

ORIGINAL

Decision No. 58375

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 fresh or green fruits and vegetables
 and related items (commodities for which
 rates are provided in Minimum Rate
 Tariff No. 8).

Case No. 5438
 Petition for
 Modification No. 16

Calhoun E. Jacobson and Leslie M. Cox, for Western
 Growers Association, petitioner.
Arlo D. Poe, J. C. Kaspar and J. Quintrall, for
 California Trucking Associations, Inc.; R. O.
Hubbard and J. J. Deuel, for California Farm
 Bureau Federation; L. C. Marshburn, for Marshburn
 Brothers; James C. Uhler, for Sunkist Growers, Inc.;
Paul O. Helin, for Calavo Growers of California;
 interested parties.
R. A. Lubich and Ralph J. Staunton, for the Commission's
 staff.

O P I N I O N

By Decision No. 56770, dated May 27, 1958, a general revision was effected in minimum rates, rules and regulations for the transportation of fresh fruits and vegetables between points in this state, as set forth in Minimum Rate Tariff No. 8. One of the changes brought about by said decision was in Item No. 40-J, which specifies certain movements as to which the minimum rates and other provisions of Tariff No. 8 are inapplicable. Among these exempt movements is the following:

Fresh or green fruits, fresh or green vegetables or mushrooms, when transported from the field or point of growth to a packing plant or a packing shed; and empty containers used or shipped out for use in connection with such transportation.

By Decision No. 56770 the above-stated exemption was made subject to the following restriction:^{1/}

Note 3. Except for the transportation of citrus fruits in field boxes or in bulk, or avocados, exemption does not apply when the distance between point of origin and point of destination exceeds 50 constructive miles computed in accordance with Item No. 110.

The effect of Note 3 was to make subject to the rates and other provisions of Minimum Rate Tariff No. 8 the movement of fresh fruits and vegetables from field or point of growth to packing plants or packing sheds located more than 50 constructive miles from such field or point of growth.^{2/} Prior to July 12, 1958, the effective date of the new provisions, such transportation was exempt from the minimum rate provisions.

By Petition for Modification No. 16 in Case No. 5438, Western Growers Association seeks cancellation of the above-quoted Note 3. Petitioner is a non-profit organization of some 300 growers and shippers of fresh vegetables and melons in California and Arizona. Assertedly, it represents approximately 90 percent of all producers of such crops in the states mentioned.

Public hearing of the petition was held before Examiner Carter R. Bishop in Los Angeles on February 17, 1959.

In the petition it is alleged that the provisions of Note 3 are contrary to the public interest, that they result in unjust, unreasonable and discriminatory charges, and that they are in violation of Section 3661 of the Public Utilities Code.^{3/} Petitioner's

^{1/} By the decision cited, the exemption quoted above was also modified to include the words "from the field or point of growth" which had not previously appeared in said exemption.

^{2/} Subject, of course, to the stated exception relation to the transportation of citrus fruit and avocados.

^{3/} Section 3661 reads as follows: "It is the policy of the State to be pursued by the Commission to establish such rates as will promote the freedom of movement by carriers of the products of agriculture, including livestock, at the lowest lawful rates compatible with the maintenance of adequate transportation service."

traffic manager testified that when Decision No. 56770, supra, was issued, the Association thought that said Note 3 might be workable for both the carriers and the shippers but that subsequent experience had demonstrated otherwise. A comprehensive survey, he stated, disclosed that there were many movements from the fields to the packing sheds exceeding 50 miles and that as a result of higher rates under the minimum rate order, certain traffic to California packing sheds was being displaced from producing points in this state to out-of-state sources. Additionally, the survey indicated that said higher rates would force California growers into proprietary trucking. It was pointed out that shipments of vegetables moving to California from Arizona and other inter-state producing areas are not subject to rate regulation.

The traffic manager introduced an exhibit designed to show the adverse effect of Note 3 on the operations of the Association's members. In one table the charges assessed on six shipments of carrots which moved via various highway carriers prior to July 12, 1958 were compared with the charges which, under the minimum rate tariff, would have applied had said shipments moved on or after the above-mentioned date. The shipments originated in the field at Santa Maria, Holtville and King City, all being consigned to a packing plant in Los Angeles. In all cases the distances were in excess of 50 constructive miles. Two shipments weighed 11,800 and 23,480 pounds, respectively, the remaining four weighed over 40,000 pounds. The charges which would have applied had the six shipments moved under the minimum rate tariff ranged from 33 percent to 136 percent more than the charges actually assessed.^{4/} The witness stated that

^{4/} The increases were greatest for the smaller shipments. This, it appears, was because the minimum rate tariff provides different levels of rates for different weight brackets (the greater the weight, the lower the rate), while the unregulated rates assessed were the same for all weights.

the movements of which the above shipments were taken as representative were discontinued when Note 3 went into effect.

