

Decision 90-12-085

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purpose 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.)

ORIGINAL

Case 5437
Petition for Modification 348
(Filed September 6, 1990)

Case 9819
Petition for Modification 130
(Filed September 6, 1990)

Case 9820
Petition for Modification 41
(Filed September 6, 1990)

Case 5433
Petition for Modification 81
(Filed September 6, 1990)

Case 5330
Petition for Modification 123
(Filed September 7, 1990)

And Related Matters.

ORDER MODIFYING DECISION 90-10-066

Summary of Decision

This decision corrects certain inadvertent errors in Decision (D.) 90-10-066. The decision also extends the effective date of fuel surcharges authorized by D.90-10-066 until March 27, 1991.

Background

The invasion of Kuwait by Iraq and the resulting events in the Middle East have caused fuel costs for trucking companies to increase. In order to recover the increases in fuel costs,

permitted carriers filed the following petitions to raise rates in Minimum Rate Tariffs (MRTs):

- o On September 6, 1990, the California Carriers Association and the California Dump Truck Owners Association (CCA/CDTOA) filed Petitions 348, 130, and 41 in Cases (C.) 5437, 9819, and 9820, respectively. These cases are the Commission's ongoing proceedings which established and maintain MRTs for dump truck transportation. C.5437, established and maintains MRT 7-A for statewide hourly and distance rates for dump truck transportation. C.9819 established and maintains MRT 17-A for Southern California Zone rates for dump truck transportation. C.9820 established and maintains MRT 20 for Bay Area Zone rates for dump truck transportation. The petitions requested increases in rates in MRTs 7-A, 17-A, and 20.
- o On September 6, 1990, the California Trucking Association filed Petition 81 in C.5433 requesting an increase in rates in MRT 3-A. C.5433 established and maintains MRT 3-A for transportation of livestock.
- o On September 7, 1990, the California Moving and Storage Association filed Petition 123 in C.5330 requesting an increase in rates in MRT 4-C. C.5330 established and maintains MRT 4-C for transportation of used household goods.

In response to these petitions, the Commission issued D.90-10-066 on October 24, 1990, which authorized temporary surcharges in rates in MRTs 3-A, 4-C, 7-A, 17-A, and 20. These surcharges are scheduled to expire on December 19, 1990.

On November 19, 1990, CCA/CDTOA filed a petition to modify D.90-10-066 pointing out that Conclusion of Law 3 in the decision which states:

"Fuel surcharges should remain in effect until further order by the Commission."

is inconsistent with Ordering Paragraph 6 which reads:

"These supplements shall remain effective until December 19, 1990."

CCA/CDTOA also point out that Conclusion of Law 3 is inconsistent with Finding of Fact 14 which read: "It is reasonable to apply an expiration date."

CCA/CDTOA request that in order to make Conclusion of Law 3 consistent with Ordering Paragraph 6 and Finding of Fact 14, Conclusion of Law 3 should be modified as follows:

"Fuel surcharges should remain in effect until ~~further-order-by-the-Commission~~ December 19, 1990." (Words to be deleted are stricken and words to be added are underlined.)

CCA/CDTOA opine that the Administrative Law Judge (ALJ) in his proposed decision had recommended to the Commission that the fuel surcharges authorized in D.90-10-066 have no specific expiration date but the Commission decided to place a December 19, 1990 expiration date in the decision just prior to issuance. According to CCA/CDTOA, in doing so, the Commission failed to modify Conclusion of Law 3 to be consistent with Finding of Fact 14 and Ordering Paragraph 6. CCA/CDTOA believe that the requested modification will correct that oversight.

In addition to the request for modification of Conclusion of Law 3, CCA/CDTOA also request that D.90-10-066 be modified as follows:

- "(1) The fuel surcharge currently in effect until December 19, 1990 be extended, at the Commission's December 19, 1990 meeting, to remain in effect until further order of the Commission; and
- "(2) The Commission continue to treat the need for fuel surcharges as an emergency situation for permitted carriers and thereby limit the time for reply to this petition to approximately 10 days from date of filing so as to permit time for Commission consideration and action on December 19, 1990."

