

ORIGINAL

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Decision No. _____

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 sand, rock, gravel and related items in bulk, in dump truck equipment between points in California as provided in Minimum Rate Tariff 7-A and the revisions or reissues thereof.

Case No. 5437
Petition for Modification
No. 302
(Filed June 16, 1978;
amended January 16, 1979
and April 25, 1979)

Case No. 9819
Petition for Modification
No. 32

Case No. 9820
Petition for Modification
No. 11
(Filed June 16, 1978;
amended January 16, 1979
and April 25, 1979)

And Related Matters.

(See Appendix A for appearances.)

O P I N I O N

Petitioner California Carriers Association (CCA), a California nonprofit corporation with approximately 50 permitted carrier members, requests an increase of 4.5 percent in the minimum rates set forth in Minimum Rate Tariffs (MRTs) 7-A, 17-A, and 20 for transporting commodities in dump truck equipment and a decrease in the minimum percentage of charges required by the MRTs to be paid by the overlying carrier to the subhauler from 95 percent of the applicable minimum charge (the 95 percent rule) to 92½ percent of the applicable minimum charge (the 92½ percent rule). CCA also requests

that the Commission revise the component of the ratemaking formula used to determine indirect expenses of overlying carriers operating under the MRTs so that indirect expenses are deemed to equal 15 percent of direct expenses rather than 10 percent of direct expenses as now called for by the formula.

California Dump Truck Owners Association (CDTOA), Associated Independent Owner-Operators, Inc. (AIOO), California Trucking Association (CTA), California Asphalt Pavement Association (CAPA), General Portland, Inc., the Commission staff, and several carriers opposed the granting of the petition. A hearing was held on the matter before Administrative Law Judge Pilling on April 24 and 25 and May 1, 1979 at San Francisco and Los Angeles, respectively. Evidence in support of the petition was presented by petitioner and two overlying carriers. Evidence in opposition to the petition was presented by an underlying carrier and by the staff.

CCA contends that the 95 percent rule does not permit the overlying carrier to recover its cost of doing business and that the overlying carrier needs at least $2\frac{1}{2}$ percent more of the gross revenue to cover such costs and, therefore, requests that the Commission substitute the $92\frac{1}{2}$ percent rule for the present rule. But so as not to reduce the monetary amount presently received by the underlying carrier, CCA proposes that the minimum rates be increased 4.5 percent. In justification for the increase in minimum rates, CCA contends that its overlying carrier cost evidence shows that the average indirect expense ratio of overlying carriers is substantially greater than the indirect cost ratio used to construct the present rates.

CCA presented a study based on the cost data for the year 1975, which it had assembled from 23 overlying carriers operating under the dump truck MRTs. The average operating ratio of the carriers was shown to be 99.61 percent. The study also showed (Exhibit 5, page 2) that the carriers' costs of doing business-- the indirect and gross revenue expenses and interest costs--equated to 12.02 percent of the carriers' operating revenues regardless of

whether the individual carrier used its own equipment or employed underlying carriers.^{1/} The results of the study also showed that the ratio of indirect costs to direct operating costs was 11.3 percent.

A CCA witness explained the services that an overlying carrier performs for an underlying carrier which contribute to the overlying carrier's indirect costs (Tr. 118-121). They include, but are not limited to, the following:

1. Obtaining work for the overlying and underlying carrier.
 - (a) Surveying potential construction projects;
 - (b) Investigating the type of material that must be moved;
 - (c) Determining risks and adverse conditions connected with the project; and
 - (d) Making a judgment decision as to the feasibility of the particular work in light of other work already committed.
2. Determining trucking requirements.
 - (a) Determining the number of trucks required;
 - (b) Determining the type of equipment that can handle the job most efficiently;
 - (c) Determining the best routing for the job; and
 - (d) Furnishing cost information to contractor or shipper and advising contractor on rates, sources of materials, etc.

^{1/} The Commission has not heretofore considered interest expense to be a component of either indirect or direct expense. Interest is considered to be a below-the-line expense and is not included in the total operating costs underlying the minimum rates.

3. Servicing the job.
 - (a) Ensuring that shipper and receiver have adequate vehicles for efficient operation;
 - (b) Placing traffic coordinators to monitor movement of trucking equipment to ensure efficient operation; and
 - (c) Providing shipper and receiver with reports on progress of work.
4. Preparing freight bills for underlying carriers.
5. Advising underlying carriers on rate matters.
6. Furnishing of supplies, fuels, tires, and repairs to underlying carriers; providing parking for subhaulers equipment.

