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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

Application of San Diego Van & Storage Company under Shortened Procedure Tariff Docket to publish tariff provisions resulting in increases because of proposed transfer of applicant's rates to its own SDVS 1-82 from tariffs previously published by a tariff bureau. -AND- For authority to depart from the terms of Sections 454 and 491 of the Public Utilities Code when accomplishing proposed publication.	(SPT) Application 82-02-17 (Filed February 8, 1982; amended February 22, 1982)

Thomas F. Smith, for applicant.
George L. Hunt and Firmo Garcia, for the Commission staff.

FINAL OPINION

Summary

San Diego Van and Storage Company (SDVS) seeks, and this decision authorizes, a change in the time period, from seven to 30 days, both for presentation of freight bills by the carrier and payment of charges by the shipper relating to shipments of trade shows, exhibits for conventions, and electronic equipment.

Interim Decision (D.) 82-03-106 dated March 16, 1982 authorized SDVS to cancel its participation in certain tariffs issued by Western Motor Tariff Bureau, Inc., Agent, and to publish its own Commodity Tariff SDVS 1-82 (Tariff 1-82). The tariff covers the transportation of freight, all kinds, with certain exclusions (including used household goods and the like). As originally filed, the application requested authority to publish a liberalized Collection of Charges Rule in Item 130 of the tariff. The amendment to the application substituted a rule based on the Collection of Charges Rule in Transition Tariff 2 (TT 2) for this request. Ordering Paragraph 4 of D.82-03-106 directed that a public hearing be scheduled in this proceeding for the receipt of evidence regarding the liberalized Collection of Charges Rule originally requested.

Public hearing on the Collection of Charges Rule issue was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on July 19, 1982, on which date the matter was submitted.

Present and Proposed Collection of Charges Rule

Except for the billing and credit time periods in the proposed Tariff 1-82 Collection of Charges Rule and the service charge provision in this and the present tariff rule, both rules are substantively identical to the similar rules in TT 2 and many other Commission tariffs. Basically, the rules in all of the tariffs provide that freight charges shall be collected when the carrier relinquishes possession of the freight subject to certain credit provision exceptions which apply when the carrier has taken precautions to assure payment of charges within the specified credit period.

The time periods in the credit provisions of the present rule in Tariff 1-82 and in TT 2 are identical and are as follows:

1. Freight bills shall be presented to debtors within 7 calendar days from the first 12 o'clock midnight following delivery of the freight.

2. Credit may be extended to debtors for a period of 7 days, excluding Sundays and legal holidays. The credit period shall run from:

   (a) The first 12 o'clock midnight following delivery of the freight when the freight bill is presented to the debtor on or before the date of delivery, and

   (b) From the first 12 o'clock midnight following presentation of the freight bill when such is after the date of delivery.

3. For freight bills presented and/or payments made by mail, the postmark shall be deemed to be the time of such presentation and/or payment.

4. Where payment of billed freight charges has been made and another freight bill for additional charges is later presented to the debtor, the carrier may extend credit for such additional charges for a period of 30 calendar days from the first 12 o'clock midnight following the presentation of the subsequent bill. (The present rule in Tariff 1-82 shows a 7-day credit period for freight bills for additional charges, which is an inadvertent error.)

The time periods in the proposed rule are changed from 7 to 30 days for both the presentation of freight bills and the extension of credit. Otherwise, the method of calculating the time periods remains unchanged.

The present rule in SDVS's tariff provides for a service charge of 1% of the amount of the freight bill, subject to a minimum charge of $2.50, when a freight bill is not paid within the 7-day credit period. The rule does not state whether a separate service charge will be applied for every additional 30 days payment is late. Except for changing the credit period from 7 to 30 days, the same service charge provision is included in the proposed rule. TT 2 does not include a service charge provision for payment beyond the credit period.

Under the Collection of Charges Rule in TT 2 and other Commission tariffs and under SDVS's present and proposed rules, a carrier is in violation of the tariff rule if a freight bill is not presented or if payment is not received within the maximum time periods stated.

SDVS Evidence and Position

SDVS has been in business for 27 years. It holds highway common carrier and household goods carrier operating authorities. It also holds other permitted operating rights. The transportation of household goods accounts for approximately 70% of its business, and most of this transportation is on a collect-on-delivery basis. The transportation of trade shows and exhibits for conventions accounts for about 25% of its business, and transportation for electronics companies accounts for most of the remaining 5% of its business. It is the trade show, exhibit, and electronic transportation that is subject to its Tariff 1-82.

