits to recover freight charges, the expenses incurred range upward to 33 percent of the amounts involved, and further delays are incurred.

Exhibits were presented by the witnesses which were designed to show that nonpayment or slow payment of freight charges is prevalent throughout the dump truck industry, and that delinquent payments have extended for many months before either they are written off as uncollectible or payment thereof is made to the carrier. Furthermore, as most delinquent payments involve work

pursuant to contracts extending over periods of more than one month, carriers cannot determine, before the transportation commences, the shipper's or overlying carrier's ability to pay, nor their reliability with respect to payment of freight charges should exigencies occur. Petitioner's Secretary-Manager also presented, in evidence, an exhibit showing for 10 carriers, their 1967 and 1968 gross transportation revenues, bad debts, collection expenses and interest expenses on monies borrowed to pay subhaulers. The total expenses for bad debts, collection and interest amounted to 1.435 percent of the carriers gross transportation revenues for the 2-year period.

CDTOA proposes that, in addition to raising all rates and charges by 11 percent, the following rule be added to MRT 7 and MRT 17:

"PAYMENT DISCOUNT

"When payment is made on or before the credit period provided in the Collection of Charges or Payments to Underlying Carrier rules herein set forth, minimum rates so provided in this tariff shall be reduced by 10 percent."

Cross-examination of petitioner's witnesses developed the following: The problems encountered by dump truck carriers arise principally in connection with work performed for overlying carriers and contractors engaged in major construction projects; the majority of large construction projects involve the transportation of earth or fill materials on highway or freeway projects being constructed under the federal aid highway program or state roads and freeways; that few problems have been encountered by dump truck carriers engaged in performing transportation services under the provisions of MRT 17; and that few problems have been encountered by dump truck carriers transporting asphaltic concrete and concrete aggregates under the provisions of MRT 7.

The record also shows that it is the practice of the State of California, Department of Public Works - Division of Highways, to pay contractors for work performed by said contractors between the 21st of one month and the 20th of the following month. Payment from the State is received by the contractors about the 10th of the succeeding month. Such periods do not conform to the calendar-month credit period in MRT 7 and MRT 17. Thus, contractors do not pay overlying carriers for work performed after the 20th of the month within the credit period specified in said tariffs. CDTOA's General Manager testified that the credit problems described herein had been discussed at various membership and board meetings of that association and it was the consensus of CDTOA's membership that the rule proposed herein is preferable to amendment of the tariff credit rules so that billing periods would coincide with payments to contractors on federal aid freeway or state highway construction projects.

CDTOA's General Manager also testified that the 10 percent discount sought herein was based on the trade discount made by rock and gravel producers in the core area. According to this witness, said producers generally allow a 10-cent per ton discount for payment by the 10th of the month following the month in which the materials were sold; that the average price of rock and gravel at the producers' plant is \$1 per ton, therefore, said trade discount amounts to about 10 percent. The witness also testified that the discount for materials supplied to dump truck carriers where a trade discount for prompt payment is in effect is generally 2 percent; that a 2 percent discount has encouraged said carriers to pay for such materials within the discount period; and that a discount of 2 percent probably would be sufficient to encourage users of dump trucks to pay for services within the tariff credit periods.

A witness for a large producer of cement aggregates testified that if the petition were granted it would cause many problems to shippers of aggregate materials. He testified that carriers often fail to submit bills promptly, and that failure to submit bills on time causes delays in the payment of charges. The proposed rule would penalize shippers who are required to pay within the credit period to get the benefit of the discount even though carriers were delinquent in submitting their freight bills promptly to the shipper. Also, all freight charges would be required to be recalculated by the shipper to reduce them by 10 percent if said charges were paid within the credit period. The witness felt that the credit period could be shortened to provide for weekly payments for submission of bills by carriers within five days after the end of the week, and for payment by the shipper seven days thereafter. Said proposal would result in credit rules in MRT 7 and MRT 17 similar to those contained in most other minimum rate tariffs.

