

**ORIGINAL**Decision No. 55984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Case No. 5432

In the Matter of the Investigation into )	
the rates, rules, regulations, charges, )	Petition No. 87
allowances, and practices of all common )	(Mixed Shipment Rates)
carriers, highway carriers and city )	
carriers relating to the transportation )	Petition No. 88
of general commodities (commodities for )	(Western Milk Transport,
which rates are provided in Minimum Rate )	Partial Exemption,
Tariff No. 2). )	Mixed Shipments)

Theodore W. Russell, for Western Milk Transport, petitioner.Charles C. Stratton, for Cal Milk Tanks, respondent.Orville A. Schulenberg, for Kings County Truck Lines,  
respondent.James Quintrall, J. C. Kaspar, and Arlo D. Poe, for California  
Trucking Associations, Inc., interested party.E. R. Chapman, for Foremost Dairies, Inc., interested party.J. J. Deuel, for California Farm Bureau Federation,  
interested party.Leonard Diamond, for the staff of the Public Utilities  
Commission of the State of California.O P I N I O N

These petitions relate to the rates which apply under the provisions of Minimum Rate Tariff No. 2 for the transportation of mixed shipments comprised of commodities for which rates are named in said tariff and commodities which either are not subject to minimum rates or are subject to rates in other of the Commission's minimum rate tariffs. The tariff provides two methods for arriving at the applicable rates: (a) The rates for the entire shipment may be determined as though all of the commodities therein were ratable under the provisions of the tariff, or (b) the commodities for which

rates are not provided in the tariff may be rated at the rates which would be otherwise applicable. These provisions, as applied to the commodities which are subject to Minimum Rate Tariff No. 2, permit the use of rates based on the total weight of the shipment only when the entire shipment is rated under the tariff. Otherwise, said commodities are rated according to their weight and without regard to the total weight of the shipment of which they are a portion.

Western Milk Transport, a permitted carrier and petitioner in these matters, alleges that these provisions are inequitable, discriminatory, and result in wasteful transportation practices. It asks that Minimum Rate Tariff No. 2 be amended to permit rates for the non-exempt portions of mixed shipments to be based on the total weights of the shipments, irrespective of whether the exempt commodities in the shipments are rated at the rates in Minimum Rate Tariff No. 2. <sup>1/</sup> In the alternative, Western Milk Transport asks that it be exempted from the provisions of the mixed shipment rule to the extent of authorizing it individually to assess rates in the manner proposed.

On October 29, 1957, subsequent to notice to persons and organizations believed to be interested, public hearing on the petitions was held before Examiner C. S. Abernathy, at Los Angeles. Evidence was presented on petitioner's behalf by officers and employees of petitioner, by a tariff expert, and by representatives of two of petitioner's principal patrons. Statements of position were submitted on behalf of the Kings County Truck Lines, the California

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<sup>1/</sup> For convenience the commodities for which rates are named in Minimum Rate Tariff No. 2 will be referred to hereinafter as "non-exempt commodities" and the commodities for which minimum rates have not been prescribed or the commodities for which rates are named in other minimum rate tariffs of the Commission will be referred to as "exempt commodities."

Trucking Associations, Inc., and the California Farm Bureau Federation. The matters were taken under submission for decision with the receipt of a late-filed exhibit on December 4, 1957.<sup>2/</sup>

As disclosed by the record, the circumstances leading up to the filing of the petitions and the reasons for the proposals are as follows:

Western Milk Transport is engaged primarily in the transportation of milk and other dairy products in central and southern California. It transports milk from dairies to processing plants and milk and milk products from processing plants to distribution centers. The latter transportation is that with which these petitions deal. Only about 5 percent of this transportation is subject to the rates in Minimum Rate Tariff No. 2. The remainder consists of the movement of commodities which are exempt from the minimum rates.<sup>3/</sup>

For a number of years heretofore petitioner's patrons followed the practice of shipping the exempt and non-exempt commodities in combined shipments of truckload quantities or more. In billing its patrons for the transportation of the non-exempt commodities, petitioner computed charges on the basis of the minimum rates applicable to truckload movements inasmuch as the non-exempt commodities moved as parts of truckloads. Recently, however, petitioner learned that this manner of assessing charges on the non-exempt commodities is not in conformity with the provisions of Minimum Rate Tariff No. 2.

