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Decision No. 52824

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules and regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).	Case No. 5432 Petition for Modification No. 111

Eugene A. Read, for California Manufacturers Association, petitioner.
Frank Loughran and Wm. N. Larimore, for California Brewers Association; Milton A. Walker, for Fibreboard Paper Products, Inc., intervenors.
W. H. Adams by G. B. Rutting, for Shell Oil Co.; A. D. Carleton, for Standard Oil Co. of California; E. R. Chapman, for Foremost Dairies, Inc.; A. E. Patton, for Richfield Oil Corporation; W. R. Donovan, for C & H Sugar Refining Corp.; Larry Binsacca, for M. J. B. Co.; Claude Bungan, for Owens-Illinois Glass Co.; Bert Buzzini, for California Farm Bureau Federation; J. C. Kaspar, Arlo D. Poe and J. X. Quintrall, for California Trucking Associations, Inc.; interested parties.
John McDonald Smith, for S.P.Co., N.W.P. RR Co., P.E. Ry., S.D. & A.E. Ry., Holton Inter-Urban Ry. Co., respondents.
Grant L.Malquist, for the Commission staff.

O P I N I O N

Item No. 200-H of Minimum Rate Tariff No. 2 provides for the use of common carrier rates in lieu of the rates contained in the minimum rate tariff when such common carrier rates produce a lower aggregate charge for the same transportation. Item No. 210-G provides for the use of the rates in said tariff in combinations with common carrier rates. Items Nos. 220-B and 230-B provide for

the use of combinations with common carrier rates in split pickup and split delivery, respectively. Item No. 240-L states, in part,

> "In the event under the provisions of Items Nos. 200 to 230 inclusive, a rate of a common carrier is used in constructing a rate for highway transportation, and such rate does not include accessorial service performed by the highway carrier the following charges for accessorial services shall be added ..... :
>
> "(1) For loading of carrier's equipment, 1 cent per 100 pounds assessed on the weight on which transportation charges are computed (See Notes 1, 2, 4, 5 and 6);
>
> "(2) For unloading of carrier's equipment, 1 cent per 100 pounds assessed on the weight on which transportation charges are computed (See Notes 1, 2, 4, 5 and 6)."

By petition filed May 21, 1958, the California Manufacturers Association, a nonprofit association of manufacturers in California, requests the Commission to amend Minimum Rate Tariff No. 2 so as to eliminate the charge for loading and/or unloading of the carrier's equipment when the charges for transportation are computed by application of combinations with common carrier rates in accordance with Items Nos. 210, 220 or 230 of said tariff. Petitioner does not seek the removal of the charge in connection with rates applied under Item No. 200 Series.

Public hearing was held before Examiner Jack E. Thompson July 30, 1958, at San Francisco. The evidentiary facts presented in the proceeding relate to the provisions of Minimum Rate Tariff No. 2 here involved and the sequence of events leading to the filing of this petition together with the fact that combinations of rates as provided in Items Nos. 210 to 230, inclusive, are in fact the minimum rates for highway transportation between points in California in a great many instances; and that in some instances, carriers have assessed and shippers have paid the loading and/or unloading charges

provided in Item No. 240 and in other instances, respecting similar transportation, carriers have not assessed the charges and shippers have refused to pay the charges. Other than the foregoing, the record consists principally of statements of position by the various participants and the opinions of witnesses concerning interpretation and construction of the tariff items here in issue.

As a part of its proposals in Petition No. 62 in Case No. 5432, the California Trucking Associations, Inc., requested the establishment of a rate of one cent per 100 pounds for loading and/or unloading to be applied in connection with the use of common carrier rates as provided in Item No. 200. By Decision No. 55249, dated July 9, 1957, in that proceeding, the Commission established the rate in Item No. 240-J to apply in connection with Items Nos. 200 to 230, inclusive. Upon the filings of a number of petitions, rehearing was held in that proceeding; however, other than the matter of the application of the charge to shipments of grain in bulk, the loading and unloading charge was not in issue on rehearing. While Item No. 240 has been amended twice since July 9, 1957, the charge and the rules governing its application have not been changed materially.

On November 18, 1957, following the decision on rehearing, the Director of Transportation of the Commission issued Informal Ruling No. 27 which holds that the charges for loading and unloading set forth in Item No. 240-K shall be assessed when the common carrier rate is used for constructing charges from or to points beyond team track or established depot (as under Items Nos. 210, 220 and 230 Series).[1]

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[1] Informal rulings of the Transportation Division are made in response to questions propounded by the public indicating what are deemed to be the correct applications and interpretations of the minimum rate tariffs. These rulings are tentative and provisional, and are made in the absence of decisions on the subjects by the Commission.

