

ORIGINAL

Decision No. 91082 NOV 30 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WESTERN MOTOR TARIFF BUREAU, INC. to publish for and on behalf of all carriers party to its Cement Tariff 17, tariff provisions resulting in increases because of changes in assessing charges for loading delays.

Application No. 58752 (Filed March 20, 1979)

- William R. Haerle, Attorney at Law, M. J. Nicolaus, George L. Roberts, and Robert S. Greitz, for Western Motor Tariff Bureau, applicant.
- William Mitze, for Riverside Cement Company;
- E. W. Anderson, for General Portland, Inc.; and George B. Shannon, for Southwestern Portland Cement Company; protestants.
- Henry Fikse, for Fikse Brothers, Inc.;
- William T. Barklie, for California Portland Cement Company; Don Austin, for Monolith Portland Cement Company; James L. Beckett, for Valencia Trucking Corporation; Robert A. Schneck, for Terri Trucking, Inc.; Woody Graham, for Miles & Sons Trucking Service, Inc.; Joe S. Tedesco, for T.T.T. Inc.; Michael V. Thomas, for Les Calkins Trucking; and Allen L. Cole, for Max Binswanger Trucking; interested parties.
- Mark Wetzell, for the Commission staff.

O P I N I O N

The application of Western Motor Tariff Bureau, Inc. (WMTB), agent, seeks authorization for and on behalf of all carriers party to Western Motor Tariff Bureau, Inc., agent, Local Freight Tariff No. 17, Cal. P.U.C. No. 21 (WMT-17) to amend Item 2250 in that tariff. Within

Southern Territory Item 2250 presently allows 30 minutes for loading bulk cement and 60 minutes for loading sacked cement. Excess time is charged for as provided in Item 2000. With certain minor exceptions, loading time commences for bulk cement when carriers' equipment is placed under the loading spout; for sacked cement, loading time commences when carriers' equipment is placed into actual position to load. It is proposed, with certain exceptions, to have loading time start when carriers' equipment arrives at shipper's premises.

Similar provisions to apply within Northern Territory were sought in A.57597 and granted in D.88041. Said decision originally authorized the change for the Northern Territory with an expiration date of June 30, 1979. That expiration date has been extended to June 30, 1980 (STD 9433 dated 6/19/79, effective 7/1/79). The present application proposes to maintain the revised loading time provisions permanently in WMT-17.

A formal protest was filed by General Portland, Inc./ California Division (General Portland) alleging, among other things that (1) all cement carriers did not support the proposed tariff change; (2) if any unloading problems exist, they are due to carriers' caravanning to be loaded; (3) General Portland's loading facilities are in excess of five miles from the entrance to its premises; and (4) the requested tariff change would put an undue administrative burden upon General Portland.

Riverside Cement Company, a division of Amcord, Inc., (Riverside) filed a statement of position on July 20, 1979. Riverside objects to the proposed amendments to Item 2250. The company states that its experience has been that trucks tend to arrive in groups. It is suggested that the group arrivals are due to local truck stops where the drivers gather. Riverside states that at both of its plants the point of entry is several hundred yards from the loading station; that before reaching the loading station, trucks stop and drivers

prepare trailers to accept the lading. Telephones, restrooms, and refreshments are available nearby for driver convenience. Riverside states that if the proposed amendment is approved, it may be compelled to: (1) employ sentries at each plant for 24-hour monitoring of truck entry into the loading areas, thus delaying entry, and (2) assign loading times to each truck. This would have to be done necessarily with little regard to the wishes of the carrier dispatcher. It is argued that the adoption of the proposed amendment could very well substantially reduce a carrier's flexibility and prove to be costly in the long run.

After duly published notice, two days of public hearings were held on July 24 and 25, 1979 in Los Angeles before Administrative Law Judge Bernard A. Peeters. The matter was submitted on the latter date subject to the filing of closing statements by the parties due August 10 and a late-filed Exhibit No. 2 due August 21, 1979. Said statements and exhibit have been timely filed and the matter is now ready for decision.