In another table were listed seven shipments of peaches which were hauled by various highway carriers to a packing plant at Fresno from unspecified points of growth, the lengths of haul ranging from 10 to 17 miles. Some of the shipments moved prior to July 12, 1958, others subsequent thereto. The rates assessed on the latter group were no higher than those applied to the former group of shipments. While the Association is not concerned with fruits, some of its members are engaged in the production of fruit as well as of vegetables. The purpose of the table, the witness stated, was to show what rates were being charged on shipments which, after July 12, 1958, were still exempt from the minimum rates.

In a third table were shown the rates assessed on 18 shipments which moved to packing plants in Los Angeles, Salinas and Decoto from various field origins, all of which were more than 50 constructive miles from the respective points of destination. This group included one shipment of cabbage and four of celery hearts; all the rest were carrots. The shipments shown for each movement included consignments made both before and after July 12, 1958 and the unregulated rates assessed on the earlier shipments were compared with the minimum rates applied to the latter. The increases ranged from 12 to 134 percent.^{5/}

The data shown in his exhibit, the traffic manager stated, were secured by means of a questionnaire which he sent to over 200 Association members. In the questionnaire members were asked to send to the witness copies of freight bills covering representative shipments falling in each of the categories covered by the above-mentioned tables. The total number of shipments included in the

^{5/} Here again the greatest increases were in the smallest shipments, for the reason stated in footnote 4, supra.

exhibit was thirty-one. The witness indicated that these constituted almost all of the freight bills received in response to the questionnaire. A few, he said, were not included in the exhibit in order to avoid duplication.

Four shipper witnesses testified in behalf of petitioner. The concerns with which they are associated have their plants at Decoto, Saticoy, Oxnard and Los Angeles, respectively. The Decoto company operates a plant at that point at which carrots, together with some cauliflower, are packed for market. The carrots come from producing areas throughout the central and southern parts of the state, and from the Phoenix and Yuma districts of Arizona. About 90 percent of the produce moves to the packing plant from fields which are more than 50 constructive miles from Decoto. About 25 percent of the packed carrots move from Decoto to San Francisco Bay Area markets and to Sacramento. The remainder are shipped to eastern markets by rail or truck. The packing of carrots is a year-round operation.

The Saticoy concern maintains at that point a packing plant with some cooling room facilities.^{6/} A variety of vegetables is packed at the plant, most of it originating in nearby fields. From 20 to 25 percent of the inbound produce originates in the Lompoc area, where the Saticoy company is a grower. Since the constructive distance between these points is about 100 miles, minimum rates now govern this latter movement.

The Oxnard company grows from 500 to 600 acres of carrots per year, all of which move to Los Angeles or to northern plants for packing. All of these movements are in excess of 50 constructive

^{6/} The witness for this packer testified that about 75 percent of all inbound produce is precooled, some before and some after packing. He stated that if all of the vegetables handled through the facility were precooled, the latter would qualify as a pre-cooling plant and all movements of produce from the field into the plant would be exempt from the minimum rates.

miles. This concern also operates packing facilities at Oxnard, for the processing of other vegetables which it grows locally.

The witness for the Los Angeles operator stated that his company maintains a packing plant at which carrots, celery, spinach and radishes are packed for local or distant markets.^{7/} The produce comes from fields some of which are over, and some under, 50 constructive miles from the plant. Carrots are the principal vegetable processed by this organization.

