

**ORIGINAL**Decision No. 50791

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 Minimum )  
 Rate Tariff No. 2). )

Case No. 5432

Petitions Nos. 7 and 8  
 and Order dated  
 April 28, 1953

Appearances

(See Appendix "A" hereof for appearances.)

O P I N I O N

This phase of Case No. 5432 relates to various provisions of Minimum Rate Tariff No. 2 which have to do with the receipt, delivery and terminal handling of shipments. By petitions for Modification Nos. 7 and 8 General Mills, Inc., and California Grain and Feed Dealers' Association, respectively, seek revision of the rules governing delay to carrier equipment and the charges to be assessed for such delays. In addition the Commission, on recommendation of its Transportation Division, ordered that hearings be held also for the general purpose of receiving evidence relating 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."

Initially, hearings of the matters involved were held before Examiner C. Ray Bryant in May, 1953. Subsequently, an examiner's proposed report was issued and exceptions to the report and replies to the exceptions were filed. In his report the examiner recommended cancellation of several tariff rules governing delays and other conditions of the receipt and delivery of shipments. His conclusions were that the conditions under which deliveries are made vary so greatly that it is not feasible, necessary nor desirable for the Commission to establish general rules in Minimum Rate Tariff No. 2 specifying what services should be considered unusual, excessive and not included in the transportation rates which are set forth in the tariff. He proposed that this determination be left to the carriers and their patrons and that additional charges be made applicable only for services and delays so determined as being unusual or excessive. The exceptors to the examiner's report took the position that adoption of the recommendations would lead to a complete break-down of minimum rate regulations. The repliants said, on the other hand, that the examiner's proposals represented a practical approach to the entire subject. After consideration of all the evidence, the examiner's report, the exceptions thereto and the replies to the exceptions, the Commission concluded that the changes proposed by the examiner were so basic that further hearings should be scheduled in order that full opportunity might

be had by interested parties to present such additional evidence<sup>1</sup> as might seem necessary.

A hearing for this purpose was held before Examiner C. S. Abernathy at San Francisco on October 6, 1954, at which time evidence covering proposed amendments to the tariff provisions for accessorial services and vehicle delays was submitted on behalf of carriers represented by the Motor Truck Association of California. Various shipper representatives and members of the Commission's staff participated in the examination of the witness for the Association and several shippers submitted statements in support of the Association's recommendations. No other proposals were advanced at the further hearing. A full record now having been adduced, the several matters are ready for decision.

The tariff rules which are principally involved herein are contained in Items Nos. 140 and 142 series. Item No. 140 provides that additional charges become applicable "when a carrier performs at shipper's or receiver's request, or is otherwise required in compliance with labor agreements to perform service such as stacking, sorting, providing helpers for loading or unloading, or any other like service which is not authorized to be performed under the rates named in this tariff and for which a charge is not otherwise provided." Item No. 142 spells out in

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<sup>1</sup> The record in these matters also dealt with (a) special demurrage provisions in connection with the transportation of whole grain in quantities of 10,000 pounds or more and with (b) the interpretation of tariff definitions of "point of origin" and "point of destination". By Decision No. 48646, dated May 26, 1953, in Case No. 5432 demurrage provisions for grain movements were established and by Decision No. 49339, dated November 17, 1953, the tariff definitions in question were revised. In Decision No. 49339 it was stated that further consideration would be given to both of these matters upon the receipt of additional evidence. Subsequently, however, it became evident that further evidence concerning "point of origin" and "point of destination" would not be submitted. Accordingly, the petition relating thereto was dismissed (Decision No. 50463, dated August 24, 1954, in Case No. 5432).

considerable detail various circumstances when additional charges are to be assessed for delays to equipment. In general, it provides that when the elapsed time between commencement and completion of loading or unloading of shipments of 10,000 pounds or more exceeds 12 minutes a ton an additional charge shall apply. Moreover, it provides that additional charges shall apply when carrier's equipment is held more than 30 minutes under constructive placement because of shipper's or consignee's inability to accept tender of the equipment at point of loading or unloading as the case may be.

