

ORIGINAL

Decision No. 92162 AUG 19 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;
amended April 14 and 29, 1980)

(See Decision No. 91403 for appearances.)

SECOND INTERIM OPINION

Minimum Rate Tariff 10 (MRT 10) contains minimum rates for the statewide transportation of cement and related commodities by highway carriers. By this petition, the California Trucking Association (CTA) seeks an increase in the rates for the transportation of cement and the issuance of a new MRT 10-A to replace MRT 10. A prehearing conference and public hearing have been held, and the matter is temporarily off calendar at the request of the parties. At the conclusion of the last day of hearing on January 8, 1980, CTA pointed out that the need for rate relief for carriers transporting cement to offset increased operating costs was imperative and requested that an immediate interim 7 percent surcharge be added to MRT 10. There were no objections to this request. Decision No. 91403 dated March 4, 1980 granted a 7 percent permissive interim surcharge increase to highway common carriers, including cement carriers. The decision pointed out that: (1) There are now only 7 cement contract carriers and over 200 certificated cement carriers; (2) the cement contract carriers may legally charge rates higher than those in MRT 10 at their discretion; (3) the certificated cement carriers, however, are required by law

to assess the precise rates and charges stated in their tariffs and cannot adjust their rates and charges to compensate for increased operating costs without prior approval of the Commission; and (4) for this reason, they should be granted permissive authority to increase their rates predicated on MRT 10 by a 7 percent surcharge supplement in accordance with the provisions of Section 415(b) of the Public Utilities Act.

By the First and Second Amendments to the petition, filed April 14 and 29, 1980, respectively, CTA again requests that the 7 percent interim surcharge that was granted to certificated cement carriers on a permissive basis in Decision No. 91403, plus additional surcharge increases of $4\frac{1}{2}$ percent for Northern Territory and 4 percent for Southern Territory be added to MRT 10. CTA points out that the additional surcharge increases are to offset further labor and related cost increases that became effective in Northern Territory on May 16, 1980, and in Southern Territory on July 1, 1980. According to Table 1 of Attachment 3 of the Second Amendment and CTA's Exhibit 1, which was received in evidence at the December 11, 1979 hearing, the total direct hourly labor cost increased from \$15.3805 to \$16.6075 in Northern Territory and from \$13.2296 to \$14.2096 in Southern Territory subsequent to the issuance of Decision No. 91403. CTA asserts that the additional surcharge amounts are necessary to enable carriers to maintain a continuing and dependable cement transportation service and that there are no protests to its proposal. It requests that an expedited ex parte order granting its request be issued.

Our Transportation Division staff, on July 9, 1980, filed an updated rate and cost exhibit (received herein as Exhibit 10) to reflect the recent labor and related increases. In the exhibit, the staff for the reasons stated in Decision No. 91403, proposes further permissive surcharge increases for highway common carriers, including cement carriers, only of 3 and $3\frac{1}{2}$ percent in their rates and charges predicated on MRT 10, with the exception of distance rates up to 130

constructive miles in Northern Territory. It recommends that in implementing these additional permissive increases, they be incorporated in and be in lieu of the 7 percent permissive surcharge increase granted to common carriers by Decision No. 91403. The specific increases proposed, which include the 7 percent, are as follows:

Distance Rates

Northern Territory

130 constructive miles or less	7.0%
Over 130 constructive miles	10.5

Southern Territory

80 constructive miles or less	10.5
Over 80 constructive miles	10.0

<u>All Other Rates and Charges</u>	10.0
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The staff pointed out that it contacted the 7 California cement manufacturers-shippers regarding its proposal and that the results of its survey were as follows: (1) None opposed the staff proposed increases or ex parte handling of the matter; (2) they do, however, oppose the increases being made permissive for certificated cement carriers only and recommend that the increases be mandatory and published in MRT 10; (3) one recommended an increase of 2½ to 3 percent for 130 constructive miles or less in Northern Territory, for which distance the staff recommends no increase; (4) another recommended that the increase be made effective on not less than five to 10 days' notice; and (5) another recommended that the increase be made permanent rather than interim.

The estimated increase in carriers' annual revenue that would result from CTA's and the staff's surcharge proposals would be \$2.6 and \$2.1 million, respectively.

Based on the labor and related cost increases that have occurred since Decision No. 91403 was issued, we are of the opinion that the further interim surcharge increases proposed by the staff for certificated cement carriers should be granted. Our reasons for granting this on a permissive basis for certificated cement carriers

are the same as those stated in Decision No. 91403 and summarized above. We have reviewed the exceptions taken by CTA in its letter of July 18, 1980 to the staff recommendations in Exhibit 10 and in particular to the staff's recommendation of no further interim increase in distance rates up to 130 constructive miles in Northern Territory. Rather than delay the request for further interim relief by setting it for hearing, we have adopted the staff proposal. The matter will, however, be set for further hearing at an early date to consider the remaining issues in this proceeding including: (1) The amount of the final rate adjustments that should be adopted in this proceeding; (2) the rate design that should be adopted in implementing the adjustments found to be justified, including considerations regarding Northern California distance rates up to 130 constructive miles; and (3) whether conditions in the California cement industry require that the rate adjustments be made mandatory rather than permissive.

The further interim increases authorized herein are 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. At the hearing on January 8, 1980, CTA requested an interim surcharge increase of 7 percent in MRT 10 to partially offset increased operating costs not reflected in the historical cost data underlying the level of rates named in the tariff pending final determination of this matter. Neither the staff nor any other party to this proceeding objected to this request.

2. 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. Highway common carriers, including cement carriers, may not increase their rates for the commodities in this tariff without authority from the Commission.

3. For the reasons stated in Finding 2, the CTA request for the 7 percent interim surcharge increase referred to in Finding 1 was granted to highway common carriers, including cement carriers, on a permissive basis by Decision No. 91403 dated March 4, 1980, and no adjustment was made in the rates and charges in MRT 10.

4. CTA and the staff have demonstrated that subsequent to Decision No. 91403 there have been further increases in labor and related costs.

5. CTA now requests that the interim 7 percent permissive surcharge granted to highway common carriers, including cement carriers, by Decision No. 91403 plus an additional interim surcharge of $4\frac{1}{2}$ percent

for Northern Territory and 4 percent for Southern Territory be incorporated in MRT 10 to partially offset the increased operating costs referred to in Findings 1 and 6 pending final determination of this matter.

6. The staff recommends further permissive interim surcharge increases for highway common carriers, including cement carriers, only of 3 to 3½ percent in most of their rates and charges predicated on MRT 10 to offset the additional increases referred to in Finding 6, staff further recommends that these increases be incorporated in and be in lieu of the 7 percent permissive interim surcharge increase heretofore authorized such carriers as provided in the order which follows.

7. The additional permissive surcharge increases referred to in Finding 6 for highway common carriers, including cement carriers, are reasonable for such carriers on an interim basis pending final decision in this matter.

8. A public hearing on this interim request is not necessary.

Conclusions of Law

1. The request by CTA for further 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 further 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.

SECOND 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 in lieu of the seven percent interim surcharge increase authorized by Decision No. 91403 the following interim surcharge increases to become effective five days after the date hereof:

Distance Rates

Northern Territory

130 constructive miles or less	7.0%
Over 130 constructive miles	10.5

Southern Territory

80 constructive miles or less	10.5
Over 80 constructive miles	10.0

All Other Rates and Charges 10.0

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 further interim surcharge increases 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 AUG 19 1980 , at San Francisco, California.

John E. Guyon
President
Herbert L. Sturgeon

Clair T. Sedgwick
Samuel W. Smith
Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.