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Decision 93805 DEC - 1 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WESTERN MOTOR TARIFF BUREAU, INC., AGENT, for authority to increase rates in Western Motor Tariff Bureau Tariffs Nos. ES 1-B, 11, 101-A, 104-A, 106, 108, 109-A, 111, 113, 123, 271 and 571 (including reissues thereof) containing rates of common carriers for the transportation of commodities and the performance of specified services related thereto.	Application 60165 (Filed December 30, 1980)
In the Matter of the Application of DON'S TRUCKING, seeking authority to publish tariff provisions resulting in increases because of proposed transfer of applicant's rates to Western Motor Tariff Bureau, Inc. from another tariff bureau.	Application 60333 (Filed March 9, 1981)
In the Matter of the Application of United Truck Line, Spear Enterprises, Inc., dba, seeking authority to publish tariff provisions resulting in increases because of proposed transfer of applicant's rates to Western Motor Tariff Bureau, Inc. from another tariff bureau.	Application 60378 (Filed March 19, 1981)
In the Matter of the Application of Walton Distribution Services, Inc. seeking authority to publish tariff provisions resulting in increases because of proposed transfer of applicant's rates to Western Motor Tariff Bureau, Inc. from another tariff bureau.	Application 60380 (Filed March 20, 1981)

Parker, Milliken, Clark & O'Hara, by Richard L. Franck, Attorney at Law, M. J. Nicolaus, and Richard W. Smith, Attorney at Law, for Western Motor Tariff Bureau, Inc., applicant in A.60165.
Parker, Milliken, Clark & O'Hara, by Richard L. Franck, Attorney at Law, for Don's Trucking, Spear Enterprises, Inc., and Walton Distributing Services, Inc., applicants in A.60333, 60378, and A.60380.
Gordon G. Gale, for The Clorox Company and Traffic Managers Conference of California; Tom Andrich, for Delta Lines, Inc. and California Motor Express; and Jess J. Butcher, for California Manufacturers Association; interested parties in A.60165.
Harry E. Cush and Edward C. Cole, for the Commission staff.

FINAL OPINION

Western Motor Tariff Bureau, Inc., Agent (WMTB), is an authorized rate bureau operating under Public Utilities Code Section 496. On December 30, 1980, WMTB filed Application (A.) 60165 seeking to increase certain rates charged by its participating common carriers. On March 17, 1981, the Commission issued an interim order (Decision (D.) 92829) granting a 7% permissive increase to these participants. Further hearing was ordered, however, to determine "the reasonableness of [an] additional 4% increase for rate innovation." (D.92829, Finding 13.)

Following this decision, the Commission approved the requests of Spear Enterprises, Inc., dba United Truck Line (A.60378, D.92905); Walton Distribution Services, Inc. (A.60380, D.93024); and Don's Trucking (A.60333, D.93095) to transfer their participation from other rate bureaus to WMTB. Because each of these carriers sought rate increases greater than that permitted for WMTB members by D.92829, interim authority was granted to each of these carriers to increase rates "to the level authorized to WMTB." Their applications were then joined with A.60165 for the hearing set to consider the reasonableness of the additional 4% increase.

As stated in D.92829, WMTB had requested an 11% increase. While the submitted data were sufficient to justify a 7% increase, the following objections were raised with respect to the additional 4%:

> ". . . [T]he California Manufacturers Association objects to the ambiguity of the applicant's need for 'an increment (4%) to enhance rate innovativeness and profit potential.' The staff notes that this 4% increase as requested lacks data justifying its need as required by Public Utilities Code Section 454."

On June 11, 1981, the hearing ordered by D.92829 was held in San Francisco before the presiding administrative law judge. During that hearing, counsel for WMTB called two witnesses, M. J. Nicolaus, WMTB's Tariff Issuing Officer and General Manager, and Ronald C. Broberg, Director of Research and Technical Services for the California Trucking Association. Broberg sponsored three exhibits. Although several parties cross-examined Nicolaus and Broberg, no other testimony or evidence was presented.

The exhibits offered by Broberg included revisions of WMTB's application related to the actual, as opposed to the estimated, cost of living adjustment; a list of common carrier participants in the applicable tariffs; and a composite balance sheet and income statement of leading carriers operating under the affected tariffs. This latter exhibit indicated an overall operating ratio of 96.4 for 1980. No projection was made for 1981 due to the uncertainty regarding the extent to which participating carriers would exercise the authority granted by D.92829 to increase their rates.

