

**ORIGINAL**

Decision 84 04 080 APR 18 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of  
WESTERN MOTOR TARIFF BUREAU, INC.,  
AGENT, for authority to increase rates  
in Western Motor Tariff Bureau Tariffs  
ES 1-B, 11, 101-A, 104-A, 106, 108,  
109-A, 113, 123, 170, 20-4 Series  
271, 273, 570, and 571, (including  
reissues thereof) containing rates of  
commodities and the performance of  
specified services related thereto.

Application 83-06-12  
(Filed June 3, 1983)

Parker, Milliken, Clark, & O'Hara, by  
Richard L. Franck, Attorney at Law,  
and M. J. Nicolaus, applicant.  
F. V. Phillips, Attorney at Law, for  
Cal Carriers Freight Rating Service;  
Alan Edelstein, Attorney at Law,  
for California Teamsters Public Affairs  
Council; Joseph E. MacDonald, for  
California Motor Express; and Arthur  
Maruna, for Willig Freight Lines;  
interested parties.  
Phillip Scott Weismehl, Attorney at  
Law, Carroll D. Smith, for the  
Commission Staff.

O P I N I O N

Western Motor Tariff Bureau, Inc., Agent (WMTB) requests an increase of five percent in various tariffs which are specifically named in the application title.

Public Hearing was held before Administrative Law Judge (ALJ) Frank J. O'Leary at San Francisco on November 21 and 22, 1983. The matter was submitted on January 6, 1984 with the filing of concurrent briefs by applicant, staff and the California Teamsters Public Affairs Council.

WMTB acts as tariff publishing agent for approximately 500 highway common carriers who are parties to the tariffs which are the subject of this proceeding. The application was initiated by one of the member common carriers, namely Don's Trucking, who sent a letter to WMTB requesting an increase in all of WMTB's intrastate tariffs of approximately five percent. The request was approved by WMTB's "California Intrastate Dry Freight Standing Rate Committee" (Rate Committee) on April 19, 1983. By letter dated April 20, 1983, all of the parties to the tariffs were notified of the rate committee's action. As a result of the April 20, 1983 letter 14 carriers notified WMTB that they did not wish to participate in the application. The 14 carriers are the following:

1. American Machinery Mart
2. Antelope Valley Trucking Co.
3. Anello Trucking Co.
4. Boulevard Freight Lines, Inc.
5. California Distribution Services, Inc.
6. Delliplaine Truck Co. Inc.
7. Diablo Transportation Co.
8. Glendale Transfer Storage Co., Inc.
9. J. D. Trucking Co.
10. Knoll Transportation Co.
11. Lucky Stores, Inc.
12. Morning Afternoon Delivery
13. Rogers Motor Express
14. Superior California Trucking Co.

This application was filed on June 3, 1983.

Since the motor carrier rate "reregulation period" commenced the applicant has filed several applications for rate increases. Decisions in those applications have resulted in permissive increases aggregating 21 percent as follows:

<u>Decision (D.) or Resolutions (R.) Nos.</u>	<u>Date</u>	<u>Percentage Increase</u>
D.92256	9-16-80	4
D.92829	3-17-81	7
D.93805	12-1-81	4
R.TS545	4-21-82	6

The increases that were granted were permissive increases, the implementation of which were not subject to an expiration date. Therefore, the four percent increase granted by D.92256, if not previously implemented by a carrier, could be implemented at any future time.

Subsequent to the filing of this application three carriers who are members of WMTB and are parties to the tariffs which are the subject of this application filed separate applications seeking increases on their own behalf in tariffs which are the subject of this application as follows:

<u>Application (A.) No.</u>	<u>Applicant</u>	<u>Requested Increase</u>
83-09-34	Viking Freight System, Inc.(Viking)	9%
83-10-34	Smith Transportation Company (Smith)	10%
83-10-38	Nielsen Freight Lines (Nielsen)	9%

D.84-01-008 rendered January 5, 1984 in A.83-09-34 authorized the increase for Viking. Ordering Paragraph 3 of D.84-01-008 provided that:

- "3. Viking Freight System, Inc. in accepting this 9% increase shall not participate in any subsequent increase granted in Application 83-06-12"

D.84-04-037 rendered April 4, 1984 in A.83-10-38 is an interim opinion authorizing rates where there is no increase authority remaining to be taken, and up to a maximum of 9% on a sliding scale to rates where unused authorized increases of between 1% and 9% remain. Ordering Paragraph 4 of D.84-04-037 provides that:

"4. This proceeding will remain open for consideration of the requested increase in those categories where applicant has not exhausted the previously authorized increases."

A.83-10-34 is still pending.

