

Decision 88 09 069 SEP 28 1988

ORIGINAL
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purposes of considering)
and determining minimum rates for)
transportation of sand, rock,)
gravel and related items in bulk,)
in dump truck equipment between)
points in California as provided in)
Minimum Rate Tariff 7-A and the)
revisions or reissues thereof.)

And Related Matters.)

Case 5437, OSH 325
(Filed April 17, 1985)
Case 5437, OSH 323
(Filed October 1, 1984)
Case 5437, Pet. 329
(Filed June 6, 1985)

Case 9819, OSH 75
Case 9820, OSH 25
(Filed April 17, 1985)
Case 9819, Pet. 79
Case 5432, Pet. 1060
(Filed June 6, 1985)
Case 9819, OSH 76
Case 9820, OSH 27
(Filed May 1, 1985)

(For appearances see Decisions 86-08-030 and 87-05-036.)

OPINION

This consolidated proceeding is being conducted for the purpose of considering methods and procedures through which effective dump truck minimum rate policy can be established, administered, and tested in practice.

This decision involves six petitions filed by Yuba Trucking, Inc. (Yuba) for modification of Decisions (D.) 86-08-030 and 87-05-036. D.86-08-030 adopted various methodologies for use in the development of costs for transportation performed in dump truck equipment. The costs would be used for ratemaking purposes in connection with the three minimum rate tariffs (MRTs), naming rates for such transportation - MRTs 7-A, 17-A, and 20.

D.87-05-036 adopted certain rules to be applicable in connection with rates named in the three MRTs.

D.86-08-030 and D.87-05-036 were issued August 6, 1986 and May 13, 1987, respectively, each becoming effective 30 days after issuance. None of the parties, including Yuba, filed a petition for rehearing of either decision.

Four of the petitions involve modification of D.86-08-030. They relate to the following issues:

1. Fuel and Oil cost gathering procedures.
2. The Labor Cost Survey.
3. Repair and Maintenance and Tire cost gathering procedures.
4. Insurance cost gathering procedures.

The two petitions seeking modification of D.87-05-036 relate to:

5. Additional Charges for service performed on Saturdays, Sundays, and Holidays.
6. Exception Rates, and Area-to-Point Rates.

A protest to the petitions was filed by Dennie Reed & Sons, Inc. Replies in opposition to the petitions were filed by California Dump Truck Owners Association/California Carriers Association (CDTOA/CCA) and by the Commission's Transportation Division staff. The six petitions were consolidated and heard before Administrative Law Judge (ALJ) John Lemke in San Francisco on July 5, 1988.

Yuba alleges generally as follows in connection with its six requests:

1. Fuel and Oil (D.86-08-030)

The fuel cost gathering method adopted by the decision develops average fuel costs, rather than costs for "efficient carriers" as contemplated by OSH 325; inappropriate costs are gathered because they include costs for transportation of commodities other than those named in Item 30 of MRT 7-A;

quantities gathered are too small; fuel consumption data is arbitrary, subjective and imprecise; costs are not compared with those contained in a streamlined annual report because such a report has not yet been developed; parties have not provided the staff with data usable in developing a fuel cost per mile curve, as specified in the decision; oil cost information is inaccurate.

Yuba urges that the requirement that the streamlined annual report be used to compare fuel cost information be eliminated. Further, it suggests that the Lundberg and OPIS Fuel Reports be used to measure fuel costs rather than the staff developed 521 Report, that actual carrier invoices on bulk purchases be used, that sample sizes be increased to no less than 100,000 gallons per month, and several other modifications be adopted in lieu of the method adopted by D.86-08-030.

2. Labor Cost Survey (D.86-08-030)

Several items are listed by Yuba concerning alleged inadequacies due to faulty gathering methods employed by the staff.

