

Decision No. 90989 NOV 6 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of A. D. Strand Excavating, Inc. for authority to deviate from the established Credit Rule of trucking receivables not more than 30 days old to that of a 90-day period to any and all of our customers.

Application No. 58351  
(Filed September 12, 1978)

Paul M. Albert, for applicant.  
James D. Martens, for California  
Dump Truck Owners Association;  
Herbert W. Hughes, for California  
Trucking Association; and Daniel  
G. Ugalde and David J. Marchant,  
for California Carriers Association;  
protestants.  
Harry Phelan, for California Asphalt  
Pavement Association, interested  
party.  
Mark Wetzell, for the Commission staff.

O P I N I O N

A. D. Strand Excavating, Inc. (Strand) is a California corporation with principal place of business in Santa Ana, Orange County. Strand is authorized to operate as a dump truck carrier and a radial highway common carrier. Among other things, it operates as a prime carrier (overlying carrier or broker) employing subhaulers (underlying carriers) for transportation of earth and debris from demolition of buildings and structures and from land clearing within Los Angeles, Orange, Riverside, and San Diego counties. Strand also furnishes and transports heavy earthmoving equipment on low-bed trailers, a type of transportation exempt from minimum rates and rules.

Strand requests authority to deviate from the collection of charges rule (Item 130) of Minimum Rate Tariff 7-A (MRT 7-A).<sup>1/</sup> It furnishes dump truck equipment, operated (manned) and maintained, mostly to southern California construction subcontractors (shippers) engaged in grading, paving, and underground work, for prime contractors working for developers. Strand seeks to extend credit to shippers on a per job basis for dump truck transportation of earth and debris, with invoiced amounts due by the tenth of the following month and past due thirty days thereafter. There would be a service charge of 1-1/2 percent per month on all unpaid balances due over thirty days. Strand anticipates additional income from such a charge. Credit would not be extended past ninety days from the tenth day following the month in which the work is performed. Strand is not requesting an extension of time to pay subhaulers.

Public hearing was held before Administrative Law Judge Norman B. Haley at Los Angeles on May 3, 1979. The matter was submitted May 29, 1979, the due date for letter briefs.

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<sup>1/</sup> The applicable provision is contained in paragraph (b) of Item 130 of MRT 7-A, as follows:

"(b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of the freight in advance of payment of the charges thereon and may extend credit in the amount of such charges to debtors for a period not to exceed the 15th day following the last day of the calendar month in which the transportation was performed."

Strand's Presentation

Evidence on behalf of Strand was presented by Paul Albert, general manager. He said Strand has been in business 23 years. It grosses between \$2.5 million and \$3 million a year. Since January 1976, the company has grossed more than \$9 million and has experienced losses of approximately \$20,000, or less than one-third of one percent. Assertedly, the financial stability of Strand and approximately five other large prime carriers in southern California would not be jeopardized by an extension of credit for an additional sixty days.

Revenues earned by Strand through use of dump truck subhaulers to transport earth and debris are about \$50,000 a year. In the past they have been as high as \$500,000 a year. Strand has cut back substantially on trucking because of the present credit rule applicable to the shippers it works for. The witness contends that it and other large prime carriers perform a guarantee function for subhaulers, and that if subhaulers tried to market their service individually to construction subcontractors, they would get hurt because of sophisticated laws and practices. Subhaulers furnish Strand complete units of equipment, including trailers. Assertedly, Strand always pays subhaulers within the time limits prescribed in Item 210 of MRT 7-A.

The matter of Strand's overdue receivables came to a head as the result of a Commission staff audit in October 1977 which disclosed there were about \$20,000 in receivables attributable to dump truck work due in excess of thirty days. Strand was fined \$250 and believes it may be fined that amount each year unless the authority sought is granted. The audit

assertedly disclosed no other types of violations. The witness stated that this application was filed primarily because he felt it inequitable for the Commission to fine Strand for not collecting its receivables on time when it is financially stable enough to guarantee subhaulers all of their funds all of the time. He contended that if more severe penalties are imposed on Strand relative to overdue receivables, it would stop trucking completely and let the subhaulers find someone else to guarantee their debts. Strand's overdue receivables at time of hearing were about \$2,000.

The witness explained that there has been an extremely heavy demand for housing and other building in southern California over the past five years. He said a number of small contractors have gone into business, that many have done a fine job, but that some are basically under-capitalized. Assertedly, cash-flow conditions in the southern California construction industry have become undesirable, and Strand has found it necessary to be very selective as to the firms it supplies. He explained that there are not enough construction subcontractors in very good financial condition, or that can pay for dump truck work in twenty days, so Strand is forced to accept marginal accounts. He said he is certain other major prime carriers do the same. The witness was of the opinion that the prime carriers in the area could not exist financially for more than a year if they were not prudent in collecting receivables.

