

**ORIGINAL**

Decision No. 60128

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 commodi- )  
 ties between and within all points and )  
 places in the State of California )  
 (including, but not limited to, trans- )  
 portation for which rates are provided )  
 in Minimum Rate Tariff No. 2).

Case No. 5432  
 (Rehearing of  
 Decision No. 58182)

(For list of appearances see Appendix A)

OPINION ON REHEARING

Items Nos. 200 through 230 of Minimum Rate Tariff No. 2 set forth provisions for the alternative application of common carrier rates, including rail rates, from, to or between the points of origin and destination. By ex parte Decision No. 57108, dated August 5, 1958, in this proceeding, these items were revised to provide specifically that they are governed by the definitions of "point of origin" and "point of destination" set forth in Item No. 10 of the tariff. Pursuant to petitions for rehearing filed by the California Trucking Associations, Inc., The Atchison, Topeka and Santa Fe Railway Company and the Southern Pacific Company, rehearing was held and Decision No. 58182, dated March 24, 1959, was issued, which canceled the tariff changes made by Decision No. 57108.

On April 15, 1959, the California Manufacturers Association petitioned for rehearing of Decision No. 58182, on the basis that the hearing previously held consisted only of oral argument and did not explore the effect of any change upon industry. Rehearing was granted by order dated April 28, 1959, and the operative effect of Decision No. 58182 was suspended.

Rehearing was held before Commissioner Matthew J. Dooley and Examiner William E. Turpen on November 17 and 18 and December 11, 1959, at San Francisco. The matter was submitted with the filing of concurrent briefs on March 10, 1960.

Items Nos. 200 through 230 of Minimum Rate Tariff No. 2 provide in essence for the use of common carrier rates in lieu of the rates provided in Tariff No. 2, when such common carrier rates produce a lower aggregate charge for the transportation of the same kind and quantity of property between the same points. These provisions are in the tariff to give effect to the mandate in Section 3663 of the Public Utilities Code.<sup>1</sup> Stripped to the basic essentials, the question in this proceeding is what is meant by the phrase "between the same points" when considering the use of railroad rates under the provisions of Items Nos. 200 through 230. At one extreme a "point" can be considered as the exact and identical spot where a rail car would be loaded or unloaded. At the other extreme, a "point" can be construed as any place within a community, city or switching limits to which the rail rate applies. Obviously, the answer lies somewhere between.

Items Nos. 200 through 230 of the tariff were made specifically subject to the definitions of "point of origin" and "point of destination", named in Item 10, by Decision No. 57108. These definitions provide that all points within a single industrial plant or shipping area of one consignor (or consignee) shall be considered as one point of origin (or destination).

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<sup>1</sup> Section 3663 reads as follows:

"In the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

At the rehearing of Decision No. 58182, some 37 witnesses, representing a cross-section of shippers and carriers, testified in support of the California Manufacturers Association's petition for rehearing and reversal of Decision No. 58182, which canceled the tariff changes made by Decision No. 57108. No purpose would be served by discussing individually the evidence offered by each of these witnesses. They all testified along the same lines and established the following:

(1) That it has always been understood by both shippers and carriers that in the use of railroad rates, under the provisions of Items Nos. 200 through 230, shipments could be picked up or delivered at any point within a single industrial plant if the plant is served by railroad spur.

(2) That over the years many industrial plants have been built with the plant layout based on separate facilities for truck and rail on the belief that the rail rate applies at any point within a single industrial plant.

(3) That, if the rail rate does not apply at all points within a plant, it would be virtually impossible to determine in advance what the applicable rate would be.

(4) That, if under such conditions, the applicable rate cannot be determined in advance, shippers would be unable to determine firm prices to charge their customers.

(5) That, under such conditions, enforcement of the minimum rates, would be extremely difficult, if not virtually impossible.

An opposite position was taken by the Southern Pacific Company and The Atchison, Topeka and Santa Fe Railway Company. A general freight agent of Southern Pacific Company testified for the rail lines. His position was to the effect that each situation is a special case that must be determined according to the circumstances. He did not feel that the point of pickup or delivery by

truck had to be at the precise point the rail cars are loaded or unloaded, but should be reasonably close. Upon being given specific examples the witness was unable to determine whether or not the rail rate would apply under his interpretation. The rail lines, therefore, contend that Decision No. 58182 should be allowed to become effective.