On November 20, 1957, the petitioner herein requested the Director of Transportation to reconsider the informal ruling. The request was denied with advice that if adjudication by the Commission was desired, petitioner should file an appropriate pleading with the Commission. The petition herein is that pleading.

The issue here primarily concerns the applicable rates on truckload shipments. The minimum rates set forth in Minimum Rate Tariff No. 2 for shipments weighing in excess of 10,000 pounds include loading into and unloading from carrier's equipment at established depots. At points of origin or points of destination other than established depots said rates include the services of one man (driver or helper) for loading or unloading of carrier's equipment. In general, the carload rates of common carriers by railroad, hereinafter called rail rates, do not include the service of loading or unloading. The situation involved herein is the combination of the rail rates with the rates in Minimum Rate Tariff No. 2. Under Informal Ruling No. 27, when the highway carrier performs loading at origin and unloading at destination and the rate assessed is a combination of a rail rate with one or more rates in Minimum Rate Tariff No. 2, the highway carrier must assess the charge for loading and the charge for unloading.

According to petitioner, because the rate in Minimum Rate Tariff No. 2 covers the loading and unloading of equipment by the driver, the assessment of the additional loading and unloading charge in circumstances where the loading and unloading is actually performed by the driver results in the shipper paying twice for the same services. Petitioner contends that the loading and unloading charge is unduly prejudicial to persons located at points beyond railhead and unduly preferential to persons located at railhead in that the

latter pay nothing in addition to the common carrier rate except the charge for loading and/or unloading which is paid and collected but once. It is further contended that, by failing to restrict its decision with respect to loading and unloading of equipment to the rates for shipments moving from one railhead point to another under the provisions of Item No. 200, the Commission has prescribed minimum rates in excess of the going rates of common carriers by land for the transportation of the same kinds of commodities between the same points in violation of the provisions of Section 3663 of the Public Utilities Code and, to that extent, its order in Decision No. 55249 is invalid.

Intervenor California Brewers Association took the position that under the provisions of Item No. 240 the charges for loading and/or unloading are not applicable to shipments moving under combinations of rates as provided in Items Nos. 210 to 230, inclusive. This interpretation of Item No. 240 relies upon the construction of the phrase "accessorial services performed by the highway carrier." (Emphasis added.) It is intervenor's contention that the charges do not apply because the highway carrier does not actually perform loading or unloading at the points over which the common carrier rate is combined with the minimum rate.

Other shippers who participated in the proceeding supported the position of petitioner or the position of intervenor, and in a few instances both positions.[2]

California Trucking Associations, Inc., does not support petitioner or intervenor. Its spokesman stated that there appeared

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[2] While the two reflect a desire of the shippers not to pay the additional charges, the positions differ in that petitioner contends Item No. 240 requires the assessment of the charges and requests that the requirement be removed from the tariff and intervenor contends that Item No. 240 does not require the assessment of the charges and requests that the Commission find that Informal Ruling No. 27 is in error.

to be some uncertainty among carriers and shippers regarding the application of the loading and unloading charges and that the Commission should amend the item so as to remove any uncertainty or ambiguity concerning it.

Because of the contention of intervenor, it is necessary to consider whether the present provisions of the tariff apply to any shipments moving under rates constructed as provided in Items Nos. 210 to 230 Series.

There are no specific shipments and references to common carrier rates of record; therefore, a hypothetical situation must serve in analyzing the application of Item No. 240.

We shall assume that a highway carrier loads a shipment onto equipment with service of driver only at Point A and unloads it at consignee's place of business with service of driver only at Point C; and that there is a rail rate from intermediate Point B to Point C which does not include pickup or delivery. We will also assume that consignee is at railhead at Point C.

It is a general rule of rate construction that combinations of rates are constructed as though the shipment moved as separate shipments over the routes and at the rates, rules and regulations of the transportation companies maintaining the rates to be combined. Therefore, in the application of a combination of rates to the above hypothetical situation, it is theorized that a highway carrier picks up the shipment at A and delivers it at B to the railroad at a team track. At this point the freight must be unloaded from the truck and placed in a rail car. The railroad accepts delivery of the loaded freight car and delivers it to consignee's siding at C. At this point the rail car must be unloaded and there is no doubt that it is the responsibility of

the consignee to unload the car. The highway carrier, therefore, has performed a service for the consignee which would not have been provided had the shipment moved via the routing over which the combination of rates was constructed. The unloading at destination by the highway carrier under the foregoing circumstances is an accessorial service within the meaning of Item No. 240 and the charge of one cent per 100 pounds for unloading of carrier's equipment is applicable thereto.