3. Repair and Maintenance, and Tires (D.86-08-030)

Yuba cites several instances of what it considers inadequate or inaccurate information received from the industry because of what it alleges to be a poorly designed questionnaire utilized by the staff to gather these data. It also asserts that the data were not compared with the streamlined annual report, as ordered by the decision, because the report is not yet available. Yuba suggests that repair and maintenance, and tire costs from current rate deviations be used for these cost developments.

4. Insurance (D.86-08-030)

In general, Yuba believes that the adopted methodology develops few cost facts; that while the decision states the methodology allows the costs to be readily gathered, the data thus gathered are imprecise. Further, that the adopted methodology includes the cost of fire, theft, and collision insurance, even though such coverage is discretionary. Yuba suggests various

revisions to the decision ordered methodology, e.g., base costs on those of carriers who file annual reports and have a minimum of 75% of revenue earned as a dump trucker; calculate costs for this group based upon total insurance cost divided by total expenses less purchased transportation (subhaul revenue); define "total insurance cost" as the cost of all business insurance; exclude carriers whose costs are in the top 10% and the bottom 30% of the survey group to eliminate extreme cost data and focus on "efficient dump truck carriers;" combine the costs of the remaining carriers to arrive at an "insurance cost percent" and use that factor in ratemaking formulas to be considered later in this proceeding.

5. Additional Charges (D.87-05-036)

Yuba urges further consideration of this issue, in part, because it alleges that the rule format was agreed upon by parties who no longer agree, and in part because the rule was agreed on without due consideration of its impact on consumers.

6. Exception Rates, Area-To-Point Rates (D.87-05-036)

Yuba points out that the decision states that adoption of the staff rules shall not prohibit parties from advancing proposals in the future concerning ratemaking policy. It suggests significant changes to the adopted rule.

CDTOA/CCA in their Reply in Opposition to the petitions for modification, note that at least one of the petitions, and perhaps two, (the last two petitions enumerated above) request new rules or rates not covered by any decision in this proceeding, and suggests they ought to have been assigned new petition numbers and processed separately from OSH 325, et al.

CDTOA/CCA argue that if the methodologies adopted in D.86-08-030 were thought by Yuba or any other party to be inadequate, the inadequacies could and should have been addressed through the filing of a petition for rehearing within 30 days of the date of issuance. They maintain that the appropriate time to argue the probative value of the evidence gathered under the

methodologies adopted by the decision will be in after hearing briefs yet to be filed, in comments relating to the ALJ's proposed decision, when distributed, and in applications for rehearing on the ultimate decision of the Commission.

Staff maintains that the petitions involve substantial changes which should have been the subject of applications for rehearing; that to address the last two petitions at this time is premature and speculative. Staff asserts that the issue regarding additional charges on Saturdays, Sundays, and holidays is primarily one concerning labor costs and cannot be decided until labor cost data is gathered. Staff does not oppose the presentation of evidence on these latter two issues, but urges that a petition for modification is not the appropriate procedure for such presentation.

Discussion

We concur with CDTOA/CCA and the staff in these matters. Yuba could have pursued its proposed changes in the decisions at the time of their issuance, instead of many months thereafter when much time has been expended by numerous parties, and costs incurred, in gathering data in the manner directed by the decisions. The spokesman for Yuba participated in the methodology proceedings, and had ample opportunity to present his views and to seek rehearing on the decisions. A number of Yuba's arguments are rehashes of arguments already considered in D.86-08-030. In all cases, the "solutions" suggested by Yuba involve substantial changes which would involve extensive time and further expense by the parties, particularly the staff, before they could be accomplished. Yuba has performed no studies to support its "solutions" to the alleged inadequacies of the adopted methodologies and rules, other than those observations based on the personal experience of its spokesman.

As we stated in our recent decision on Yuba's Petition to Set Aside Submission of Phase 1-B (D.88-08-065), we would rather

place our hopes on the development of an expeditious deviation procedure than to reconsider a number of methodologies or data that have previously been developed.

