

ORIGINAL

Decision No. 91403 MAR 4 1980

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 cement and)
related products statewide as)
provided in Minimum Rate Tariff 10,)
and the revisions and reissues)
thereof.)

Case No. 5440
Petition for Modification
No. 113
(Filed October 11, 1979)

William P. Haerle, Attorney at Law, and
Ronald C. Broberg, for the California
Trucking Association, petitioner.
Allen L. Cole, for Max Binswanger Trucking;
Henry Fikse, for Fikse Brothers, Inc.;
Frank R. Golzen, Attorney at Law, for
Universal Transport System, Inc.; H. E. Farrer,
for Miles & Sons Trucking; Michael V. Thomas,
for Les Calkins Trucking; and Mike Mallin,
for South Bay Transportation; respondents.
R. G. Moon, for Western Motor Tariff Bureau;
Don Austin, for Monolith Portland Cement Company;
T. W. Anderson, for General Portland, Inc.;
William Mitze, for Riverside Cement Company;
George B. Shannon, for Southwestern Portland
Cement; Fred R. Covington, Douglas K. Guerrero,
O. R. Stephenson, and Jim S. McGahey, for Kaiser
Cement Corporation; James M. Gallagher, for
Flintkote Cement Company, Calaveras Division;
William T. Barklie, for California Portland
Cement Company; and E. J. Bertana, for Lone Star
Industries, Inc.; interested parties.
John Lemke, and Ray Toohey, for the Commission staff.

INTERIM OPINION

Minimum Rate Tariff 10 (MRT 10) contains minimum rates for the statewide transportation of cement and related commodities by highway carriers. The last full-scale investigation of the rates and charges of MRT 10 resulted in the Commission's Decision No. 73607 dated January 9, 1968. Subsequently, the Commission has periodically

issued decisions revising MRT 10 to reflect updated carrier operating experience, including fuel costs, and the needs of the shippers served. By this petition, the California Trucking Association (CTA) seeks the issuance of a new MRT 10-A to replace MRT 10.

A prehearing conference was held on November 16, 1979 and public hearing was held on December 11 and 12, 1979 and January 8, 1980 before Administrative Law Judge Arthur M. Mooney in San Francisco. At the request of CTA and with the concurrence of the other parties, the matter has been temporarily taken off calendar.

Cost studies were presented in evidence by both CTA and the Commission staff. CTA has also presented in evidence its proposed MRT 10-A. The proposed new tariff is similar in format to the current cement tariff. Generally, the revisions in the new tariff include increases in rates and charges, and changes in certain rules. According to the cost studies of both CTA and the staff, there have been significant increases in the cost of transporting cement and related commodities which are not reflected in the cost datum plane on which the rates and charges in MRT 10 are now based. The staff will at a later date file its proposed rate increases and revisions to MRT 10. The consultant representing Kaiser Cement Corporation will at a future hearing present his analysis of CTA's proposal and his recommendations regarding cement rates and rules. It is his present position, and also that of the staff, that should any revisions in the cement minimum rates and rules be adopted by the Commission, MRT 10 should be amended to reflect these changes rather than issue a new tariff.

At the conclusion of the hearing on January 8, 1980, CTA pointed out that the need for rate relief by cement carriers is imperative and recommended that an immediate 7 percent surcharge be added to MRT 10 pending final determination of this matter. The staff pointed out that (1) its cost study shows that the cost of transporting cement has increased approximately 10 percent; (2) the increases shown in CTA's cost study average approximately

15 percent; and (3) it has no objection to the requested 7 percent surcharge. There was, likewise, no objection by the consultant for Kaiser Cement Corporation or any of the other parties at the hearing to the immediate 7 percent surcharge.

While radial highway common, highway contract, and cement contract carriers in performing transportation subject to MRT 10 may not charge less than the minimum rates and charges stated therein, such carriers may, at will, charge more than these rates. There are only seven cement contract carriers subject to MRT 10, as all other former cement carriers have converted their permits to cement carrier certificates pursuant to the provisions of Assembly Bill 1559 (Statutes 1978, Chapter 1373). On the other hand, there are more than two hundred cement common carriers.

