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ORIGINAL

Decision No. 49681

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 (Petition for Modification No. 20)

Appearances

Theodore W. Russell, for West Coast Fast Freight, Inc., and Los Angeles-Seattle Motor Express, Inc., petitioners.

Arlo D. Poe, for Motor Truck Association of Southern California, interested party.

Robert D. Boynton, for Truck Owners Association of California, interested party.

Russell Bevans, for Draymens Association of San Francisco, interested party.

Walter A. Rhode, for San Francisco Chamber of Commerce, interested party.

L. E. Osborne, for California Manufacturers Association, interested party.

P. S. Labaeh and Herman H. Parsons, for Canners League of California, interested party.

W. D. Wall, Jr., for Dried Fruit Association of California, interested party.

R. O. Cowling, for Inland Shippers Association, interested party.

John A. O'Connel and Frank Loughran, for California Traffic Service, interested party.

William M. Edwards, Cliff Bailey, K. P. Thorpe, C. R. Hart, E. M. Peak, Russell A. McNutt, Marvin Handler, George Dyck, Charles Wallen, Jr., for various highway carriers, respondents.

Richard Tobey, Stanley R. Duncan, Max Sherman, E. R. Chapman, E. Dishman, R. L. Whitehead, Theron L. Carothers, Gustav E. Lowe, R. E. Tewson, James L. Roney, A. F. Schumacher and P. N. Kujachich, for various industrial concerns, interested parties.

C. S. Abernathy, of the staff of the Public Utilities Commission of the State of California.

O P I N I O N

This proceeding is an investigation into the rates, rules, regulations, charges, allowances and practices of all for-hire carriers relating to the transportation of general commodities for which minimum rates are provided in Highway Carriers' Tariff No. 2. By Petition for Modification No. 20 filed on December 7, 1953, West Coast Fast Freight, Inc. and Los Angelos-Seattle Motor Express, Inc. request the elimination from the tariff of a rule concerning the mixing of intrastate and interstate tonnage.

Public hearings on the petition were held before Examiner Bryant at Los Angeles on January 18, 1954, and at San Francisco on January 27, 1954. The matter was submitted on the latter date and is ready for decision.

The rule in question is designated in the tariff as paragraph 3 (a) of Item No. 90-E, appearing on Fifth Revised Page 17. It reads as follows:

"3. Intrastate and Interstate Tonnage:

(a) When property consisting of part intrastate and part interstate tonnage is received as a single shipment, the intrastate portion may be charged for at the rate which would be applicable on such portion were the entire quantity intrastate in character. In no event shall the aggregate charge on the intrastate and interstate portions be less than the charge herein provided for an intrastate shipment of the same combined quantity.".

The petitioners allege that practices which have developed under this rule are resulting in unreasonable discrimination and preference between California shippers, in diversion of interstate traffic from petitioners' lines and in the undue burdening of interstate commerce. Assertedly some California highway common carriers who also conduct interstate operations are soliciting mixed shipments of intrastate and interstate traffic by offering truckload rates on less-than-truckload shipments of intrastate traffic tendered simultaneously with interstate traffic where such aggregate shipments are truckload in quantity.

The evidence consists primarily of testimony of carriers and shippers and their several associations concerning the circumstances and methods by which the rule has been used.[1] The testimony shows that the rule has been used widely and extensively. For example, much tonnage originating in the interior of California is shipped to the harbor cities, part of it for export and part for local consumption. Such tonnage is sometimes combined in

[1] The term "the rule" is used herein for convenience as meaning the aforesaid paragraph 3 (a) of Item No. 90-E of Highway Carriers' Tariff No. 2, or identical or similar rules copied therefrom as set forth in tariffs of common carriers.