The labor cost survey ordered by D.86-08-030 was the subject of a recent decision on the appeal from a ruling of the ALJ denying a motion to strike exhibits based on the survey. There is no need to further consider these issues here. The repair and maintenance, insurance, and fuel petitions were adequately addressed in the hearing process leading to D.86-08-030. However, a staff representative informed the parties during the July 5 hearing that the Fuel and Oil cost gathering methodology adopted by D.86-08-030, i.e., use of information contained in the 521 report, had been recently discontinued. Use of this information was adopted by the Commission after careful deliberation of alternative methods for determining these important cost elements.

With respect to Yuba's petition concerning "Additional Charges for Service Performed on Saturdays, Sundays and Holidays," the petitioner asserts that there is now disagreement among some of the parties on this issue, both among those of record when D.87-05-036 was issued and certain new parties. Further, Yuba maintains that the rule provisions adopted do not serve the best interests of consumers. Yuba suggests that the various items appearing in MRTs 7-A, 17-A, and 20 containing rules and rates for this service be canceled. As mentioned above, Yuba's spokesman made no study concerning the impact of his proposal upon the industry. The petition should be denied without prejudice. Yuba may wish to file a proposal seeking such a modification of the applicable tariffs. If the carrier does exercise this option in the future, it should do so by filing a petition to revise present tariff rules, and not by requesting modification of D.87-05-036. As the staff has commented, the principal reason for allowing parties to advance proposals on this issue in the future was for the purpose of establishing ratemaking policy. (D.87-05-036,

Appendix A, page 3, numbered paragraph 5.) In view of the unanimous agreement of the parties concerning this rule at the time D.87-05-036 was issued, we understand that ratemaking policy to apply to considerations of rate levels which were not then, nor are yet developed. The petition will be denied without prejudice to Yuba's refiling as a request to modify the present tariff(s).

Yuba's petition regarding exception rates and area-to-point rates, rather than a mere modification of D.87-05-036, recommends an extension of the present MRT 17-A rule into MRT 7-A. Yuba's proposal would substantially change the present rule, as well as the proposed rule. Again, Yuba performed no study to determine the impact of its proposal upon the industry. The petition will be denied without prejudice.

With respect to Yuba's concern relative to the development by the staff of a streamlined annual report, staff is in the process of developing the report, and informs us that its presentation is imminent.

In accordance with Public Utilities Code Section 311, as amended by Assembly Bill 3383, the ALJ's proposed decision was mailed to appearances on August 17, 1988. Comments were received from Yuba and from the staff.

Yuba's comments are essentially rehashes of the arguments contained in its petitions, and provide no basis for modifying the proposed decision. Yuba now agrees that its requests for modification of D.87-05-036 should be denied.

Staff comments that the ALJ has erred by recommending that the 521 Fuel Report be reinstituted; that the proposed decision considers and includes a finding of fact and conclusion of law on an issue that is beyond the scope of the petitions which are the subject of the decision. (The proposed decision contained a discussion of information furnished by a staff representative during the hearing that the 521 Report had been recently discontinued, and ordered that the report be reinstituted.)

Staff points out that Finding 4 of D.86-08-030 stated: "The present procedure used by the Commission for developing fuel and oil costs, contained in Exhibit 5, is adequate..." This is true; but it is also true that the then "present procedure" involved preparation and issuance of the 521 Report. Further, Appendix B to D.86-08-030 specified use of "the data obtained in the weekly fuel and oil questionnaires and compiled yearly in report 521 as the fuel and oil costs." It seems reasonable to infer that the "present procedure" used for developing fuel and oil costs contemplated continued use of the 521 Report.

However, we agree that continued preparation of the entire Report is unnecessary for purposes of this proceeding, since it involved the collection of data involving not only dump truck carriers, but other types of carriers, such as tank truck, grain, household goods, general freight, ect. carriers. It will be adequate, and the intent of D.86-08-030 served, if staff will gather fuel data in the manner it was collected when the 521 Report was issued.

