

ORIGINALDecision 82 09 162 SEP 22 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Charles D. Tobey, doing)
 business as C & M Trucking, for)
 authority to deviate from the minimum) Application 82-08-42
 rates and rules established for the) (Filed August 20, 1982)
 transportation of Asphaltic Concrete in)
 MRT 17-A and MRT 7-A.)

INTERIM OPINION AND ORDER

By this application Charles D. Tobey, an individual doing business as C & M Trucking, requests authority to charge less than the applicable rates in Minimum Rate Tariffs 7-A and 17-A (MRTs 7-A and 17-A) for the transportation of asphaltic concrete for the account of Huntmix, Inc. from Huntmix's ultra-modern, new plant in Irwindale to a construction project at Berths 121-126 in Los Angeles Harbor. Continental-Heller Company is the general contractor for the Los Angeles Harbor Department on the project. Best Western Paving Co. is the grading and paving subcontractor to whom the asphaltic concrete will be shipped. Approximately 204,000 tons are to be transported over an estimated 12-month period.

Section 11 of MRT 17-A contains tonnage zone rates for the transportation of asphaltic concrete in the area in question. However, when the transportation is performed in units with trailing equipment, the hourly rates in Item 390 of MRT 7-A are applicable. The rates proposed by Tobey are stated on a tonnage basis and would apply to transportation performed in five-axle bottom dump units and five-axle transfer dump units.

In support of the sought authority, the application asserts that special circumstances exist, including favorable loading, unloading, and route conditions, and better than average use

of equipment. It states that, based on Tobey's past experience on similar projects, the proposed rates are reasonable.

While no actual performance times and cost data for the transportation in issue were submitted, a cost statement based on cost exhibits presented in Case 5437, Petition 315, the most recent general MRT 7-A rate proceeding, modified to reflect Tobey's alleged efficiencies and economies was attached to the application. According to this cost analysis, transportation under the proposed reduced rates may reasonably be expected to be profitable. Also, the application alleges that the costs for providing the service are less than the datum plane costs on which the rates in MRT 17-A are based.

It is expected that subhaulers will be used on the proposed haul. A support statement signed by a number of subhaulers is attached to the application. However, no performance or operating cost data have been furnished for these subhaulers.

The application was listed on the Commission's Daily Calendar of August 23, 1982. No objection to the granting of the application has been received.

The application states that the harbor project is now underway and that the shipper will require the asphaltic concrete in October 1982. It requests that if a hearing is to be held on the matter, interim authority be granted immediately.

It has been the policy of the Commission generally to deny carriers granted minimum rate deviations the authority to base payments to subhaulers on the deviated rates unless adequate subhauler costs justifying the reasonableness of such payments have been furnished. In this application, because commencement of the public works harbor

project is imminent, the Commission staff recommends that the requested deviation be granted for an interim period of 120 days, including the request to pay subhaulers on the basis of the deviated rates, subject to the following conditions:

1. Unless appropriate cost showings for Tobey and for subhaulers are furnished, no continuation of the authority will be authorized.
2. Tobey agrees to pay subhaulers the full amounts provided in MRTs 7-A and 17-A for all transportation subject to this order in the event that results of operations during an appropriate test period should show the relief not justified.
3. The acceptance by Tobey of the interim authority is evidence of his agreement to these conditions.

We agree with the staff recommendations. An appropriate test period would be the first 750 loads transported at the interim deviated rates. For each load transported, Tobey shall furnish the Commission with the information listed in attached Appendix B, which includes vehicle and driver identification, time and mileage, loading and unloading data, and relief and breakdown time.

The application was listed on the Commission's Daily Calendar of August 23, 1982. By letter dated September 10, 1982, the California Dump Truck Owners Association (CDTOA) stated that: (1) because of deficiencies in the financial data for Tobey and subhaulers, it is opposed to the application, and (2) in the event the Commission should consider interim authority appropriate, the interim decision should require an expedited public hearing for the presentation of all necessary financial information for Tobey and subhaulers together with actual performance data relating to

operations under the deviation. The following interim order does provide for a public hearing for the presentation of the financial and performance data referred to by CDTOA. No formal objection to the granting of the application has been received.

Because of the urgent need for the interim authority, this order will be made effective today.

Findings of Fact

1. The proposed transportation involves unique circumstances.
2. Although Tobey has not furnished actual performance times and cost data for the proposed transportation, some cost information has been provided, and based on this information, Tobey's costs for this transportation are less than those used to set the rates in MRTs 7-A and 17-A.
3. Subhaulers are to be used in providing the proposed transportation.
4. No performance times or cost data for subhaulers to be used have been included with the application.
5. Subject to further review upon consideration of evidence which may be received at a public hearing and the conditions set forth in the following order, the proposed rates are reasonable.

Conclusions of Law

1. Tobey should be granted interim authority for a period of 120 days as provided in the following order.
2. A hearing should be scheduled in this proceeding at which Tobey should present: (1) performance and cost data experienced by his company and by subhaulers he engages in performing the transportation in issue, and (2) other material evidence in support of the sought authority.
3. Because there is an immediate need for the interim authority, the following order should be made effective today.