The witness explained that these services are performed by overlying carriers in all facets of the dump truck industry, including plant-to-plant work and special commodity work, as well as construction work.

The witness noted that overlying carriers must pay subhaulers by the twentieth of every month, even though payments from the contractor or shipper have not been received.

The CCA witness explained that by modifying the 95 percent rule to a 92 1/2 percent rule and assuming an increase in the minimum rates of 4.5 percent, the subhauler will get \$1.66 if it is a full unit operator or the puller if it is a tractor-only operator will get \$0.76 over what it is now receiving per each \$100 increment of the charges for a haul.

Opposition

The Commission staff opposed the petition on the basis that the original proposals would exceed the President's Wage and Price Guidelines. Since we are denying the proposed rate increase on other grounds, this issue is moot.

Two overlying carriers presented opinion testimony to the effect that the increase in the proportion of minimum rate revenue they would receive would be helpful to their business. Similarly, an underlying carrier testified that, in his opinion, the proposals concerning divisions of revenues would harm underlying carriers.

Discussion

The CCA showing fails to provide any basis to alter the 95 percent rule. The CCA petition did not attempt to make a showing to justify an increase in the minimum rates, absent a change in the division of revenue. The petition will, therefore, be denied entirely.

CCA makes the erroneous assumption that the 95 percent rule is cost-based. The 95 percent rule was established on the basis of industry judgment and not on cost data by Decision No. 40724 dated September 16, 1947, 47 CPUC 447, wherein it was said at page 460 of the printed decision:

"Witnesses, including carriers engaged in extensive operations as 'overlying' carriers, testified that experience in these operations has indicated that 5 percent of the transportation charges collected from shippers is a reasonable basis for settlement. On the basis of such settlements, these witnesses said, reasonable provisions are made for the service of the 'overlying' carrier such as soliciting the business, billing, dispatching, and proper effect is given to the lower costs experienced by the 'underlying' carrier as a result of being relieved from incurring these expenses directly."

* * *

"No one opposed the adoption of the recommendation that 'overlying' carriers be required to pay 'underlying' carriers not less than 95 percent of the charges accruing under the minimum rates."

Later, in Decision No. 88440 dated January 31, 1978, 83 CPUC 39, wherein the 95 percent rule was reaffirmed on the basis of carrier concurrence, the Commission said at page 398:

"The Commission has the authority to approve a division of revenues between carriers...and such division of revenues need not necessarily be related directly to the operating costs involved if the carriers to which the division of revenues will apply are satisfied that such division of revenues will be fair... Inasmuch as the principal dump truck carrier associations concur in the proposed division of revenues, it appears that the carriers directly involved are satisfied that revenue division is fair and reasonable, and thus will not be discriminatory."

CCA also makes the erroneous assumption that the 5 percent deduction is somehow related to the ratio of indirect and direct expenses. Basing their argument on these assumptions, they then attempt to show the currently used ratio understates the magnitude of indirect expenses. To rectify this error, CCA requests that the 5 percent deduction be increased to 7 1/2 percent in order to adequately compensate overlying carriers. The services assertedly performed by the overlying carrier for the underlying carrier as outlined in CCA's testimony are elements of indirect expense, but there is no showing by CCA that the Commission considered all or any portion of those services in arriving at the current indirect expense ratio of 10 percent. The costs underlying the current minimum rates reflect the operations of a full-unit of equipment carrier that is not engaged either as a subhauler or as an overlying carrier.

CCA also attempted to show that the 10 percent ratio of indirect and direct expenses is no longer reasonable. CCA's study showed an 11.3 percent ratio for the year 1975, which is not substantially out of line with the present 10 percent ratio used in dump truck cost studies that underlie the existing minimum rates. Naturally, fluctuations in the ratio of indirect expenses to direct expenses will occur from time to time. The 1.3 percent increase which carriers experienced in 1975 may represent a crest in such fluctuations. A longer time sample is necessary to establish that a new ratio is justified. CCA also failed to show separately the current indirect ratios of carriers that are not operating as overlying carriers--the type of carrier for whom costs are developed in the studies underlying the existing minimum rates.