According to the record, for-hire carriers are utilized by the above-mentioned companies in all movements from field to packing plant where the hauls are over 50 constructive miles. Also, the transportation charges are, in general, borne by the packing plant operator.^{8/}

Since the adoption of Note 3, effective July 7, 1958, the following changes have taken place in the practices of these operators. The Decoto concern learned that the rail lines provide a stopping-in-transit privilege for the cleaning and packing of vegetables at California points when the shipments are destined to eastern markets. The only extra charge on the through movement from producing point via the Decoto plant is a transit charge, said to be 9 cents per 100 pounds. In view of this privilege, the Decoto operator has diverted a substantial portion of its inbound movements from truck to rail. Assertedly, the increase in truck rates which obtained by reason of Note 3 made such action necessary. This operator, the record shows, would prefer to continue movement by truck direct from field to

^{7/} The plant is located in Vernon. However, Los Angeles rates apply from and to the plant.

^{8/} The Oxnard witness testified that, since the effective date of Note 3, he has been compelled to sell his carrots to the Los Angeles packers on a delivered basis. This was made necessary to meet the competition of producers who are not under minimum rate regulation.

packing plant, since the extra handling involved in movement via rail is not good for the carrots. However, if the Note 3 restriction were to be removed, the witness for the Decoto company was doubtful whether the traffic which moves by rail to the plant under the transit privilege would be restored to the highway carriers.

The Saticoy witness indicated that since the effective date of Note 3 the Lompoc produce, at least in part, moves to packing plants in that area. Also, other movements from Imperial Valley and Wheeler Ridge (in Kern County) to Saticoy, which formerly occurred, are now diverted to canneries or to closer packing plants. The effect of the Note 3 restriction has been to restrict the producing areas from which Saticoy can secure its produce, rather than to increase carrier revenues. For example, tomatoes, which formerly moved from Imperial Valley to Saticoy at exempt rates, still move under such rates, but to canneries, transportation to which latter facilities is not subject to the Note 3 restriction.

The Oxnard producer still ships its carrots to Los Angeles and Decoto, but the competition from Arizona is more acute than formerly because of the higher rates now applicable from Oxnard, under the minimum rate tariff. The witness of the Los Angeles packer stated that his company had at times used the rail stop-in-transit privilege and that it would be necessary, in view of Note 3, to consider reverting to the use of that privilege. This, however, the packer is reluctant to do because of the extra handling involved in movement by rail from producing point to packing plant.

The record contains evidence relating to the threat of shifting the produce movements here in issue from for-hire carriage to proprietary hauling. The aforementioned survey of Association members, the Association traffic manager said, indicated that the growers in some instances would be "forced" to engage in proprietary trucking. The Decoto witness stated that his company was seriously

considering utilizing certain units of highway equipment in for-hire trucking of carrots to its packing plant, after first securing the necessary authority from the Commission. The Saticoy and Oxnard witnesses both testified that it might be necessary for their respective companies to engage in proprietary hauling if the Note 3 restriction is continued in effect.

Counsel for the California Trucking Associations and members of the Commission's transportation division staff assisted in the development of the record. While CTA did not appear in opposition to the sought relief, its counsel, in a closing statement, pointed out what he deemed to be weaknesses in petitioner's showing and urged the Commission not to lightly change a provision (Note 3) which was established only after thorough consideration of the various factors involved.

Conclusions

The reasons for the addition of Note 3 to Item No. 40-J of Minimum Rate Tariff No. 8 are set forth in the Examiner's Proposed Report dated February 25, 1958 in Case No. 5438, of which we hereby take official notice. Substantially, adoption of the note was predicated upon evidence to the effect that movements of fresh vegetables and fruits from the field or point of production to nearby packing sheds or packing plants are not movements for which the minimum rates are designed. Generally the vehicles used are substantially different from those used in "over-the-road" movements and as to which the costs underlying the minimum rates here in issue were developed. In other respects, also, the circumstances surrounding the short-haul movements to packing plants were shown to be substantially different from those which usually accompany over-the-road, long-haul transportation. On the other hand, the evidence indicated that where longer hauls are involved, the type of equipment used, the operating costs and the other circumstances attending the transportation are not materially

different when the destination point is a packing plant than when it is, for example, a market.

The evidence on which Decision No. 56770, *supra*, was bottomed indicated also that, with the exception of movements of citrus fruits and avocados, there were few, if any, movements of fresh fruits or vegetables from the field to bona fide packing plants located more than 50 constructive miles away.

The record in the instant phase of Case No. 5438 clearly indicates that the charges assessed by highway carriers for those movements of produce which were not under minimum rate regulations prior to July 12, 1958, or which are still unregulated, were and are substantially lower than those reflected by the minimum rates for the same distances. No competent evidence was introduced to establish that such unregulated rates were or are compensatory.