The evidence in these matters which was received at the earlier hearings has been reviewed in the examiner's report and further detailed recitation thereof is not necessary. It will suffice to say that the witnesses generally objected to the additional charge for helpers for loading or unloading supplied "in compliance with labor agreements". Their objections were made on the grounds that the shippers and receivers have no part in the making of such agreements, that the contents of the agreements are not a matter of common knowledge, that the employment of helpers may be to the advantage of carriers but not to that of the shippers or receivers, and that the maintenance of the present tariff charge may lead to economically unsound agreements. Regarding charges for equipment delays, a number of the witnesses were in agreement that demurrage charges should be assessed for delays to carriers' vehicles when such delays are the responsibility of the shipper or consignee. They had divergent views, however, as to the basis upon which delay charges should be assessed. Many of their recommendations in this regard were incompatible.

By its proposals which the Motor Truck Association of California submitted at the further hearing the Association

advocated elimination from Item No. 140 of the specific reference to labor agreements and would make the charges for accessorial services apply when these services are performed by carrier at shipper's or receiver's request "or requirement". With respect to the tariff rule for delays, the Association would cancel present provisions relating to constructive placement of vehicles for loading or unloading purposes, and would make additional charges for delays accrue only after the tender of carrier's equipment for loading or unloading at the time and place agreed to by the carrier and the shipper or consignee, or at the time of acceptance by the shipper or consignee of the tender of the equipment for loading or unloading. Incorporated in the proposals is the present rule prescribing additional charges for excess delay time between the commencement and completion of loading or unloading of shipments of 10,000 pounds or more.

According to the Association's director of research who presented and explained the Association's proposals, experience has shown that the present requirement for the assessing of charges for helpers furnished in compliance with labor agreements is not a desirable provision to be made part of a minimum rate tariff. The effect of the sought amendment, he said, would be to make additional charges for helpers apply only when employment of helpers is required by the shipper or consignee. Regarding the proposed changes in the regulations for equipment delays, he said that they are intended to result in more workable provisions. He asserted that the present regulations are impractical and that for this reason they are being observed only in rare instances.

It is clear from the record which has been developed in the instant phase of this proceeding that the present provisions

of Items Nos. 140 and 142 series of Minimum Rate Tariff No. 2 have not proved satisfactory in application, that shippers and carriers both are in substantial agreement that the reference to labor agreements should be deleted from the regulations in Item No. 140 governing accessorial services and that the regulations in Item No. 142 which specify conditions under which charges should be made for equipment delays should be liberalized. Two principal courses to attain the desired results have been presented for consideration. On the one hand there are the recommendations set forth in the examiner's report and on the other hand there is the course generally contained in the several proposals of the shipper and carrier witnesses. The recommendations of the Motor Truck Association appear to conform largely to the latter. Such variations as there are between the Association's proposals and those of the other parties have been carefully considered and it appears that for the purposes of our discussion and conclusions hereinafter the provisions which were advocated by the Association may be deemed as representative of the major aspects of the recommendations of the other parties.

The differences between the proposals contained in the examiner's report and those of the Association are largely a matter of degree. The examiner would leave the application of additional charges for accessorial services and unusual delays wholly to the determination of the carriers and shippers whereas the Association in the main would define conditions under which the additional charges would apply although it would leave elements of some of the services to be agreed upon by the shippers and carriers.

The course outlined in the examiner's report has much to recommend it since it leaves to the carriers and their patrons the

greatest latitude possible to fit their arrangements to their individual circumstances. Nevertheless, it appears that the examiner's recommendations should not be followed herein. Adoption of his proposals would result in cancellation of certain minimum standards that have prevailed heretofore. Upon the record now before us it appears that for the time being at least these standards should be retained. For this reason it is concluded that the more restrictive course urged by the Association should be favored.