In support of their request to extend the expiration date of the surcharge, CCA/CDTOA have provided the results of a recent fuel cost survey. According to CCA/CDTOA, the results of the survey clearly show the need for continuation of the surcharge after December 19, 1990.

CCA/CDTOA also request that the Commission take notice of recent actions regarding the Middle East crisis taken by the President of the United States and the United State Congress as a proof that there is no end in sight of the crisis and that it is highly unlikely that fuel prices will show a substantial decrease in the near future.

Discussion

We recognize that Conclusion of Law 3 in D.90-10-066 is not consistent with Ordering Paragraph 6 and Finding of Fact 14. This is an inadvertent error. We had intended to have a certain termination date for the surcharges to allow a close Commission oversight of the impact of the changes in fuel prices which is evident from the following:

"The duration of the Middle East crisis is unknown, as is the duration of any resulting impact on the cost of fuel. We have witnessed wide fluctuations in the cost of oil due to this crisis, warranting close monitoring of the impact on the cost of fuel. Recognizing the temporary nature of the increases granted and the volatility of prices, we find it reasonable to require close Commission oversight. We will, therefore, allow the surcharges to remain in effect until December 19, 1990."
(D.90-10-066, p. 9.)

The modification of Conclusion of Law 3 proposed by CCA/CDTOA would make it consistent with Ordering Paragraph 6 and Finding of Fact 14. However, since we are modifying the termination date of fuel surcharges to a date other than

December 19, 1990, we can achieve appropriate results by modifying the conclusion as follows:

"Fuel surcharges should remain in effect until the date specified in the appropriate ordering paragraph."

Next, we will consider CCA/CDTOA's request to extend the effective date of the surcharge indefinitely until further Commission order. We still believe that due to all the uncertainties associated with the Middle East crisis, close monitoring of fluctuations in fuel costs is warranted. Accordingly, we will require the surcharges to terminate on a certain date. While we recognize the need for certain termination date for surcharges, we believe that the surcharges should remain in effect for at least the duration for which no decline in fuel costs is expected. We will extend the surcharges for an additional period of approximately 90 days to March 27, 1991, the second Commission meeting in March 1991.

As to CCA/CDTOA's request to limit to 10 days the period for filing comments and/or protest on their petition to modify D.90-10-066, we note that the ALJ has issued a ruling on November 21, 1990, requiring parties to file their comments and/or protest to the petition no later than December 3, 1990.

While not requested in CCA/CDTOA's petition to modify D.90-10-066, we note that D.90-10-066 does not close the proceedings in Case (C.) 5437 et al. There is no need to keep these proceedings open. We will correct this inadvertent error.

Comments and/or Protests on the Petition

The California Trucking Association (CTA), Bay Counties Dump Truck Association (BCDTA), and the Division of Ratepayer Advocates (DRA) have filed comments on the petition.

CTA and BCDTA support the modification proposed by CCA/CDTOA. While DRA does not oppose CCA/CDTOA's request for extension, it is opposed to the open-ended nature of relief

requested by petitioners. DRA recommends that the surcharges should expire on March 31, 1991, unless modified or cancelled sooner by the Commission. DRA believes that such action would place the responsibility to justify the continued need for surcharges on the trucking industry.

Only one party, Association General Contractors of California (AGCC), has filed a protest to the petition. AGCC protests the request for ex parte action by the Commission and requests that hearing be set to consider the issues raised by CCA/CDTOA. AGCC insists that it would not have protested a request for a 30- or a 60-day extension of the surcharge beyond December 19, 1990, if the extension also included a quarterly review of a continued need for surcharges.

Discussion

Since the extension being granted in this order is for a period of approximately 90 days, we believe that we have substantially addressed the concerns raised by AGCC. We also believe that limiting the extension to 90 days will allow us the quarterly review of the need for surcharges proposed by AGCC. Accordingly, we will deny AGCC's request for hearings and grant the extension for surcharges.

Findings of Fact

1. The invasion of Kuwait by Iraq and the resulting events in the Middle East have resulted in higher fuel costs for trucking companies.
2. On September 6, 1990, CCA/CDTOA filed Petitions 348, 130, and 41 in C.5437, C.9819, and C.9820, respectively. The petitions request increases in rates in MRTs 7-A, 17-A, and 20 to reflect the increase in fuel costs.
3. On September 6, 1990, CTA filed Petition 81 in C.5433 requesting an increase in rates in MRT 3-A to reflect the increase in fuel costs.

