Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eck Miller Transportation Corporation -
Reconsideration

File: B-245385.2

Date: May 20, 1992

DIGEST

Request for reconsideration is denied where it essentially
only restates arguments in the original request for review,
and presents no evidence demonstrating an error in fact or
law in the prior decision.

DECISION

Eck Miller Transportation Corporation, a motor carrier,
requests that we reconsider our decision of January 15,
1992, in which we held that the government may alternate
rates/charges for shipments weighing 10,000 pounds or more
with rates/charges contained in a tender marked for
distribution to routing authorities responsible for traffic
of less than 10,000 pounds. We deny Eck Miller's request.

Eck Miller offered service under two tenders covering the
same commodities, and submitted in the Department of
Defense's Standard Tender format. Block 17 of the Standard
Tender allows the carrier to denote distribution of the
tender to routing authorities responsible for shipments of
less than 10,000 pounds, or to those responsible for
shipments of 10,000 pounds or more, or to both. Eck Miller
marked block 17 to denote a different distribution for each
tender; the rates in the tenders were different. In our
decision, we pointed out that the associated instructions
informed the carrier that distribution preference was for
administrative purposes only, and we held that distribution
preference was unrelated to rate alternation.

The carrier bases its request for reconsideration on three
grounds. First, it contends that a carrier's intent to
distribute a tender for traffic routing purposes only to
routing authorities of traffic of less than 10,000 pounds,
also means that the rates/charges therein apply only to
shipments of less than 10,000 pounds.

Second, the carrier argues that we were wrong in deciding that, under Eck Miller's tenders, service offered for the movement of a commodity weighing less than 10,000 pounds is not a different service than moving the same commodity when it weighs 10,000 pounds or more.

Third, the carrier disputes our finding that provisions of (1) the Military Traffic Management Command's (MTMC) Freight Traffic Rules Publication No. 1A (MFTRP 1A), (2) the Standard Tender format completed by the carrier, and (3) MTMC's instructions for completing the Standard Tender, all permit the rate alternation involved. The carrier also contends that even if the two tenders covered the same service, alternation is not proper under MFTRP 1A where, as here, the rates are on a per mile basis (as opposed to one containing a weight factor).

The first two bases of the request for reconsideration merely state disagreement with our holding, and reiterate arguments made previously, which we fully considered in reaching our January 15 decision. To prevail on reconsideration, the carrier must demonstrate an error in fact or law, and neither disagreement with a decision, nor restatement of arguments already made, establishes that the decision was based on an error of fact or law. **Starflight, Inc.**, B-210740.2, June 14, 1984; **American Farm Lines, Inc.-- Reconsideration**, B-203639, Apr. 22, 1982.

Eck Miller is incorrect in concluding that the alternation provisions of MFTRP 1A do not apply to mileage rates. Item 140, paragraph 2, provides that when alternating truckload charges are set out in a tender or different tenders, as provided in Item 60, charges will be the lowest that can be computed. Item 60 provides that commodity rates/charges (here the commodity is Freight All Kinds) applying between the same origin and destination, on the same article(s), will alternate to produce the lowest charge "regardless of rate qualifier" (rate qualifiers include per mile per vehicle used, per hundredweight per mile, etc.).

Eck Miller's request for reconsideration is denied.
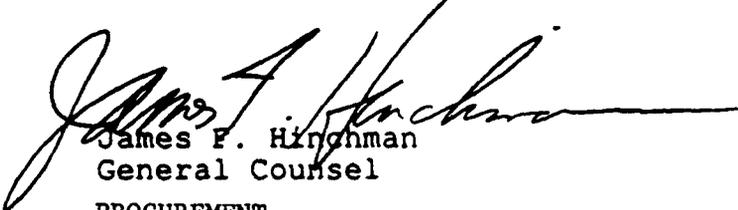
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PROCUREMENT
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