The present record contains evidence that we did not have before us when Decision No. 58182 was issued. The record now is convincing that it has been a long established interpretation, in using rail rates for highway carrier shipments, to apply such rates from and to all points within a single industrial plant if any part of that plant is served by a rail spur. It is also clear that any other interpretation would cause chaos among the shippers and carriers and would not be in the public interest. We, therefore, find and conclude that Decision No. 58182 should be rescinded and that the notes added to Items Nos. 200 through 230 of Minimum Rate Tariff No. 2 by Decision No. 57108, providing that the definitions of Point of Origin and Point of Destination as set forth in Item No.10 will apply to the alternative application provisions, should be continued in effect.

ORDER ON REHEARING

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

IT IS ORDERED:

(1) That Decision No. 58182, dated March 24, 1959, in this proceeding, be and it is hereby rescinded.

(2) That Minimum Rate Tariff No. 2 (Appendix "D" of Decision No. 31606 as amended) be and it is hereby further amended by incorporating therein, to become effective July 8, 1960, Supplement No. 50, Fourteenth Revised Page 23, Tenth Revised Page 24

and Fifth Revised Page 25, which supplement and revised pages are attached hereto and by this reference made a part hereof.

(3) That in all other respects said Decision No. 31606, as amended, shall remain in full force and effect.

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

Dated at Los Angeles, California, this 17<sup>th</sup> day of MAY, 1960.

[Signature]  
 President

[Signature]

[Signature]

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Commissioners

Matthew J. Dooley  
 Commissioner ~~S. Theodore H. Jenner~~ being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

List of Appearances

Eugene A. Read, for California Manufacturers Association, petitioner.

John MacDonald Smith, Robert A. Thompson, Berol & Silver by Edward M. Berol, Herbert J. Lindeman, William M. Edwards, Richard F. McCurdy, Jr., E. H. Griffiths, James L. Roncy, Richard N. Murphy, Willard S. Johnson, Robert Howard Bensinger, Charles Wallen, Jr., and E. J. Muzio, appearing for various rail and highway carriers, respondents.

Arlo D. Poe, J. C. Kaspar and James Quintrall for California Trucking Associations, Inc., interested party.

Charles C. Miller, James M. Cooper, B. R. Garcia, Sherman B. Erickson, P. N. Kujachich, Robert B. Costello, Frank Loughran, William M. Larimore, R. J. Blicht, W. F. McCann, William G. Jackson, Loren D. Olsen, N. E. Keller, Meyer Kapler, J. E. Hale, Kenneth M. Robinson, Milton A. Walker, R. A. Morin, Frank E. Ashton, Cromwell Warner, W. Y. Bell, Ralph Hubbard, Hilda B. Nauck, B. F. Bolling, E. R. Chapman, J. A. Sullivan, W. P. Pierce, B. F. Maddux, Hugh A. Gillis, Carl F. Breidenstein, Nile O. Greer, W. R. Donovan, John F. McMahon, Marvin J. Colangelo, Scott D. Flegal, James S. Blaine, R. L. Whitehead, John W. Hargens, W. A. Main, Albert Kesenheimer, Larry Binsacca, H. W. Timmerman, Frank A. Small, Billy M. Harris, Leland D. Smith, John P. Hellmann, Albert C. Glatze, Gary E. Haas, Verne M. Bushman, C. H. Costello, W. Paul Tarter, W. M. Cheatham, Allen K. Pentilla and Ralph J. Graffis, for various shippers, shipper associations, and chambers of commerce, interested parties.

C. Ray Bryant, for the Commission's staff.

SUPPLEMENT NO. 50

(Cancels Supplements Nos. 45 and 48)  
(Supplements Nos. 43, 47, 49 and 50 Contain All Changes)

To

MINIMUM RATE TARIFF NO. 2

Naming

MINIMUM RATES, RULES AND  
REGULATIONS

For The

TRANSPORTATION OF PROPERTY OVER THE  
PUBLIC HIGHWAYS WITHIN THE  
STATE OF CALIFORNIA

By

Radial Highway Common Carriers  
Highway Contract Carriers

And

Household Goods Carriers

Decision No. 60128

EFFECTIVE JULY 8, 1960.

