

ORIGINALDecision No. 49339

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
 into the rates, rules, regulations,)
 charges, allowances and practices)
 of all common carriers, highway)
 carriers and city carriers relating)
 to the transportation of general)
 commodities (commodities for which)
 rates are provided in Highway)
 Carriers' Tariff No. 2).)

Case No. 5432
 (Pets. Nos. 3, 7 and
 8, and Order dated
 April 28, 1953)

Appearances

(See Appendix "A" hereof
 for appearances)

O P I N I O N

This proceeding is an investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of general commodities for which rates are provided in Highway Carriers' Tariff No. 2.

This decision relates to evidence received on Petitions for Modification Nos. 3, 7 and 8 and related matters, concerning which evidence was received at public hearings held before Examiner Bryant in San Francisco and Los Angeles. An Examiner's Proposed Report was issued upon petition of interested parties and at the direction of the Commission in accordance with

Rules 69 and 70 of the Commission's rules of practice and procedure. Exceptions and replies have been filed. The matter is ready for decision.¹

This phase of Case No. 5432 covers several definitions and rules in Highway Carriers' Tariff No. 2, all of which have to do with the receipt, delivery and terminal handling of shipments. Petition for Modification No. 3 seeks clarification and revision of the definitions of "point of origin" and "point of destination." Petitions for Modification Nos. 7 and 8 seek revision of rules governing delays to carriers' equipment, and the charges to be assessed for such delays. In addition to these three petitions, the Commission, on recommendation of its Transportation Division, ordered that the hearings be held also for the general purpose of receiving evidence relative to the application, interpretation and revision of the tariff provisions "concerning property received or delivered by a carrier at two or more points in the same plant area, labor agreements, loading and unloading, including tailgate loading and unloading, other accessorial services, carrier employees used in such services, and delays to equipment."

¹ Petition No. 3 was filed by the Los Angeles Traffic Managers' Conference on March 18, 1953; Petition No. 7 was filed by General Mills, Inc., on May 4, 1953; and Petition No. 8 was filed by the California Hay, Grain and Feed Dealers Association on May 5, 1953. The hearings were held in San Francisco on May 12, 25 and 26, and in Los Angeles on May 20 and 21, 1953. Issuance of a proposed report by the Examiner was directed by the Commission on June 1, 1953. The Examiner's report was dated July 16, 1953. Exceptions to the report were due on August 25, 1953. Replies to the exceptions were due on September 21, 1953.

The evidence and the issues were discussed in adequate detail by the Examiner in his report which was served upon the parties and is a matter of record in this proceeding. It would be redundant, therefore, and is unnecessary, to summarize the evidence herein.

The Examiner recommended changes in the tariff definitions of the terms "Point of Origin" and "Point of Destination", and cancellation of several tariff rules governing delays, and other conditions of the receipt and delivery of shipments. It was the Examiner's general conclusion that the ranges of traffic, of carriers, of services, and of conditions covered by Highway Carriers' Tariff No. 2 are so great and so varied that it is not feasible, necessary, nor desirable, for the Commission to establish general rules in the minimum rate tariff specifying what services are to be considered usual and ordinary in connection with the receipt and delivery of shipments, what helpers are required, what delays are to be considered excessive, or other similar details.

The Examiner's recommendations were based upon his conclusions which he stated as follows: "It is primarily the responsibility of the carriers to determine what services they will perform. The tariff-filing common carriers must do so by specification in their tariffs; the permitted carriers may do so by negotiation and agreement with their patrons. It is far better that some latitude be left to the carriers and their patrons in determining the conditions of receipt and delivery than that the Commission, by attempting to protect against every possibility of

abuse, be led into the prescription of unsound rules. The Commission should avoid the establishment of restrictive rules and regulations lest it impede the full and unrestricted flow of traffic."

Exceptions to the Examiner's recommendations were filed by California Motor Transport Associations, Inc., by the Draymen's Association of Alameda County, by Southern Pacific Company and Pacific Motor Trucking Company, and by two sections of the Commission's Transportation Division. Replies to the exceptions were filed by California Manufacturers Association, by the Los Angeles Traffic Managers' Conference, and by various industrial corporations.²

The exceptors call the Examiner's recommendations idealistic theories which would lead inevitably to a complete breakdown of minimum rate regulation. The repliants say that the Examiner's proposals represent a practical approach to the entire subject and show a complete understanding of the matters in issue. The five excepting parties ask that the Examiner's proposed report be disregarded or rejected. Three of the exceptors urge that further hearings be scheduled for the purpose of receiving additional evidence and proposals.³ The repliants

² Repliants included California and Hawaiian Sugar Refining Corporation, California Packing Corporation, Durkee Famous Foods, Fibreboard Products, Inc., Gerber Products Company, Golden State Company, Ltd., Kaiser Steel Corporation, Owens-Illinois Glass Company, Richfield Oil Corporation, Union Oil Company of California and W. P. Fuller & Company. Numerous other companies wrote letters endorsing the Examiner's recommendations, but these letters cannot be deemed to be in evidence.