Prior to the filing of this application Di Salvo Trucking Co. (Di Salvo) filed A.83-05-15 for a 5% increase but was also included in this application. By letter dated July 3, 1983, Di Salvo requested WMTB to delete it from A.83-06-12. Resolution TS 654 rendered July 20, 1983 authorized the 5% increase to Di Salvo.<sup>1/</sup>

WMTB retained California Trucking Association (CTA) as a consultant for purposes of gathering, assembling, and presenting data and information to the Commission relative to motor carrier operations which are the subject of this application. The data and information were presented by Mr. Joel D. Anderson, CTA's Assistant Executive Vice President, Industry Economic Development Department. Mr. Anderson presented data which show increases in cost as follows:

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<sup>1/</sup> On April 4, 1984, Di Salvo filed A.84-04-21, requesting authority to increase its rates by another 9%. This application is pending.

<u>Description</u>	<u>Overall Cost Increase</u>
1. Cost of living adjustment and Health and Welfare insurance plans pursuant to the general freight agreement with Teamsters Union	1.0%
2. Increased Payroll Taxes: FICA, California Unemployment Insurance and Federal Unemployment Taxes	0.4%
3. Workers' Compensation Insurance	0.2%
4. Fuel Cost (including increased Federal and State Tax of 5 and 2 cents per gallon, respectively)	0.5%
5. Vehicle Parts, Depreciation and Tires	0.9%
6. Indirect Costs	0.5%
Total	<u>3.5%</u>

Details of the above data are contained in Exhibits 4 and 5.

The composite cost data consists of Annual Report information for WMTB member carriers who in 1980 were Class I or II carriers earning \$1 million or more from operations under the affected tariffs and where such tariff revenues constituted 25% of the carriers' total revenues (forty-three carriers). Exhibit 4 contains 1981 information and Exhibit 5 contains 1982 information. The carriers from whom the information was abstracted are identical for both exhibits except that the information in Exhibit 5 did not include three carriers (Alco Transportation, Inc.; Peerless Trucking Co.; and Pro Express.) that were included in Exhibit 4 because the Annual Reports of the three carriers had not been filed at the time the information was compiled.

Evidence on behalf of the Commission staff (staff) was presented through a senior transportation engineer, and a senior transportation rate expert. The staff engineer presented a cost study, Exhibit 6 where he concluded that the cost increases were as follows:

	<u>Description</u>	
1.	Labor; including health and welfare. increased payroll taxes and increased workers compensation insurance.	1.6%
2.	Vehicle Fixed Cost; including depreciation but not tires and parts.	0.51%
3.	Vehicle Running Cost; including fuel, oil, tires, maintenance and repairs.	(0.63%)
4.	Indirect Cost.	0.61%
	Total	2.09%

The staff rate expert presented exhibits which contain total revenue and expense data together with operating ratios for 51 carriers for 1982 (Exhibit 8). The composite operating ratio of the 51 carriers is 94.96%. The criteria for selection were the same as those used by Mr. Anderson with the following exceptions:

1. The selection year was 1982 rather than 1980.
2. General Freight Revenue was at least 75% of total rather than 25% of revenue being derived from affected tariffs.

As originally compiled the list included 54 carriers (Exhibit 7) however, three of those included were three of the carriers who filed applications on their own behalf. (Viking, Smith and Nielsen). The staff rate expert compiled Exhibit 9 which shows the percentage

increases previously authorized which were implemented by each of the carriers who are parties to tariff WMT 570-A. 503 carriers are listed in Exhibit 9 which can be summarized as follows:

Description	Number	Percent
Carriers implementing full 21%	259	51.49
Carriers implementing more than 0% but less than 21%	206	40.95
Carriers implementing 0%	38	7.55

The carriers implementing increases of less than the full 21% may have implemented, in some instances, the full 21% for some but not all weight brackets, e.g. a carrier who has implemented the full 21% on less than truckload traffic but only 10% on truckload traffic.

The ALJ requested that certain policy issues be addressed in briefs which he directed be filed by applicant and staff. Other parties could file briefs if they so desired. The issues are the following:

- "1. The authority or vehicle by which rate bureaus file applications to modify tariffs of carriers without those carriers joining in the application.
- "2. Should permissive rate increases be subject to an expiration date, and
- "3. To what extent should the Commission grant increases to carriers who have not implemented previous rate increase authorizations."

With respect to "1" above, review of the briefs of both applicant and staff are convincing that the only authority necessary is an agreement between the carrier and the rate bureau in accordance with Section 496 of the Public Utilities (PU) Code.

Concerning "2", the parties who filed briefs were of the opinion that this issue is more properly addressed in Case (C.) 10368 which is an investigation on the Commission's own motion into the rules, practices, procedures, and activities of all rate bureaus operating pursuant to PU Code Section 496 agreements. We concur that this policy issue is more properly addressed in C.10368 and hereby direct the staff to present its recommendations concerning this issue in that proceeding.