Issued by the  
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
State Building, Civic Center  
San Francisco, California

Fourteenth Revised Page ..... 23  
 Cancels  
 (1) Thirteenth Revised Page ..... 23  
 and  
 (2) Twelfth Revised Page ..... 23  
 and  
 Eleventh Revised Page ..... 23

MINIMUM RATE TARIFF NO. 2

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
190-D Cancels 190-C and 190-B	<p style="text-align: center;">ALTERNATIVE APPLICATION OF RATES NAMED IN THIS TARIFF</p> <p>In the event two or more rates are named in this tariff for the same transportation, the lower rate shall apply. In the event a combination of rates makes a lower aggregate through rate or charge than a single rate, such lower combination of rates shall apply.</p>
*200-I Cancels 200-K and 200-J and 200-I	<p style="text-align: center;">ALTERNATIVE APPLICATION OF COMMON CARRIER RATES</p> <p>(a) Common carrier rates, except rates of coastwise common carriers by vessel, may be applied in lieu of the rates provided in this tariff, when such common carrier rates produce a lower aggregate charge for the same transportation than results from the application of the rates herein provided. (See Notes 1, 2, 3, 4 and 5.)</p> <p>(b) Team track-to-team track rates of common carriers by railroad or of common carriers by vessel operating over inland waters may be applied in lieu of the rates provided in this tariff, in connection with transportation between established depots in the same cities or unincorporated communities in which such team tracks are located, when such team track-to-team track rates produce a lower aggregate charge than results from the application of the rates provided in this tariff for depot-to-depot movements. (See Notes 1, 2, 3, 4 and 5.)</p> <p>NOTE 1.-When a rail carload rate is subject to varying minimum weights, dependent upon the size of the car ordered or used, the lowest minimum weight obtainable under such minimum weight provisions may be used in applying the basis provided in this item.</p> <p>NOTE 2.-In determining the aggregate charge by railroad of transporting shipments of hay and related articles, as described in Item No. 355, there shall be added to the rail rate 37 cents per ton for shrinkage.</p> <p>NOTE 3.-In determining the aggregate charge by railroad for the transportation of shipments of commodities classified "cold pack" or "frozen" in the Western Classification or Exception Sheet, the charge for refrigeration service shall be the charge for Mechanical Refrigeration Service named in the applicable rail tariff or tariffs.</p> <p>NOTE 4.-In applying the provisions of this item, a rate no lower than the common carrier rate and a weight no lower than the actual weight or published minimum weight (whichever is the higher) applicable in connection with the common carrier rate shall be used.</p>



NOTE 5.-For the purpose of applying the provisions of this item, the definitions of Point of Destination and Point of Origin set forth in Item No. 10 will be applicable.

\*No change, suspended matter removed from item, Decision No. 60128

- (1) Thirteenth Revised Page 23 was suspended by Supplement No. 49.
- (2) Twelfth Revised Page 23 was suspended by Supplement No. 45.

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San Francisco, California.

Correction No. 1027

Tenth Revised Page ..... 24  
 Cancels  
 (1) Ninth Revised Page ..... 24  
 and  
 Eighth Revised Page ..... 24

MINIMUM RATE TARIFF NO. 2

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
<p>*210-J Cancels 210-I and 210-H</p>	<p style="text-align: center;">ALTERNATIVE APPLICATION OF COMBINATIONS WITH COMMON CARRIER RATES</p> <p>When lower aggregate charges result, rates provided in this tariff may be used in combination with common carrier rates, except rates of coastwise common carriers by vessel, for the same transportation as follows:</p> <p>(a) When point of origin is located beyond railhead or an established depot and point of destination is located at railhead or an established depot, add to the common carrier rate applying from any team track or established depot to point of destination the rate provided in this tariff for the distance from point of origin to the team track or depot from which the common carrier rate applies. (See Notes 1, 2, 3, 4 and 5.)</p> <p>(b) When point of origin is located at railhead or an established depot and point of destination is located beyond railhead or an established depot, add to the common carrier rate applying from point of origin to any team track or established depot the rate provided in this tariff for the distance from the team track or depot to which the common carrier rate used applies to point of destination. (See Notes 1, 2, 3, 4 and 5.)</p> <p>(c) When both point of origin and point of destination are located beyond railhead or an established depot, add to the common carrier rate applying between any railheads or established depots the rate provided in this tariff for the distance from point of origin to the team track or depot from which the common carrier rate used applies, plus the rate provided in this tariff for the distance from the team track or depot to which the common carrier rate used applies to point of destination. (See Notes 1, 2, 3, 4 and 5.)</p> <p>NOTE 1.-If the route from point of origin to the team track or the established depot, or from the team track or established depot to point of destination, is within the corporate limits of a single incorporated city, the rates provided in this tariff for transportation for distances of 3 miles or less, or rates established for transportation by carriers as defined in the City Carriers' Act, whichever are the lower, shall apply from point of origin to team track or established depot or from team track or established depot to point of destination as the case may be; except that if the route from team track or established depot is within the limits of the Los Angeles Drayage Area (see Item No. 30 for reference), rates no lower than those established for transportation therein shall apply in connection with shipments of alcoholic liquors originating in San Francisco Territory.</p> <p>NOTE 2.-When a rail carload rate is subject to varying minimum weights, dependent upon the size of the car ordered or used, the lowest minimum weight obtainable under such minimum weight provisions may be used in applying the basis provided in this item.</p>