mixed shipments. Also, as an example, some shippers in the San Francisco Bay area find it advantageous to tender to a single carrier a quantity of freight to be delivered at various points in southern California and in Arizona and New Mexico. A similar distribution is made from the Los Angeles area to central and northern California, Oregon and Washington. One "shipment", as described by an industrial traffic manager, originated in the Los Angeles area and was delivered in component parts to numerous destinations including San Jose, San Mateo, San Francisco, Oakland and Healdsburg, in California, and to about twenty other destinations throughout the states of Oregon and Washington. In this instance the originating carrier effected the deliveries in the San Francisco Bay area. Those north of San Francisco were handled by a connecting motor carrier. The charges assessed on the interstate traffic were those provided in the applicable interstate tariffs, unaffected in any way by the intrastate tonnage. The charges on the intrastate deliveries, contrariwise, were lower than would have been applied in the absence of the interstate tonnage. The "shipment" in question was tendered to the originating highway common carrier on a so-called "master bill of lading" supported by separate documents for each delivery.

Those carriers and shippers who are using the rule urged uniformly that it not be disturbed, or at least that no change be made which would interfere with their several prevailing practices. Those who took this general position included representatives of three highway carriers, several industrial concerns,

the California Manufacturers Association, the Canners League of California, the Dried Fruit Association of California, the San Francisco Chamber of Commerce and the Inland Shippers Association.

Representatives of the two petitioning carriers testified that their companies had lost traffic to competing carriers who solicited tonnage on what the witnesses believed to be misapplications of the rule. One of these witnesses introduced and explained an exhibit which compared rates and charges under the assailed rule on intrastate tonnage of various weights when tendered (a) without interstate tonnage and (b) with various weights of interstate tonnage. According to this exhibit the rate differences in many cases are substantial.

The petitioners urged, in conformity with their petition, that the assailed rule be cancelled entirely or, as a minimum, that it be clarified or modified so as to preclude its use in connection with interstate traffic moving across the state line. It is their position (1) that the existing practices are not in conformity with the assailed tariff rule and (2) that if the practices are in accordance with the rule then the rule is improper and unlawful for the reasons alleged in their petition. The petitioners explained that, as basically interstate operators, they are not individually concerned with operation of the rule when the interstate portions of the mixture are not consigned beyond the state boundaries. They stated that while they would be individually satisfied with a revision of the rule to restrict its application to the mixing

of intrastate and interstate tonnage moving within the state boundaries, they questioned whether any such modification would be feasible and whether the resulting rule would be proper and lawful in any event.

The Motor Truck Association of Southern California did not introduce evidence but its counsel offered argument in support of the cancellation of the rule. He stated it to be the position of his association that the rule is being used in a manner which is not authorized by its terms and that if such use is authorized then the rule is erroneous, unsound and beyond the jurisdiction of this Commission. He said that it is the opinion of his association that the rule as a whole should be eliminated from the tariff but that if it is to be retained it should be restricted so that all component parts would have to originate in and be destined to points in California and be of such character that they could be rated under Highway Carriers' Tariff No. 2.

The Truck Owners Association of California was represented at the hearing but did not participate actively. Its representative stated that the membership was divided for and against the petition and that his association therefore had no position to state in this matter.

The assailed rule has been maintained in the tariff for many years. It has not been the subject of formal complaint or review heretofore. The considerations underlying its original establishment are not spelled out in the Commission's decisions. Its self-evident purpose, however, is to permit the

carriers to reflect in their rates the lower unit costs of transporting larger quantities even though a portion of the tonnage is in interstate commerce.

The testimony shows that many highway carriers have construed the rule to be applicable to split delivery shipments where the intrastate component goes to one destination and the interstate component to another. Some carriers have applied it even when the interstate components are delivered in other states such as Oregon, Washington, Nevada, Arizona or New Mexico. The rule has no proper application to split pickup shipments or split delivery shipments of any kind. That this is so appears from a careful reading. The rule lacks rationality unless it is recognized as applying only to property received from one shipper at one point of origin and delivered to one consignee at one point of destination.

