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Decision No. 89870 ! JAN 16 1979

ORIGINAL

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 rock, sand and gravel in bulk, in dump truck equipment in Northern California as provided in Minimum Rate Tariff 20 and Northern California Production Area and Delivery Zone Directory 2, and the revisions or reissues thereof.

Case No. 9820
Petition for Modification
No. 12
(Filed June 21, 1978)

(See appearances in Decision No. 89597 dated October 31, 1978 in Case No. 5437, Petition 298 et al.)

O P I N I O N

This matter was set down for concurrent hearing with Petitions 298, 299, 300, and 301 in Case No. 5437 (Minimum Rate Tariff 7-A) on August 8, 1978. None of the parties in attendance at that hearing had objections to the granting of Petition 12 in Case No. 9820, and the parties concurred in petitioner's request that Petition 12 be decided without the taking of evidence thereon. Therefore, the matter was submitted for decision based on the allegations set forth in the petition.

Minimum Rate Tariff 20 (MRT 20) contains zone rates for transportation of rock, sand, and gravel in bulk in dump truck equipment from production areas to delivery zones in Northern California. Item 140(b) of MRT 20 states:

"APPLICATION OF TARIFF - TYPES OF EQUIPMENT"

* * *

"(b) When the shipper, debtor or overlying carrier requests transportation service to be performed by a two- or three-axle truck, transfer-type pull trailer, the rate shall be 20 cents per ton more than the otherwise applicable rate."

California Carriers Association (petitioner) seeks to modify Item 140(b) of MRT 20 so that the application of the additive rates contained in that tariff item shall be based upon the use of a particular type of equipment and not upon the subjective interpretation of whether a "request" for such equipment has been made. In support thereof, petitioner states: The application of the additive rate set forth in this item depends upon the subjective interpretation of either the shipper, the carrier, or both as to whether a "request" for a certain type of equipment has been made.

Petitioner is informed and believes that there are numerous instances where the additive rates set forth in Item 140 are not charged, even though the equipment referred to in that item is being used, because it has not been determined whether a "request" for such equipment has been made. In these instances, the carrier is providing the service with equipment that is more costly to operate than the bottom dump trailing equipment. The latter is used as a cost basis for setting the minimum rates. When equipment other than the tractor and bottom dump trailing equipment is being used, the carriers are not being adequately compensated. Petitioner asserts that it is unfair and unreasonable for a carrier to be denied the higher rates which should apply when this more costly equipment is being used. Petitioner states that the application of the additive rate should depend upon the use of certain types of equipment and not upon the understanding that there has been a request for such equipment. Petitioner asserts that the uncertainties created by this tariff item make it virtually impossible to enforce the application of the additive rate contained in Item 140(b) of MRT 20.

In order to eliminate the problems set forth in the preceding paragraph, petitioner requests a modification of Item 140(b) as follows:

"When the transportation service is performed by two-axle or three-axle trucks with transfer-type pull trailer or by two-axle or three-axle trucks with pup-type trailing equipment, and when in the course of accomplishing the delivery with such truck and pup equipment the operator disconnects and separates the trailer from the truck, the rate shall be twenty cents (20¢) per ton in addition to those rates provided for when the transportation is performed at the otherwise applicable rates."

Petitioner states that a further reason for granting this petition is that virtually identical language, as set forth above, was added to Item 120 of Minimum Rate Tariff 17-A (MRT 17-A) following hearing in the last general wage offset rate case involving that tariff. (Decision No. 88177 dated November 29, 1977 in Case No. 9819, Petition No. 23.) Item 120 in MRT 17-A now sets forth a rule which bases the application of the additive rate on the use of the equipment referred to therein and not on whether or not a request for that equipment had been made.

Findings

1. At petitioner's request, this petition was set for hearing on a concurrent record with Petition for Modification No. 299 in Case No. 5437, in which petitioner seeks similar relief in Minimum Rate Tariff 7-A. At the duly noticed public hearing on August 8, 1978, the parties of record concurred in petitioner's request and agreed that the petition should be submitted without the taking of evidence thereon.

2. Petitioner's proposal will provide just, reasonable, and nondiscriminatory provisions to govern the application of MRT 20.

Conclusion

The petition should be granted.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 20 (Appendix A to Decision No. 81799) is further amended by incorporating therein, to become effective thirty-nine days after the date hereof, Sixth Revised Page 1-3 and Sixth Revised Page 1-4, attached hereto and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they also are subject to Decision No. 81799, as amended, are directed to establish in their tariffs the amendments necessary to conform with the further adjustments ordered by this decision.

3. Tariff publications required to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and made effective thirty-nine days after the date hereof, on not less than nine days' notice to the Commission and to the public; such tariff publications as are authorized shall be made effective not earlier than thirty-nine days after the date hereof, on not less than nine days' notice to the Commission and to the public, and this authority shall expire unless exercised within sixty days after the effective date of this order.

4. Common carriers, in establishing and maintaining the rule authorized by this order, are authorized to depart from the provisions of Section 461.5 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rule published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects, Decision No. 81799, as amended, shall remain in full force and effect.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 11th day of JANUARY, 1979.

