

**ORIGINAL**Decision No. 66124

## 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. 36)

Arlo D. Poe, J. C. Kaspar and James Quintrall,  
 for California Trucking Association, petitioner.  
Thomas B. Gallen and Primo R. Repetto, for Golden  
 Gate Produce Terminal; Robert Fisse, for  
 Rushton & Co.; Ralph Hubbard, for California  
 Farm Bureau Federation; interested parties.  
J. M. Jenkins and E. E. Tanner, for the Commission  
 staff.

O P I N I O N

By Petition for Modification No. 36, as amended, in Case No. 5438, California Trucking Association seeks amendment of Minimum Rate Tariff No. 8 by the addition in Item No. 290 thereof of a description of the Golden Gate Produce Terminal, located at South San Francisco. Petitioner also proposes that concurrently there be established in said tariff certain surcharges which shall apply only to shipments having point of destination within said Golden Gate Produce Terminal.

The effect of the inclusion of that produce terminal in Item No. 290 of Minimum Rate Tariff No. 8 would be to designate the terminal as a "single market area", thus permitting multiple deliveries of split delivery shipments therein without the assessment of split delivery charges.<sup>1/</sup> This privilege now applies at all other

1/ Paragraph 2 of Item No. 120 of Minimum Rate Tariff No. 8 reads as follows:

"For the purpose of applying the rates in this tariff, multiple deliveries within a single market area as defined in Item No. 290 shall be deemed to be made to one consignee at one point of destination provided charges are paid by a single consignor or a single consignee."

major wholesale produce markets in the State.

The purpose of the proposed surcharges, the petition discloses, is to compensate the carriers transporting produce to consignees in the Golden Gate Produce Terminal for the gate fees which are collected by the Terminal from the truck drivers. According to the record, the gate fees are as follows:

<u>No. of Units (packages)</u>	<u>Gate Fee</u>
0 - 50	0
51 - 150	\$1.00
151 - 250	\$2.00
251 +	\$1.00 per axle

The surcharges proposed by petitioner herein are as follows:

1. On all shipments, or component parts of split delivery shipments, for which freight charges are determined on the basis of a weight of 10,000 pounds or greater, the surcharge shall be \$5.00.
2. On all other shipments, or component parts, the surcharge shall be \$1.00, except that the surcharge will not apply to shipments consisting of not more than 50 pieces.

The manager of Golden Gate Produce Terminal, testifying on its behalf, described the layout and operations of the facility. The terminal, he said, was planned for maximum efficiency, in the movement of produce, inbound and outbound. A number of studies, including some prepared by the United States Department of Agriculture, were consulted when plans for the terminal were being formulated. According to this witness, the Golden Gate Terminal is far more efficient than the older produce terminals of the State because, among other factors, ample space is provided for the ingress, spotting and egress of trucks, resulting in a minimum of congestion and consequent delay.

The Terminal opened for business in November 1962. Initially a scale of gate fees was instituted which, in December, was revised to reflect the fees hereinabove set forth. Similar fees are in effect, the manager testified, at several new and modern

produce terminals located in various cities in other parts of the country. The assessment of gate fees, he said, was suggested in the above-mentioned Department of Agriculture studies to assist in amortization of installation costs, and in the maintenance expense, of the truck areas, including such items as the pavement and the bumper strips; also to defray the wages of the guards employed by the terminal to protect the produce deposited therein. The gate fees are assessed, however, only against produce delivered by for-hire carriers to consignees in the Terminal. No proprietary produce is subject to the fees.

The Terminal properties are owned by Golden Gate Produce Terminal, a corporation. According to the record, 67 of the 73 stalls contained in the Terminal are leased by individuals or concerns which are stockholders in the terminal company.

Petitioner's assistant director of research testified concerning the proposals here under consideration. The present minimum rate tariff provisions, he said, are discriminatory in that shipments of produce consigned to more than one consignee in Golden Gate Produce Terminal are subject to split delivery charges, whereas similar multiple delivery produce shipments consigned to the other major markets of the State, currently listed and geographically defined in the aforesaid Item No. 290, are not subject to said charges. The addition of the proposed description to Item No. 290, he added, would remove the discrimination. The proposed geographical description for the Golden Gate Produce Terminal is the same as that which was proposed by the Commission's staff in another proceeding.<sup>2/</sup> According to the aforesaid terminal manager, the

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2/ In Order Setting Hearing dated October 9, 1962 in Case No. 5438. The staff proposal, which did not include surcharges, was introduced, with other suggested modifications for Minimum Rate Tariff No. 8 at a hearing on December 18, 1962. That phase of Case No. 5438 was taken under submission on June 25, 1963.

description in question accurately delineates the produce market area.

The proposed tariff surcharges, the research director stated, are intended to return to the carriers no more than the costs incurred by the latter in paying the gate fees. He pointed out the difficulties involved in view of the fact that the gate fees are not related to the weights of the shipments, but rather to the number of packages or pieces transported. It had been found necessary, therefore, to arrive at the proposed tariff surcharges by the exercise of informed judgment. Thus, the selection of 10,000 pounds as the transition point from the proposed surcharge of one dollar for the lighter shipments to a charge of five dollars for the heavier shipments was arbitrarily made. The latter figure, the witness explained, is the equivalent of the Golden Gate Produce Terminal's entrance fee for a five-axle load of 251 packages or more. He described two different combinations of truck equipment having a total of five axles which assertedly are commonly used in the transportation of produce to market. In the opinion of petitioner's witness the method by which it is proposed that the carriers shall be reimbursed for the cost of the gate fees is the only fair and practicable one.