The answer to the question in "3" of whether to grant increase authority to carriers who already have unused authority to increase their rates should be determined through a showing of the revenue impact of the sought increase, when added to its previously authorized but unexercised increase authority, on the potential profitability for each individual carrier, such as was supplied by Nielsen and cited in D.84-04-037 (page 3 mimeo). Such carriers are free to submit their own applications, or to cause applicant to submit an application on their behalf, for our consideration of these issues. (We encourage applicant to file a single application on behalf of those of its members who wish to present their individual showings.) In the event that the showing made in that application indicates that the resulting operating ratio is within the zone of reasonableness, a further increase should be granted in that proceeding.



Discussion of Evidence

The major difference between the cost figures presented by applicant and the staff concerns the cost of fuel. With respect to increased cost of labor both are in agreement, an overall cost increase of 1.6%. WMTB's fixed cost overall increase is 0.9%. The staff's fixed cost overall increase is 0.51% a difference of .39%. WMTB's figure includes increases in tires and parts, whereas the staff's figure does not. The staff has included such increases in running costs. With respect to indirect costs WMTB and the staff agree within 0.11%.

The real difference between WMTB's figures and the staff's figures is the cost of fuel. WMTB contends that the additional State Taxes of 2 cents per gallon effective January 1, 1983 and Federal Tax of 5 cents per gallon effective April 1, 1983 more than offset any drops in the price of fuel. The staff on the other hand shows cost increases of 2 cents per gallon in the price of gasoline and 14 cents per gallon in the price of diesel fuel between 1982 and 1983. The staff engineer used "the current cost" from the Commission's fuel and oil reports; he did not amplify what "the current cost" was. We will adopt WMTB's overall increased cost estimate of 3.5%.

The staff recommends an increase of up to 2.5% be granted to all the carriers participating in the application only to the extent they do not have 2.5% remaining from prior increase authorizations. The staff further recommends that any increase granted not be subject to an expiration date. Since the issue of whether permissive rate increases should be subject to an expiration date will be addressed in C.10368, we will make the increases granted today subject to our resolution of that issue. After decision in C.10368 a supplemental order may be issued in this proceeding imposing an expiration date for implementation of the rate increases granted here.

Applications to increase rates of common carriers require a showing and a finding that the increase is justified. Approximately 50% of the carriers who are members of WMTB and parties to tariff WMT

570-A have not implemented increases previously authorized. We cannot find increases justified for all carriers in this proceeding. We certainly could not make a finding that a 5% increase is justified for those carriers who have not implemented any of the previously authorized 21%. An increase of up to 3.5% is justified for those carriers who have less than 3.5% of previously authorized increases available to them.

### Findings of Fact

1. WMTB operates as a rate bureau pursuant to PU Code Section 496.
2. The following 14 carriers notified WMTB that they did not wish to participate in this application.

American Machinery Mart, Antelope Valley Trucking Co., Anello Trucking Co., Boulevard Freightlines, Inc., California Distribution Services, Inc., Delliplaine Truck Co., Inc., Diablo Transportation Co., Glendale Transfer & Storage Co., Inc., J.D. Trucking Co., Knoll Transportation Co., Lucky Stores, Inc., Morning Afternoon Delivery, Rogers Motor Express, and Superior California Trucking Co.

3. Since the commencement of the motor carrier rate reregulation period applicant has been granted rate increases aggregating 21% as follows:

<u>Decision or Resolution</u>	<u>Date</u>	<u>Percentage Increase</u>
D.92256	9-16-80	4
D.92829	3-17-81	7
D.93805	12-1-81	4
R.TS545	4-21-82	6

4. Four carriers, DiSalvo, Viking, Smith, and Nielsen who are parties to the tariffs which are the subject of this application, have filed separate applications on their own behalf.

5. The rates set forth in Finding 3 have been implemented as follows:

<u>Description</u>	<u>No. of Carriers</u>	<u>Percent</u>
Implementation of full 21%	259	51.49
Implementation of more than 0% but less than 21%	206	40.95
Implementation of 0%	38	7.55

6. Increases are justified as follows:

3.5% to carriers who have implemented the total 21% in Finding 3;

2.5% to carriers who have implemented 20% of the total 21% in Finding 3;

1.5% to carriers who have implemented 19% of the total 21% in Finding 3;

0.5% to carriers who have implemented 18% of the total 21% in Finding 3;

0% to those carriers named in Findings 2 and 4 and those carriers who have implemented less than 18% of the total 21% in Finding 3.