4. On September 7, 1990, CMSA filed Petition 123 in C.5330 requesting an increase in rates in MRT 4-C to reflect the increase in fuel costs.

5. On October 24, 1990, the Commission, by D.90-10-066 authorized temporary rate increases in the form of surcharges in MRTs 3-A, 4-C, 7-A, 17-A, and 20.

6. The surcharges authorized by D.90-10-066 will remain effective until December 19, 1990.

7. As a result of an inadvertent error, Conclusion of Law 3 in D.90-10-066 is inconsistent with Ordering Paragraph 6 and Finding of Fact 14.

8. On November 19, 1990, CCA/CDTOA filed a petition for modification of D.90-10-066 requesting that:

- a. Conclusion of Law 3 be made consistent with Ordering Paragraph 6 and Finding of Fact 14;
- b. The fuel surcharge currently in effect until December 19, 1990 be extended to remain in effect until further Commission order; and
- c. The Commission limit to 10 days the period for filing comments and/or protest on the petition to modify D.90-10-066.

9. Conclusion of Law 3 of D.90-10-066 can be made consistent with Ordering Paragraph 6 and Finding of Fact 14 if it is modified as follows: "Fuel surcharges should remain in effect until the date specified in the appropriate ordering paragraph."

10. Requiring surcharges to terminate on a certain date will allow the Commission to closely monitor the impact of fluctuations in fuel prices on permitted carriers.

11. Surcharges should remain in effect for at least the duration for which no decline in fuel prices is expected.

12. No decline in fuel prices is expected for the next 90 days.

13. The ALJ has issued a ruling requiring parties to file no later than December 3, 1990, their comments and/or protest on the petition to modify D.90-10-066.

14. D.90-10-066 does not close the proceedings in C.5437 et al.

15. There is no need to keep these proceedings open.

16. The complete conclusions of law and ordering paragraphs as modified by this decision are set forth in Appendix A.

Conclusions of Law

1. The fuel surcharges should be extended to March 27, 1991.

2. Conclusion of Law 3 in D.90-10-066 should be modified to read: "Fuel surcharges should remain in effect until the date specified in the appropriate ordering paragraph."

3. Ordering Paragraph 6 of D.90-10-066 should be modified to read: "These supplements shall remain in effect until March 27, 1991."

4. Proceedings in C.5437, Pet. 348 et al. should be closed.

IT IS ORDERED that:

1. Conclusion of Law 3 of Decision (D.) 90-10-066 is modified to read as follows: "Fuel surcharges should remain in effect until the date specified in the appropriate ordering paragraph."

2. Ordering Paragraph 6 of D.90-10-066 is modified to read as follows: "These supplements shall remain in effect until March 27, 1991."

C.5437, Pet. 348 et al. ALJ/AVG/rmn

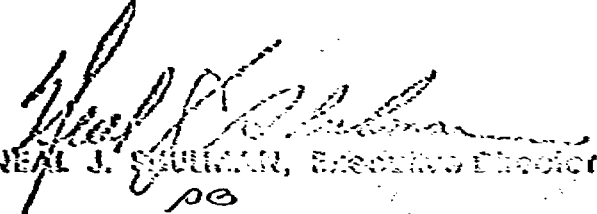
3. Ordering Paragraph 8 is added to D.90-10-066 to read as follows: "The proceedings in Case 5437, Petition for Modification 348 and related matters are closed."

This order is effective today.

Dated 12-19-90, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. CHANTIAN
PATRICIA M. ECKERT
Commissioners