Discussion

The record clearly shows that some carriers have had difficulty in collecting freight charges for dump truck transportation services within the credit periods specified in MRT 7. Petitioner's witnesses have testified that transportation performed under MRT 17 has caused no serious problems of this nature. Similarly, it appears from the record that no general problem exists with respect to transportation of asphaltic concrete, or the transportation of rock, sand and gravel from commercial producing plants or distributing yards to concrete batching plants or concrete article factories under the provisions of MRT 7. The record is silent with respect to commodities such as cement clinker, oil well drilling mud, mill scale, cullet, debris, and ore. Therefore, no regulatory purpose would be

served by amending MRT 17 as proposed herein, nor by amending MRT 7 as proposed herein with respect to the commodities discussed above.

It appears from this record that the principal transportation services involved in delinquent payments of transportation charges involves dump truck services performed on construction projects. Said transportation generally involves the movement of fill materials from, to, or within said projects. It also appears from this record that the greatest proportion of construction projects in California currently involve the construction of highways and freeways. The State Division of Highways has established a payment period for work performed on federal aid and state highway and freeway jobs that differs from the payment period in the MRT 7 credit rule. This results in payments by the State to contractors outside the credit rule period. Contractors in turn sometimes delay payments to underlying carriers.¹

While this Commission recognizes that a serious problem exists concerning payments of freight charges within the specified credit period, it does not believe the proposals offered by petitioner provide a satisfactory method of accomplishing the indicated purpose of such proposals. Petitioner requests a general increase of 11 percent in rates for all transportation services covered by MRT 7 and MRT 17, even though it is clear that a serious problem exists only with respect to a particular sector of the transportation covered by MRT 7 and that no serious problem exists with respect to MRT 17. The record contains no support for an increase of 11 percent, except that it would permit a discount of 10 percent

¹ The record shows many overlying carriers pay subhaulers within the credit period, even though said overlying carriers are not paid promptly by contractors.

if payments are made promptly. The proposed 10 percent discount, in turn, is based on a practice limited to sale of concrete aggregates in Southern Territory.

According to CDTOA's evidence, carrier expenses directly related to late payment or nonpayment of freight charges amount to about 1.5 percent of gross revenues. This would indicate that freight revenue (and thus freight rates) may be deficient by 1.5 percent of meeting carriers' costs of performing services on construction projects. But said evidence does not support a general increase in rates of 11 percent. The record does not contain sufficient data upon which the Commission reasonably could base findings that the increases in rates proposed herein are justified, or that the resulting freight charges will be just, reasonable and nondiscriminatory. In fact, a contrary finding could be made: that the proposal herein would be discriminatory to the extent that it would be applied to shippers who are not generally involved in the types of transportation wherein freight charges are not promptly paid. A further reason appears for the denial of the relief sought herein. It is clear from the testimony and closing statement of concrete aggregate producers that additional explanatory rules are necessary in order to apply the proposed "discount" by shippers. The record herein does not contain the information necessary to provide such additional tariff rules.

Findings and Conclusions

The Commission finds as follows:

1. Carriers engaged in performing dump truck transportation services on construction projects have, at times, incurred difficulties in collecting freight charges within the credit provisions of Minimum Rate Tariff No. 7.

2. No general problem exists concerning collection of freight charges by carriers performing transportation services under provisions of Minimum Rate Tariff 17, nor by carriers engaged in transportation of asphaltic concrete where charges are paid by producers, or the transportation of rock, sand, and gravel from commercial producing plants or distributing yards to concrete batching plants or concrete article factories under the provisions of Minimum Rate Tariff No. 7.

3. Petitioner proposes that all rates and charges in Minimum Rate Tariffs Nos. 7 and 17 be increased by 11 percent and that freight charges be reduced by 10 percent if payment is made within the credit periods specified in said tariffs.

4. Petitioner's proposal has not been shown to be justified with respect to the transportation described in Finding 2.

5. Petitioner has not made a clear and convincing showing that an 11 percent increase in rates as proposed herein is justified. The evidence adduced by petitioner does not show that any specific increase in rates will be reasonable or is justified.

The Commission concludes that Petition No. 170 in Case No. 5437 should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 170 in Case No. 5437 is hereby denied.

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

Dated at San Francisco, California, this 16th day of DECEMBER, 1969.

William J. Lyons, Jr.
President
John J. [illegible]
Thomas J. [illegible]
Vernon L. Sturgeon
Commissioners