

Decision No. 76599**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of J. A. BEARD and LOUIS A. HAHN, Incorporated, for authority to deviate from Item No. 94 of Minimum Rate Tariff No. 7 and Public Utilities Commission General Order No. 102-C, Section 2e and Section 4 regarding the manner of payment for services to underlying carriers.

Application No. 51382
(Filed September 19, 1969;
Amended October 29, 1969.)

Leon McCaslin, for applicant.
G. Ralph Crago, for Associated Independent Owner-Operators, Inc., protestant.
E. O. Blackman, for the California Dump Truck Owners Association; Richard W. Smith, H. F. Kollmyer, and A. D. Poe, for California Trucking Association, interested parties.
W. J. Tait and A. J. Lyon, for the Commission staff.

O P I N I O N

J. A. Beard and Louis A. Hahn, Incorporated, is a corporation which operates as a radial highway common carrier and engages in the transportation of commodities in bulk in dump truck equipment. In this application it seeks authority to deviate from the credit rule provisions of Minimum Rate Tariff No. 7 (MRT-7) on its own behalf and on behalf of subhauliers employed by it, and to deviate from the provisions of General Order No. 102-C (G.O. 102-C) concerning the time

period in which subhaulers must be paid by an overlying carrier.^{1/} The application names two public works (freeway) projects on which applicant acts as overlying carrier and employs subhaulers to perform the transportation services.

Public hearing was held and the matter submitted before Examiner Mallory at Marysville on October 29, 1969. At the hearing the application was amended to incorporate an additional dump truck project involving levee work for the United States Corps of Engineers, and to indicate the specific items in MRT-7 from which deviation is sought. The application, as amended, was opposed by the Associated Independent Owner-Operators, Inc. and by the California Dump Truck Owners Association. The California Trucking Association took no position in the matter. A representative of the Commission's Transportation Division staff presented in evidence an exhibit setting forth the wording of an appropriate order should the Commission conclude relief should be granted herein. Another representative of the Commission's Transportation Division staff urged that the relief sought by applicant on behalf of subhaulers cannot be granted unless said subhaulers were joined in the application, or unless they seek relief on their own behalf in separate proceedings.

^{1/} General Order No. 102-C contains rules to govern bonding requirements in connection with subhauling or leasing of equipment. Under that general order overlying carriers are required to maintain and file with the Commission a bond in the sum of not less than \$10,000 to secure payment of claims of subhaulers, for work performed by subhaulers for said overlying carriers. The general order also provides as follows: "4. Payments to Subhauler, Sub-subhauler or Lessor of Equipment: The prime carrier or lessee shall pay to the subhauler, sub-subhauler or lessor of equipment the charges specified in the written agreement on or before the 20th day of the calendar month following the (1) completion of shipment as defined in Section 2(e) hereof or (2) termination of lease as defined in Section 2(f)."

Evidence in support of the relief sought was presented by applicant's president. He testified as follows: Applicant began operations on the first of the year, upon acquisition of the radial highway common carrier permit and assets of Giboney-Heilmann, Inc., a corporation. Applicant owns no tractor equipment, but own several units of trailing equipment. Said trailers are leased to subhaulers on the basis of 15 percent of the gross revenues earned by the subhauler.^{2/} Applicant has agreed to perform dump truck transportation services for two general contractors constructing freeway projects under contracts with the State Division of Highways.^{3/} Applicant also has agreed to haul cobblestone to a levee repair project for a general contractor engaged by the United States Corps of Engineers.^{4/}

Applicant's president testified and submitted an explanatory exhibit concerning the manner in which payment is made by the State Division of Highways and the Federal Corps of Engineers. The witness testified that said governmental agencies pay general contractors for work performed between the 21st of one month and the 20th of the following month. The witness explained that general contractors that employ applicant's services make payment to applicant in a like manner. Payment generally is received by said contractors by the 10th of the month following that in which the work is performed; the contractors, in turn, generally pay applicant by the 15th of that month; and applicant pays subhaulers by the 20th of that month. For example, on work

^{2/} Deductions of 5 percent (for so-called "brokerage") and for liquidated amounts (such as gasoline, tires and repairs), as authorized under Item 94 of MRT-7, are also made by applicant from revenues earned by subhaulers.

