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ORIGINAL

Decision No. 81718

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 any and all)
commodities between and within all)
points and places in the State of)
California (including, but not)
limited to, transportation for)
which rates are provided in Minimum)
Rate Tariff No. 2).

Case No. 5432
Petition for Modification No. 731
(Filed January 5, 1973;
amended April 3, 1973)

And Related Matter.

Case No. 8808
Petition for Modification No. 20
(Filed January 5, 1973;
amended April 3, 1973)

Milton W. Flack, Attorney at Law, and Don B. Shields,
for Highway Carriers Association, petitioner.
J. McSweeney, for Delta Lines, and Richard L. Bredeman,
for Landis Morgan Transportation, respondents.
J. C. Kaspar, Herbert W. Hughes, and A. D. Poe, Attorney
at Law, for California Trucking Association, protestant.
Lloyd K. Hoffman, for California Department of General
Services; Bill T. Farris, for County of Los Angeles;
Keith E. Miller, for Miller Traffic Service; R. C. Fels,
for Furniture Manufacturers Association of California
and California Lamp and Shade Association; William D.
Mayer, for Cannery League of California; Ralph Grago,
by James R. Foote, for Associated Independent Owner-
Operators, Inc.; J. J. Butcher, for California Manu-
facturers Association; Calhoun E. Jacobson, for Traffic
Managers Conference of California; Helen J. Dalby, for
Delmar Fernandez, et al.; and William D. Grindrod, for
Los Angeles Area Chamber of Commerce and Norris Industries,
interested parties.
Gary E. Haas, for the Commission staff.

O P I N I O N

The Highway Carriers Association (HCA) seeks revision of the current provisions governing the extension of credit by highway carriers set forth in Items 250 and 330 of Minimum Rate Tariffs (MRT) 2 and 18, respectively. Public hearings were held before Examiner Gagnon at San Francisco on April 24 and 25, 1973. The matter was submitted on the latter date subject to the filing of closing briefs, due on or before June 4, 1973, which have been received.

Present Credit Rule

The current provisions governing the collection of freight charges set forth in Item 250 of MRT 2 are generally the same as the rule contained in Item 330 of MRT 18. Further discussion herein relative to Item 250 of MRT 2 applies equally to the like provisions of MRT 18. A summary of the former tariff item follows:

MRT 2 - Item 250: Collection of Charges

- "(a) Except as otherwise provided...charges shall be collected by the carriers prior to relinquishing physical possession of shipments...
- "(b) Upon taking precautions...to assure payment of charges within the credit period herein specified, carriers may relinquish possession of freight in advance of the payment of the charges...and may extend credit in the amount of said charges...for a period of 7 days, excluding Sundays and legal holidays other than Saturday half-holidays. When the freight bill...is presented...on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the freight. When the freight bill is not presented to the debtor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill. . . .
- "(c) Where a carrier has relinquished possession of freight and collected the amount of charges...and another freight bill for additional charges is thereafter presented...the carrier may extend credit

...for a period of 30 calendar days...from the first 12 o'clock midnight following the presentation of the subsequently presented freight bill. . . .

- "(d) Freight bills...shall be presented to the debtor within 7 calendar days from the first 12 o'clock midnight following delivery of the freight.
- "(e) Debtors may elect to have their freight bills presented by...mail, and...the time of mailing...as evidenced by the postmark, shall be...the time of presentation of the freight bills.
- "(f) The mailing by the debtor of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period...may be deemed to be the collection of the charges within the credit period...
- "(g) When alternative rail carload rates are applied under the provisions of...this tariff, carriers may relinquish possession of freight in advance of payment thereon and extend credit...for period of 5 days (120 hours) beginning at 12 o'clock midnight of the day delivery is accomplished."

From the above summary it will be noted that the maximum credit period for the payment of charges is generally 14 days, excluding Sundays and legal holidays other than Saturday half-holidays. It is this limitation upon the carriers' extension of credit for the payment of its charges that petitioner now seeks to have revised. It is proposed that the basic 7-day credit period prescribed in subparagraph (b) of Item 250 of MRT 2 be extended to 15 days, excluding Saturdays, Sundays, and holidays as defined in the tariff. A new rule providing for the issuance of a Notice of Delinquent Freight Charges by the carrier to the debtor is also proposed. A summary of this latter tariff proposal follows:

- "(h) Within 7 days following expiration of the credit period set forth in (b), the carrier shall send a notice by certified or registered mail to the debtor listing all delinquent freight bills. A copy of this notice shall be sent to the Public Utilities Commission. . . . " (Emphasis supplied.)