While WMTB's showing included these cost data, the testimony of both of its witnesses indicated that the requested 4% increase was not so much motivated by increased costs as by a desire for greater flexibility in common carrier ratemaking. Broberg termed the 4% increase "an over-and-above amount...not directly related to a cost increase." The 4% figure itself was therefore not derived from any particular economic or cost study but "reflected [carrier] evaluation of an amount they deemed necessary to give them greater flexibility in their ratemaking and to enhance their profit potential."

It is WMTB's position, however, that the 4% rate increase is consistent with the Commission's program of reregulation of intrastate motor freight transportation announced in D.90354, 90663, and 91861 in Case (C.) 5436, et al. Broberg described the objectives of that program as follows:

> (1) "to provide a framework within which shippers and carriers could explore and implement conditions and rates subject to a minimum of Commission regulations",
>
> (2) "to allow for increased rate competition",
>
> (3) "to provide carriers with operational flexibility under varying conditions and varying rate levels",

> (4) "to help assure that carrier profits were maximized and that consumer costs were reduced as a result of the working of these market forces and the play of flexible rate structures and shipper-carrier negotiation", and
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> (5) "to give shippers a real choice ...between competitive for-hire carriers and proprietary carriage as well as move their goods."

Broberg stated that the 4% increase would further these objectives while keeping rates within the "zone of reasonableness." Both Broberg and Nicolaus emphasized that an additional 4% permissive rate increase without an expiration date would allow carriers the freedom to exercise their managerial discretion without burdensome paper work and would further encourage rate innovation.

Broberg supported the requested 4% "rate window" by reference to Order Instituting Rulemaking (OIR) 6 and two Commission decisions involving <u>Pacific Southwest Airlines</u> (PSA) (1978, 84 CPUC 171) <u>Emery Air Freight Corporation</u> (Emery) (D.92323). In particular, Broberg pointed to the following language in the <u>PSA</u> decision:

> "We believe that whenever free market forces can govern an industry in the public interest, they should be allowed to do so with as little government intrusion as necessary. We feel that regulation should encourage innovation and, therefore, an industry should be given as much flexibility and latitude to respond to changing conditions as is reasonable." (84 CPUC at 175.)

Broberg asserts that this philosophy was applied to motor carriers by the <u>Emery</u> decision (D.92323) and was persuasive in the Commission's granting a rate window in that application under which Emery would be permitted to increase or decrease its surface rates by a maximum of 20% annually above or below its initial tariff rates. The <u>Emery</u>

decision also recognized that in "those industries which are not natural monopolies, such as the transportation of property, there can be a wide latitude in the degree of regulation required to keep those industries' practices in conformance with the public interest." (D.92323 at pg. 7.)

In OIR 6, the Commission considered the adoption of a rate window for all common carriers under which such carriers could raise or lower their rates by not more than 10% per year. That proceeding is undecided. The rate window concept was advanced by our staff in OIR 6 as a means to more expeditiously process rate increases under current inflationary economic conditions. We concluded before issuing OIR 6 that we had the statutory authority to grant rate windows when appropriate procedural safeguards are provided,1/ and that the rate flexibility of rate window procedures would permit carriers to more rapidly adjust rates under current economic conditions with current regulatory restraints.

The 4% rate window proposed is for similar purposes as advanced by our staff in support of the proposed rate window in OIR 6. We believe the rate window requested by WMTB is in conformity with the letter and spirit of our motor carrier rate reregulation program and should be authorized for that reason, as well as the reasons discussed below.

We agree, that greater flexibility should be given to carrier management in setting its rates to enhance efficiency and productivity on a price as well as a service basis. But as the preceding analysis indicates, the 4% increase should not be allowed solely as a rate window, but because cost justification has also been given for that percentage increase. As WMTB's exhibit shows,

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1/ See Wood v. Public Utilities Commission (1971) 4 C 3d 288 at 292 and 293.

the latest operating ratio for its carriers, based on the composite analysis, is 96.4. According to D.92829, the 7% increase authorized by that decision would result in an operating ratio of 95 for the "composite group" of carriers. The additional 4% increase will reduce that ratio to between 91 and 92.4 which, as Broberg stated, is still within the zone of reasonableness. It was Broberg's testimony that the total 11% increase, if exercised by a carrier, would not even be close to the outer limit of the zone of reasonableness, the point at which products or commodities would not move.