The Evidence

WMTB presented its case through six witnesses and two exhibits. Two of the witnesses were northern California carriers who testified that in the recent past they had experienced delay-time problems in loading at shipper facilities. These delays most frequently occurred after the carriers' equipment reached the shipper's plant and before it was placed into position to be loaded. Delays of several hours were common and caused the carriers to become liable for payment of overtime wages to drivers and to incur substantial revenue loss. Although both of the northern carriers worked closely with their respective shippers to alleviate the delay problem, the delays continued. One of the carriers testified that his company attempted to limit their delay time by recalling their units of equipment after they had been at the shipper's facility over two hours without being loaded. Both carriers testified that they cannot cover

their revenue loss by assessing the present delay time charge of \$16.80 per hour, but they can at least cover a portion of the loss when excess delays do occur. Since the adoption of the revised loading time provisions, the carriers stated that the delay time problem has become minimal.

The testimony of three Southern Territory carriers was offered by WMTB. Their testimony shows that they are suffering delays in loading which are continuing to the present day and that such delays are causing revenue losses. Under cross-examination it was developed that a shipper-instituted program of scheduled loading times would not cause a problem for the carriers as long as such a program was not punitive in nature. One carrier testified that one shipper he presently hauls for does designate such loading times and that it has worked out well for both parties. It was generally agreed by the carriers that they were not aware of any bunching or "caravaning" of trucks which would cause backups at the loading facilities. Furthermore, each carrier stated that he would not condone such "caravaning" by his own drivers as it would be an inefficient method of operating his business. The carriers generally agreed and stated that common practice in the industry with respect to the presentation of carriers' equipment for admission to shipper's premises occurs when the driver advises the mill that he is ready to load, such advice being either via a call box or when the bill of lading is stamped by the mill representative.

WMTB introduced Exhibit 1, Cement Loading Times, through a cost witness from the California Trucking Association (CTA). The witness stated that his duties involve close relationship with the Cement Standing Rate Committee of WMTB and to closely follow Commission rate proceedings. The witness stated that the current cost development underlying WMT-17 for loading time is based upon a Commission staff study of cement transportation which was done in 1966

and 1967. The results of that study were presented in Exhibit 1 in Pet.26, C.5440. Utilizing the staff's working papers which underlay this exhibit, the witness developed Exhibit 1 in this proceeding. In addition the witness utilized all of the trips of a Southern Territory carrier during the week of June 18, 1979 from which he determined the arrival time and loading time for each of those trips and compiled that information into Exhibit 1. The results of Exhibit 1 show that the current costs for loading bulk cement are based upon 0.42 hours in the Northern Territory and 0.44 hours in the Southern Territory. A proper, although conservative, average loading and delay time is 50 minutes or 0.83 hours. Table 6 of Exhibit 1 sets forth the impact of such excessive loading time to be 4 percent of the annual revenue of a unit of carrier's equipment. Table 4 is a comparison of the Southern Territory cost study versus current experience. This table shows that only 3.7 percent of the trips in the Commission's staff cost study experienced load times in excess of 60 minutes. However, 18.7 percent of the trips of the southern carrier for the study week of June 18, 1979, experienced loading delays in excess of 60 minutes.

WMTB's last witness was a tariff compiler for WMTB representing all of the bulk carriers, viz., petroleum irregular route carriers, cement carriers, vacuum truck carriers, and some other specialized carriers. This witness stated that he prepared the application and the proposed change in Item 2250. The witness admitted that there could be some problem with an interpretation of the proposal to have loading times start when the carriers' equipment arrives on shipper's premises. He agreed to take up the matter of clarifying this language with the Tariff Bureau's Standing Rate Committee which was scheduled to meet on August 9. On that basis he would be able to present a late-filed exhibit which would show a clarification and amendment to the proposed item change that was agreed

upon by the Standing Rate Committee. Late-filed Exhibit 2 is the result of this action.

The protestants presented two Southern Territory carrier witnesses. The gist of their testimony was that they opposed the proposed amendment to Item 2250 and stated that if such proposal were adopted, they would "flag" themselves out of such a tariff provision. The other two protestants elected not to make any affirmative showing although both of them were invited by the ALJ to at least present a statement of position under oath and be subject to cross-examination.

Discussion

It is clear from the record that the time consumed for loading bulk cement in the Southern Territory greatly exceeds the free-time allowance. It is also clear from the record that the excessive loading times which had been occurring in the Northern Territory have abated since the amendment of Item 2250 providing for charges for excess loading times.

Applicant's proposal, as amended in Exhibit 2, provides that loading time shall commence at the time carrier's driver and equipment report for loading to consignor's agent. This proposal eliminates some of the problems with the application of the proposed rules raised by protestants.

