

ORIGINAL

Decision No. 54378

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
 Order Setting Hearing
 Dated June 19, 1956

- E. J. McSweeney, for Pacific Motor Trucking Company, respondent.
- Arlo D. Poe and J. C. Kasper, for California Trucking Associations, Inc., interested party.
- Allen K. Pentilla, for The Sherwin Williams Co., interested party.
- Ray Ristrom and H. A. Lincoln, for The Fibreboard Paper Products Corporation, interested party.
- A. L. Russell, for Sears, Roebuck and Company, interested party.
- B. F. Bolling, for The Flintkote Co., interested party.
- James Quintrall, for the Western Motor Tariff Bureau, interested party.
- Edward Rutherford, for Schenley Industries, Inc., interested party.
- A. F. Schumacher, Sr., for Owens-Illinois Glass Co., interested party.
- Eugene R. Rhodes and Waldo A. Gillette, for Monolith Portland Cement Co., interested party.
- J. Lane Barbour and Norman Haley, for the Commission's staff.

INTERIM OPINION

This phase of Case No. 5432 relates to rules and regulations in Minimum Rate Tariff No. 2 pertaining to tailgate and other-than-tailgate loading and unloading of vehicles of motor carriers. As defined in the tariff tailgate loading or unloading means the loading or unloading of carriers' equipment from or to a point not more than 25 feet from said equipment. Minimum Rate Tariff No. 2 provides that when the loading or unloading is performed under other

than tailgate loading or unloading conditions (when shipments are loaded from or unloaded to points more than 25 feet distant from the equipment) additional charges at specified rates shall be assessed in certain circumstances. This present matter has for its purpose the determination of whether the additional charges should be continued in effect, revised or canceled.

On August 14, 1956, subsequent to notice to persons and organizations believed to be interested, public hearing on the matter was held before Examiner C. S. Abernathy at Los Angeles.

A transportation rate expert of the Commission's staff presented evidence and recommended that the provisions in question be canceled. He said that the charges for loading or unloading services performed under other-than-tailgate circumstances were established in an attempt to equalize competitive relationships between motor and rail carriers or other common carriers in instances where motor carriers assess common carrier rates which do not include loading or unloading. He asserted that the charges have not accomplished their objective for the reason that the loading and unloading services which the motor carriers perform is a principal source of advantage for the motor carriers and that the charges, as now set forth in the provisions involved, have little effect in equalizing this situation. He asserted, furthermore, that experience has since shown that the other-than-tailgate services are seldom performed and that the tariff provisions are, moreover, ambiguous, impractical and difficult to enforce. For these several reasons he declared that retention of the provisions in Minimum Rate Tariff No. 2 serves little purpose.

A senior transportation representative in charge of enforcement of the Commission's minimum rates, rules and regulations also presented evidence concerning difficulties of obtaining compliance with the provisions applicable to the other-than-tailgate

services. He testified that, because of the nature of the services involved, enforcement of the provisions is virtually impossible except by the utilization of personnel far in excess of the available staff.

Opposition to cancellation of the charges for other-than-tailgate loading or unloading, as recommended by the Commission rate witness, was voiced by counsel for the California Trucking Associations, Inc. Although agreeing with the rate witness that these provisions are infrequently applied, the Associations' counsel argued that they nevertheless operate to deter shippers from exacting unreasonable amounts of service from carriers and that their continuance in Minimum Rate Tariff No. 2 is therefore justified. He expressed concern lest cancellation of the charges act to disturb present relationships between carriers and shippers. He said, furthermore, that if the present provisions are deemed to be ambiguous and impractical, their amendment to correct the difficulties would be preferable to their cancellation. The traffic manager for Owens-Illinois Glass Co. concurred in the viewpoints expressed by counsel for the trucking associations.

It appears that the proposals of the rate witness which are under consideration in this matter are, for the most part, advanced as a remedy to cure technical infirmities of present tariff provisions. In addition, however, they bear directly upon basic minimum rate considerations. The rules and charges involved herein were established initially for the purpose of equalizing competitive opportunity between motor carriers and rail carriers. They reflect legislative directives which are contained in Sections 452, 731, 3662, and 3663 of the Public Utilities Code and which deal in part with the equalizing of competitive conditions between the different

forms of transport. As expressed in an early decision of the Commission, the applicable principle is as follows:

"Where truck carriers are permitted to maintain lower than normal rates for the purpose of meeting the rates of the rail lines and the services of the truck carriers include something that may be evaluated which the rail rates do not, additional charges must be provided."

(Decision No. 30410, 41 C.R.C. 26, 32)

Although the rules and charges in question were established for the purposes of equality as above indicated, it appears that experience has since demonstrated that they have operated to give the motor carriers a definite advantage over the rail lines. The rule changes proposed by the rate witness, if adopted, would extend this advantage. In the circumstances here shown, adoption of the recommendations of the rate witness would constitute a negation of a standard heretofore deemed to be fundamental to the maintenance of reasonable and nondiscriminatory minimum rates. The showing herein neither provides grounds for a modification of such import in the Commission's minimum rate policies nor does it disclose how such a modification could be accomplished in consonance with the statutory provisions referred to above.

The record points to need for re-evaluation and amendment of the tailgate and other-than-tailgate loading and unloading provisions in the light of experience and present conditions. However, before amendatory action is taken concerning the present provisions the Commission should be fully apprised of the applicable considerations. A further hearing will be held on May 1, 1957, for the purpose of providing all interested parties opportunity to present evidence, recommendations, and to be heard otherwise in these respects.

In view of these conclusions it is not necessary to consider at this time the technical infirmities of the present tariff

provisions. These infirmities are subordinate to the basic problem discussed above and should be considered in connection with the matters to be adduced at the further hearing to be held.

INTERIM ORDER

Based on the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that the instant phase of the above-numbered proceeding, initiated by Order Setting Hearing dated June 19, 1956, in this proceeding, be and it is hereby continued and that further hearing thereon be held at Los Angeles on May 1, 1957, for the purposes stated in the above opinion.

IT IS HEREBY FURTHER ORDERED that appropriate notice of the further hearing and the purposes thereof be furnished forthwith by the Commission's Secretary to parties of record in the above-numbered general proceeding.

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

Dated at San Francisco, California, this 15th day of January, 1957.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners

Commissioner Matthew J. Dooloy, being necessarily absent, did not participate in the disposition of this proceeding.