In the first place, it will be noted that the rule applies only when all of the tonnage "is received as a single shipment." The term "shipment" is defined elsewhere in the tariff as a quantity of freight tendered by one shipper on one shipping document at one point of origin at one time for one consignee at one point of destination. There are separate and distinguishing definitions for "split pickup shipment" and "split delivery shipment". The use of the word "single" in the phrase "a single shipment" can have no purpose other than to exclude the possibility of any application of the rule to split pickup shipments or split delivery shipments.

In the second place, the rule specifies that the intrastate portion may be charged for at "the rate which would

"be applicable on such portion were the entire quantity intrastate in character" (emphasis supplied). The necessary rate determination may be made readily where all of the tonnage has one point of origin and one point of destination. In this circumstance the intrastate portion merely receives the benefit of any lower rate which may be applicable upon the entire quantity. However, if separate destinations were involved, the determination of the rate on the intrastate portion would be dependent in many cases upon the destination point of the interstate portion. No reason appears why the charges on intrastate tonnage should vary according to the destination of one or more lots of interstate freight.

In the third place, the second sentence of the rule impels the conclusion that the rule has no application to split pickup shipments or split delivery shipments. This sentence specifies that the aggregate charge on the intrastate and interstate portions in no event shall be less than the charge "herein provided" (i.e., provided in Highway Carriers' Tariff No. 2) for an intrastate shipment of the same combined quantity. Hence, if the tonnage could in fact consist of an intrastate portion going to one destination and an interstate portion going to a higher-rated destination beyond, then the carrier would be required in effect not only to determine the rate on the intrastate freight but also to adjust the charges thereon to whatever extent might be necessary to make up any deficiency below the charges which would have accrued under Highway Carriers' Tariff No. 2 if all of the tonnage had been intrastate in character.

Such a method of determining the minimum rates and charges on intrastate traffic would have no necessary relationship to the cost of transporting such traffic, nor any apparent sound basis in rate-making.

Finally, the phrases "entire quantity" and "same combined quantity" serve to emphasize that the quantity of freight is the essential factor considered in the rule. It is significant that nowhere therein is any reference made to point or points of origin or to point or points of destination.

For all of the foregoing reasons, taken as a whole, the conclusion is inescapable that the rule has no reference to any form of split pickup shipment or split delivery shipment but only to "a single shipment" as the term "shipment" is defined in the tariff. Wholly aside from its interpretation and application, however, it is now evident that the rule is inherently unsound even as applied to single shipments. In effect it seeks to compensate in part for the disabilities of a duality of jurisdiction. That is to say, it is founded upon the presumptions (1) that interstate commerce subject to federal regulation reasonably can be combined in a single shipment with intrastate commerce subject to state jurisdiction, (2) that the intrastate tonnage can reasonably be accorded lower rates because of the greater weight resulting from the combination and (3) that the intrastate minimum rate structure can be protected reasonably by requiring that the charge on the combined tonnage be no lower than would have accrued had all of it been subject to the state jurisdiction. This combination of presumptions

is invalid.

It is a relatively rare circumstance in which such a rule could be used at all. Without some prior or subsequent movement beyond the state borders there can be no interstate tonnage. If the tonnage is in interstate commerce it normally is under a contract for carriage from or to some point outside of California. In this case it cannot be combined with intrastate tonnage for movement on one shipping document, since such a condition would result in conflicting contracts. The "one shipping document" required by the rule could be issued only if there were no other contemporaneous contract of carriage covering the interstate commerce. In other words, as a condition to the issuance of such a document there would have to exist a circumstance in which the interstate tonnage, while interstate in character by reason of an original and continuing intention of a consignor, was not covered by another existing contract of carriage for its movement within California. There may be frequent circumstances of this kind, as the present record indicates, but relatively they are exceptional. Moreover, the rule as thus limited to its terms would be further restricted to use only by certain limited classes of carriers, namely, those who possess the required operating authorities to cover both the intrastate and interstate operations from the point of origin to the point of destination.