The capital structures of motor carriers typically are highly leveraged; equity investment is generally quite small and debt is quite high. The operating ratios that result from this order may be less than required to maintain operations and service debt, when the debt portion of the carrier's capital structure is in excess of 70 or 80% (see, for example, the analysis in Great American Stage Line, Inc. Rate Increase, D.93656, dated October 20, 1981 in A.59603). The additional 4% increase authorized will permit carriers having the more highly leveraged capital structures a more realistic opportunity to earn an adequate return.

As described by Broberg, "the competitive pressures won't allow those rates to become excessive, and the Commission's open entry policy will assure and has assured, indeed, that monopolistic tendencies don't develop in the industry..." Finally, we note that while CMA voiced objections to the 4% increase, no direct evidence was presented contesting WMTB's showing.

Findings of Fact

1. WMTB operates as a rate bureau under PU Code Section 496.

2. The transfers of Spear Enterprises, Inc., dba United Truck Line; Walton Distribution Services, Inc.; and Don's Trucking to WMTB have been previously approved by this Commission.

3. Rate increases have been authorized for these carriers in D.92905, 93024, and 93095 to bring them to the level authorized for WMTB in D.92829 in A.60165.

4. Public hearing was held to consider the justification for granting an additional 4% increase for carrier participants including those named in Finding 2, in WMTB's Tariffs Nos. ES 1-B, 11, 101-A, 104-A, 106, 108, 109-A, 111, 113, 123, 271, and 571.

5. The uncontested evidence presented by WMTB during that proceeding demonstrates that the granting of the additional 4% increase is cost justified and would result in an operating ratio of between 91 and 92.4 for the "composite group" of carriers examined in WMTB's testimony.

6. The following order has no reasonably foreseeable impact on the energy efficiency of highway carriers.

Conclusions of Law

1. The rates approved by D.92829, 92905, 93024, and 93095 should become final.

2. Authority for an additional 4% permissive rate increase is just and reasonable and should be granted.

3. To permit needed flexibility in ratemaking, encourage rate innovativeness, and permit the exercise of managerial discretion, the additional 4% rate increase should be permissive and should not have an expiration date for its exercise.

4. Limited authority to depart from the provisions of PU Code Section 461.5 should be granted.

5. Limited authority to depart from the terms and rules of General Order Series 80 should be granted.

6. To encourage rate innovation, the following order should be made effective the date of signature.

FINAL ORDER

IT IS ORDERED that:

1. The rate increases authorized by D.92829, 92905, 93024, and 93095 in these applications are final.

2. Western Motor Tariff Bureau, Inc., Agent, is authorized to publish an additional 4% surcharge increase on behalf of the individual carriers participating in its following tariffs:

No. ES 1-B	- Cal. P.U.C. 34	- Exceptions to Governing Classifications
No. 11	- Cal. P.U.C. 5	- Truckload Commodity Rates
No. 101-A	- Cal. P.U.C. 37	- Commodity Rates on Iron or Steel Articles
No. 104-A	- Cal. P.U.C. 23	- Class and Commodity Rates (San Diego Area)
No. 106	- Cal. P.U.C. 11	- Class and Commodity Rates (East Bay Drayage Area)
No. 108	- Cal. P.U.C. 12	- Mechanical Protective Service Tariff
No. 109-A	- Cal. P.U.C. 43	- Commodity Rates
No. 111	- Cal. P.U.C. 15	- Class and Commodity Rates
No. 113	- Cal. P.U.C. 19	- Vehicle Unit Rates
No. 123	- Cal. P.U.C. 32	- Class and Commodity Rates on Oil, Water, and Gas Well Outfits and Supplies, and Other Property
No. 271	- Cal. P.U.C. 46	- Rates on Uncrated New Furniture
No. 571	- Cal. P.U.C. 49	- Class Rates (San Francisco)

3. Tariff publications authorized to be made 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 December 16, 1981 on not less than five days' notice to the Commission and to the public.

4. Western Motor Tariff Bureau, Inc., Agent, in establishing and maintaining the rates authorized by this order, is authorized to depart from the provisions of PU Code Section 461.5 to the extent necessary to adjust long- and short-haul departures now maintained under outstanding

authorizations; such modifications are 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.

5. Western Motor Tariff Bureau, Inc., Agent, is authorized to depart from the Commission's tariff circular requirements only to the extent necessary in establishing the surcharge supplements authorized by this order.

This order is effective today.

Dated DEC 1 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz, Executive Director