SDVS's gross operating revenue for the year 1981 was approximately $3.5 million. It has four offices in San Diego County and hauls primarily for Mayflower agents throughout the State. It has 25 pieces of moving van equipment and about 40 employees on its office and sales staffs. SDVS has contracts with about 40 to 50 drivers for its equipment. Approximately half of the tractors used are furnished by subhaulers. All trailing equipment is owned by SDVS. Subhaulers are always paid within the prescribed time period.

The following evidence was presented by the vice president of SDVS, who has been with the company for 22 years:

1. The credit provisions in the present Collection of Charges Rules in Tariff 1-82 and in the Commission's TT 2 and other tariffs are archaic. This credit rule was established when accounting procedures were done by individuals by hand, and accountants could stop what they were doing to bill a customer or issue a check. We are now in the computerized age, and this is no longer possible. Computers do not stop to issue an individual invoice or check. They operate in billing and payment cycles, which are usually at 30 more or less day intervals. From an overall standpoint, computers are far more efficient in accounting procedures than the archaic methods they have replaced.

2. With its computerization setup, SDVS cannot physically pay its bills within 7 days. Likewise, it cannot process the paperwork and issue an invoice for the Tariff 1-82 shipments it transports within this time period. To process the necessary paperwork for such shipments and to issue the billing requires 14 to 21 days for most shipments, and some require over 30 days. In this connection, SDVS delivers shipments throughout the State, and it generally takes a minimum of 10 to 15 days or more to accumulate the necessary papers for a shipment.

3. Shippers of commodities subject to Tariff 1-82 have the same payment problems experienced by SDVS. None has the capability of issuing checks within 7 days. Some can pay within 14 to 21 days; however, most pay between 21 to 30 days. The majority of these shippers are wholesalers, and they support the proposed 30-day credit period, as evidenced by the letters from General Dynamics and Cubic Corporation in Exhibits 1 and 2.

4. Since it is impossible to comply with the 7-day billing and credit periods, the Collection of Charges Rule should be made realistic by increasing the time periods to 30 days each. By so doing, SDVS could then be in compliance with its tariff rule.

5. SDVS has recently attempted to enforce the current 7-day credit period, and because of this, has lost some accounts to competitors who do not do so.

6. A number of SDVS's competitors support the 30-day billing and credit periods.

7. It is SDVS's intent to add the 1% service charge for each additional 30-day billing period after the credit period has expired until payment has been made.

8. The 1%, minimum $2.50, service charge for payments after the credit period is realistic. It is estimated that, if the proposed time extensions are authorized,

late payments would not be more than 1%. Although applicant has never borrowed money, the present cost for borrowed funds is around 17% to 18%.

9. Under the reregulation program, other general commodity carriers could adopt the proposed 30-day billing and credit periods under the so-called "me too" competitive filing procedure.

10. As with the Collection of Charges Rule in TT 2 and other Commission tariffs, government traffic would be exempt from the proposed rule.

In his closing statement, the vice president urged that the Commission authorize the proposed rule for the various reasons stated in his testimony.

Staff Position

Although it did not present evidence, the staff did present a written opening statement and a closing statement, and it assisted in development of the record. Following is a summary of its opening statement:

1. The credit provisions of the Collection of Charges Rule in the Commission's various TTs and MRTs are exceptions to the general rule that freight charges must be collected prior to relinquishing possession of the property. SDVS seeks an exception to the exception for general commodity carriers by further extending the billing and credit deadlines.

2. In requests for deviation from the rates and/or rules in the Commission's MRTs, the applicant must show special, unusual, or unique circumstances surrounding the transportation which were not considered by the Commission in establishing such rates and/or rules. This test of reasonableness should be applied here. SDVS should be required to show the nature of the services provided for its customers, how they differ from those provided by other carriers offering similar services, and whether it and its customers have unique operating

circumstances requiring a more liberal timeframe for billing and for the extension of credit.

3. The Commission has consistently denied past applications requesting deviation authority to extend the credit period in the Collection of Charges Rules in its various tariffs. In this connection, the Commission has stated, among other things, that if an applicant were authorized to extend the credit period, all shippers would use its service to take advantage of this, and other carriers would have to seek the same privilege to compete (In re H. L. Bales, et al., D.77834 dated October 20, 1970 in A.51873, unreported). Also, the Commission has consistently required carriers in enforcement proceedings to comply with the credit provisions. In this regard, it has stated that the credit rule should discourage a carrier from favoring a slow-paying shipper by granting unlimited credit, and the purpose of the rule is to require a carrier to stop hauling for a shipper which does not pay on time (Inv. of V. Belloumini et al. (1974) 76 CPUC 811).