^{3/} Said projects are designated in the application as: (1) Maxwell project, Contract No. 03-056614 (contractor: Fredrickson Watson); (2) Onstott Freeway project, Contract No. 03-040114 (contractor: Baldwin and Dabach).

^{4/} Cobble Haul Project, DACW-05-70-C0009 (contractor: H. Earl Parker).

performed between the 21st of September and the 20th of October, payment to the general contractor by the contracting agency would be made about November 10th, payment to applicant by the contractor would be made by November 15th, and payment by applicant to its subhaulers would be made by November 20th.

The credit rules in MRT-7 permit carriers to extend credit for all work performed during a calendar month. Item No. 45 requires that overlying carriers collect charges from shippers on or before the 15th day following the last day of the calendar month in which the transportation was performed. Item No. 94 provides that underlying carriers may extend credit to overlying carriers for a period not to exceed 20 days following the last day of the month in which the transportation was performed. Applicant's witness testified that under the method of extending credit sought herein, applicant would bill the contractor for work performed between the 21st of one month through the 20th of the succeeding month; applicant would extend credit to the contractor for a period not to exceed the 15th day of the month following the close of such billing period; and subhaulers would be paid by applicant by the 20th day of the month following the close of such billing period.

Applicant's witness asserted that the authority is sought so that billing periods on the described freeway and levee jobs will coincide with the manner in which the general contractors on such jobs are paid by the federal and state agencies involved. Assertedly, the authority involves only a change from a calendar month billing period to a fiscal month billing period. The witness testified that, under the authority sought, applicant would not be paid by the shipper and subhaulers would not be paid by applicant for the period between the

20th of any month and the end of that calendar month within the credit period specified in Items Nos. 45 and 94 of MRT-7 and Rule 4 of General Order No. 102-C.

Applicant's president testified that applicant does not have sufficient working cash to pay subhaulers until it receives payment from its shippers. He asserted that in the current tight-money situation applicant's attempts to borrow sufficient working cash to pay subhaulers within the tariff credit period has met with failure. The witness further testified that the greatest hardship on subhaulers resulting from the method of payment sought herein would occur in the first month on each construction project. He stated that applicant had offered financial assistance for such period to the approximately 20 subhaulers employed on the Maxwell freeway project and that eight subhaulers availed themselves of this offer.^{5/}

The general manager of the California Dump Truck Owners Association (CDTOA) testified in opposition to the relief sought herein. He stated that the subject of this application was discussed at joint meetings of CDTOA's overlying carrier group and its northern region board of directors. It was unanimously resolved that this application should be opposed on the following grounds:

1. That the erosion of the tariff could occur through relaxation of rules within the tariff for individual carriers and/or shippers, which would inevitably lead to chaos insofar as any compliance or enforcement of the tariff rules and perhaps the rates were concerned.
2. The fact that an application for a deviation, such as this one, filed after the jobs had been agreed upon between carrier and shipper would inevitably result in discrimination between overlying carriers in the State, assuming they will and do and in fact comply with the rules in the tariff.

^{5/} The record shows the Maxwell freeway project was in progress at the time of hearing. Applicant's witness indicated that applicant does not seek retroactive relief with respect to this project.

3. It was the considered opinion of that group that there was no economic reason why the contractors and the carrier could not comply with the credit rule set forth in the tariff.

No additional facts were presented by CDTOA's witness to support the foregoing statement of position adopted by that association.

An associate transportation rate expert of the Commission's staff presented Exhibit 3, setting forth appropriate language to incorporate in an order granting the authority sought herein. The witness testified that he took no position with respect to merits of the sought authority. The witness testified that if relief is granted the authority should be made contingent upon the carrier filing a new subhaul bond setting forth the payment periods incorporated in the Commission order.