The witness said that some of Strand's customers pay within twenty days from the time the work is performed. However, the typical time cycle Strand experiences in receiving payment from a majority of its customers is sixty days. The witness

stated that Strand is no different from any other prime carrier in connection with problems involved in collecting monies for the type of work performed. He contends that cash situations in the building industry have changed to such an extent that the credit rule in Item 130 of MRT 7-A is outdated. The witness believes that with the monthly service charge of 1-1/2 percent the proposal would result in an increase, not a decrease, in minimum rates. He said that if the sought authority is granted, he would have no objection to it being limited to transportation of earth and land clearing debris that takes place in Los Angeles, Orange, Riverside, and San Diego counties. He was of the opinion that the proposal also should apply to any other large prime carrier who is financially stable enough, but that it would not be good for all carriers. He said he had been informed by the staff representative assigned to the audit that the best chance to obtain what Strand needed was through the instant application for a deviation rather than filing a petition to modify the tariff rules themselves.

Positions of Other Parties

Representatives of the protesting associations, the interested party, and the staff assisted in developing the record through cross-examination of Strand's witness. No direct evidence was presented by these parties. California Dump Truck Owners Association, California Trucking Association, and the staff filed letter briefs in opposition. The various views of these parties can be summarized as follows:

(1) Any carrier who is found to be in violation of a Commission rule should not be permitted to escape compliance by obtaining a deviation from the rule because the purposes of regulation will have been negated.

(2) The credit rule in Item 130 of MRT 7-A is substantially more liberal than credit rules in other minimum rate tariffs, and is adequate to meet the needs of the dump truck industry.

(3) Strand's proposed credit rule would give it an unfair competitive advantage over all other carriers for the transportation involved and, therefore, is discriminatory.

(4) A shipper should not be allowed to gain any advantage from free use of a carrier's money as the result of withholding prompt payment (citations).

(5) Strand's witness freely admits that his company's credit problem probably is not materially different from that of about five other large prime carriers engaged in performing essentially the same transportation.

(6) Deviations from minimum rates (and rules) should not be authorized under Section 3666 of the Public Utilities Code except where the subject transportation conditions are unusually favorable or there are unusual circumstances not considered in the establishment of minimum rates (citations).

#### Discussion

The fundamental rule relative to collection of minimum rate tariff charges is that carriers must collect freight charges prior to relinquishing possession of the property. All other arrangements constitute exceptions. The credit rules in the various minimum rate tariffs provide exceptions by allowing carriers to extend credit for specified time periods upon taking necessary precautions (see rule in Footnote 1, for example). Exceptions to collection on delivery are allowed only when the carrier's investigation of individual ratepayers assures it that charges will be paid on a timely

basis in each instance. Carriers therefore collect at time of delivery from ratepayers who either want to pay immediately or who are not good credit risks, and extend credit where desired to those who are good risks. The record here shows that Strand cannot always do this as contemplated under Item 130 of MRT 7-A. Because of speeded-up building activity, a number of construction subcontractors have entered the field who are not sufficiently capitalized and do not have adequate cash flow to always pay immediately or within the specified credit period. In order for Strand to continue the business it is in, it must work for some of those shippers.

Strand has substantially reduced its for-hire trucking activity from about \$500,000 a year to about \$50,000 a year because of enforcement of the present credit rule, and may discontinue for-hire trucking altogether. This has occurred even though building activity has been conducted at a rapid pace in recent years. The record does not show how Strand would continue to get the large quantities of earth and debris moved from construction sites. It is reasonable to assume, however, that it would do this under exemptions contained in Public Utilities Code Sections 3511(b) (persons or corporations hauling their own property), and 3549 (primary business rule).

The feature of Strand's proposed credit rule which would permit it to extend free credit thirty days past the tenth of the month following the month in which transportation was performed would constitute a rebate from minimum rates. That request would give Strand an unwarranted competitive advantage. It was not shown to be reasonable.

The feature of the proposed rule, which would incorporate a service or carrying charge on any balance unpaid after a reasonable period of time, has merit. Our staff has looked into the feasibility of similar rules in the past for inclusion in minimum rate tariffs. One major problem encountered, however, has been substantially as explained by Strand's witness, which is that all carriers performing a given type of transportation do not necessarily possess the monetary strength or financial expertise to follow all of the steps necessary to make such a rule work properly. The proposed carrying charge provision, if adopted for general use, could place an undue strain on carriers that are not financially strong, because they may not receive payment for many weeks after the transportation has been performed. Strand proposes to follow an established credit time schedule, with the last event being attachment by lien by a certain day if the debt is not paid. Strand's witness testified that about 30 percent of business today is collection.

The issue in this proceeding is whether Strand's proposed credit rule, without the sought extension of free credit, is reasonable under Section 3666 of the Public Utilities Code. It is clear that Strand is not primarily seeking an advantage over other dump truck carriers transporting earth and debris. Primarily what it is seeking is a flexible and lawful method for collecting its debts for the transportation involved from the construction subcontractors it works for. The advantages and disadvantages to Strand would be largely offsetting. The carrier would collect additional revenue for the service of credit extension. On the other hand, it would have to get along without receiving payment for transportation for an extended period of time. A shipper



receiving extended credit would gain time to collect from prime contractors and to pay the carrier. But it would have to pay quite substantially for the additional time it buys.