While one cement shipper's mill is five miles from the actual entrance to the property upon which the mill is located, such fact apparently causes no problem of interpretation among the carriers as to when the "carriers' equipment is presented for loading". The evidence shows that the carriers consider their equipment presented for loading at the time they notify the shipper's agent that they are present and available for loading, or at the time the shipper's agent actually places the time stamp upon the bill of lading tendered to the carrier at the time of loading.

While Exhibit 1 is clearly based upon outdated data, in part, it is valuable from a comparative standpoint with the current information shown therein based upon one carrier's experience. The facts set forth therein are uncontroverted and it does show that the current loading delays in the Southern Territory are costing carriers at least 4 percent of their annual operating revenues per unit of equipment.

The two carriers who were subpoenaed by one of the protestants testified that they would "flag out" of the tariff provision if it is adopted. WMTB admits that all carriers do not support the application. This matter was the subject of a WMTB docket which was duly publicized and brought before the WMT-17 Cement Standing Rate Committee in accordance with established procedures. The docket item was approved by the Standing Rate Committee, and WMTB was directed to file the application on behalf of all carriers party to WMT-17.

We note that carriers that are parties to WMTB's Cement Tariff 17 elect not to increase their rates by "flagging out" of the revised rate that WMTB would publish. Given the opportunity for such independent carrier action, along with the cost justification referred to above, we are of the opinion the requested rate modifications are reasonable.

Findings of Fact

1. The Southern Territory cement carriers are experiencing excessive loading delays.
2. The excess loading time charges provided in WMT-17 do not cover the carriers' costs.
3. The proposed amendment has been in effect in the Northern Territory for over one year, and it has had the desired effect of accomplishing shipper efficiency by reducing excessive loading time.

4. The adoption of the proposed rule change will establish charges for excess delay time in the Southern Territory which results in an increase of tariff charges.

5. The increase referred to in Finding 4 above covers carriers' costs not presently reflected in WMT-17.

6. The establishment of monetary charges for excessive loading time in the Southern Territory will provide an incentive to the shippers to assure that carriers are loaded within the free time allowance provided by the tariff item in question.

7. The granting of the sought authority will provide uniform charges statewide for excessive delay times.

8. The verified application shows that carriers party to WMT-17 will not have their gross intrastate gross revenue increased by as much as 1 percent if the sought-for authority is granted.

Conclusion of Law

WMTB should be authorized to publish the proposed amendment to Item 2250, WMT-17 contained in Exhibit 2 for the Southern Territory, and adopt it on a permanent basis for the Northern Territory.

O R D E R

IT IS ORDERED that:

1. Western Motor Tariff Bureau, Inc., agent, on behalf of all carriers party to its Tariff No. 17, is hereby authorized to amend its Local Freight Tariff No. 17, Cal. P.U.C. No. 21, Item 2250, as specifically set forth below:

"TIME ALLOWANCE FOR LOADING AND UNLOADING

(A) Free time for loading sacked cement shall be 60 minutes. Free time for loading bulk cement shall be:

- (1) 30 minutes when loaded under the provisions of Paragraph (D) (1), below.
- (2) 60 minutes when loaded under the provisions of Paragraph (D) (2), below.

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- (B) Free time for unloading both bulk and sacked cement shall be two hours.
- (C) Charges as provided in Item No. 2000 shall be assessed for the time carrier's equipment is detained through no fault of the carrier after expiration of the free time specified in Paragraphs (A) or (B) above, except Saturdays, Sundays and Holidays shall be excluded when driver is not on duty.
- (D) Loading time shall be computed as follows:
 - (1) When shipment is designated by consignor to be loaded at a specified time, loading time shall commence from the time designated by the consignor, provided equipment is tendered for loading on or prior to designated loading time, and shall terminate when carrier's equipment is released for departure from point of origin.
 - (2) When a shipment is not designated by consignor to be loaded at a specified time, loading time shall commence at the time carrier's driver and unit of equipment report for loading to consignor's agent and shall terminate when carrier's unit of equipment is released for departure by consignor's agent from point of origin."

2. Tariff publications authorized to be made as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and to the public. ✓

3. The authority herein granted shall expire unless exercised within ninety days after the effective date of this order.

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

Dated NOV 30 1979, at San Francisco, California.

John E. Byron

President

James L. Thompson

Richard D. Wood

Clarence J. Sprick

James L. Thompson

Commissioner