³ Only one of the exceptors submitted proposed substitute findings or conclusions as contemplated by the Commission's rules of practice and procedure.

ask that pleas for further hearing be denied and that the Commission adopt as its own the Examiner's findings and recommended order, with or without some modification.

All of the evidence has been carefully considered, including the proposed report, the exceptions to the report, and the replies to the exceptions. The Examiner's findings and recommendations suggest a new approach to the making of rules to govern the application of minimum rates, and some of his proposals encompass a scope greater than reasonably might have been anticipated by the parties. While the recommendations are worthy of serious consideration, it clearly would be imprudent either to accept or reject proposals for basic changes of this nature without affording the parties an opportunity for further hearing. Further hearings will be scheduled, therefore, as requested by some of the exceptors, in order that full opportunity may be had to present such additional evidence as may seem necessary.

Some tariff change is necessary pending development of the full record, however, in order that the status quo may reasonably be preserved. The Examiner recommended that the definitions of the terms "point of origin" and "point of destination" be revised to read as follows:

POINT OF ORIGIN means the precise location at which property is physically delivered by the consignor or his agent into the custody of the carrier for transportation. All points within a single industrial plant or other similar shipping area shall be considered as one point of origin.

POINT OF DESTINATION means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent. All points within a single industrial plant or other similar receiving area shall be considered as one point of destination.

The underscoring identifies the language which would be added to the existing definitions. The record adequately establishes the fact that it long has been the prevailing, and perhaps universal, practice of carriers and shippers alike to consider any single plant area, regardless of size, as constituting but one point of origin or destination. As construed by the Commission's transportation staff, the existing definitions are greatly at variance with the practice. The attempted application and enforcement of the present definitions under such circumstances would require drastic changes. Virtually all of the witnesses took exception to the present definitions and none of the witnesses advocated their retention in the present form. Pending the further hearings and ultimate decision, therefore, the definitions will be revised to reflect the prevailing practice substantially as recommended by the Examiner, but with some additional clarification. Further modifications, as required, may be made subsequently when the full record has been developed.

Upon consideration of all of the facts and circumstances of record we are of the opinion and hereby find that modification of the existing definitions is justified to the extent hereinbefore indicated and as provided in the order which follows.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED:

(1) That Highway Carriers' Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended) be and it is hereby further amended by incorporating therein, to become effective January 1, 1954, Ninth Revised Page 11 cancels Eighth Revised Page 11, attached hereto and by this reference made a part hereof.

(2) That tariff publications required or authorized to be made by common carriers as a result of the order herein may be made effective on or after the effective date hereof on not less than five days' notice to the Commission and to the public.

(3) That Petitions for Modification Nos. 3, 7 and 8 and the related matters shall be held for further consideration upon receipt of additional evidence.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 17th day of November, 1953.

R. F. Anderson
President
James G. Quinn
Frederick Pottel
John E. McNeil
Gene Quinn
Commissioners

APPENDIX "A"