The proposed 1-1/2 percent service or carrying charge per month would equate to approximately 18 percent annual simple interest on unpaid amounts on transportation bills. The sought carrying charge would not constitute a financial service which would lower any shipper's cost of doing business at the expense of the carrier. Under no circumstance would a shipper be receiving a rebate from minimum rates from free or otherwise unwarranted extension of credit. We must conclude that, with certain modifications, the proposed carrying charge would meet the minimum needs of the shippers involved and is a reasonable rate for the accessorial service of credit extension by Strand.

A deviation under Section 3666 would apply only to Strand. Such an authority may give applicant some temporary advantage over other carriers. This is inherent in a specially authorized rate or rule that other carriers cannot use, at least initially. However, other carriers may seek and obtain similar relief assuming, of course, they also can make the requisite showing. This would include demonstrating financial and business ability.

Strand is capable and financially strong enough to utilize and enforce the credit rule it proposes. The carrying charge portion of the proposed credit rule should be authorized for the transportation involved. In order to eliminate any unnecessary advantage or confusion that may accrue, the rule should be made to correspond with paragraph (b) of Item 130 of MRT 7-A by terminating the free credit period the fifteenth day following the last day of the calendar month in which

transportation was performed. The maximum credit period Strand should be authorized is ninety days after the fifteenth day following the last day of the calendar month in which transportation was performed.

A substantial number of prime carriers engaged in dump truck transportation were represented by the protesting associations and, therefore, will receive notice of the authorization granted to Strand. The authorization to Strand should be deferred sufficiently to permit any carrier who can demonstrate it has the capability to properly use such a rule for generally the same transportation to seek authority to do so. Accordingly, the authorized rule should not become effective until sixty days after the effective date of the order which follows.

Findings of Fact

1. Strand is engaged, among other things, as a for-hire dump truck carrier in the transportation of earth and debris from construction sites in certain southern California counties.

2. Some of the construction subcontractors Strand finds it must work for cannot and do not pay transportation charges within the credit period set forth in Item 130 of MRT 7-A.

3. Although there has been a high level of construction activity in southern California, Strand has reduced for-hire dump truck transportation of earth and debris from about \$500,000 a year to about \$50,000 a year because of enforcement against it of the credit rule in Item 130 of MRT 7-A.

4. Strand proposes to apply a credit rule for transportation described in Finding 1 to allow payment on a per job basis with invoiced amounts due by the tenth day of the following month and past due thirty days thereafter,

subject to a service charge of 1-1/2 percent per month on all unpaid balances due over thirty days. Credit would not be extended past ninety days after the tenth day of the month following the month in which transportation was performed.

5. The portion of the credit rule described in Finding 4 which would permit Strand to extend free credit thirty days past the tenth of the month following the month in which transportation was performed would constitute a rebate from minimum rates and would give Strand an unwarranted competitive advantage. That portion of the proposed rule was not shown to be reasonable.

6. The sought carrying charge for the transportation involved would not constitute a financial service which would lower any shipper's cost of doing business at the expense of the carrier, and would not constitute a rebate of minimum rates.

7. Strand has demonstrated that circumstances surrounding the subject transportation are unusual.

8. The advantages and disadvantages of the proposed service charge to Strand would be largely offsetting.

9. The record does not show that the proposed service charge would give Strand any unreasonable advantage over competitors, or cause its competitors any unreasonable disadvantage.

10. Strand has the business and financial ability to apply and enforce the proposed service charge.

11. The proposed rule for the accessorial service of credit extension, as modified and subject to the conditions in Appendix A hereof, is reasonable and should be authorized.

O R D E R

IT IS ORDERED that:

1. A. D. Strand Excavating, Inc. is authorized to apply the credit rule in Appendix A hereof in addition to the otherwise applicable provisions of Item 130 of Minimum Rate Tariff 7-A.

2. In all other respects Application No. 58351 is denied. The effective date of this order shall be thirty days after the date hereof.

Dated NOV 6 1979, at San Francisco, California.

John E. Bryan  
President  
William L. Ferguson  
Richard G. Kaul  
Alvin T. Adams  
Francis J. ...  
Commissioners

## APPENDIX A

**Carrier:** A. D. Strand Excavating, Inc.

**Shippers:** Construction contractors and subcontractors engaged in grading, paving, and underground work.

**Commodity:** Earth, as described in Item 10 of Minimum Rate Tariff 7-A, and debris from demolition of buildings and structures.

**Territory:** Within Los Angeles, Orange, Riverside, and San Diego counties.

**Credit Rule:** A. D. Strand Excavating, Inc. shall observe the credit rule in Item 130 of Minimum Rate Tariff 7-A, except that it may extend credit after the fifteenth day following the last day of the calendar month in which the transportation was performed (paragraph (b) of that item) subject to the following conditions:

A carrying charge computed at 1-1/2 percent of any transportation charges unpaid after said fifteenth day of the month shall be assessed for each thirty days or fraction thereof. All charges for transportation and credit extension shall become due and payable not later than ninety days after said fifteenth day of the month.

**Effective Date:** The effective date of the credit extension rule in this appendix shall be sixty days after the effective date of the above order.