4. Another factor that applicant must establish is that the proposed service charge of 1% of the amount of the unpaid charges is reasonable. In this regard, the current cost of money is higher than the proposed service charge.

5. It is the staff position that the requested further extension of the billing and credit provisions constitutes a financial service which lowers the shipper's costs of doing business at the expense of the carrier.

The representative who presented the staff's closing statement pointed out that there are thousands of highway common carriers and permitted carriers of general commodities in the State. He explained that if the liberalized rule is authorized all general commodity carriers could adopt it. This, he argued, is not reasonable without more extensive hearings on this subject. The representative asserted that the Commission is a protector of carriers, and many could not withstand a 60-day waiting period for payment from customers for transportation service rendered. He stated that it would take a special provision by the Commission to limit the application of the proposed rule to SDVS.

Discussion

We are of the opinion that SDVS's request should be granted.

As stated the proposal extends the maximum allowable time periods for billing and for credit specified in the Collection of Charges Rule in Item 130 of Tariff 1-82 from 7 to 30 days, an increase of 23 days each, plus any Sundays or legal holidays that may occur during the credit period. Not counting Sundays or legal holidays during the credit period, this would mean that if billing and payment were on the last authorized days, the total elapsed time between delivery and payment would be 60 days, an increase of 46 days over the present rule. No service charge would be assessed for this additional time. However, the witness for SDVS testified that the cost for this would be insignificant.

As the evidence establishes, the 7-day billing and credit periods in SDVS's present rule are based on the same time periods that were established in TT2 many, many years ago when business practices differed substantially from those of today. Now, as pointed out by SDVS's witness, many companies, including many of those in the transportation industry, have replaced the individual hand methods for their accounting and other business functions with modern computerized techniques. It is common practice to program billing and payment cycles generally for intervals of 30 days. According to the witness for SDVS, both his company and its Tariff 1-82 customers are fully computerized, and because of this, they are unable to meet the 7-day deadlines. We agree with this witness that tariff rules should not conflict with generally accepted modern business procedures. The evidence presented by SDVS supporting the requested time revisions is persuasive.

Although Tariff 1-82 is used by SDVS for transportation of trade shows, exhibits for conventions, and specialized equipment for electronic companies and SDVS's evidence related to this type of transportation only, it is a freight all kinds tariff which would cover any general commodities hauling. Therefore, as pointed out by the staff, under the "me too" competitive filing procedure any general commodities carrier could adopt the revised credit and billing procedure. We recognize, as asserted by the staff, that some general commodities carriers may not be in a financial position to extend credit for this period of time and could be at a competitive disadvantage if they did not adopt these revisions. To limit this possibility, we will require SDVS to restrict the application of the revised time periods to the transportation of trade shows, exhibits for conventions, and specialized equipment for electronic companies. The authority granted would then be in conformity with the evidence presented by SDVS. Furthermore, the purpose of our reregulation program is to encourage fair, equitable, and realistic rates and rules for the transportation industry of California. With the restriction we will require, the proposed time revisions will meet these standards for the type of transportation for which they are designed.

The staff has questioned the 1%, minimum $2.50, service charge for payment after the credit period in SDVS's present and proposed rules. It is the staff position that any service charge should be based on the current cost of money which was approximately 18% per annum at the time of the hearing. Perhaps a higher monthly service charge would be more appropriate. However, there is not sufficient information in the record before us on which to make an informed determination as to what a proper service charge should be. We will not direct SDVS to change the service charge. However, SDVS is placed on notice that the fact that it has a service charge stated in its rule for late payments does not insulate it from complying with the stated credit period, especially in view of the longer credit periods authorized in this decision.

As stated above, Paragraph (D) of SDVS's present Item 130 rule shows a 7 calendar days credit period for additional freight charges billed after the initial freight bill has been paid, whereas the rule in TT 2 has a 30-day credit period for additional billed charges. Also, although its rule does not so state, it is SDVS's intent that the stated service charge apply to each 30 days or fraction of that time freight charges remain unpaid after the expiration of the credit period. SDVS will be authorized to make these corrections.

Findings of Fact

1. SDVS is engaged, among other things, in the transportation of trade shows, exhibits for conventions, and specialized equipment for electronic companies. This transportation accounts for approximately 30% of its business.

2. A.82-03-106 authorized SDVS to publish its Tariff 1-82 which governs the transportation described in Finding 1. The decision also provided that a public hearing would be held for the receipt of evidence regarding the billing and credit periods stated in the Collection of Charges Rule in Item 130 of the tariff.