The proposed delinquency notice states:

"The following freight bills charged to your account remain unpaid as of the date of this notice, and are in violation of the Commission's credit rules. Notice is hereby given, with a copy to the Public Utilities Commission, that unless these are paid within 15 days of the date of this notice, further action will be taken, including legal action if necessary. . . ." (Emphasis supplied.)

The Managing Director for HCA testified in support of the proposed revised credit rule. His testimony, as summarized in petitioner's closing brief, is:

"The system of mail service today precludes collection within 7 days. . . . Business practices have changed since the credit rule went into effect. . . . The 7-day credit rule was taken from the railroad rules where because of lack of competition, the rails were in a position to enforce cash payment or limited credit. . . . Today, with the extensive use of credit cards, credit constitutes a part of business's working capital. . . . There are inconsistencies with other regulations and general orders in connection with time periods within which payments are to be made.

"...various problem areas which have precipitated the requested change. ...increased delay in postal delivery, mergers and consolidations...increased utilization of computers, central office payments... small size of freight bills causing shippers to accumulate and pay periodically, vacations...and plain inefficiency causing delays. ...reasonable business practice will not allow payment within 7 days, and therefore HCA has concluded that the proposal would be more in line with current business practices.

"As to the proposal set forth in subparagraph (h)... its purpose was to assist the carrier in enforcement of collection, provide a method by the carrier to demonstrate that he is doing everything to collect, and appraise the small shipper, not knowledgeable in PUC regulations, that payment is to be made pursuant to the Commission's credit regulations."

Petitioner contends that it does not seek any substantive changes in the existing credit rules beyond the proposed extension of the credit period from 7 to 15 days, excluding Saturdays, Sundays, and holidays. The suggested mailing of delinquent freight bill

notices to debtors within 7 days following expiration of the 15-day credit period is not advanced or intended to apply as an indirect extension of credit. Such notice is suggested merely as a procedure for the carrier to follow when endeavoring to collect past due freight charges from the debtor. Petitioner also believes that the notice will act as a deterrent against credit rule violations.

Two traffic consultants testified that the highway carriers they represent were experiencing difficulties in making their collection of charges within the current credit period of 7 days and that the proposed credit rule changes would alleviate their problems. The Traffic Managers Conference of California also supports petitioner's proposal, although its representative conceded that in the operation of his own traffic service the 7-day credit rule was generally observed. While the California Manufacturers Association supports the sought extension of credit, it withdrew its support of the proposed delinquency notice because it would require the carrier to report its credit rule violations to the Commission. The Commission's Transportation Division staff opposed the suggested delinquency notice. It took no position relative to the sought extension of credit from 7 to 15 days.

The California Trucking Association, protestant, urges that petitioner's proposed revision of the credit provisions of MRT 2 and 18 be denied. Evidence in support of protestant's position was presented by the Director for its Division of Transportation Economics. He stated that it was impossible to determine with definitiveness and certainty the precise intent or effect of petitioner's proposal. Protestant's cross-examination of petitioner's witness tends to substantiate this contention. The Director demonstrated that under the suggested revised credit rule a period of approximately 50 days from date of delivery of a shipment could expire before the carrier would be required to take positive action to collect its past-due freight charges. Petitioner, on the contrary, contends there is nothing in its proposal that would lead one to conclude that either

the credit period is extended beyond 15 days or that a credit rule violation would not exist in connection with freight charges that are not paid within such credit period if the suggested Notice of Delinquent Freight Charges is adopted. Petitioner further argues on brief that "the violation of the credit rule is not the failure to collect but the extension of credit without taking precautions sufficient to assure payment of charges". In support of this contention, petitioner cites Hobbs Trucking Co. (1970) 70 CPUC 699. Finding 5 of that decision, however, clearly provides:

- "5. The failure to collect the lawful tariff charges within the period prescribed by law is a device which permits persons to obtain transportation for property...at rates less than the minimum rates...."

The distinction drawn by petitioner between a carrier's failure to collect charges within the prescribed credit period and the precaution taken by such carrier to assure payment of charges in effect constitute a distinction without a difference. It is conceivable that a carrier might take every reasonable precaution to assure payment within the established credit period short of "cash on delivery" and still experience a debtor's subsequent failure to make payment on time. On the other hand, it is not totally unrealistic to assume a situation where the carrier fails to take any precautionary steps to assure payment within the prescribed credit period and the debtor's remittance of outstanding charges is actually received on time. Whether a violation of the minimum rate tariff provisions governing the carriers' extension of credit does in fact exist is, in the final analysis, evidenced by the actual collection of charges by the carrier within or beyond the prescribed credit period. For all practical purposes, a successful compliance and enforcement program for petitioner's suggested revised credit regulations could not be initiated until after the expiration of time allotted in the Notice of Delinquent Freight Charges for a carrier's positive action to collect the past-due charges. This would be so even though the Commission had been notified of a

violation of its credit regulations by the carrier some 22 days prior to the expiration of the time allotted for the collection of past-due charges in the proposed notice.

