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Decision 91-04-067 April 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

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.

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

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

And Related Matters.

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)

ORDER EXTENDING FUEL SURCHARGE

Summary of Decision

The Commission concludes that the Middle East crisis has ended and that the temporary fuel surcharges in rates in Minimum Rate Tariffs (MRTs) 3-A, 4-C, 7-A, 17-A, and 20 should be terminated.

Background

Iraq's invasion of Kuwait and the resulting events in the Middle East 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 Truckowners 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 (CTA) 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 Decision (D.) 90-10-066 on December 24, 1990, authorizing temporary surcharges in rates in MRTs 3-A, 4-C, 7-A, 17-A, and 20 which were scheduled to expire on December 19, 1990. The Commission subsequently issued D.90-12-085, D.90-12-124, and D.91-02-021 which, among other things, extended the expiration dates for the surcharges.

Most recently, the Commission issued D.91-02-037, establishing the current May 2, 1991 expiration date for the surcharges. In addition, D.91-02-037 directed the administrative

law judge (ALJ) to conduct a hearing on March 13, 1991 to consider the following issues:

1. Should the Commission continue to issue decisions every 45 to 60 days to account for changes in fuel prices?
2. Should the Commission adopt an indexing procedure which will:
 - a. Adjust rates in MRTs whenever fuel prices change by 10 cents/gallon?
 - b. Adjust rates in MRTs every 3 months, based upon the current fuel price?
 - c. Adjust rates in MRTs every three months based on average fuel price for previous 12-month period?
3. Which fuel price survey should be relied upon to adjust rates in MRTs?
4. How should the Commission determine the end of the fuel crisis due to events in the Middle East by using:
 - a. Some event or level of fuel price per gallon?
 - b. Some other criteria?

Accordingly, hearings were held before ALJ Garde to consider the above issues. The matter was submitted upon receipt of the transcript on March 22, 1991.

Positions of Parties

CDTOA/CCA, CMSA, CTA, the Division of Ratepayer Advocates (DRA), Associated General Contractors of California (AGCC) and Bay Counties Dump Truck Association (BCDTA) provided testimony addressing the issues outlined in D.91-02-037.

CDTOA/CCA, CMSA, and BCDTA recommend that fuel cost surcharges be adjusted on a quarterly basis with a rate adjustment effective on January 1, April 1, July 1, and October 1 of each year. CDTOA/CCA and CMSA also recommend that rate adjustments

should be made in increments of 1/2 of 1%, rounding to the nearest 1/2 of 1%.

CTA recommends that fuel surcharges be adjusted when the change in price of fuel results in 1% change in the surcharge.

As to the determination of the end of the Middle East fuel crisis, CDTOA/CCA, CMSA, and CTA believe that the Commission should terminate the fuel surcharge program when the price of fuel excluding the new fuel taxes reaches August 1, 1990 level of fuel price of \$1.04 per gallon.

DRA and AGCC contend that the Middle East crisis is over and that no emergency exists to justify continuance of the surcharge program. The program should be terminated.

All parties agreed that if the Commission finds it necessary to continue the surcharge program past May 2, 1991, Transportation Division's fuel survey of April 22, 1991 be used for computing the level of surcharges.

Discussion

The Gulf war has ended. The president has declared a cease-fire. In addition, fuel prices continue to go down. There is no need to continue the surcharge indefinitely. Accordingly, we will terminate the temporary fuel surcharges in rates in MRTs 3-A, 4-C, 7-A, 17-A, and 20 on May 2, 1991.

Waiver of 30-Day Waiting Period Under PU Code § 311

PU Code § 311(d) requires that:

"The administrative law judge shall prepare and file an opinion setting forth recommendations, findings, and conclusions. The opinion of the administrative law judge is the proposed decision and a part of the public record in the proceeding. The proposed decision of the administrative law judge shall be filed with the commission and served upon all parties to the action or proceeding without undue delay, not later than 90 days after the matter has been submitted for decision. The commission shall issue its decision not sooner than

30 days following filing and service of the proposed decision by the administrative law judge, except that the 30-day period may be reduced or waived by the commission in an unforeseen emergency situation or upon the stipulation of all parties to the proceeding. The commission may, in issuing its decision, adopt, modify, or set aside the proposed decision or any part thereof. Every finding, opinion, and order made in the proposed decision and approved or confirmed by the commission shall, upon that approval or confirmation, be the findings, opinion, and order of the commission." (Emphasis added.)