In the foregoing illustration, the loading of carrier's equipment at Point A, the point of origin, is a service included in the rate from said point to Point B. The loading charge, insofar as that portion of the service is involved, is not applicable.

From Informal Ruling No. 27, it would appear that the Transportation Division is of the opinion that an additional charge of one cent per 100 pounds should be assessed for the theoretical loading of the rail car at Point B. The loading of the car is not a service included in the rail rate and theoretically the highway carrier would have performed the service. The rate from A to B, however, includes the service of one man in unloading the truck. There is a question, therefore, whether the placing of the freight in a rail car at the same time the truck is unloaded is included in the rate from A to B. In tendering carload shipments to the railroads shippers must observe carriers' rules regulating safe loading of freight and protection of equipment.[3] Whether the loading of the rail car in a manner acceptable to the railroad would constitute a service the highway carrier could perform at the minimum rate for the transportation from A to B would depend upon the commodity in the shipment, the size of the shipment, the size and type of the

[3] Rule No. 27, Western Classification No. 76.

rail car and the rules and regulations of the railroad publishing the carload rate from B to C. Under very favorable conditions, it appears that a shipment could be placed in a rail car without dunnage, blocking or shoring. Unless all of the facts are known, and even then in some instances unless the carloading were actually attempted, it would be difficult to ascertain whether accessorial services would be required or not. In those circumstances the application of Item No. 240 would be uncertain. It is noted, however, that in those instances when the carloading would be a service included in the highway carrier rates, an interpretation of Item No. 240 which would require the assessment of the loading charge would result in placing a construction upon Decision No. 55249 that the Commission had established minimum rates higher than the going rates of common carriers by land. The Commission is prohibited from establishing such minimum rates by Section 3663 of the Public Utilities Code. Where a provision of a minimum rate tariff is uncertain, the language therein should be given that construction which would make the order of the Commission establishing the provision valid in all respects. We conclude that the loading and/or unloading charges set forth in Item No. 240 are not applicable other than for loading and/or unloading services actually performed by the highway carrier.

Petitioner has not shown that the application of the charges in Item No. 240, as interpreted in the foregoing opinion, are unduly preferential or prejudicial. Nor has it been shown that the order of the Commission in establishing the aforesaid charges, as construed above, is in conflict with the provisions of Section 3663 of the Public Utilities Code. Good cause has not been shown why the aforesaid charges should be eliminated in

connection with shipments moving under rates constructed pursuant to Items Nos. 210, 220 and 230. The use of common carrier rates as provided in Items Nos. 200 to 230 Series, inclusive, is not only necessitated by Section 3663 but also because of the policy of the State in minimum rate making of establishing those rates which will allow all forms of transportation opportunity to compete with each other. In the foregoing hypothetical illustration, the elimination of the unloading charge as requested would permit the highway carrier to assess the lower rail rate and at the same time provide a service of unloading at consignee's place of business which is not included in said rate.

The record is persuasive that Item No. 240 should be amended so as to clearly provide for the application of the loading and/or unloading charge in the manner set forth hereinabove. Upon consideration of all of the facts and circumstances or record, the Commission is of the opinion and finds that the modifications in the rules and regulations in Minimum Rate Tariff No. 2 which are set forth in the order which follows are necessary to the application and enforcement of the minimum rates contained therein.

The record indicates that there may be highway common carriers maintaining rates based upon the interpretation of Item No. 240 set forth in Informal Ruling No. 27. Said carriers will be authorized to reduce said rates on less than thirty days' notice to the level of the minimum rates. It was also indicated that there may be common carriers maintaining rates based upon an interpretation of Item No. 240 that the charges contained therein are not applicable to rates constructed under Items Nos. 210, 220 and 230 Series. Those carriers will be directed to increase said rates to the level of the applicable minimum rates.

O R D E R

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

IT IS ORDERED:

1. That Minimum Rate Tariff No. 2 (Appendix "A" of Decision No. 31606, as amended) is further amended by incorporating therein, to become effective October 17, 1958, 16th Revised Page 26, which page is attached hereto and by this reference made a part hereof.

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

3. That tariff publications required 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, and that such tariff publications shall be made effective not later than October 17, 1958; and that tariff publications which are authorized but not required 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.

4. That Petition for Modification No. 111 is denied.

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

Dated at San Francisco, California, this 10th day of September, 1958.