Closing arguments in opposition to the relief sought were made by protestant Associated Independent Owner-Operators, Inc. (AIOO) and by CDTOA. AIOO was concerned primarily with the economic hardship which may be placed on subhaulers because of the delay in payments for the period covering the 20th through the end of any month. AIOO argued that it would be more appropriate to amend the tariff than to provide relief of this kind to a single carrier; but that if general relief is granted through amendment of MRT-7, it would set a double standard of two pay days for subhaulers, one for work on construction projects and one for other types of dump truck service.

A supervising field representative of the Commission staff questioned whether relief could be granted unless the subhaulers individually applied for relief from the provisions of MRT-7 and G.O. 102-C.

Discussion

It is clear that applicant has experienced difficulty in complying with the collection of charges provisions of MRT-7 and the payments to subhaulers requirements of said tariff and G.O. 102-C. It is undisputed on this record that, for the three construction projects for which relief is sought herein, payment is not received by applicant until after the contractors on such projects have been paid by the governmental agencies involved. The record shows that applicant has insufficient working cash available to pay subhaulers until it is paid by said contractors, and that attempts to borrow additional working cash for this purpose were unsuccessful. Denial of this application would place applicant in violation of the credit provisions of MRT-7 and G.O. 102-C, without any apparent way open to applicant to effect compliance except through discontinuance of service on said projects.

CDTOA opposes this application, first, with respect to the effect the granting of this application may have on dump truck transportation, generally, in this State. The granting or denial of this application is not intended to provide a solution to what appears to be an industry-wide problem of dump truck carriers, except as this application appears to be the first of its type to be decided on the merits and, thus, may be considered a precedent decision.^{6/} Secondly, CDTOA urges that discrimination can result because this application was filed after the jobs were secured by applicant. There is no evidence to support this contention. What evidence on this point appears in the record shows that dump truck carriers who regularly bid

^{6/} Two recent applications seek similar relief. Application No. 51039 was dismissed at the request of applicant (Dec. No. 76046, dated August 19, 1969). Application No. 51149 has not been heard.

for work on freeway projects are aware of the manner in which the State Division of Highways pays contractors, and expect that the contractors will pay them on a similar basis. Thirdly, CDIOA urges that there is no economic reason why contractors and applicant could not comply with the tariff credit rules. Applicant has established sufficient reasons why it cannot comply with the credit rule provisions.

AI00 opposes the application because of the delay which would occur in payment to subhaulers. As applicant's president pointed out, the delay has the greatest effect on subhaulers for work performed in the first payment period on each construction project. Thereafter the subhaulers are being paid each month. The relief sought would shift to the subhaulers the need to provide their own working cash for a longer initial period than under the tariff credit rule. However, on balance, it appears that reasons indicated above for granting the application outweigh the fact that subhaulers would be required to supply additional working capital covering the initial payment period on each construction project.

The Commission finds as follows:

1. Applicant seeks relief from credit provisions of MRT-7 and G.O. 102-C with respect to dump truck transportation performed for contractors on two freeway construction projects and one levee reconstruction project.
2. Said contractors are paid by the agencies involved (State Division of Highways and United States Corps of Engineers) on the basis of work performed between the 21st of one month to the 20th of the succeeding month.
3. The foregoing method of payment to contractors is the usual and ordinary method employed by the governmental agencies involved.

4. Contractors employing applicant on the construction projects involved herein pay applicant for work performed during a period spanning the 21st of one month through the 20th of the succeeding month.

5. The period of payment by the agencies to the contractors, and by the contractors to applicant, differs from the calendar-month credit period contained in MRT-7. Under such payment method, applicant would receive payment for services later than permitted under prescribed credit rules.

6. The authority requested by applicant to deviate from the tariff credit rules with respect to payment to it by contractors is justified and will be reasonable.

7. Applicant proposes to pay subhauler within five days following receipt of payment by contractors. Payments by applicant to subhaulers as proposed herein will conform to the manner in which it is paid by contractors employed on federal and state construction projects.

8. Applicant has shown that it does not possess, and at the present time cannot acquire, funds to serve as working cash in order to pay subhaulers in advance of payment to it by contractors.