APPEARANCES IN CASE NO. 5432

Armand Karp, H. M. Hays, Lester A. Bey, John E. McCarthy, Emile J. Pozas, H. C. Stallings, Emerson E. Bolz, W. P. Gunn, Lester M. Grainger, Lloyd W. Gragg, W. V. Criddle, Merlyn F. Teskey, J. C. Kaspar, R. D. Boynton, A. F. Schumacher, E. Nicholas Ferretta, N. O. Greer, W. O. Narry and R. T. Hunt, P. J. Arturo, R. P. McCarthy, Leon P. Matthews, L. J. Towley, Clifford J. vanDuzer, R. Church, Turcotte & Goldsmith by Jack O. Goldsmith, Michael Nojiri, Gustav V. Sundin, Harold F. Culy, W. R. Donovan, L. E. Osborne, E. R. Chapman, Melville A. Tuchler, J. H. Watson, J. Cousimano, Louis A. Dore', Norman C. Ortman, Jr., Rex M. Nielson, William H. Ott, Jr., R. L. Whitehear, D. A. Mitchell, Eugene R. Warren, C. J. Reidy, Earl S. Williams, G. E. Lowe, Joseph R. Quinn, William J. Keane, B. F. Bolling, Milton O'Donnell, Stanley T. R. Bush, Elmer J. Melberg, Bess E. Anderson, Fred R. Nelson, J. A. Sullivan, J. A. Sullivan, F. F. Miller, Ralph R. Bishop, R. E. Tewson, William M. Larimore, A. D. Carleton, J. B. Costello and W. K. Smith, Harry L. Gunnison, J. R. Copeland, Erma Stang, Walter A. Rohde, Jack P. Sanders, Fred Morkelbach, H. J. Bischoff, William A. Gough, Earl R. Wertz, Arlo D. Poe, N. R. Moon, J. G. Fitzhenry, C. A. Millen, S. C. Knight, Frank L. Merwin, Daniel W. Baker, Russell Bevans, Richard Stokes, Willie Calvin Lykes, W. L. Ryan, E. C. Hurley and R. Hutcherson, Orville A. Schulenberg, Milton A. Walker, Laurence Binsacca, E. H. Lowthian, A. W. Brown, John E. Myers, John C. Sutherland, Peter Vinick, S. A. Moore, C. R. Nickerson, Allen K. Penttila, William Meinhold, Jess F. Milford, John C. Breslin, N. E. Keller, Charles R. McNulty, Harry Moser, Harry Moser, James L. Roney, B. E. Rowland, Frank A. Small, Morton G. Smith, J. A. McCunnif, Jack E. Thompson, James F. Bartholomew, Arnold Abajian, C. P. Stephenson, James A. Gayle, R. Ristrom, John F. Kirkman, Turcotte & Goldsmith by F. W. Turcotte, G. R. Groth and M. S. Housner, Ralph S. Schmitt, John M. Walker, Frank McCarley, H. R. Van Maren, C. R. Wright, C. L. Wadsworth, Richard P. Cotter, Samuel S. Gill, J. R. McNicoll, D. O. Day, Theodore J. Label.

End of Appendix "A"

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION
	<p style="text-align: center;">DEFINITION OF TECHNICAL TERMS (Items Nos. 10 and 11 Series)</p> <p>(a) CARRIER means a radial highway common carrier or a highway contract carrier as defined in the Highway Carriers' Act, or a household goods carrier as defined in the Household Goods Carriers Act.</p> <p>(b) CARRIER'S EQUIPMENT means any motor truck or other self-propelled highway vehicle, trailer, semi-trailer, or any combination of such highway vehicles, operated by the carrier.</p> <p>(c) COMMON CARRIER RATE means any intrastate rate or rates of any common carrier, or common carriers, defined in the Public Utilities Act, lawfully on file with the Commission and in effect at time of shipment; also any interstate rate of any common carrier railroad or railroads applying between points in California by an interstate or foreign route lawfully in effect at time of shipment.</p> <p>(cc) DISTANCE TABLE means Distance Table No. 4, amendments thereto or reissues thereof.</p> <p>(d) ESTABLISHED DEPOT means a freight terminal owned or leased and maintained by a carrier for the receipt and delivery of shipments.</p> <p>(e) EXCEPTION SHEET means Pacific Southcoast Freight Bureau Exception Sheet No. 1-S, Cal. P.U.C. No. 193 of J. P. Haynes, Agent, and supplements thereto or reissues thereof when the provisions of such supplements or reissues have been approved by the Commission.</p> <p>(ea) INDEPENDENT-CONTRACTOR SUBHAULER means any carrier who renders service for a principal carrier, for a specified recompense, for a specified result, under the control of the principal as to the result of the work only and not as to the means by which such result is accomplished.</p> <p>(ee) PICKUP AND DELIVERY CHARGE means the full charge applicable without the deduction authorized by Item No. 110 series.</p> <p>*(f) POINT OF DESTINATION means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent. All points within a single industrial plant or receiving area of one consignee shall be considered as one point of destination. An industrial plant or receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare.</p> <p>*(g) POINT OF ORIGIN means the precise location at which property is physically delivered by the consignor or his agent into the custody of the carrier for transportation. All points within a single industrial plant or shipping area of one consignor shall be considered as one point of origin. An industrial plant or shipping area of one consignor shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare.</p> <p>(h) RAILHEAD means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from,</p>

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Cancels
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rail cars or vessels. It also includes truck loading facilities of plants or industries located at such rail or vessel loading or unloading point.

(i) RATE includes charge and, also, the ratings, minimum weight, rules and regulations governing, and the accessorial charges applying in connection therewith.

(j) SAME TRANSPORTATION means transportation of the same kind and quantity of property between the same points, and subject to the same limitations, conditions and privileges, but not necessarily in an identical type of equipment.

* Change, Decision No. 49339

EFFECTIVE JANUARY 1, 1954

Issued by the Public Utilities Commission of the
State of California,
San Francisco, California.

Correction No. 605