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Decision No. 82725

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Joe Costa Trucking (A Calif. Corp.))
for authority to deviate from)
Item No. 250 of Minimum Rate)
Tariff No. 2.)

Application No. 53754
(Filed December 15, 1972)

Fred A. Nunnemaker, for Joe Costa Trucking,
applicant.

J. C. Kaspar, Herbert W. Hughes, and Arlo
D. Poe, Attorney at Law, for California
Trucking Association, protestant.

J. L. Glovka, for the Commission staff.

O P I N I O N

This application was heard October 15, 1973 before Examiner Thompson at San Francisco. It was taken under submission November 1, 1973 upon the receipt of briefs.

Joe Costa Trucking, a corporation, is a highway permit carrier engaged in the transportation of commodities for which minimum rates are prescribed in Minimum Rate Tariff 2 (MRT 2). It requests authority to deviate from the requirements of Item 250 of MRT 2 governing the length of time carriers may extend credit for the payment of their freight charges. The sought relief is opposed by California Trucking Association.

Pertinent portions of the current credit provisions set forth in Item 250 of MRT 2 are:

- "(a) Except as otherwise provided in this rule, transportation and accessorial charges shall be collected by the carriers prior to relinquishing physical possession of shipments entrusted to them for transportation.
- "(b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within

the credit period herein specified, carriers may...extend credit in the amount of such charges...for a period of 7 days, excluding Sundays and legal holidays other than Saturday half-holidays. . . . 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.

* * *

- "(d) Freight bills for all transportation and accessorial charges shall be presented to the debtors within 7 calendar days from the first 12 o'clock midnight following delivery of the freight."

Applicant desires to extend credit for a maximum period of 45 days and to charge interest at 7 percent on delinquent accounts.

The manager-dispatcher of applicant testified in support of the application. Applicant transports lumber, steel, and other commodities; however, the large portion of its traffic is the movement of lumber from Humboldt County to the San Francisco Bay area and to the Los Angeles area. Two of its customers are Simpson Building Supply Co. (Simpson) and Weyerhaeuser Lumber Co. (Weyerhaeuser). The witness described typical transportation performed for those shippers and described some problems encountered in preparing and presenting freight bills for the transportation within seven calendar days following delivery of the freight. The application, however, does not address itself to that problem.

Following preparation of freight bills for transportation of shipments tendered by Simpson, they are mailed to Simpson's office in Seattle. Remittance is received by applicant ordinarily within twelve days.

The Weyerhaeuser shipments are to distributors for Weyerhaeuser and are designated on the bills of lading as "freight collect". Following the preparation of freight bills on those shipments they are mailed to the distributors. Uniformly applicant receives his

remittance over seven days after mailing the freight bill in the form of a check drawn on a bank in the State of Massachusetts.

The witness stated that he did not know how he could receive the freight charges any sooner. He said that he could not deliver a freight bill with the Weyerhaeuser loads because the shipper wants a signed bill of lading with the freight bill and that he did not feel that he could trust the drivers with the preparation and presentation of the bills. He said that he knows that other carriers perform transportation for Simpson and for Weyerhaeuser but he has not discussed matters with them to determine whether they have similar problems.

MRT 2 sets forth the just, reasonable, and nondiscriminatory minimum rates established or approved by the Commission to be charged by any highway permit carrier for the transportation of general commodities, including lumber and forest products. The minimum rates so established take into consideration the cost of all transportation services performed when the freight charges are collected by the carriers prior to the relinquishing possession of the shipments or within a period of not more than seven days from the presentation of a bill for charges. The extension of credit beyond seven days is an additional or accessorial service. Where a carrier proposes to include that accessorial service in the application of the minimum rate, it is in essence a proposal to perform a transportation service and accessorial service at a lesser rate than the minimum established rate, and therefore comes under the provisions of Section 3666 of the Public Utilities Code.^{1/} The circumstances which would support a finding by the Commission that

^{1/} Section 3666: "If any highway carrier other than a highway common carrier desires to perform any transportation or accessorial service at a lesser rate than the minimum established rates, the Commission shall, upon finding that the proposed rate is reasonable, authorize the lesser rate."

a proposed lesser rate than the minimum rate would be reasonable were discussed at some length in Application of Majors Truck Line, Inc. (1970) 70 CPUC 447. It was said therein that such finding contemplates circumstances and conditions attendant to the transportation not present in the usual or ordinary transportation performed by public utility carriers or performed by highway carriers under the applicable minimum rates.

There do not appear to be any circumstances or conditions attendant to the transportation of lumber by applicant for Simpson and Weyerhaeuser not present in the usual or ordinary transportation of lumber performed by public utility carriers or performed by highway carriers under the applicable minimum rates. The evidence indicates that there are other for hire carriers engaged in transporting lumber for those shippers and we are not aware of authority having been granted by the Commission to any other carrier to depart from the requirements of the minimum rates in connection with such transportation. The fact relied upon by applicant in justification for the authority sought is that it has not been paid by these shippers within seven days after he has presented his freight bills. It asks us to infer from that fact that there is nothing that applicant can do about it and therefore it should be relieved from the requirement of collecting its freight charges within the prescribed period in order to avoid violation of the Commission's minimum rate order.

The fact that these shippers may have headquarters outside of the State of California is not an unusual circumstance. That they may have internal procedures wherein they desire to audit each bill at their headquarters before making payment is not unusual. Those circumstances are the same as recited in McDaniel-Costa Trucking, Inc. (1973) Decision No. 81975 in Application No. 53743 (unreported). In that case the Commission found that the requested authority to deviate from the credit regulations set forth in MRT 2

was not shown to be reasonable or otherwise justified. The relief sought herein and the facts presented in support thereof are virtually identical to those in Application of Herbert L. Bales and George E. Cain (1970) 71 CPUC 483. There the Commission held that compliance with Item 250 of MRT 2 cannot be excused to satisfy a shipper's convenience; and, in noting the problem of collecting charges from shippers that desire to process bills at a distant central office, commented, "Finally, that it seems evident the shippers involved could arrange with a local bank or other agent to make the payments within the period specified in the tariff."

We find that:

1. Applicant is a highway permit carrier that is and has been transporting lumber between points in California for Simpson and Weyerhaeuser, and in connection with such transportation has not received or collected freight charges until after seven days, excluding Sundays and legal holidays, have elapsed following the presentation of its freight bills.

2. The remittances from Simpson and Weyerhaeuser for freight charges have been received by applicant by mail posted from offices of Simpson and Weyerhaeuser outside the State of California.

3. Pursuant to the provisions of Item 250 of MRT 2 applicant is required to collect freight charges for transportation of lumber prior to relinquishing physical possession of the shipments except that it may extend credit in the amount of such charges for a period of seven days, excluding Sundays and legal holidays other than Saturday half holidays.

4. By this application applicant requests authority to be relieved of the requirements of Item 250 by extending credit for a period of not more than 45 days.

5. Other highway carriers transport lumber for Simpson and Weyerhaeuser between points in California.

6. The authority sought has not been shown to be reasonable.
We conclude that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 53754 of Joe Costa Trucking, a corporation, is denied.

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

Dated at San Francisco, California, this 16th
day of APRIL, 1974.

William J. Sturgeon, Jr. President
[Signature]
[Signature]
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.