President

Commissioners

Item No.	SECTION NO. 1 – RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)

ACCESSORIAL SERVICES NOT INCLUDED IN COMMON CARRIER RATES

In the event under the provisions of Items Nos. 200 to 230, inclusive, a rate of a common carrier is used in constructing a rate for highway transportation, and such rate does not include accessorial services performed by the highway carrier the following charges for such accessorial services shall be added (except as otherwise provided in connection with individual rates):

(1) For loading of carrier's equipment, 1 cent per 100 pounds assessed on the weight on which transportation charges are computed (See Notes 1, 2, 4, 5 and 6);

(2) For unloading of carrier's equipment, 1 cent per 100 pounds assessed on the weight on which transportation charges are computed (See Notes 1, 2, 4, 5 and 6);

*240-M Cancels 240-L

(4) For C.O.D. service - charges provided in Item No. 180;

(5) For other accessorial services - charges provided in Item No. 145;

(6) Split pickup or split delivery shall not be accorded unless included in the common carrier rate (See Items Nos. 220 and 230 for exceptions) except that, on shipments of dried fruit, split delivery may be accorded, subject to the additional charges named in Note 1 of Item No. 170, when all component parts of the shipment are destined to one or more docks, piers or wharves at:

(a) San Francisco only, or
(b) Alameda, Oakland and/or Richmond, or
(c) Stockton only.

*6 NOTE 1.-The charges for loading and/or unloading shall apply in all circumstances except:

(a) When rates provided in this tariff are applied in combination with common carrier rates under the provisions of:

(1) Paragraph (a) of Item No. 210, only the accessorial charge for unloading shall be assessed,

(2) Paragraph (b) of Item No. 210, only the accessorial charge for loading shall be assessed, and

(3) Paragraph (c) of Item No. 210, no charge for either loading or unloading shall be assessed.

(b) When the shipment is loaded into and/or unloaded from the carrier's equipment as follows:

(1) On shipments of grain, in bulk, when loaded and/or unloaded by gravity.

(2) By the consignor and/or consignee as follows:

(a) With power equipment as described in Item No. 10, or

(b) When the carrier's equipment is a trailer or semi-trailer left for loading and/or unloading without the presence of carrier's employees.

(3) Provided that on shipments described under subparagraphs (1) and (2) above the Shipping Document(Freight Bill) issued pursuant to Item No. 255 indicates that the shipment was loaded and/or unloaded under one of the circumstances described in subparagraphs (1) and (2) above.

NOTE 2.-When shipments consisting in whole or in part of Oil, Water or Gas Well Outfits and supplies, and other Articles, as described in Item No. 365, moving between points located in Los Angeles and Orange Counties on the one hand and points located in California, Salinas, Fresno and south thereof, on the other hand, are transported:

(a) Under the provisions of Item No. 200, a charge of 3½ cents per 100 pounds shall be added for loading, and a charge of 3 cents per 100 pounds shall be added for unloading;
(b) Under the provisions of Paragraph (a) of Item No. 210, a charge of 3½ cents per 100 pounds shall be added for unloading;
(c) Under the provisions of Paragraph (b) of Item No. 210, a charge of 3½ cents per 100 pounds shall be added for loading; or
(d) Under the provisions of Paragraph (c) of Item No. 210, no additional charge shall be added for loading or unloading.

NOTE 4.-When shipments consisting in whole or in part of Liquors, alcoholic, N.O.I.B.N., as described under that heading in the Western Classification, moving between San Francisco Territory and Los Angeles Territory are transported:
(a) Under the provisions of Item No. 200 a charge of 2-3/4 cents per 100 pounds shall be added for loading, and a charge of 2½ cents per 100 pounds for unloading;
(b) Under the provisions of Paragraph (a) of Item No. 210, a charge of 2½ cents per 100 pounds shall be added for unloading;
(c) Under the provisions of Paragraph (b) of Item No. 210, a charge of 2-3/4 cents per 100 pounds shall be added for loading; or
(d) Under the provisions of Paragraph (c) of Item No. 210, no additional charge shall be added for loading or unloading.

NOTE 5.-For loading or unloading of Cement, Portland (building), a charge of 2½ cents per 100 pounds shall be added.

NOTE 6.-For pickup or delivery service at a point not at street level and where the minimum weight is less than 10,000 pounds, the loading or unloading provisions of this item will not apply and the additional charge provided in Item No. 120 will apply.

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* Change
◊ Reduction
) Decision No. 57324

EFFECTIVE OCTOBER 17, 1958

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

Correction No. 847