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<sup>2/</sup> The late-filed exhibit was submitted for the purposes of clarifying petitioner's proposals and eliminating certain technical difficulties therefrom.

<sup>3/</sup> The principal exempt commodities which petitioner transports are liquid milk, cream, butter, and cheese. The principal non-exempt commodity is powdered milk.

As a consequence it since has been treating the non-exempt commodities as though they were separate shipments and has applied truckload rates thereto only when it has been tendered truckload quantities of these commodities; otherwise, it has applied less-truckload rates, which are higher.<sup>4/</sup>

With the change in basis of assessing charges petitioner experienced a decline in load factor -- in the average volume of its loads. Whereas previously the non-exempt commodities usually moved in combination loads with the exempt commodities, shipment of the non-exempt commodities is now frequently deferred by petitioner's patrons in order to aggregate sufficient quantities to obtain the truckload rates. As a consequence, in transporting the exempt commodities petitioner's vehicles move to destinations with smaller loads. Furthermore, where petitioner formerly enjoyed virtually all of the transportation of the non-exempt commodities when they moved in combination with the exempt shipments, it now finds that when the exempt commodities are accumulated into truckload lots they are often tendered to and transported by other carriers.

From the shippers' standpoint the rearrangement of shipping practices that has ensued from the change in basis of charges has not proved satisfactory. According to testimony of witnesses for two of the milk companies which petitioner serves, the aggregating of the non-exempt commodities to obtain the lower truckload rates interferes

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<sup>4/</sup> It appears that were petitioner to assess charges under the alternative basis named in the mixed shipment rule, and to rate the exempt as well as the non-exempt commodities under the tariff, the resultant charges would be much higher than those which now apply under the divided basis of rates.

with the efficient distribution of their companies' products and increases their companies' operating costs. The witnesses stated that unless the rating of mixed shipments of exempt and non-exempt commodities is permitted as herein sought their companies probably would undertake to transport all of their shipments by their own facilities. In this connection they stated that their companies already are engaged in extensive proprietary transportation operations in California in areas other than those served by petitioner.

No one appeared in opposition to the sought amendment of the mixed shipment provisions in Minimum Rate Tariff No. 2. Representatives of the California Farm Bureau Federation, the California Trucking Associations, Inc., and Kings County Truck Lines (a carrier engaged in transportation services similar to those of petitioner) supported the proposals in this respect. However, with reference to the exemption from the mixed shipment provisions which Western Milk Transport seeks in its Petition No. 88, the representatives of California Trucking Associations, Inc., and Kings County Truck Lines both opposed the exemption as being preferential.

It appears from the showing herein that Minimum Rate Tariff No. 2 should be amended in the manner proposed by petitioner.<sup>5/</sup> Purposes of the regulation of rates of for-hire carriers operating over the public highways are the preservation of the highways without unnecessary congestion and wear thereof, and the securing for the people of just and reasonable rates (Section 3502, Highway Carriers' Act). The evidence in these matters is persuasive that the mixed shipment provisions of Minimum Rate Tariff No. 2 which are in issue have not operated and do not now operate in consonance with such

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<sup>5/</sup> This conclusion is subject to the qualification that in the adoption of petitioner's recommendations a minor modification would be made for purposes of clarity of application of the proposed provisions.

purposes; that said provisions induce wasteful transportation practices and unnecessary congestion and wear on the public highways; and that in requiring non-exempt portions of mixed shipments to be treated as separate shipments, said provisions do not permit the carriers to reflect in their charges the lower operating costs per 100 pounds which they attain through combining exempt and non-exempt commodities into truckload shipments. It appears that the revisions which petitioner seeks would provide a more reasonable basis of rates for the transportation of mixed shipments of exempt and non-exempt commodities. The resulting provisions, it may be noted, are virtually the same as those which the Commission has prescribed as reasonable for the transportation of interstate and intrastate shipments which move together in combined lots.