In further support of its opposition to petitioner's proposal, the California Trucking Association introduced a copy of a Commission's informal letter addressed to protestant on April 4, 1973 regarding the Commission's current accelerated credit rule compliance program. The letter states:

"During the period June 1, 1972 through March 30, 1973, there have been 1,276 carriers contacted regarding credit rule compliance. These contacts resulted in the processing of 174 Citation Forfeiture files, 340 carriers placed on notice for minor violations, and 14 carrier files submitted for formal actions. No credit rule violations were found in our investigation of the remaining 748 carriers.

"We are unable at this time to furnish you a breakdown of the various minimum rate tariffs involved in the above figures. This information should be available sometime in July."

The above preliminary results of the staff's credit rule compliance program certainly does not substantiate petitioner's contention that the existing credit provisions in MRT 2 are nonresponsive to current business practices which will not permit payment of freight charges within a basic credit period of 7 days. What the final results of the staff's accelerated compliance program will indicate relative to the need, if any, for revisions in the existing credit rule provisions contained in the Commission's several minimum rate tariffs is, of course, unknown at this time.

The Commission's order in Decision No. 80088 dated May 18, 1972 in Case No. 5432 et al., directed its Transportation Division staff to:

- "1. ...conduct an accelerated enforcement and tariff compliance program, in Northern, Central, and Southern California, for the purpose of attaining carrier compliance with outstanding minimum rate orders governing the collection of charges within prescribed tariff credit periods. Thereafter, the staff shall advise the Commission relative to:

- "(a) The staff's evaluation of the credit rule violations disclosed pursuant to the aforementioned program, and
 - "(b) The changes in minimum rate tariff credit rules, if any, deemed necessary and justified to insure that said tariff rules are responsive to the present carrier-shipper (debtor) transportation requirements.
- "2. In the event it is determined that the present credit regulations named in the Commission's several minimum rate tariffs need to be revised, such rate proposals shall be made the subject of a separate order setting hearing there-fore."

To date, the Transportation Division staff has not advised the Commission as to the results of its statewide studies as directed in Decision No. 80088. Pending such staff report and recommendation, adoption of petitioner's proposed credit rule changes, based on the rather restricted testimony of its Managing Director and other supporting witnesses, would be premature.

Findings and Conclusions

1. Minimum Rate Tariffs 2 and 18 provide that, except as otherwise specifically provided, charges shall be collected by the carrier prior to relinquishing physical possession of shipment. The tariffs also provide that, when carrier takes precautions deemed sufficient to assure payment within the prescribed credit period, the carrier may relinquish possession of freight in advance of payment of the charges and extend credit therefor for a period of 7 days, excluding Sundays and legal holidays other than Saturday half-holidays.

2. Petitioner recommends that the current 7-day credit period be extended to 15 days, excluding Saturdays, Sundays, and holidays as defined in the tariff. The petitioner also suggests that, after the expiration of the proposed credit period, the governing Minimum Rate Tariffs provide for the mailing of a Notice of Delinquent Freight.

Charges to the debtor of any past-due freight bills with a copy of such notice being sent to the Commission. It is suggested that the delinquency notice be issued by the carrier within 7 days following expiration of the 15-day credit period, and that the debtor be allowed an additional 15 days to remit payment of all past-due freight bills before appropriate legal action is initiated by the carrier.

3. It has been demonstrated that petitioner's credit rule changes are subject to conflicting interpretation and application and have not been shown to be justified or reasonable.

4. Adoption of the proposed extended credit period of 15 days, excluding Saturdays, Sundays, and holidays as defined in the tariff, based solely upon petitioner's oral testimony, has not been shown to be fully justified at this time.

It is concluded that Petitions for Modification Nos. 731 and 20 in Cases Nos. 5432 and 8808, respectively, should be denied.

O R D E R

IT IS ORDERED that Petitions for Modification Nos. 731 and 20 in Cases Nos. 5432 and 8808, respectively, of the Highway Carriers Association are denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th
day of AUGUST, 1973.

Vernon L. Sturgeon
President
[Signature]
[Signature]

Commissioners

Commissioner William Symons, 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.