Parties that were present at the hearings stipulated to waive the 30-day waiting period required by PU Code § 311. Parties also stipulated that the period of filing comments on the ALJ's proposed decision be reduced from 20 days to 10 days with no reply comment period. Parties that were not present at the March 13, 1991 hearing have filed similar waivers with the Docket office. Accordingly, we will limit the comment period on the ALJ's proposed decision to 10 days and will not allow parties to file reply comments. We will also waive the 30-day waiting period required by PU Code § 311 and issue our decision expeditiously.

Comments on ALJ's Proposed Decision:

The ALJ's proposed decision was filed and mailed to the parties on April 8, 1991. AGCC filed comments on the proposed decision. After reviewing the comments, we have concluded that the temporary fuel surcharges should not be extended beyond the current expiration date of May 2, 1991. We have modified the decision accordingly.

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 surcharge rate increases, to be effective until December 19, 1990, in MRTs 3-A, 4-C, 7-A, 17-A and 20.

6. The Commission subsequently issued D.90-12-058, D.90-12-124 and D.91-02-021 which, among other things, extended their expiration dates for the surcharges.

7. Most recently, the Commission issued D.91-02-037 establishing the current May 2, 1991 expiration for the surcharges.

8. D.91-02-037 directed the ALJ to conduct hearings to consider certain issues related to the fuel crisis.

9. Hearings were held on March 13, 1991 before ALJ Gardener to consider the issues outlined in D.91-02-037.

10. CDTOA/CCA, CMSA, CTA, AGCC, DRA, and BCDTA provided testimony in the proceeding.

11. CDTOA/CCA, CMSA, and BCDTA recommend that fuel cost related surcharges be adjusted on a quarterly basis with a rate adjustment effective on January 1, April 1, July 1, and October 1 of each year.

12. CDTOA/CCA and CMSA recommend that rate adjustment should be made in increments of 1/2 of 1%, rounding to the nearest 1/2 of 1%.

13. CTA recommends that fuel surcharges be adjusted when the change in price of fuel results in 1% change in the surcharge.

14. CDTOA/CMSA, and CTA recommend that the fuel surcharge program be terminated when the price of fuel reaches the August 1, 1990 level of \$1.04/gallon.

15. DRA and AGCC contend that the Middle East crisis is over and the fuel surcharge program should be terminated.

16. All parties agree that if the Commission finds it necessary to continue the surcharge program, Transportation Division's fuel survey of April 22, 1991 be used to compute the level of surcharges.

17. Middle East crisis has ended.

18. There is no need to continue the surcharge program indefinitely.

19. Parties have stipulated that the 30-day waiting period required by PU Code § 311 be waived and that the comment period on ALJ's proposed decision be reduced from 20 days to 10 days with no reply comment period.

Conclusions of Law

1. The fuel surcharge program for rates in MRTs should be terminated on May 2, 1991.

2. The Commission should act expeditiously on this decision by waiving the 30-day waiting period required under PU Code § 311.

3. Since the currently authorized fuel surcharges will expire on May 2, 1991, this order should be made effective today.

ORDER

IT IS ORDERED that:

1. The expiration date of the temporary fuel surcharges in rates in Minimum Rate Tariffs 3-A, 4-C, 7-A, 17-A, and 20, authorized in D.91-02-037 shall not be further extended and will terminate on May 2, 1991.

2. The 30-day waiting period required under PU Code § 311 is waived.

3. Since all the issues raised in these proceedings have now been resolved, the proceedings are closed.

This order is effective today.

Dated April 24, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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

Neil J. Schulman
NEIL J. SCHULMAN, Executive Director