With certain modifications the rule regarding accessorial services which was advocated by the Association appears suitable for adoption. The reference to labor agreements will be eliminated. Regarding the substitute provision, however, and with particular reference to the term "requirement," it appears from the explanation which was advanced by the Association witness that the term is intended to continue in effect obligatory charges in situations where the carrier furnishes helpers in order to meet labor requirements directly or indirectly imposed upon the shipper. The proposal apparently contemplates that in various instances these charges would be assessed without prior agreement of the shipper or the receiver. In instances of this sort where the carrier is required to incur additional costs in order to meet special requirements of a shipper or receiver the imposition of additional charges to compensate for these costs appears proper. However, the charges should be made to apply as a result of affirmative agreements between the carriers and their patrons that additional labor is necessary rather than as a result of unilateral determination by carriers. To emphasize that this is the result

intended as well as to continue in effect the present basis of charges for accessorial services of stacking, sorting, and the like, the additional charges for accessorial services will be made applicable when such services are furnished "at shipper's or receiver's request or order".

In the matter of equipment delays the Association proposal, as has been indicated above, would result in the cancellation of the present provisions of Item No. 142 series relative to constructive placement of carriers' equipment and would make additional charges apply for excessive delays (a) after tender of the equipment at the place designated by the shipper or consignee in accordance with a prior agreement with the carrier or (b) after the time of acceptance by the shipper or consignee of the tender of the equipment for loading or unloading purposes. Since the time of tender in accordance with a prior agreement and the time of acceptance of the tender of equipment where there is no agreement may well be two quite different times, it is evident that the sought rule would result in the application of two levels of charges although the actual delay times experienced by a carrier in serving two shippers might be the same in each instance. The rule in effect would act as a penalty against those patrons who cooperate with the carriers in the scheduling of equipment. Aside from the impropriety of assessing different charges for the same services, consideration being given to the importance of carrier and shipper cooperation to promote operating efficiencies, provisions should not be included in the minimum rate tariff which would impede the attainment of such efficiencies.

The conditions affecting the arrival and placement of carriers' equipment at shippers' or receivers' docks for loading and



unloading purposes are extremely diverse. It is evident that the present rule providing charges for delays after constructive placement has not met the problems involved and should be canceled. The Association's proposal does not appear appropriate for the reasons outlined above. Present tariff regulations governing delay time during actual loading or unloading appear satisfactory and will be retained. In other respects, however, until further data are developed upon which a satisfactory rule can be based, no specific provision will be included in Minimum Rate Tariff No. 2 to cover equipment delays. Carriers, of course, are not precluded by the absence of such provisions from making a reasonable charge for delays plainly attributable to shippers or receivers.<sup>2</sup>

Upon careful consideration of all of the facts and circumstances of record the Commission is of the opinion and hereby finds that modification of the existing provisions in Minimum Rate Tariff No. 2 relating to charges for accessorial services and equipment delays is justified to the extent hereinbefore indicated and as provided in the order which follows. In all other respects and except to the extent that Petitions Nos. 7 and 8 have been granted by Decision No. 48646, dated May 26, 1953, in Case No. 5432, Petitions Nos. 7 and 8 will be denied.

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The conclusions herein regarding equipment delays do not relate to the special demurrage rule which has been established in connection with the transportation of whole grain in quantities of 10,000 pounds or more. No recommendations were made for the revision of that rule.

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 Minimum Rate 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, 1955, the following tariff pages which are attached hereto and which by this reference are made a part hereof:

Eighth Revised Page 19 Cancels Seventh Revised Page 19  
Second Revised Page 19-A Cancels First Revised Page 19-A  
Fifth Revised Page 27-A Cancels Fourth Revised Page 27-A  
First Revised Page 68-D Cancels Original Page 68-D

(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 except as otherwise provided herein and except to the extent that Petitions Nos. 7 and 8 have heretofore been granted by Decision No. 48646, dated May 26, 1953, in Case No. 5432, Petitions Nos. 7 and 8 be and they hereby are denied.

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

Dated at San Francisco California, this 23rd day of November, 1954.

John E. Mitchell  
President  
Justin J. Craven  
Deane Higgins  
Raymond L. ...

Commissioners

APPENDIX "A" TO DECISION NO. ~~50731~~APPEARANCES

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, E. 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. vanDuker, 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 E. Bishop, E. 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 Merkelbach, H. J. Bischoff, William A. Gough, Earl E. 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, H. 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. Kirkmar, Turcotte & Goldsmith by F. W. Turcotte, G. E. 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, A. L. Hillman, Robert Phelan, Phillip J. Ryan, P. N. Kujachich and A. R. Day.