7. The following order has no reasonably foreseeable impact on the energy efficiency of highway carriers.

#### Conclusions of Law

1. Authority for a rate increase as set forth in Finding 6 is just and reasonable and should be granted.

2. Authority for a rate increase to carriers who have previously implemented less than 18% of the total 21% of previously authorized increases set forth in Finding 3 should be denied.

3. Limited authority to depart from the provisions of PU Code Section 461.5 should be granted.

4. Limited authority to depart from the terms and rules of General Order Series 80 should be granted.

5. Because of the nature of the increase granted the following order should be made effective on the date of signature.

O R D E R

IT IS ORDERED that:

1. Western Motor Tariff Bureau, Inc. agent is authorized to publish increases in its following tariffs:

No. ES 1-B - Cal. P.U.C. 34	- Exceptions to Governing Classifications
No. 11 - Cal. P.U.C. 5	- Truckload Commodity Rates
No. 101-A - Cal. P.U.C. 37	- Commodity Rates on Iron or Steel Articles
No. 104-A - Cal. P.U.C. 23	- Class and Commodity Rates (San Diego Area)
No. 106 - Cal. P.U.C. 11	- Class and Commodity Rates (East Bay Drayage Area)
No. 108 - Cal. P.U.C. 12	- Mechanical Protective Service Tariff
No. 109-A - Cal. P.U.C. 43	- Commodity Rates
No. 113 - Cal. P.U.C. 19	- Vehicle Unit Rates
No. 123 - Cal. P.U.C. 32	- Class and Commodity Rates on Oil, Water, and Gas Well Outfits and Supplies, and Other Property
No. 271 - Cal. P.U.C. 46	- Rates on Uncrated New Furniture
No. 570-A - Cal. P.U.C. 85	- Class and Commodity Rates
No. 571 - Cal. P.U.C. 49	- Class Rates (San Francisco)

as follows:

- a. 3.5% on rates which have been increased by 21% prior to the effective date of this order as previously authorized by D. 92256, 92829, 93805 and R.TS545;
- b. 2.5% on rates which have been increased by 20% prior to the effective date of this order as previously authorized by D.92256, 92829, 93805 and R.TS545;

- c. 1.5% on rates which have been increased by 19% prior to the effective date of this order as previously authorized by D.92256, 92829, 93805 and R.TS545;
- d. 0.5% on rates which have been increased by 18% prior to the effective date by D.92256, 92829, 93805 and R.TS545;

except that no increase shall be published on behalf of the following:

American Machinery Mart; Antelope Valley Trucking Co.; Anello Trucking Co.; Boulevard Freight Lines, Inc.; California Distribution Services, Inc.; Delliplaine Truck Co., Inc.; Diablo Transportation Co.; DiSalvo Trucking Co.; Glendale Transfer Storage Co., Inc.; J. D. Trucking Co.; Knoll Transportation Co.; Lucky Stores, Inc.; Morning Afternoon Delivery; Rogers Motor Express; Superior California Trucking Co.; Viking Freight System, Inc.; Smith Transportation Company and Nielsen Freight Lines.

2. Tariff publications authorized to be made as a result of this order shall be filed on or after the effective date of this order and may be made effective not earlier than May 1, 1984 on not less than five days' notice to the Commission and to the public.

3. Western Motor Tariff Bureau, Inc., Agent, in establishing and maintaining the rates authorized by this order, is authorized to depart from the provisions of PU Code Section 461.5 to the extent necessary to adjust long- and short-haul departures now maintained

under outstanding authorizations; such outstanding authorizations are 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.

4. Western Motor Tariff Bureau, Inc., Agent, is authorized to depart from the Commission's tariff circular requirements only to the extent necessary in establishing the increases authorized by this order.

5. Since the issue of whether permissive rate increases should be subject to an expiration date will be addressed in C.10368, we will make the increases granted today subject to our resolution of that issue. After decision in C.10368 a supplemental order may be issued in this proceeding imposing an expiration date for implementation of the rate increases granted here.

6. To the extent not granted here A.83-06-12 is denied.

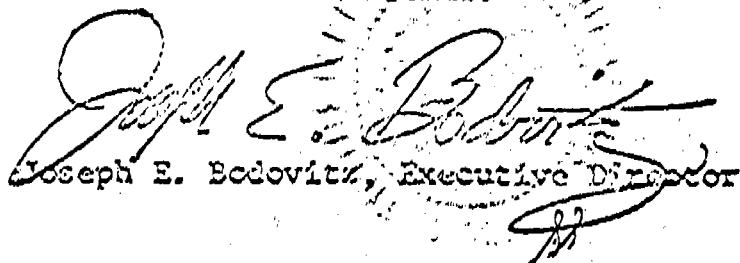
This order is effective today.

Dated APR 18 1984, at San Francisco, California.

LEONARD M. GRIMES, JR.  
President

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director