ALJ/ks

Decision No. 92397 NOV 4 1980

ORIGINAL

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 or reissues thereof.	Case No. 5440 Petition for Modification No. 115 (Filed March 12, 1980)

Les Calkins, for Les Calkins Trucking, Inc., petitioner.
William Haerle, Attorney at Law, for California Trucking Association, protestant.
Ted Anderson, for General Portland, Inc.; Don Austin, for Monolith Portland Cement Co.; and Julie McKnight, for Kaiser Cement; interested parties.
Carl Blaubach, for the Commission staff.

O P I N I O N

Les Calkins Trucking, Inc. (Calkins) seeks authority as a cement carrier under the provisions of Section 452 of the Public Utilities Code to establish a tariff provision under which consignees of cement transported in bulk in pneumatic equipment will receive a rebate of $5.97 per delivered load when the shipment is unloaded by the consignee using its pneumatic unloading equipment in lieu of the pneumatic unloading system of the carrier.

The petition was protested by California Trucking Association (CTA). Public hearing was held before Administrative Law Judge Mallory in San Francisco on August 21, 1980 and the matter was submitted.

Testimony in support of the petition was presented by petitioner's vice-president/operations. The witness explained that Calkins, a common carrier, participates in the rates for the transportation of cement set forth in Western Motor Tariff Bureau Tariff No. 17 (WMTB 17). The rates and rules in that tariff follow the same format and the rates are generally on the same levels as the minimum rates established by the Commission in Minimum Rate Tariff 10 (MRT 10). The provisions of both WMTB 17 and MRT 10 provide that the rates for the transportation of cement include the services of loading and unloading by the carrier. In connection with bulk cement transported in pneumatic equipment the cost data, which underlie the minimum rates, include a provision for the use of the carrier's blower units.

The basis for the reduction in charges proposed by Calkins is the estimated operating costs for the use of the carrier's blower that would be avoided when the unloading service is performed by the consignee. The witness explained the manner in which such costs were developed in recent cost studies prepared by CTA and the Commission staff for presentation in Case No. 5440, Petition 113, and the adjustments of such costs made by the witness to reflect Calkins' current fuel costs.

Calkins' proposal requires that the consignee provide a pneumatic unloading system capable of producing 10 to 14 pounds per square inch at a minimum of 400 cubic feet per minute, or otherwise to comply with the carrier's requirements. The witness testified that Calkins has a consignee that has equipment that meets this requirement, and that other consignees are prepared to obtain such equipment.

The witness explained that the principal shippers of cement, the cement mills, generally prepay transportation charges. The cement mills have computerized their transportation billing procedures, and do not want to revise their computer programs to accommodate the few instances where the consignee unloads under the circumstances involved herein. Calkins proposed that the rate reduction be in the form of a rebate to the consignee, rather than as a reduction in the transportation rate in order to avoid the need to revise consignors' computerized freight bill procedures.

Calkins agreed to revisions in its proposal designed to clarify the application of the rate reduction and to remove objections. Calkins agreed to amend its proposal to provide that the refund to the consignee would be made 30 days after the transportation service was performed. According to Calkins' witness, the last day for the receipt of payment of the charges on the prepaid freight bills submitted to the consignor is 30 days after the date of shipment. Calkins also agreed to revise the proposal to add a condition providing that carrier's equipment shall be unloaded by the consignee's pneumatic equipment which shall be physically connected to the carrier's equipment.

CTA presented testimony in opposition to the relief sought. CTA opposed the petition on three bases. The first is that the cost data developed in a concurrent proceeding in which increases of minimum rates for cement are sought (Petition 113 in Case No. 5440) show that the current rates for 150 constructive miles or more in Northern Territory are below the full costs of providing the service. Thus, no reduction as proposed herein should be made because the total charges received by the carrier may fall below the estimated full costs of providing the service. The second basis for objection is that the proposal is not clear whether the refund of $5.97 would apply to each component part of a split delivery shipment. The third basis for objection is that Calkins indicated that it would assist consignees in acquiring pneumatic unloading equipment by purchasing such equipment and reselling it to consignees at cost and by arranging for installation at the consignee's premises. CTA believes that such assistance provides a potential for mischief, in that an unscrupulous carrier could provide the consignee with materials or services below cost or without cost.

Discussion

The evidence produced by Calkins shows that an amount of $6.00 per load to be refunded to consignees is not in excess of the unloading costs which would be incurred by the carrier if it performed the service. A refund to the consignee that provides its own unloading service in the amount proposed by Calkins is justified by transportation conditions and will meet the needs of commerce, and is not adverse to the public interest.