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


NEAL J. SULLIVAN, Executive Director
no

APPENDIX A
Page 1

Complete Conclusions of Law and Ordering Paragraphs
As Amended by D.90-12-085

Conclusions of Law

1. A single fuel price increase should be used for all classes of carriers for the purpose of this proceeding.
2. Fuel price increase found in the CCA/CDTOA survey should be used for computing fuel surcharges.
3. Fuel surcharges should remain in effect until the date specified in the appropriate ordering paragraph.
4. No special deviation procedure should be adopted for the fuel surcharges.
5. The Commission should act expeditiously on this decision by waiving the 30-day period required under PU Code § 311.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff (MRT) 3-A (Appendix A to Decision (D.) 55587, as amended) is further amended by incorporating Supplement 30 included in Appendix B.
2. MRT 4-C (Appendix D to D.87-01-066, as amended) is further amended by incorporating the attached Supplement 3 included in Appendix B.
3. MRT 7-A (Appendix B to D.82061, as amended) is further amended by incorporating the attached Supplement 37 included in Appendix B.
4. MRT 17-A (Appendix C to D.80578, as amended) is further amended by incorporating Supplement 50 included in Appendix B.

APPENDIX A
Page 2

5. MRT 20 (Appendix A to D.81799, as amended) is further amended by incorporating Supplement 34 included in Appendix B.

6. These supplements shall remain effective until March 27, 1991.

7. The Executive Director shall serve a copy of this decision on each subscriber to MRTs 3-A, 4-C, 7-A, 17-A, and 20.

8. The proceedings in C.5437, Petition for Modification 348 and related matters are closed.

(END OF APPENDIX A)

C.5437, Pet. 348 et al. ALJ/AVG/rmn

APPENDIX B

EMERGENCY FUEL SURCHARGE SUPPLEMENT

☞(E) SUPPLEMENT 30

(Cancels Supplement 29)

(Supplements 27 and 30 Contain All Changes)

TO

MINIMUM RATE TARIFF 3-A

NAMING

MINIMUM RATES AND RULES

FOR THE

TRANSPORTATION OF LIVESTOCK OVER THE

PUBLIC HIGHWAYS WITHIN THE

STATE OF CALIFORNIA

BY

HIGHWAY COMMON CARRIERS

HIGHWAY CONTRACT CARRIERS

AND

LIVESTOCK CARRIERS

☞(E) APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules in this tariff, and increase the amount so computed by seven (7.0) percent.

In computing the amount of the charges, fractions of less than one-half (1/2) cent shall be dropped and fractions of one-half (1/2) cent or greater shall be increased to the next higher whole cent.

EXCEPTION: The surcharge herein shall not apply to:

1. Item 110 - Accessorial Charges;
2. Items 170 and 180 - Split Pickup and Split Delivery;
3. Item 200 - Stopping in Transit; and
4. Item 210 (Railhead-to-railhead Charges Only).

☞(E) Expires March 27, 1991

☞ Change, Decision 90-12-085

EFFECTIVE DECEMBER 19, 1990

Issued by the
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Governor Edmund G. "Pat" Brown Building
505 Van Ness Avenue
San Francisco, California 94102

EMERGENCY FUEL SURCHARGE SUPPLEMENT

(E) SUPPLEMENT 3

(Cancels Supplement 2)

(Supplement 3 Contains All Changes)

TO

MINIMUM RATE TARIFF 4-C

NAMING

MINIMUM RATES AND RULES

FOR THE

TRANSPORTATION OF USED PROPERTY, NAMELY:

HOUSEHOLD GOODS, PERSONAL EFFECTS AND

OFFICE, STORE AND INSTITUTIONAL FURNITURE,

FIXTURES AND EQUIPMENT OVER THE

PUBLIC HIGHWAYS WITHIN THE

STATE OF CALIFORNIA

BY

HOUSEHOLD GOODS CARRIERS

(E) APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules in this tariff, and increase the resulting total as follows:

1. By one and five-tenths (1.5) percent on charges computed at rates set forth in Item 320; and
2. By three (3) percent on charges computed at rates set forth in Items 300, 310, 330, 380 and 390.

The surcharge authorized herein shall be computed to the nearest five (5) cents. In computing the surcharge, two and one-half (2-1/2) cents shall be considered as being nearer to the next five cents.