3. Because of computerization of accounting and related business functions and resulting billing and payment cycles, SDVS and its customers shipping the commodities referred to in Finding 1 have experienced difficulties in complying with the 7-day billing and credit periods stated in the present Collection of Charges Rule in Item 130 of Tariff 1-82.

4. For the reasons stated in Finding 3, SDVS proposes to amend the 7-day billing and credit time periods specified in Paragraphs (B) and (E) of Item 130 from 7 to 30 days each.

5. SDVS has established that its billing and credit for the transportation described in Finding 1 involve unique and special facts and circumstances.

6. No evidence was presented by SDVS to justify the proposed tariff revision for any transportation not described in Finding 1.

7. The proposed modification of the billing and credit time periods in Paragraphs (B) and (E) of the Collection of Charges Rule in Item 130 of Tariff 1-82 is reasonable for the transportation described in Finding 1 only.

8. Any competitive "me too" filing by any general commodites carrier of a tariff provision published by another general commodities carrier must include the same limitations and restrictions in the other carrier's tariff provision.

9. Paragraph (c) in Item 130 provides for a service charge of 1%, minimum $2.50, for payments after the expiration of the credit period. While the item does not so state, it is SDVS's intent that the service charge apply for each 30 days or fraction of that time payment is overdue.

10. The fact that SDVS has a service charge in Item 130 does not excuse it from failure to collect any freight charges for transportation subject to Tariff 1-82 within the credit period stated in Paragraph B of the item.

11. Paragraph (D) of SDVS's present Item 130 provides for a 7-day credit period for additional charges billed after the initial freight bill has been paid; whereas, TT 2 provides for a 30-day credit period in such circumstances. The shorter credit period for additional charges in Item 130 is an obvious inadvertent error by SDVS.

12. Household goods transportation accounts for approximately 70% of SDVS's business. Substantially all of the freight charges for this transportation are collected at the time of delivery. SDVS has not requested any extension of the credit provisions applicable to this transportation.

13. To further enhance the competitive nature of the for-hire transportation marketplace and to compensate SDVS for the delay occasioned by the hearing in this case, this order in this case should be effective immediately.

Conclusions of Law

1. The liberalization of SDVS's Collection of Charges Rule in Item 130 of its Tariff 1-82 requested by it in A.82-02-17 should be granted to the extent provided in the following order.

2. SDVS should be placed on notice that it should specifically state in Paragraph (C) of Item 130 of its Tairff 1-82 that the service charge stated will be applied each 30 days or fraction of that time transportation charges remain unpaid after the expiration of the credit period specified in the rule.

3. SDVS should be placed on notice that there is a violation of the credit provision in Paragraph (B) of Item 130 of its Tariff 1-82 if payment for transportation charges is not received from a customer within the stated credit period excluding Sundays and legal holidays.

4. SDVS should be authorized to change the 7-day credit period in Paragraph (D) of present Item 130 of Tariff 1-82 for additional charges billed after the original freight bill has been paid to 30 calendar days.

FINAL ORDER

IT IS ORDERED that:

1. Subject to the following restriction which shall be included in the tariff rule, San Diego Van and Storage Company (SDVS) is authorized to publish the requested 30-day billing and credit provisions in Item 130 of its Commodity Tariff 1-82 (Tariff 1-82):

> RESTRICTION: The 30-day billing and credit provisions apply only to transportation of trade shows, exhibits for conventions, and specialized equipment for electronic companies.

2. For any transportation not described in the restriction in Ordering Paragraph 1, the 7-day billing and credit provisions in the present Item 130 of Tariff 1-82 shall continue to apply.

3. SDVS shall amend Paragraph (C) of Item 130 of its Tariff 1-82 to provide that the stated service charge shall apply to each 30 days or fraction of that time any transportation charges remain unpaid after the authorized credit period.

4. SDVS is placed on notice that there is a violation of Item 130 of its Tariff 1-82 if a customer does not pay freight charges within the credit period stated in the item.

5. SDVS may change the credit period stated in Paragraph (D) of Item 130 of its Tariff 1-82 for additional charges billed after the original freight bill, which was presented by it as the total amount of charges, has been paid from 7 to 30 calendar days.

6. Tariff publications required or authorized to be made as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than 5 days after the effective date of this order on not less than 5 days' notice to the Commission and to the public.

7. This authority shall expire one year after the effective date, unless canceled, or extended by the Commission.

This order becomes effective today.

Dated DEC 15 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. CRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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

Joseph E. Bodovitz, Executive Director