NOTE 3.- In determining the aggregate charge by railroad of transporting shipments of hay and related articles, as described in Item No. 355, there shall be added to the rail rate (or the combined rail and highway carrier rate) 37 cents per ton for shrinkage.

NOTE 4.- In applying the common carrier rate or charge under this item, a rate no lower than the common carrier rate and a weight no lower than the actual weight or published minimum weight (whichever is the higher) applicable in connection with the common carrier rate shall be used.

NOTE 5.- For the purpose of applying the provisions of this item, the definitions of Point of Destination and Point of Origin set forth in Item No. 10 will be applicable.

\* No change, suspended matter removed from item, Decision No. 60128

(1) Ninth Revised Page 24 was suspended by Supplement No. 45.

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San Francisco, California.  
Correction No. 1028

Cancels

and

Item No.	SECTION NO. 1-RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
*220-E Cancels 220-D and 220-C	<p style="text-align: center;">ALTERNATIVE APPLICATION OF SPLIT PICKUP UNDER RATES CONSTRUCTED BY USE OF COMBINATIONS WITH COMMON CARRIER RATES</p> <p>Charges on split pickup shipments may be computed by use of combinations with common carrier rates as follows, if a lower aggregate charge than that accruing under the basis provided in Item No. 160 results (See Note 1):</p> <p>(1) Compute the charge applicable under the rates named in this tariff for a split pickup shipment from the point or points of origin of the several component parts (See Item No. 160) to any team track or established depot. (See Note 2.)</p> <p>(2) Add to such charge the charge applicable under Items Nos. 200 and 210 for the weight of the composite shipment from such team track or established depot to point of destination.</p> <p>NOTE 1.-For the purpose of applying the provisions of this item, the definitions of Point of Destination and Point of Origin set forth in Item No. 10 will be applicable.</p> <p>NOTE 2.-If the points of origin of all component parts are within the limits of an incorporated city within which the team track or established depot is located, and no rate for transportation to the team track or established depot from such points of origin is named in this tariff, the rates named in this tariff for transportation for distances of 3 miles or less shall apply to the composite shipment, or rates established for transportation by carriers as defined in the City Carriers' Act, whichever are the lower, shall apply to such team track or established depot from such points of origin.</p>
*230-E Cancels 230-D and 230-C	<p style="text-align: center;">ALTERNATIVE APPLICATION OF SPLIT DELIVERY UNDER RATES CONSTRUCTED BY USE OF COMBINATIONS WITH COMMON CARRIER RATES</p> <p>Charges on split delivery shipments may be computed by use of combinations with common carrier rates as follows, if a lower aggregate charge than that accruing under the basis provided in Item No. 170 results (See Note 1):</p> <p>(1) Compute the charge applicable under Items Nos. 200 and 210 for the weight of the composite shipment from point of origin to any team track or established depot.</p> <p>(2) Add to such charge the charges applicable under the rates named in this tariff for a split delivery shipment (See Item No. 170) from such team track or established depot to the point or points of destination of the several component parts. (See Note 2.)</p>

NOTE 1.-For the purpose of applying the provisions of this item, the definitions of Point of Destination and Point of Origin set forth in Item No. 10 will be applicable.

NOTE 2.-If the points of destination of all component parts are within the limits of an incorporated city within which the team track or established depot is located, and no rate for transportation from the team track or established depot to such points of destination is named in this tariff, the rates named in this tariff for transportation for distances of 3 miles or less shall apply to the composite shipment, or rates established for transportation by carriers as defined in the City Carriers' Act, whichever are the lower, shall apply from such team track or established depot to such points of destination.

\* No change, suspended matter removed from item, Decision No. 60128

(1) Fourth Revised Page 25 was suspended by Supplement No. 45.

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