The instant record shows that, contrary to the evidence introduced in the earlier proceeding, there are intrastate movements of vegetables, specifically carrots, from fields to bona fide packing plants far in excess of 50 constructive miles in length. The record discloses some such hauls of other vegetables which, in length, are a few miles in excess of the 50-mile limitation.

Witnesses testified regarding the adverse effect on their operations of shipments of produce which move from neighboring states to California packing plants and markets at lower (unregulated) rates than are applicable, under the minimum rate structure, from California producing areas to the same points of destination. This situation, of course, is not peculiar to the traffic involved herein, but undoubtedly has prevailed since minimum rates on produce were first established by this Commission. It will continue to be a problem as long as the interstate rates are unregulated.

This record is almost entirely concerned with the transportation of carrots. Practically all of the shipments listed in the traffic manager's exhibit were of that vegetable.^{9/} All of the traffic of the Decoto and Oxnard operators affected by Note 3 involves carrots only. In this connection it is also noted that the total of 31 shipments included in the aforesaid traffic manager's exhibit comprised practically all those which he was able to develop as a result of a questionnaire sent out to over 200 members. Each member had been asked to give reference to representative shipments in each of three different categories. The relatively small response to the Association's questionnaire appears to indicate a lack of interest, on the part of the majority of the membership, in the matter here at issue.

According to the record, the adoption of Note 3 does not appear to have resulted in great hardship to the growers or packers of produce. A large part of the traffic continues to move from the field to the same facilities as before July 12, 1958. Some traffic has been diverted from the more distant packing plants to facilities located near the points of production. In other instances, produce movements have been shifted from the highways to the rails in order to take advantage of existing stopping-in-transit privileges. The threat, moreover, of diversion from for-hire to proprietary carriage does not appear from the record to be, as yet, serious.

Upon careful consideration of all the facts and circumstances of record, we find and conclude that the proposed cancellation of Note 3 in Item No. 40-J of Minimum Rate Tariff No. 8 has not been justified. It appears, however, that with respect to carrots the

^{9/} The foregoing statement disregards the seven shipments of peaches included in the exhibit. These all involved hauls of from 10 to 17 miles. They were and are exempt from the minimum rates.

limitation of 50 constructive miles specified in that note is more restrictive than is justified on the record herein. We further find that said 50-mile limitation should be made inapplicable to the transportation of carrots. With the above-noted exception, the petition will be denied.

O R D E R

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

IT IS ORDERED that:

1. Minimum Rate Tariff No. 8 (Appendix "C" to Decision No. 33977 as amended) be and it is hereby further amended by incorporating therein, to become effective June 12, 1959, Fourteenth Revised Page 8, which revised page is attached hereto and by this reference made a part hereof.
2. In all other respects said Decision No. 33977, as amended, shall remain in full force and effect.
3. Except to the extent that it is granted by this order, Petition No. 16 in Case No. 5438 be and it is hereby denied.
4. 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.

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

Dated at San Francisco, California, this 5th day of May, 1959.

E. L. Fox
President
W. H. D. [illegible]
W. H. D. [illegible]
Theodore D. [illegible]
Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.