A.82-08-42 ALJ/ec/nb *

Original

IT IS ORDERED that:

1. Charles D. Tobey may depart from the rates in MRTs 7-A and 17-A by charging not less than the rates in Appendix A subject to the following conditions:
 - a. Unless appropriate cost showings for Tobey and for subhaulers are furnished, no continuation of the authority will be authorized.
 - b. Tobey agrees to pay subhaulers the full amounts provided in MRTs 7-A and 17-A for all transportation subject to this order in the event that results of operations for the first 750 loads transported at the authorized deviated rates should show the relief not justified.
 - c. Tobey shall furnish the Commission with the detailed performance data listed in attached Appendix B for the first 750 loads transported at the authorized interim rates.
 - d. The acceptance by Tobey of the interim authority is evidence of his agreement to these conditions.
2. This authority shall expire 120 days after the effective date, unless sooner canceled by the Commission after hearing.

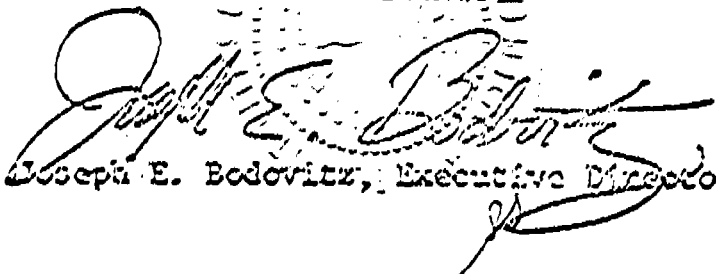
3. A public hearing on this application will be scheduled for the receipt of evidence regarding: (1) performance and cost data experienced by Tobey's company and by subhaulers he engages in performing the transportation in question, and (2) other material issues, including determination of a reasonable rate for the future for the transportation in issue should the actual performance and cost data not support the rates authorized.

This order is effective today.

Dated SEP 22 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. CRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

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


Joseph E. Bodovitz, Executive Director

APPENDIX A

Carrier: Charles D. Tobey, dba C & M Trucking
Commodity: Asphaltic concrete
From: Durbin Conrock - Irwindale
To: San Pedro Harbor - Berths 121-126
Minimum Weight: a. Bottom Dumps - 25.5 tons
b. Transfer Dumps - 24.5 tons
Rate: a. \$3.35 per ton - 5-Axle Bottom Dump Units
b. \$3.62 per ton - 5-Axle Transfer Dump Units

Conditions:

1. The minimum weight shall apply per unit of carrier's equipment consisting of a tractor or truck and one or more gravity dump semi- or full trailers.
2. Applicant has indicated that subhaulers are necessary and will be engaged, but applicant has not submitted any costs for subhaulers. Therefore, if any of the below named subhaulers are employed, they shall receive 95% of the deviated rate authorized. If applicant provides trailing equipment, he may deduct an additional 20% for the use of the trailing equipment.
3. If any subhaulers other than those named below are employed, they shall be paid not less than the authorized deviated rates.

T-129,601	Robert C. Neff
T-130,710	Abel R. Reyes
T- 76,310	Olaguilbel Gomez
T-134,627	Earnest Hatcher
T- 88,531	Robert M. Pfaff
T-126,248	William R. Atkins
T-138,365	Joseph A. Peterson
T-114,907	Frank, Arturo, and William S. Cardona
T-125,313	Billy Harrison and James Parker
T-117,970	Simon Bibayoff
T- 88,571	Gerald G. Gross
T- 69,688	Russell Tjarks
T-115,937	Robert E. Atkin
T-107,182	William A. Keseloff

4. Except as otherwise provided, the rules and regulations of Minimum Rate Tariffs 7-A and 17-A shall apply.

(END OF APPENDIX A)

APPENDIX B

Interim Order A.82-08-42

Detailed performance data to be recorded for the first 750 loads transported under the deviation:

1. For each unit of equipment used:
 - a. Tractor or truck license no.; and
 - b. Trailing equipment license nos.
2. For each day's movement show:
 - a. Carrier's T-No.;
 - b. Driver's name;
 - c. Time and mileage reading when service commenced;
 - d. Loading time, en route loaded time and mileage, unloading time, en route empty returning time and mileage, and repeat for each subsequent load;
 - e. Time out for lunch and other breaks shall be noted; and
 - f. Breakdown of equipment or delays to equipment shall be noted.

(END OF APPENDIX B)

IT IS ORDERED that:

1. Charles D. Tobey may depart from the rates in MRTs 7-A and 17-A by charging not less than the rates in Appendix A subject to the following conditions:

- a. Unless appropriate cost showings for Tobey and for subhaulers are furnished, no continuation of the authority will be authorized.
- b. Tobey agrees to pay subhaulers the full amounts provided in MRTs 7-A and 17-A for all transportation subject to this order in the event that results of operations for the first 750 loads transported at the authorized deviated rates should show the relief not justified.
- c. Tobey shall furnish the Commission with the detailed performance data listed in attached Appendix B for the first 750 loads transported at the authorized interim rates.
- d. The acceptance by Tobey of the interim authority is evidence of his agreement to these conditions.

2. This authority shall expire 120 days after the effective date.