Robert B. ...
President
...
...

Commissioners

SECTION 1--RULES (CONTINUED)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--CARRIERS</p> <p>Rates provided in this tariff are minimum rates, established pursuant to the Highway Carriers' Act. They apply for transportation of property by dump truck carriers, as defined in said Highway Carriers' Act, in bulk in dump truck equipment.</p> <p>The rates and rules contained in this tariff shall apply to transportation by underlying carriers (independent-contractor subhauler) when such transportation is performed for other carriers as provided in Item 460.</p>	40
<p style="text-align: center;">APPLICATION OF TARIFF--COMMODITIES</p> <p>Rates in this tariff apply for the transportation of the following commodities:</p> <p style="padding-left: 40px;">Asphaltic or cement concrete, crushed or recrushed;</p> <p style="padding-left: 40px;">Rock, natural, crushed, chips, waste or dust (Subject to Notes 1 and 2),</p> <p style="padding-left: 40px;">Sand,</p> <p style="padding-left: 40px;">Gravel.</p> <p>NOTE 1.--The term "rock", as used herein, includes stone.</p> <p>NOTE 2.--The term "rock", as used herein, includes any rock or rocks that passes through a 6-inch screen as used in the industry.</p>	60
<p style="text-align: center;">APPLICATION OF TARIFF--GENERAL</p> <p>Rates in this tariff do not apply to the transportation of:</p> <p>(a) Disaster Supplies, i.e., those commodities which are allocated to provide relief during a state of extreme emergency or state of disaster; and those commodities which are transported for a civil defense or disaster organization established and functioning in accordance with the California Disaster Act to ultimate point of storage or use prior to or during a state of disaster or state of extreme emergency.</p> <p>(b) Property of the United States or property transported under an agreement whereby the United States contracted for the carrier's service.</p> <p>(c) Property transported for a displaced person when the cost thereof is borne by a public entity as provided in Section 7262 of the Government Code.</p>	80
<p style="text-align: center;">HANDLING OF CLAIMS FOR LOSS OR DAMAGE</p> <p>Claims for loss or damage shall be governed by the provisions of General Order No. 139.</p>	85
<p>No change on this page, Decision No. 89870</p>	
<p>EFFECTIVE</p>	
<p>Correction</p>	<p>ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>

ITEM	SECTION 1--RULES (CONTINUED)
100	<p style="text-align: center;">APPLICATION OF TARIFF--RATES</p> <p>Except as otherwise provided, the rates in this tariff are zone rates and include bridge tolls. The rates apply from all points of origin within the designated production areas to all points of destination within the designated delivery zones.</p> <p>If any portion of a shipment is physically delivered into or beyond more than one delivery zone, the minimum rate for the entire shipment shall be that rate from point of origin to the highest rated point where physical delivery is made. (See Exception)</p> <p>EXCEPTION.--When any portion of a shipment is delivered into more than one zone, and when no portion of such shipment is physically delivered beyond the boundaries of streets which are the boundaries between the zones involved, the minimum rate for the entire shipment shall be the lower or the lowest of the applicable rates between point of origin and the zones into which delivery is made.</p>
120	<p style="text-align: center;">APPLICATION OF TARIFF--TERRITORIES</p> <p>Rates in this tariff apply for transportation from all points within the production areas to all points within the delivery zones described in Northern California Production Area and Delivery Zone Directory 2. They apply also, to the extent specified elsewhere herein, for transportation from all points within said production areas to points outside of said delivery zones.</p>
140	<p style="text-align: center;">APPLICATION OF TARIFF--TYPES OF EQUIPMENT</p> <p>(a) Rates in the tariff apply to transportation of rock, sand and gravel in four- and five-axle dump truck equipment (truck tractor or dump truck with dump-type trailing equipment).</p> <p>§0(b) When the transportation service is performed by two axle or three axle trucks with transfer-type pull trailer or by two axle or three axle trucks with pup-type trailing equipment, and when in the course of accomplishing the delivery with such truck and pup equipment the operator disconnects and separates the trailer from the truck, the rate shall be twenty cents (20¢) per ton in addition to those rates provided for when the transportation is performed at the otherwise applicable rates.</p> <p>(c) Rates in this tariff do not apply to transportation of rock, sand and gravel in two- or three-axle dump trucks without trailing equipment. When such equipment is utilized, rates set forth in Minimum Rate Tariff 7-A shall apply.</p>
160	<p style="text-align: center;">APPLICATION OF OTHER MINIMUM RATE TARIFFS</p> <p>Except as otherwise provided, the rates in this tariff supersede, and apply to the exclusion of, rates applicable to the same transportation under other minimum rate tariffs of the Commission.</p> <p>For rates for the transportation of commodities in dump truck equipment, other than as provided in this tariff, see Minimum Rate Tariff 1-B, 2, 7-A or 19 as the case may be.</p>
<p> <input type="checkbox"/> Change) Decision No. 89870 <input type="checkbox"/> Increase) </p>	
EFFECTIVE	
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