Highway common carriers, including cement carriers, however, are in a different position than permitted carriers. They are required by law to publish tariffs and to assess the precise rates and charges stated in their tariffs. They cannot rapidly adjust their rates and charges to compensate for increased operating costs. For this reason, we are of the opinion that they should be granted permissive authority to increase their rates predicated on MRT 10 by a seven percent surcharge supplement in accordance with the provisions of Section 415(b) of the Public Utilities Act. This increase is in addition to any outstanding surcharge increases heretofore authorized to such common carriers.

The interim increase authorized herein is within the guidelines of President Carter's Council on Wage and Price Stability. Because of the immediate need for the interim relief in issue, the order which follows will be made effective on the date it is issued, and it will provide that the surcharge increases may be made effective five days thereafter on five days' notice.

Findings of Fact

1. CIA and the staff have demonstrated that since MRT 10 was last generally adjusted, the for-hire carriers governed thereby have incurred increases in operating costs.

2. The increased costs referred to in Finding 1 are not now reflected in the historical cost data underlying the level of rates named in MRT 10.

3. CIA seeks an interim surcharge increase of 7 percent in MRT 10 to partially offset the increased costs referred to in Finding 1 pending final determination of this matter. Both the staff and other parties in this proceeding have no objection to this request.

4. Radial highway common, highway contract, and cement contract carriers may, on their own initiative, charge more than the minimum rates set forth in MRT 10 to compensate for the increases in operating costs referred to in Finding 2. Highway common carriers, including cement carriers, may not increase their rates based on this tariff without authority from the Commission.

5. It has not been established on this record that the rates and charges for radial highway common, highway contract, and cement contract carriers in MRT 10 should be adjusted by interim surcharge as requested by CIA.

6. The CIA request for immediate interim relief for highway common carriers, including cement carriers, is justified and they should be authorized to increase their rates predicated on minimum rates in MRT 10 by applying a seven percent interim surcharge supplement increase.

7. The interim increases referred to in Finding 6 are within the standard set forth in the President's wage-price guidelines.

Conclusions of Law

1. The request by CTA for an interim cost offset increase in MRT 10 pending final decision in its Petition for Modification No. 113 in Case No. 5440, should be granted to highway common carriers, including cement carriers, to the extent set forth in the following order.

2. The interim cost offset increase authorized herein should be put into effect through the application of a surcharge.

3. Because there is an immediate need for the sought interim relief by highway common carriers, including cement carriers, the order which follows should be made effective on the date hereof, and it should provide that the surcharge increase to highway common carriers', including cement carriers', tariffs may be made effective on five days' notice to the Commission and to the public.

INTERIM ORDER

IT IS ORDERED that:

1. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 44633, as amended, are authorized to establish in their tariffs a seven percent interim surcharge increase to become effective five days after the date hereof.

2. Common carriers maintaining rates on a level other than the minimum rates for transportation for which rates are prescribed in Minimum Rate Tariff 10 are authorized to increase such rates by the same amounts authorized by this decision.

3. Common carriers maintaining rates at levels other than the minimum rates for the transportation of commodities and/or for transportation not subject to Minimum Rate Tariff 10 are authorized to increase such rates by the same amounts authorized by this decision.

4. Tariff publications authorized to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order, on not less than five days' notice to the Commission and to the public; the authority shall expire unless exercised within sixty days after the effective date of this order.

5. Common carriers, in establishing and maintaining the rates 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 authorization; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

6. In all other respects, Decision No. 44633, as amended, shall remain in full force and effect.

7. To the extent not granted herein, the request for an interim seven percent increase in Petition for Modification No. 113 in Case No. 5440, is denied.

8. The Executive Director shall serve a copy of this decision on every common carrier, or such carriers' authorized tariff publishing agents, performing transportation services subject to Minimum Rate Tariff 10.

The effective date of this order is the date hereof.

Dated MAR 4 1980, at San Francisco, California.

John E. Bryan

President

Richard D. Howell

Lawrence J. Smith

Commissioners

I dissent
Vernon L. Sturgeon

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.