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Decision No. 85538

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HARRISON-NICHOLS CO. LTD.,)
CALIFORNIA SAND TRANSPORT, SILICA SAND)
TRANSPORT, DONALD TALLEY, A. H. DISSINGER,)
DENNIS TRANSPORT, DANIEL C. REYNOLDS,)
CLIFFORD E. WALTERS, F. L. HART, SR.,)
F. L. HART, JR. and G. W. HART,)
ALLAN BRANCH, ROBERT R. WORLEY,)
JOHN ATKINS, for authority to depart)
from the minimum rates, rules and)
regulations of Minimum Rate Tariff No.)
7-A, pursuant to the provisions of)
Section 3666 of the Public Utilities Code,)
for OWENS-ILLINOIS, INC.)

Application No. 56093
(Filed November 25, 1975;
amended January 13, 1976)

INTERIM OPINION

Statement of Facts

Applicant Harrison-Nichols Co. Ltd. (Harrison-Nichols), a California corporation, operating under various authorities including highway dump truck carrier permit No. T-8757, by this application seeks authority in accordance with Section 3666 of the Public Utilities Code to deviate from the minimum rates named in Minimum Rate Tariff 7-A (MRT 7-A) for the transportation of processed silica sand from the Mission Viejo production plant of Owens-Illinois Glass Company (Owens-Illinois) in the city of San Juan Capistrano to the Owens-Illinois glass factory in Vernon.

Owens-Illinois replaced its Corona production plant with a new multimillion dollar production facility in Mission Viejo. After commencing production in 1972, the plant was closed because of production and environmental problems in February 1973. Assertedly these problems have been overcome and Owens-Illinois is now ready to resume production, utilizing loading facilities consisting of a 5,000-ton storage bin feeding a 150-ton bunker located over a 100-foot truck scale. Trucks will be loaded and weighed simultaneously. The silica sand produced at Mission Viejo will be transported entirely by 2-axle tractors pulling bottom dump trailers (gravity dump). Initially unloading will be done on a daytime, 8-hour day basis; however, Owens-Illinois is currently constructing a new unloading and batching facility at Vernon with a storage capacity of 1,270 tons. When completed early in 1976, unloading at Vernon will be done on a continuous 24-hour basis, year round.

In 1971, when the Mission Viejo facility began production, and pending hearing following protests, Harrison-Nichols had been granted interim authority to deviate from MRT 7 for this service by Decision No. 79243 dated October 13, 1971 in Application No. 52895. This interim authority was thrice extended,^{1/} until in May 1973 Mission Viejo ceased operations entirely because of their problems. The Harrison-Nichols application never did get to full hearing. It had been consolidated, together with other deviation applications, with Case No. 5437 and under OSH 233 set for hearing in March 1973. At the March 13, 1973 hearing, because of the then mootness of the applications, the matter was taken off calendar and aborted.^{2/} The Commission subsequently by Decision No. 82095 dated November 7, 1973 terminated the interim deviation authority.

1/ By Decision No. 79801 dated March 14, 1972; Decision No. 80405 dated August 29, 1972; and Decision No. 81087 dated February 23, 1973.

2/ See Decision No. 81472 dated June 17, 1973 in Case No. 5437, OSH 233.

Although it previously had been reported to the Commission that no silica sand had been transported under the interim authority during the 1971-1973 period,^{3/} it now is asserted that 3,200 loads were transported between March 1972 and February 1973, and Harrison-Nichols seeks to use the experience data there derived in this application.^{4/}

The current Harrison-Nichols application (filed November 25, 1975) was protested on December 18, 1975 by the California Dump Truck Owners Association who questioned (1) the propriety of applicant seeking rate relief for unnamed independent contractor subhaulers, and (2) whether the deviation rate requested would be compensatory to the subhaulers supplying the tractors. This protest led to the filing of an amended application January 13, 1976 wherein California Sand Transport, Silica Sand Transport, Donald Talley, A. H. Dissinger, Dennis Transport, Daniel C. Reynolds, Clifford E. Walters, F. L. Hart, Sr., F. L. Hart, Jr. and G. W. Hart, Allan Branch, Robert R. Worley, and John Atkins, the independent contractor subhaulers involved, joined Harrison-Nichols in the application. Consequently on January 19, 1976 the California Dump Truck Owners Association withdrew its protest to granting the deviation requested.

3/ See Decision No. 82095 dated November 7, 1973 in Application No. 57895.

4/ Applicant asserts this data was experienced in 1972-1973:

Average running time: 147 minutes.

Terminal end time: 15 minutes.

One way distance: 55 miles.

California Trucking Association also filed a protest, objecting to ex parte interim authority being granted, and suggesting that the application raises "...anew many of the questions intended to be addressed by the Commission pursuant to its now defunct Order Setting Hearing 233 in Case 5437."