Upon consideration of all of the facts and circumstances of record, the Commission is of the opinion and finds as a fact that the mixed shipment rule in Minimum Rate Tariff No. 2 (Item No. 90 series) should be revised to the extent provided in the following order and that such revision of said rule has been shown to be reasonable and justified. The revisions of the mixed shipment rule which are hereinafter ordered are in response to Petition No. 87 in this general proceeding, Case No. 5432. The revisions will, in effect, satisfy petitioner's request contained in Petition No. 88. Therefore, no action on this latter petition is necessary. It will be dismissed.

O R D E R

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

IT IS ORDERED:

1. That Minimum Rate Tariff No. 2 (Appendix "D" to Decision No. 31606, as amended) be and it is further amended by incorporating therein, to become effective January 19, 1958, Eleventh Revised Page 17 Cancels Tenth Revised Page 17, which page is attached hereto and by this reference made a part hereof.
2. That tariff publications authorized to be made by common carriers as a result of the order herein may be made effective on not less than five days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the tariff changes herein involved.
3. That in all other respects the aforesaid Decision No. 31606, as amended, shall remain in full force and effect.
4. That Petition No. 88 in this general proceeding be and it hereby is dismissed.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of December, 1958

*John E. Beckell*  
 President

*Ralph J. [unclear]*

*[unclear]*

*R. Hardy*

*E. J. Fox*  
 Commissioners

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	<p style="text-align: center;">MIXED SHIPMENTS</p> <p>(1) 1. Commodities for which rates are provided in this tariff:</p> <p style="padding-left: 40px;">(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.</p> <p style="padding-left: 40px;">(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. 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.</p> <p style="padding-left: 40px;">(c) If lower charges result under specific mixture provisions named in individual items of the Western Classification or Exception Sheet than under the provisions of paragraphs (a) and (b) hereof, such basis shall be used in determining the applicable minimum transportation charge.</p> <p style="padding-left: 80px;">(1) Paragraph 1 hereof will not apply to mixed shipments which are subject to the provisions of Item No. 365 of this tariff.</p> <p>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:</p>

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o (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, the charges on the traffic subject to the rates named in this tariff may be computed at the separate rates applicable to such traffic based upon the combined weight of the entire mixed shipment, but in no event shall the total charges for the entire mixed shipment be less than the charges for the weight of the commodities for which rates are provided in this tariff when computed as a separate shipment; 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 last described basis is used, the minimum charges provided in Item No. 150 of this tariff shall apply to the entire shipment. The minimum weight shall be the highest provided for any of the rates named in this tariff used in computing charges, subject to Item No. 80. The rate applicable to the deficiency weight, if any, shall be the rate applicable to the lowest rated commodity which is included in the mixed shipment and which is subject to the rates named in this tariff (See Notes 1, 2, 3, 4 and 5).

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 Minimum Rate Tariff No. 6.

Note 2.-The provisions of this rule will not apply to mixed shipments containing used property, viz.: household goods, personal effects and office and store fixtures and equipment, for which rates are provided in the tariff designated Minimum Rate Tariff No. 4-A.

Note 3.-The provisions of this rule will not apply to mixed shipments containing fresh fruits, fresh vegetables (including fresh mushrooms) or empty containers for which rates are provided in the tariff designated Minimum Rate Tariff No. 8.

Note 4.-The provisions of this rule will not apply to mixed shipments containing uncrated new furniture for which rates are provided in Minimum Rate Tariff No. 11-A. All commodities in such mixed shipments may be rated under the provisions of Minimum Rate Tariff No. 11-A, or the commodities for which rates are provided herein may be rated under the provisions of this tariff as separate shipments.

Note 5.-The provisions of this rule will not apply to mixed shipments containing motor vehicles and other commodities moving in truckaway service for which rates are provided in Minimum Rate Tariff No. 12.

(Continued)

\*Change )  
oReduction ) Decision No. 55984

EFFECTIVE JANUARY 19, 1958

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San Francisco, California.  
Correction No. 794