We will take official notice of the information furnished by the staff representative concerning discontinuance of the 521 Report, and remind staff of its obligation to furnish fuel and oil data as directed in D.86-08-030. In the circumstances the pertinent text contained in the proposed decision, and the finding, conclusion, and order therein will be modified in accordance with the above discussion.

Findings of Fact

1. D.86-08-030 and D.87-05-036 adopted certain cost methodologies and certain rules, for use in connection with the establishment of rates in MRTs 7-A, 17-A, and 20. The decisions became effective 30 days after issuance.

2. None of the parties in this consolidated proceeding filed a petition for rehearing of D.86-08-030 or D.87-05-036.

3. Yuba has filed six petitions for modification, four in connection with D.86-08-030 and two in connection with D.87-05-036.

4. The suggestions made by Yuba in its petitions for modification involve substantial changes to both decisions which, in order to implement, would require considerable time and costs for all parties, particularly the staff.

5. Yuba performed no in-depth studies to support the suggestions contained in its petitions.

6. The methodologies and rules contained in D.86-08-030 and D.87-05-036 were found, and continue to be adequate for the purposes intended in this proceeding.

7. D.86-08-030 directed the use of the information contained in the 521 Report for gathering fuel and oil costs.

Conclusion of Law

The petitions for modification should be denied.

ORDER

IT IS ORDERED that the petitions for modification filed by Yuba Trucking, Inc. are denied.

This order is effective today.

Dated September 28, 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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



Victor Weisser, Executive Director

methodologies adopted by the decision will be in after hearing briefs yet to be filed, in comments relating to the ALJ's proposed decision, when distributed, and in applications for rehearing on the ultimate decision of the Commission.

Staff maintains that the petitions involve substantial changes which should have been the subject of applications for rehearing; that to address the last two petitions at this time is premature and speculative. Staff asserts that the issue regarding additional charges on Saturdays, Sundays, and holidays is primarily one concerning labor costs and cannot be decided until labor cost data is gathered. Staff does not oppose the presentation of evidence on these latter two issues, but urges that a petition for modification is not the appropriate procedure for such presentation.

Discussion

We concur with CDTOA/CCA and the staff in these matters. Yuba could have pursued its proposed changes in the decisions at the time of their issuance, instead of many months thereafter when much time has been expended by numerous parties, and costs incurred, in gathering data in the manner directed by the decisions. The spokesman for Yuba participated in the methodology proceedings, and had ample opportunity to present his views and to seek rehearing on the decisions. A number of Yuba's arguments are rehashes of arguments already considered in D.86-08-030. In all cases, the "solutions" suggested by Yuba involve substantial changes which would involve extensive time and further expense by the parties, particularly the staff, before they could be accomplished. Yuba has performed no studies to support its "solutions" to the alleged inadequacies of the adopted methodologies and rules, other than those observations based on the personal experience of its spokesman.

The labor cost survey ordered by D.86-08-030 was the subject of a recent decision on the appeal from a ruling of the ALJ

denying a motion to strike exhibits based on the survey. There is no need to further consider these issues here. The repair and maintenance, insurance, and fuel petitions were adequately addressed in the hearing process leading to D.86-08-030. However, a staff representative informed the parties during the July 5 hearing that the Fuel and Oil cost gathering methodology adopted by D.86-08-030, i.e., use of the ongoing staff developed 521 report, had been recently discontinued. Use of the 521 Report was adopted by the Commission after careful deliberation of alternative methods for determining these important cost elements. The staff will be directed to immediately recommence gathering of fuel data in the manner contemplated by D.86-08-030.