CTA's reasons for opposing the petition have no merit. With respect to CTA's first point, Calkins' witness testified that the preponderance of its shipments of cement handled in pneumatic equipment move for distances of 100 miles or less; not within the distances where CTA alleges the present minimum rates are below full operating cost. Moreover, Calkins will not worsen its profitability by permitting the consignee to perform the unloading service and paying it an amount which does not exceed Calkins' avoidable cost.

Concerning CTA's second point, the ambiguity easily may be corrected by amending Calkins' proposal to show that the full refund applies only to shipments not accorded split delivery service; and that the refund will be prorated between component parts of the split delivery shipment.

CTA's third reason for opposing the petition is that the assistance Calkins would offer to consignees may present the opportunity for unlawful rebates. The question of whether a certain practice is a device to evade the minimum rates or to offer or obtain transportation at a lower rate than a common carrier's tariff rate is a question of fact determined by the circumstances involved in each individual transaction. It is not possible to determine in advance, based on the limited facts presented herein, that potential transactions will result in unlawful rebates. We must assume that Calkins will not engage in unlawful activities. Only after the potential transactions are completed can a determination of their lawfulness be made.

The petition should be granted, modified as indicated above.

Findings of Fact

1. Calkins, a cement carrier (common carrier) maintains rates for the transportation of cement in WMTB 17. The rates in WMTB 17 are generally the same or higher than the minimum rates in MRT 10, and the governing rules are generally the same in both tariffs.

2. WMTB 17 and MRT 10 provide that the rates in those tariffs for the transportation of cement include loading into and unloading from the carrier's equipment.

3. The basic cost data which underlie the minimum rates in MRT 10 as developed by the Commission staff and CTA, contain a separate tabulation showing the unloading costs of blower equipment on carriers' pneumatic vehicles when used to unload bulk cement.

4. Calkins seeks authority as a common carrier under Section 452 of the Public Utilities Code to refund to consignees an unloading charge of $5.97 when the consignee unloads a shipment of bulk cement transported in pneumatic equipment using blower equipment furnished and operated by the consignee.

5. Calkins has shown by modifying the unloading data in the basic cement cost studies to reflect current fuel costs, that it incurs an unloading cost of approximately $6.00 per load when it uses the blower equipment in its pneumatic vehicles to unload shipments of bulk cement.

6. The proposed refund to consignees of $5.97 (rounded to $6.00) to apply when the consignee uses its blower equipment to unload Calkins' pneumatic vehicles does not exceed Calkins' cost of unloading its equipment.

7. It will be reasonable for Calkins to refund to the consignee the cost of unloading when such cost is not incurred by Calkins.

8. No undue discrimination between shippers or between carriers of cement will result from Calkins' proposal.

9. Calkins' proposal, as amended in the order which follows, is justified by transportation conditions, is designed to meet the needs of commerce, and is in the public interest.

Conclusions of Law

1. Calkins' proposal, amended as provided in the order which follows, should be granted.

2. Inasmuch as the circumstances surrounding the transportation in question may change at any time, the authority granted herein should be limited to a period of one year.

O R D E R

IT IS ORDERED that:

1. Les Calkins Trucking, Inc., a cement carrier, is authorized to publish and file the tariff provisions set forth in Appendix A attached hereto and made a part hereof.

2. The tariff publication authorized as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order on ten days' notice to the Commission and the public.

3. The authority granted shall expire one year after the effective date of this order unless sooner cancelled, or extended.

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

Dated NOV 4 1980, at San Francisco, California.

President

Commissioners

APPENDIX A

Carrier: Les Calkins Trucking, Inc.

Commodity: Cement (building, Portland, hydraulic, and/or specialty) in bulk in pneumatic equipment.

For: Any consignee of bulk cement as defined above.

Between: Counties listed in Item 330, Page 18, of Western Motor Tariff Bureau, Inc. Local Freight Tariff No. 17.

Rate: A total sum of $6.00 per delivered shipment will be reimbursed to the consignee 30 days after the date unloading is performed, provided the following conditions can be met.

Conditions:

1. Carrier's equipment shall be unloaded by consignee's pneumatic equipment which shall be physically connected to carrier's equipment.
2. Consignee shall provide a pneumatic unloading system capable of producing 10 to 14 psi at a minimum of 400 cubic feet per minute, but not to exceed 450 CFM, or comply with carrier's requirements.
3. System shall discharge air through a 3-inch line capable of connecting to Calkins' equipment without sustaining heat damage produced by the blower system.
4. System shall be completely accessible by Calkins during delivery hours.
5. System shall meet all noise and safety requirements as outlined by California OSHA.
6. Reimbursement shall be made on shipments accorded split delivery by prorating the $6.00 refund per shipment to each component part in relationship to the weight of each component part to the total weight of the shipment.