Item No.	SECTION NO. 1-RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
120-C Cancels 120-B	<p style="text-align: center;">APPLICATION OF RATES</p> <p>Rates in this tariff, and common carrier rates applied under the provisions of Items Nos. 200, 210, 220 and 230, subject to minimum weights of less than 10,000 pounds, include loading into and unloading from the carrier's equipment. When the carrier picks up or delivers a shipment subject to a minimum weight of less than 10,000 pounds and weighing more than 100 pounds, at a point not at street level, and no vehicular elevator service or vehicular ramp is provided and made available to the carrier, an additional charge of 7½ cents per 100 pounds, minimum additional charge 53 cents per shipment, shall be assessed for the service of handling shipment beyond the carrier's equipment.</p> <p>Rates in this tariff, subject to minimum weights of 10,000 pounds or more, include loading into and unloading from carrier's equipment at established depots. At points of origin or points of destination other than established depots, rates in this tariff, and common carrier rates, applied under the provisions of Items Nos. 200, 210, 220 and 230, subject to minimum weights of 10,000 pounds or more, include the services of one man (driver or helper) for loading or unloading of the carrier's equipment, subject to the provisions of Item No. 140.</p>
*140-G Cancels 140-F	<p style="text-align: center;">ACCESSORIAL SERVICES</p> <p>When carrier performs, at shipper's or receiver's request or order, service such as stacking, sorting, providing helpers for loading or unloading, or any other like service which is not authorized to be performed under rates named in this tariff, and for which a charge is not otherwise provided, additional charges per man shall be assessed as provided in Item No. 145(a). The charge provided in Item No. 145(b) for unit of equipment shall also apply whenever the accessorial or incidental service requires its use, or whenever the unit of equipment is inactivated by reason of the driver or helper being engaged in such service.</p> <p>The provisions of this item shall not apply when a helper is provided for any reason other than shipper's or receiver's request or order. The reason for supplying helpers shall be recorded on shipping and accessorial service documents.</p>
*Change, Decision No. <b>50791</b>	
EFFECTIVE JANUARY 1, 1955	
<p>Issued by the Public Utilities Commission of the State of California, San Francisco, California.</p> <p>Correction No. 637</p>	

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
<p>*142-B Cancels 142-A</p>	<p style="text-align: center;">(1) DELAYS TO EQUIPMENT</p> <p>Except as hereinafter noted, whenever the elapsed time between commencement and completion of the loading or unloading of shipments subject to minimum weights of 10,000 pounds or more, exceeds 12 minutes per ton (based on the weight on which transportation charges are computed) additional charges for delay time in excess of 12 minutes per ton shall be assessed as provided in Item No. 145. The charge provided in Item No. 145(b) for unit of equipment, shall apply only when the accessorial or incidental service requires its use or when the unit of equipment is inactivated by reason of its driver or helper being engaged in such service. The provisions of the item shall not apply in connection with the placement of units of equipment under agreement with the shipper or consignee for loading by the shipper or unloading by the consignee, when such agreement is recorded on the shipping document.</p> <p>By unit of equipment is meant a motor truck, trailer or semi-trailer, exclusive of motor tractors.</p> <p>The provisions of this item shall also apply in connection with:</p> <p>(a) Component parts of shipments transported under the provisions of Items Nos. 160 and 170, when the component part picked up or delivered weighs 10,000 pounds or more. In such instances, the charges assessed shall be based on the actual weight of the component part loaded or unloaded.</p> <p>(b) Shipments transported under the provisions of Items Nos. 200, 210, 220 and 230.</p>
	<p>(1) Does not apply on shipments of Whole Grain, in bulk or in bags, subject to minimum weights of 10,000 pounds or more. * Change, Decision No. 50791.</p>
	<p>EFFECTIVE JANUARY 1, 1955</p>
	<p>Issued by the Public Utilities Commission of the State of California, San Francisco, California.</p> <p>Correction No. 638</p>