With respect to Yuba's petition concerning "Additional Charges for Service Performed on Saturdays, Sundays and Holidays," the petitioner asserts that there is now disagreement among some of the parties on this issue, both among those of record when D.87-05-036 was issued and certain new parties. Further, Yuba maintains that the rule provisions adopted do not serve the best interests of consumers. Yuba suggests that the various items appearing in MRTs 7-A, 17-A, and 20 containing rules and rates for this service be canceled. As mentioned above, Yuba's spokesman made no study concerning the impact of his proposal upon the industry. The petition should be denied without prejudice. Yuba may wish to file a proposal seeking such a modification of the applicable tariffs. If the carrier does exercise this option in the future, it should do so by filing a petition to revise present tariff rules, and not by requesting modification of D.87-05-036. As the staff has commented, the principal reason for allowing parties to advance proposals on this issue in the future was for the purpose of establishing ratemaking policy. (D.87-05-036, Appendix A, page 3, numbered paragraph 5.) In view of the unanimous agreement of the parties concerning this rule at the time D.87-05-036 was issued, we understand that ratemaking policy to

apply to considerations of rate levels which were not then, nor are yet developed. The petition will be denied without prejudice to Yuba's refiling as a request to modify the present tariff(s).

Yuba's petition regarding exception rates and area-to-point rates, rather than a mere modification of D.87-05-036, recommends an extension of the present MRT 17-A rule into MRT 7-A. Yuba's proposal would substantially change the present rule, as well as the proposed rule. Again, Yuba performed no study to determine the impact of its proposal upon the industry. The petition will be denied without prejudice.

We stated in our recent decision on Yuba's Petition To Set Aside Submission of Phase 1-B of this proceeding that it would be unwarranted to set aside submission, after the substantial time and expense invested by numerous parties, based upon the pleading of a single party, without substantial evidence of some egregious effect if the petitioner's request is not granted. Such evidence has not been demonstrated on this record. We also placed the parties on notice that appeals from rulings of the presiding officer, and petitions for modification of our decisions, will not be routinely entertained by the Commission, and that we expect to see the early completion of the remainder of the studies and hearings necessary to bring about the final establishment of the rates and rules contemplated by OSH 325. We will remind the parties here that we intend to pursue this policy throughout the remainder of the proceeding.

With respect to Yuba's concern relative to the development by the staff of a streamlined annual report, staff is in the process of developing the report, and informs us that its presentation is imminent.

Findings of Fact

1. D.86-08-030 and D.87-05-036 adopted certain cost methodologies, and certain rules, for use in connection with the

establishment of rates in MRTs 7-A, 17-A, and 20. The decisions became effective 30 days after issuance.

2. None of the parties in this consolidated proceeding filed a petition for rehearing of D.86-08-030 or D.87-05-036.

3. Yuba has filed six petitions for modification, four in connection with D.86-08-030 and two in connection with D.87-05-036.

4. The suggestions made by Yuba in its petitions for modification involve substantial changes to both decisions which, in order to implement, would require considerable time and costs for all parties, particularly the staff.

5. Yuba performed no in-depth studies to support the suggestions contained in its petitions.

6. The methodologies and rules contained in D.86-08-030 and D.87-05-036 were found, and continue to be adequate for the purposes intended in this proceeding.

7. D.86-08-030 directed the use of the 521 Report for gathering fuel and oil costs. Preparation of the report has recently been discontinued.

Conclusions of Law

1. The petitions for modification should be denied.

2. The staff should be directed to immediately recommence preparation and issuance of the 521 Report.

ORDER

IT IS ORDERED that:

1. The petitions for modification filed by Yuba Trucking, Inc. are denied.

2. The staff shall immediately recommence preparation and issuance of the 521 Report concerning the gathering of fuel and oil costs.

This order is effective today.

Dated _____, at San Francisco, California.

3. Yuba has filed six petitions for modification, four in connection with D.86-08-030 and two in connection with D.87-05-036.

4. The suggestions made by Yuba in its petitions for modification involve substantial changes to both decisions which, in order to implement, would require considerable time and costs for all parties, particularly the staff.

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Conclusion of Law

The petitions for modification should be denied.

ORDER

IT IS ORDERED that the petitions for modification filed by Yuba Trucking, Inc. are denied.

This order is effective today.

Dated SEP 28 1988, at San Francisco, California.

STANLEY W. HULETT
President

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FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHANIAN
Commissioners