Item No.	SECTION NO. 1-RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	<p data-bbox="645 410 1168 447" style="text-align: center;">APPLICATION OF TARIFF-COMMODITIES</p> <p data-bbox="365 476 1386 547">Rates in this tariff apply to transportation of the following commodities (See Exception):</p> <p data-bbox="423 573 1281 844">Fruits, fresh or green (not cold pack nor frozen); Vegetables, fresh or green (not cold pack nor frozen), including mushrooms, fresh; Containers, empty, second-hand, returning from an out- bound paying load, of commodities for which rates are provided herein or forwarded for a return paying load, of commodities for which rates are provided in this tariff, subject to Note 1.</p> <p data-bbox="365 871 1451 1068">NOTE 1.-Highway carriers must determine before accepting shipment that said containers were moved filled and are being returned by the same carrier or carriers to consignor of the filled containers; or that containers shipped for return paying load will, when filled, move by the same carrier or carriers to the consignor of the original empty containers.</p> <p data-bbox="442 1094 1472 1131">EXCEPTION.-Rates in this tariff do not apply to transportation of:</p> <p data-bbox="365 1158 1462 1329">(a) Fresh or green fruits, fresh or green vegetables, or mush- rooms, as described herein, when the point of destination of the ship- ment is a cannery, accumulation station, cold storage plant, precool- ing plant, or winery, nor to the empty containers used or shipped out for use in connection with such transportation, subject to Note 2.</p> <p data-bbox="365 1355 1434 1526">(b) Fresh or green fruits, fresh or green vegetables or mush- rooms, as described herein, when transported from the field or point of growth to a packing plant, or a packing shed, nor to empty containers used or shipped out for use in connection with such transportation, subject to Notes 2 and 3.</p> <p data-bbox="365 1552 1451 1687">(c) Citrus fruits when the point of destination of the shipment is within the Los Angeles Drayage Area, as described in Minimum Rate Tariff No. 5; nor to the empty containers used or shipped out for use in connection with such transportation.</p> <p data-bbox="365 1713 1451 1787">(d) Sugar beets when the point of destination of the shipment is a beet sugar factory or a railroad loading dump.</p> <p data-bbox="442 1787 1168 1823">(e) Property for the United States Government.</p> <p data-bbox="365 1823 1434 1884">NOTE 2.-For the purpose of this item, the following definitions will apply:</p> <p data-bbox="365 1910 1431 1984">(a) Packing Shed or Packing Plant:-Facilities maintained for assembling, sorting, grading, or packing the commodity for shipment.</p> <p data-bbox="365 2010 1417 2084">(b) Precooling Plant:-Facilities maintained for the purpose of precooling commodities for shipment under refrigeration.</p> <p data-bbox="365 2110 1451 2181">(c) Cold Storage Plant:-Facilities maintained for the storage of commodities under refrigeration.</p> <p data-bbox="365 2208 1462 2310">(d) Cannery:-Facilities maintained for the processing of commodi- ties at which the commodities are canned, preserved, dried, frozen, pickled, brined, or otherwise processed into manufactured products.</p>

*40- K
Cancels
40- J

(e) Winery:-Facilities maintained for the purpose of producing vinous liquors, including wine, champagne and brandy.

(f) Accumulation Station:-Yards or open areas maintained for the receiving of unprocessed commodities from the field, and accumulation and consolidation of such commodities for shipment to a can- nery, winery, cold storage plant or precooling plant.

*NOTE 3.-Except for the transportation of citrus fruits in field boxes or in bulk, //carrots or avocados, exemption does not apply when the dis- tance between point of origin and point of destination exceeds 50 con- structive miles computed in accordance with the provisions of Item No. 110.

SHIPMENTS TO BE RATED SEPARATELY

50

Each shipment shall be rated separately. Shipments shall not be consolidated nor combined by the carrier. Component parts of split pickup or split delivery shipments, as defined in Item No. 11, may be combined under the provisions of Items Nos. 170 and 180.

GROSS WEIGHT

(a) Charges shall be assessed on the gross weight of the shipment, including container icing, if any. No allowance shall be made for the weight of containers.

(b) In connection with shipments weighing 20,000 pounds or more, transported for distances in excess of 50 constructive miles, the actual gross weight of the shipment shall be confirmed by a public weighmaster's certificate, which shall be obtained by the carrier prior to or at the time of unloading.

60-C
Cancels
60-B

(c) When the carrier obtains a public weighmaster's certificate, charges shall be based on the weight of the commodities as confirmed by the public weighmaster's certificate. The original and duplicate copy of the public weighmaster's certificate shall be affixed to the shipper's and carrier's copy of the freight bill, (see Item No. 255), respectively.

EXCEPTION.-On shipments of onions or potatoes packed and invoiced in sacks of standard capacities as shown below, charges shall be assessed on the gross weights as follows:

When Packed and Invoiced as:

10 pounds per sack
15 pounds per sack
25 pounds per sack
50 pounds per sack
100 pounds per sack
5-10 pound consumer paper
bags per sack

Charges Shall Be Assessed on Gross Weight per Package of:

10½ pounds per sack
15½ pounds per sack
25½ pounds per sack
50½ pounds per sack
101 pounds per sack
51-¾ pounds per sack

UNITS OF MEASUREMENT IN QUOTATION OF RATES AND CHARGES

65

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
Addition
o Reduction

Decision No. 58375

EFFECTIVE JUNE 12, 1959

Issued by the Public Utilities Commission of the State of California,
Correction No. 223 San Francisco, California.