

Decision No. 78937

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Western Motor Tariff Bureau, Inc., to establish a new rule pertaining to charges for service at other than regular working hours for and on behalf of its participating carriers, with certain exceptions, in its Bureau Tariff No. 111, and to depart from the terms of Section 454 of the Public Utilities Code to accomplish the desired publication.

Application No. 52511
(Filed March 22, 1971)

Richard W. Smith, Attorney at Law, and M. J. Nicolaus
for Western Motor Tariff Bureau, Inc., applicant.
J. C. Kaspar, H. F. Kollmyer and A. D. Poe, Attorney
at Law, for the California Trucking Association,
interested party.
Everest A. Benton, for the Commission staff.

O P I N I O N

The Western Motor Tariff Bureau, Inc., Agent, (WMTB) on behalf of various participating highway common carriers in applicant's Local, Joint and Proportional Freight and Express Tariff No. 111, Cal. P.U.C. No. 15, seeks authority to publish a tariff rule providing charges for service performed at other than regular working hours.

Public hearing was held before Examiner Gagnon on May 21, 1971, at San Francisco. No one appeared in opposition to the sought relief.

The proposed tariff provisions were explained by applicant's consultant, the Director for the Division of Transportation Economics of the California Trucking Association. The proposed tariff rule, as contained in Section 2 of the consultant's Exhibit 1, is set forth below:

Proposed Revised Tariff Rule
WMTB Tariff No. 111

CHARGES FOR SERVICE AT OTHER THAN REGULAR
WORKING HOURS

(Applies only when service is performed in the Central
Coastal Territory)

- (A) Rates named in this tariff apply to transportation, accessorial and other services specified herein during regular working hours of 8:15 A.M. and 5:15 P.M., except Saturdays, Sundays and Holidays. (See Item No. 250, Paragraph (H-2).)
- (B) When at the request of shipper or consignee, and carrier's operating conditions permitting, service may be performed at other than during the time specified above Monday through Friday, subject to the following additional charges:

Between the hours of 5:15 P.M. and 8:15 A.M., except Saturdays, Sundays and Holidays: \$10.45 per man, per hour or fraction thereof, minimum charge \$10.45 per man, subject to Note 1.

NOTE 1: Time shall be computed from time of departure from carrier's terminal until the time of return to the same carrier's terminal.

Upon publication of the proposed tariff rule in WMTB Tariff No. 111, the existing provisions dealing with charges for service at other than regular working hours, contained in Paragraphs (D), (E) and (F) of Items 50 and 53 of the tariff, are to be cancelled. It will be noted that the scope of application of the proposed tariff rule is limited to services performed in the so-called Central Coastal Territory.^{1/} It will be further observed that the proposed rule will apply only upon the specific request of shipper or consignee for service at other than during regular working hours and the carrier's operating conditions at the time of said request permit the service desired.

^{1/} The Central Coastal Territory includes that area consisting of the City and County of San Francisco and the Counties of Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma.

Applicant explains that the proposed tariff rule is the result of considerable effort on the part of a Special Rule Subcommittee established by WMTB participating carriers. The carriers' primary objective was to develop a tariff rule pertaining to service performed at other than regular working hours that would be capable of being interpreted properly by both shippers and carriers, and would provide an equitable charge for such service. The proposed charges reflect the provisions of existing labor contracts in effect within the Central Coastal Territory.

Work performed by carrier's employees at other than regular working hours is subject to overtime compensation under current labor agreements which is, with certain exceptions, being absorbed by the carriers. Applicant further explains that the proposed charges not only reflect the overtime cost of the carrier's driver but also the additional personnel required to remain on duty while carrier's equipment is in operation; such as dispatchers, clerks, helpers and dock workers.

It is applicant's position that carriers who maintain uniform and regular hours of service to take care of ordinary traffic tendered by shippers who operate during the usual working hours should not bear the added transportation costs entailed in performing services upon request of shippers who operate at other than regular working hours. In this connection, attention is directed to Items 140 and 100 of the Commission's Minimum Rate Tariffs 1-B (Oakland Drayage Area) and 19 (San Francisco Drayage Area), respectively, which provide for the assessment of an accessorial charge equal to the cost of overtime experienced by the carrier whenever it is requested by the shipper or consignee to perform transportation services at other than regular working hours as specified in effective labor agreements.^{2/}

2/ The Oakland and San Francisco Drayage Areas are both located within the exterior boundaries of the Central Coastal Territory involved in this proceeding.

Applicant's consultant expressed the opinion that the cost factor for overtime labor embodied in the line-haul rates, published in either WMTB Tariff No. 111 or the otherwise governing minimum rates established by the Commission, reflects an element of compensation to the carrier whenever it experiences overtime labor expenses in the conduct of its normal every-day operations. The witness further stated that such allowance for overtime expenses in the basic rates does not afford adequate compensation to the carrier when, at the request of shipper or consignee, it performs services, during other than regular working hours, that require carrier personnel and equipment to be reassigned from the carrier's normal schedule of operations. Under such latter circumstance applicant would assess the additional accessorial charges proposed herein.

Applicant explains that the matter contained in this application was the subject of a docket proposal considered by WMTB's General Commodity Standing Rate Committee at a meeting held on February 10, 1971. Consideration of the proposal was circulated to interested parties on the mailing list of WMTB's docket. There were no objections raised at the rate committee meeting where the rate proposal was considered, nor was any correspondence received by applicant from interested parties in opposition to the rate proposal.

The context of the proposed tariff rule does not appear to achieve the degree of clarity expressly sought by applicant, in the first instance, nor is the scope of application of the proposed accessorial charge contained therein sufficiently restricted to those particular instances cited by applicant's consultant. In the event the tariff rule as proposed to be published by applicant is not clear, the witness for applicant invited the Commission to make any changes in the wording of the proposed tariff provision

which it felt would improve or more clearly express the relief sought. The following revision of Paragraph (B) of the proposed rule appears to express more clearly the specific relief sought herein:

- (B) For services performed at request of shipper or consignee (and shipping document so indicates) during other than the regular working hours specified in Paragraph (A) above, and such services require the reassignment of carrier's available personnel and equipment away from its regular schedule of operations to perform such services, the following additional charges shall be assessed:

We find that the highway common carrier proposed tariff provisions, as amended herein, have been shown to be justified by transportation conditions. It is concluded that the relief sought in Application No. 52511, as amended herein, should be granted.

O R D E R

IT IS ORDERED that:

1. Western Motor Tariff Bureau, Inc., is authorized to publish in its Tariff No. 111, Cal. P.U.C. No. 15, on behalf of various highway common carriers, the tariff rule proposed in Application No. 52511, subject to the further revisions required herein, for services performed at other than regular working hours.
2. Tariff publications authorized to be made as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than ten days after the effective date hereof on not less than ten days' notice to the Commission and to the public.
3. The authority herein granted shall expire unless exercised within sixty days after the effective date of this order.

4. Common carriers, in establishing and maintaining the rates authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

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

Dated at San Francisco, California, this 27th day of JULY, 1971.

William L. ... Chairman
[Signature]
Vernon L. Sturgeon
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.