(E) Expires March 27, 1991

Change, Decision 90-12-085

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EMERGENCY FUEL SURCHARGE SUPPLEMENT

~~(E)~~SUPPLEMENT 37

(Cancels Supplement 34)
(Supplements 9, 33, 35⁽¹⁾, 36⁽²⁾ and 37 Contain All Changes)

TO
MINIMUM RATE TARIFF 7-A
NAMING
MINIMUM RATES AND RULES
FOR THE
TRANSPORTATION OF PROPERTY IN DUMP TRUCK
EQUIPMENT BETWEEN POINTS IN CALIFORNIA
BY
HIGHWAY CONTRACT CARRIERS
AGRICULTURAL CARRIERS
AND
DUMP TRUCK CARRIERS

~~(E)~~APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules of this tariff, and increase the amount so computed as follows:
(SEE EXCEPTION)

1. By seven (7) percent on charges computed at rates provided in Items 290, 300, 310, 320, 325, 330, 340, 490 and 510.
2. By six (6) percent on charges computed at rates provided in Items 390 and 400.

For purposes of disposing of fractions under provisions hereof, fractions of less than one-half (1/2) cent shall be dropped and fractions of one-half (1/2) cent or greater shall be increased to the next higher whole cent.

(1) Supplement 35 becomes effective January 1, 1991
(2) Supplement 36 becomes effective January 5, 1991

~~(E)~~ Expires March 27, 1991

~~(E)~~ Change, Decision 90-12-085

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EMERGENCY FUEL SURCHARGE SUPPLEMENT

⌘(E) SUPPLEMENT 50

(Cancels Supplement 47)

(Supplements 6, 13, 27, 29, 46, 48, 49⁽¹⁾ and 50 Contain All Changes)

TO

MINIMUM RATE TARIFF 17-A

NAMING

MINIMUM RATES AND RULES

FOR THE

TRANSPORTATION OF PROPERTY

IN DUMP TRUCK EQUIPMENT FROM

DEFINED PRODUCTION AREAS TO DESIGNATED DELIVERY ZONES

AND POINTS IN SOUTHERN CALIFORNIA

BY

HIGHWAY CONTRACT CARRIERS

AND

DUMP TRUCK CARRIERS

⌘(E) APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules of this tariff, and increase the amount so computed by six (6) percent. -
(SEE EXCEPTION)

For purposes of disposing of fractions under provisions hereof, fractions of less than one-half (1/2) cent shall be dropped and fractions of one-half (1/2) cent or greater shall be increased to the next higher whole cent.

EXCEPTION: The surcharge herein shall not apply to:

1. Paragraphs (b) and (c) in Item 120 - Application of Tariff--Rates;
2. Item 170 - Accessorial Charges (At Origin);
3. Item 180 - Accessorial Charges (At Destination);
4. Items 200 and 220 (Railhead-to-railhead charges only);
5. Item 280 - Collect on Delivery (C.O.D.) Shipment; and
6. Item 570 - Tarp Labor Charge.

(1) Supplement 49 becomes effective January 5, 1991

⌘(E) Expires March 27, 1991

⌘ Change, Decision 90-12-085

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EMERGENCY FUEL SURCHARGE SUPPLEMENT

§(E) SUPPLEMENT 34

(Cancels Supplement 31)

(Supplements 2, 7, 30, 32, 33⁽¹⁾ and 34 Contain All Changes)

TO

MINIMUM RATE TARIFF 20

NAMING

MINIMUM ZONE RATES AND RULES

FOR THE

TRANSPORTATION OF ROCK, SAND AND GRAVEL

IN FOUR- AND FIVE-AXLE DUMP TRUCK EQUIPMENT FROM

DEFINED PRODUCTION AREAS TO DESIGNATED DELIVERY ZONES

AND DISTANCE RATES

IN NORTHERN CALIFORNIA

BY

DUMP TRUCK CARRIERS

§(E) APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules of this tariff, and increase the amount so computed by six (6) percent.
(SEE EXCEPTION)

For purposes of disposing of fractions under provisions hereof, fractions of less than one-half (1/2) cent shall be dropped and fractions of one-half (1/2) cent or greater shall be increased to the next higher whole cent.

EXCEPTION: The surcharge herein shall not apply to:

1. Items 180 and 190 - Accessorial Charges;
2. Item 195 - Tarp Labor Charge;
3. Items 200 and 220 (Railhead-to-railhead charges only); and
4. Item 280 - Collect on Delivery (C.O.D.) Shipment.

(1) Supplement 33 becomes effective January 5, 1991

§(E) Expires March 27, 1991

Change, Decision 90-12-085

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