The nature of the Owens-Illinois process is such that it will require operation of the Vernon plant 24-hours per day, 353 days a year, necessitating delivery of processed silica sand on the same schedule regardless of weather. Applicant will furnish trailers with a carrying capacity of 28 tons. These will be operated 2,859-hours a year on a continuous 24-hour unloading, and 1,970-hours a year on an 8-hour per day basis. Owens-Illinois will ship approximately 120,000 tons of silica sand during 1976. All applicants will provide their own tractors.

Discussion

Under MRT 7-A there are no zone rates to cover the transportation of silica sand from San Juan Capistrano to Vernon. While there are hourly and mileage rates,^{5/} applicants contend these are not reflective of the special circumstances and economics applicable to their proposed service, and assert that their proposed service is more similar to other services set forth in MRT 17-A. Although there is no actual rate for the proposed service set forth in MRT 17-A, applicants contend that a valid hypothetical MRT 17-A rate can be

5/ The MRT 7-A rates are:

Hourly rate: \$35.78 per hour.
Mileage rate: \$3.49 per ton.

computed using the cost and rate formulae for rock, sand, and gravel set forth in the California Dump Truck Owners Association report in Case No. 9819^{6/} showing certain increased fuel, oil, wage, and allied payroll costs utilized in developing zone rates for rock, sand, and gravel. The cost and rate formulae set forth in that report are based on composite cost factors weighted to reflect 70 percent truck and transfer trailer equipment costs and 30 percent bottom dump equipment costs. Based on such cost factors and using applicants' terminal time, traverse time, and distance data (determined from the 1972-1973 experience of Harrison-Nichols--see footnote No. 4), and the larger payload proposed here, a hypothetical MRT 17-A rate is asserted by applicant to be \$2.92 per ton.

Applicants next assert that bottom dump equipment costs are lower than truck and transfer trailer equipment costs, and that by using the cost and rate formulae set forth in the Case No. 9819 report,^{7/} adjusted to reflect 100 percent bottom dump cost factors, applicants' terminal end, traverse time and distance factors, and the larger payloads, applicants' computations result in a rate of \$2.58 per ton for the 8-hour day operation, and \$2.41 per ton for the 24-hour day continuous operation. Data and computations submitted by applicants indicate that the proposed rates would be compensatory for the transportation involved. Preliminary estimates of savings are from \$56,000 to \$120,000 for 1976 depending upon hours worked and satisfactory completion of facilities.

6/ Exhibit No. 1, Case No. 9819, Petition 10 dated July 1975.

7/ Id.

In that Owens-Illinois scheduled operations to begin January 16, 1976, requested Harrison-Nichols to file for deviation rates, and supports this application, applicants request that if public hearing is required interim authority be granted pending such hearing. The staff recommends that interim authority be granted pending full scale hearing.

Findings

In the circumstances the Commission finds that special factors exist which warrant the granting of interim relief as requested, and that the proposed rates of \$2.58 per ton based on an 8-hour day operation, and \$2.41 per ton based on a 24-hour day operation, are reasonable for Harrison-Nichols and the named subhauler contractors joining in this application pending a final decision to be based upon evidence to be adduced at a public hearing. The Commission concludes that interim relief shall be granted as set forth in the order which follows. Because reduced rates will benefit the public and a hearing will be held shortly, the rates should be made effective at once.

INTERIM ORDER

IT IS ORDERED that:

1. Harrison-Nichols Co. Ltd. is authorized to deviate from the minimum rates named in Minimum Rate Tariff 7-A for the transportation of processed silica sand from the Mission Viejo production plant of Owens-Illinois Glass Company in the city of San Juan Capistrano to the Owens-Illinois Glass Company factory in Vernon.

2. The deviation authorized is set forth in Appendix A of this decision. This authority does not include any deviation from any rates, rules, or regulations except as specifically set forth in Appendix A.

3. The deviation rates authorized are restricted to transportation provided by Harrison-Nichols Co. Ltd. and the following named subhauler contractors who joined in the application for the deviation: California Sand Transport, Silica Sand Transport, Donald Talley, A. H. Dissinger, Dennis Transport, Daniel C. Reynolds, Clifford E. Walters, F. L. Hart, Sr., F. L. Hart, Jr. and G. W. Hart, Allan Branch, Robert R. Worley, and John Atkins.

4. The interim authority granted herein shall expire six months after the effective date of this order unless sooner canceled, modified, or extended by order of this Commission.

5. A public hearing shall be scheduled on this application at a date to be set.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 9th
day of MARCH, 1976.

William S. Quous President
Thomas L. Stenger
U. Ross
Robert A. ... Commissioners

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

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APPENDIX A

Shipper: Owens-Illinois Glass Company, San Juan Capistrano

Commodity: Processed silica sand

From: Mission Viejo plant, San Juan Capistrano

To: Vernon glass factory of Owens-Illinois Glass Company

Rate: \$2.58 per ton for 8-hour day operation
\$2.41 per ton for 24-hour day operation

Conditions: Other than the authority described above, all other provisions of Minimum Rate Tariff 7-A shall apply.