9. If applicant's request is granted, subhaulers would be required to provide their own working capital for a greater period of time than under the tariff credit rule during the initial payment period on each construction project, but thereafter would receive payment from applicant on a monthly basis. The proposed method of payment will cause no economic hardship to subhaulers regularly employed on said projects, except during the initial payment period on each project.

10. The relief sought herein with respect to payment to sub-haulers will be reasonable and is justified.

The Commission concludes:

1. Subhaulers employed or to be employed by applicant on the three construction projects involved herein need not individually join with applicant in seeking relief from the provisions of MRT-7 and G.O. 102-C, in order that relief from the provisions of Item No. 94 of MRT-7 and paragraph 4 of the general order may be granted.

2. The amended application should be granted, such authority to expire upon completion of the three construction projects involved herein.

3. Relief should be made contingent upon the filing of a new subhaul bond by applicant incorporating therein the time period for payment of subhaulers provided in the order which follows.

O R D E R

IT IS ORDERED that:

1. J. A. Beard and Louis A. Hahn, Incorporated, a corporation, is authorized to deviate from the provisions of Minimum Rate Tariff No. 7 and General Order No. 102-C to the extent provided in Appendix A, attached hereto and made a part hereof.

2. The authority granted in ordering paragraph 1 hereof may become effective upon the filing of a new or revised subhaul bond, as required by General Order No. 102-C, incorporating the time periods for payments to subhaulers set forth in Appendix A attached hereto.

3. The authority granted in ordering paragraph 1 shall expire, as to each construction project, upon completion of said project.

The effective date of this order is ten days after the date hereof.

Dated at San Francisco, California, this 23rd day of DECEMBER, 1969.

William Lyons Jr.
President
Augustine
J. D. ...
Thomas ...
James L. ...
Commissioners

APPENDIX A
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Carrier: J. A. BEARD and LOUIS A. HAHN, Incorporated

J. A. Beard and Louis A. Hahn, Incorporated, is hereby authorized to deviate from the provisions governing the payment of charges by it as a Prime Carrier to Subhaulers as set forth in paragraphs 4, 5a and 5e of General Order No. 102-C and from corresponding provisions set forth in Items Nos. 45 and 94 of Minimum Rate Tariff No. 7, subject to the following conditions:

- A. The authority granted herein shall be applicable only to transportation services which are contracted between J. A. Beard and Louis A. Hahn, Incorporated and Fredrickson Watson, Baldwin and Dabach, and H. Earl Parker in connection with the projects identified as follows:
 1. Maxwell project, Contract No. 03-056614.
 2. Onstott Freeway project, Contract No. 03-040114.
 3. Cobble Haul project, DACW-05-70-C0009.
- B. For transportation services performed by subhaulers between the 21st day and the last day of each calendar month, J. A. Beard and Louis A. Hahn, Incorporated shall pay to such subhaulers, not later than 45 days from the last day of such calendar month, all monies payable for transportation services rendered.
- C. For services contracted between the 21st day and the last calendar day of each month, J. A. Beard and Louis A. Hahn, Incorporated, may extend credit to Fredrickson Watson, Baldwin and Dabach, and H. Earl Parker, for a period not to exceed the 42nd day following the last day of the calendar month in which the transportation service was performed.
- D. The written agreement entered into between J. A. Beard and Louis A. Hahn, Incorporated and any subhaulers engaged by it for the transportation described in paragraph A shall include the terms of payment to such subhaulers as set forth in paragraph B.

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- E. A subhauler to whom an amount may be due as transportation charges for any shipment subhauled and not paid within the time period provided in Paragraph B hereof may file a claim therefor with the surety and notify the Commission of such filing against the bond required by paragraph 5a of General Order No. 102-C. The provisions of this paragraph concerning the filing of a claim by a subhauler shall supersede like provisions of Commission form LC-679 which sets forth all conditions of the surety bond.
- F. A copy of the decision in this matter and Appendix A thereto shall be attached to the original and all copies of the bond required by paragraph 5a of General Order No. 102-C.
- G. In all other respects General Order No. 102-C and Items Nos. 45 and 94 of Minimum Rate Tariff No. 7 shall remain in full force and effect.