Item No.	SECTION NO. 1-RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	<p style="text-align: center;">ISSUANCE OF DOCUMENTS</p> <p>1. ISSUANCE OF SHIPPING DOCUMENT</p> <p>A shipping document (either in individual or manifest form) shall be issued by the carrier to the shipper for each shipment received for transportation. The shipping document shall show the following information:</p> <ul style="list-style-type: none"> <li>(a) Name of carrier.</li> <li>(b) Date of shipment.</li> <li>(c) Name of shipper and name of consignee.</li> <li>(d) Point of origin and point of destination.</li> <li>(e) Description of shipment (in terms of the Western Classification or Exception Sheet or as provided in this tariff).</li> <li>(f) Weight of the shipment (or other factor or measurement upon which the charges are based).</li> <li>(g) Rate and charge assessed.</li> <li>(h) Such other information as may be necessary to an accurate determination of the applicable minimum rate and charge.</li> </ul> <p>2. ISSUANCE OF ACCESSORIAL SERVICE DOCUMENT</p> <p>An accessorial service document shall be issued by the carrier to the shipper or consignee for stacking, sorting, helpers for loading or unloading, vehicle detention or any other accessorial or incidental service which is not authorized to be performed under the transportation rates named in Sections 2 and 3 of this tariff. The accessorial service document shall show the following information:</p> <ul style="list-style-type: none"> <li>(a) Name of carrier.</li> <li>(b) Date of issuance.</li> <li>(c) Name of shipper or consignee or their representative, ordering or requiring the services, or for whom they are rendered.</li> <li>(d) Shipping document numbers or other identification of the shipments in connection with which the services are rendered.</li> <li>(e) Time for which equipment ordered, if any, and time of constructive and actual placement.</li> <li>(f) Weight, in pounds, loaded or unloaded.</li> </ul>

\*255-C  
Cancels  
255-B

- \* (g) Time loading or unloading begun and completed.
- (h) Free time allowable.
- (i) Time or weight on which charges are based.
- (j) Rate and charges assessed.
- (k) Such other information as may be necessary to an accurate determination of the applicable minimum rate and charge.

3. The forms of documents in Items Nos. 910, 911 and 912 will be suitable and proper.

4. A copy of each shipping document and accessorial service document shall be retained and preserved by the issuing carrier, subject to the Commission's inspection, for a period of not less than three years from the date of its issuance.

UNITS OF MEASUREMENT IN QUOTATION OF RATES AND CHARGES

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Rates or accessorial charges shall not be quoted or assessed by carriers based upon a unit of measurement different from that in which the minimum rates and charges in this tariff are stated.

\*Change, Decision No. 50791

EFFECTIVE JANUARY 1, 1955

Issued by the Public Utilities Commission of the State of California,  
 Correction No. 639 San Francisco, California.

SECTION NO. 5 - FORMS OF DOCUMENTS

\*Item No. 912-A Cancels 912

ACCESSORIAL SERVICE DOCUMENT

Date----- Bill No. -----

Name of Carrier----- Permit No. -----  
(Name of carrier must be same as shown on permit)

Debtor-----  
(Name of shipper, consignor or receiver against whom bill is rendered)

Address-----

Kind of Service Rendered -----  
(State kind of delay or kind of work performed)

Reference to Shipping Document:

Date of Shipping Document----- Shipping Document No. -----

Shipper----- Consignee-----

Shipper's Address----- Consignee's Address-----

Description of Equipment-----  
(List each motor truck, trailer and semi-trailer)

Explanation of Accessorial Charges:

Equipment Time Data:	Day - Hour - Minute	AM	PM	Day - Hour - Minute	AM	PM
Equipment Ordered For						
Constructive Placement From				To		
Actual Placement From				To		
Equipment Not Inactivated From				To		
//Unloading Time From				To		

Bases of Charges

Number of Service Men	Type of Equipment	Elapsed Time	Deductions	Time for Computation of Charges	Weight for Computation of Charges	Rate	Charges

If helper or helpers employed, state reasons therefor: \_\_\_\_\_

Certification of Data:

Shipper or Receiver-----Carrier-----

By-----By-----

END OF TARIFF

\*Change ) Decision No. 50791  
#Addition)

EFFECTIVE JANUARY 1, 1955

Issued by the Public Utilities Commission of the State of California,  
Correction No. 540 San Francisco, California.