The record shows that a great amount of traffic has moved and is moving in purported conformity with the assailed rule. Many substantial shippers and industries have based

their shipping practices in various degrees upon the rule as used, or misused, by various highway carriers. The routing of traffic has been influenced as between carriers and classes of carriers. Inevitably any interpretation of, change in, or elimination of the rule will affect many carriers and shippers, some favorably and others adversely. Nevertheless, it is clear that the assailed rule, even though its use were properly limited to those relatively exceptional circumstances for which it was designed, is inherently unsound in theory and in fact.

The evidence is convincing that it is not feasible nor reasonable for this Commission, acting alone and independently in its rate regulatory process, to provide for a concession in the intrastate minimum rates in an attempt to correlate the handling and rating of mixed shipments of intrastate and interstate traffic.

Upon careful consideration of all the facts and circumstances of record the Commission is of the opinion and finds as a fact that Paragraph 3(a) of Item No. 90 series of Highway Carriers' Tariff No. 2 is not productive of just, reasonable and nondiscriminatory minimum rates. It will be cancelled.

O R D E R

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

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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 April 1, 1954, Sixth Revised Page 17 cancels Fifth Revised Page 17, which revised page is attached hereto and by this reference made a part hereof.

2. That tariff publications required to be made by common carriers pursuant to this order shall be made effective not later than April 1, 1954, and on not less than five days' notice to the Commission and to the public.

3. That in all other respects the aforesaid Decision No. 31606, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 16th day of February, 1954.

R. E. Mitchell
President
Justus F. Craemer
Kenneth Potter
Everett C. McKeage
Dean Peoples
Commissioners

Item No.	SECTION NO. 1-RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	[illegible] provisions of this rule will not apply to mixed shipments MIXED SHIPMENTS property, viz.: household goods, personal effects and office and store
	(1) 1. Commodities for which rates are provided in this tariff: [illegible] in the tariff designated City Carriers' Tariff No. 3-A,
	(a) When two or more commodities for which different ratings are provided, are shipped as a mixed shipment, without actual weights being furnished or obtained for the portions shipped under the separate ratings, charges for the entire shipment will be computed at the class or commodity rate applicable to the highest classed or rated commodity contained in such mixed shipment, subject to Item No. 80 series. [illegible] provided in the tariff designated Highway Carriers' Tariff No. 6, amendments
	(b) When two or more commodities are included in the same shipment and separate weights thereof are furnished or obtained, charges will be computed at the separate rates applicable to such commodities in straight shipments of the combined weight of the mixed shipment. The minimum weight shall be the highest provided for any of the rates used in computing the charges, subject to Item No. 80 series. In the event a lower charge results by considering such commodities as if they were divided into two or more separate shipments such lower charge shall apply.
	(1) Paragraph 1 hereof will not apply to mixed shipments which are subject to the provisions of Item No. 365 series of this tariff.
*90-F Cancels 90-E	2. Commodities for which rates are provided herein, moving in mixed shipments containing commodities for which rates are provided in other effective tariffs of the Commission, or in mixed shipments containing commodities upon which no minimum rates or charges have been established by this Commission.
	(a) When one or more commodities for which rates are not provided in this tariff are included in a shipment of one or more commodities for which rates are herein provided, the rate or rates applicable to the entire shipment may be determined as though all of the commodities were ratable under the provisions of this tariff; or one or more of the commodities for which rates are not provided in this tariff may be transported at the rates otherwise applicable. In the event the latter basis is used, the minimum charges provided in Item No. 150 series of this tariff shall apply to the entire shipment. (See Notes 1, 2 and 3.)
	* NOTE 1.-The provisions of this rule will not apply to mixed shipments containing petroleum or petroleum products in bulk in tank trucks, tank trailers or tank semi-trailers for which rates are provided in tariff designated City Carriers' Tariff No. 5, Highway Carriers' Tariff No. 6, amendments thereto or reissues thereof.