The Commission adopted the 95 percent rule based upon the judgment of the industry rather than upon any specific cost data. We are now asked to change that rule with a showing made of the costs of the overlying carriers only. To upset an industry consensus and base the division of revenue between the overlying and the underlying carriers on the costs involved we would need a showing of the costs of the underlying carriers as well. We have not been presented with the costs of the underlying carriers and, therefore, must deny CCA's request to change the rule.

Findings of Fact

1. CCA requests that the component of the ratemaking cost studies used to determine indirect expenses of overlying carriers operating under the dump truck MRTs be revised so that indirect expenses are deemed to equal 15 percent of direct expenses rather than 10 percent of direct expenses as is now called for by the formula.

2. CCA's 1975 cost study embracing 23 carriers operating under the dump truck MRTs showed a ratio of indirect costs to direct costs of 11.3 percent for the combined operations. Included in the indirect cost showing of CCA was interest expense, which heretofore has not been considered an element of indirect cost. To the extent that interest is included in its study, the indirect expenses developed by CCA are overstated.

3. The 1.3 percent difference between the ratio now used and the requested ratio is not sufficient to indicate that the indirect ratio now used is unreasonable for minimum rate purposes.

4. The time period covered by the sampling is of too short a duration to show that the proposed indirect cost ratio is representative.

5. CCA requests that we decrease the minimum percentage of charges required to be paid by overlying carriers to underlying carriers from 95 percent to 92½ percent of the applicable minimum rate.

6. The existing division of revenues between overlying and underlying carriers was based upon the judgment of the industry rather than upon any specific cost data. (See Decision No. 88440, supra.)

7. CCA presented a study based on the 1975 operations of 23 overlying carriers which was designed to show that their average cost of doing business exceeded the 5 percent allowed them by the 95 percent rule.

8. CCA did not present any data showing the operating costs of underlying carriers, or of carriers not operating as overlying carriers or subhaulers.

9. Lacking cost data of the aforementioned types of carriers, we are unable to determine, on an industry-wide cost basis, that the present divisions of revenues between overlying and underlying carriers are unreasonable.

Conclusions of Law

1. The levels of minimum rates in the MRTs have not been shown to be unjust or unreasonable.
2. The present divisions of revenues between overlying and underlying carriers have not been shown to be unjust or unreasonable.
3. The present components of ratemaking cost studies used to determine indirect expenses of overlying carriers operating under the dump truck MRTs have not been shown to be unreasonable.
4. The petitions should be denied.

O R D E R

IT IS ORDERED that Petition for Modification No. 302 in Case No. 5437, Petition for Modification No. 32 in Case No. 9819, and Petition for Modification No. 11 in Case No. 9820 are denied.

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

Dated JUL 15 1980 , at San Francisco, California.

John E. Bryson
President
Veronica L. Johnson
Michael W. Howell
Charles J. P. P. P.
Thomas W. Jones
Commissioners

APPENDIX A

LIST OF APPEARANCES

Petitioner: Graham & James, by David J. Marchant and Thomas J. MacBride, Jr., Attorneys at Law, and Dennie Reed, for California Carriers Association.

Protestants: William R. Haerle, Attorney at Law, and H. W. Hughes, for California Trucking Association; James R. Foote, for Associated Independent Owner-Operators, Inc.; and J. D. Young, for himself.

Respondents: Les Calkins, for Les Calkins Trucking; Ness M. Daher, for himself; Gary Duarte, for Gary Duarte Trucking; Thomas W. Hall, for T. W. Hall Trucking; Kenneth F. Hvatt, for Hyatt Trucking; Jack W. Lord, for We Haul Trucking; R. Medina, for Medina Trucking; George Moore, for George Moore Trucking; Dave Sanchez, for K. A. Trucking; Richard G. Santos, Jr., for Santos Trucking; John Settle, for Settle & Sons; and Dennis D. Yardley, for Dennis D. Yardley Trucking.

Interested Parties: T. W. Anderson, for General Portland, Inc., California Division; Walker Brown, for Walker Brown Trucking, Inc.; James D. Martens, Dorothy J. Flanders, and Lynda Spangler, for California Dump Truck Owners Association; Harry Phelan, for California Asphalt Pavement Association; and Link Richmond, for Link Richmond & Sons, Inc.

Commission Staff: Joe Braman and Vahak Petrossian.