No study was made by petitioner to determine the range and distribution of weights, or of packages, in the loads of produce entering the Terminal.<sup>3/</sup> The record discloses, moreover, that his observation of operations at the Terminal was limited to one brief visit.

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<sup>3/</sup> The record contains the results of two separate checks, made by the terminal management, of truckloads against which the entrance fees were assessed. The first check, covering the period from December 26, 1962 to January 17, 1963, did not include the weights of the loads. Weights were obtained in the second check, which covered the period of February 1-11, 1963, but were not secured on all loads. The data from these two surveys are too incomplete to be of assistance in the disposition of this proceeding.

Representatives of the Commission's Transportation Division staff and other interested parties assisted in the development of the record through examination of the two witnesses. In his closing statement, counsel for petitioner emphasized the position of the latter that the two proposals here under consideration are to be considered a "package" deal. In his opinion, to incorporate Golden Gate Produce Terminal in Item No. 290 without contemporaneous treatment of the entrance fee would be improper and result in unjust and unreasonable minimum rates. He added, however, that petitioner is quite willing to leave the determination of the exact method of imposing a reasonable charge to the wisdom of the Commission.

Counsel for the Terminal argued against the establishment of the proposed surcharges. In his opinion the time saved, by reason of the modern, efficient, arrangement of the terminal, in the movement of trucks in and out, more than offsets the cost of the gate fees, and thus makes unnecessary the establishment of the proposed surcharges. He suggested, however, that a study be undertaken by the Commission's staff to develop fully all the facts necessary for an accurate determination of the issues.

A question as to the legality of the Terminal's entrance fees was raised by the representative of California Farm Bureau Federation. He stated that, on the basis of the facts so far developed, it was the opinion of his Association that the payment of the entrance fee by the carriers constituted a rebate to the shippers. He therefore urged that the Commission, prior to reaching a decision with respect to the proposals here involved, make a determination as to the legality of said fees. He further requested that, if it should be found that rebates are involved, the Commission take appropriate punitive action.

Discussion, Findings and Conclusions

The first matter for consideration is the question presented in the immediately preceding paragraph, namely, whether the gate fees of the Terminal constitute rebates of transportation charges from carriers to shippers. The fees, the record shows, are for the purpose of amortizing the costs of construction of certain of the facilities of the Terminal and for maintenance of said facilities. The fees are paid to the Terminal corporation, not to the tenants. Substantial evidence is lacking as to who customarily bears the transportation charges on shipments of produce delivered by for-hire carriers to consignees at the Golden Gate Produce Terminal. From such evidence as the record contains on this point it appears that customarily such charges are borne by the shipper-grower, that the produce is sold to the wholesaler on a delivered basis. To the extent that such is the case it is found that no rebate is involved.

Even where the consignee is both a tenant and stockholder of the Terminal, the record here does not justify a finding that a rebate is involved. If, however, facts should come to light with respect to individual transactions indicative of the payment of rebates through the instrumentality of gate or entrance fees

the matter should be brought to the Commission's attention through appropriate procedure. ✓

We turn now to consideration of petitioner's proposals. The request to designate the Golden Gate Produce Terminal as a single market area will accord treatment of produce consigned to that Terminal equal to that given similar shipments which are delivered to the other major wholesale fruit and vegetable markets of the State. The proposal is clearly reasonable; it will be adopted. ✓

The payment of the Terminal's gate entrance fees represents a cost to the carriers which they do not incur at other produce terminals. The evidence offered by the Golden Gate market to show that the saving in costs to the carriers by reason of the more expeditious movement of vehicles through its terminal offsets the gate fees is inadequate for a determination of the matter. In any event, the superior efficiency of the terminal in question, insofar as such is a fact, should be reflected in the minimum rate structure, apart from any consideration of the gate fees.

The gate fees should be recognized as a necessary cost to the carriers in the performance of their transportation services into the Terminal. Provision should be made in the minimum rate tariff, therefore, for recovery by the carriers of the amount paid. Since the fees are assessed against each produce load as a whole, the surcharge method proposed by petitioner is reasonable. The suggested charges, however, do not match the gate fees with reasonable accuracy. This failure is due to the inherent difficulty of reconciling gate fees which are not directly related to the weight of the shipment with a proposed tariff surcharge that is dependent upon such weight. For illustration, a truck, or a truck-trailer combination,

might carry a load of 250 packages weighing 10,000 pounds. The gate fee for such a shipment would be \$2.00, while the surcharge assessed by the carrier under petitioner's proposal would be \$5.00. It is conceivable that in many instances the surcharges assessed by the carrier would exceed or fall short of the gate fees collected by the Terminal.

It appears, therefore, that as long as the gate fees are assessed according to the number of packages in the load, the surcharges to be assessed by the carriers to compensate the latter for payment of the fees should also be assessed according to the number of packages, and should, in short, duplicate the gate fees.

Upon consideration, we find:

1. The designation of Golden Gate Produce Terminal at South San Francisco as a single market area in Minimum Rate Tariff No. 8, as proposed by petitioner, is reasonable.

2. The assessment of gate or entrance fees by the aforesaid Terminal against truck equipment of for-hire carriers transporting produce into the Terminal constitutes an operating cost, provision for the recovery of which should be made in said minimum rate tariff.

3. Pending the results of a general review, now in progress, of the provisions of Minimum Rate Tariff No. 8, the establishment therein of surcharges which reflect the amounts of the aforesaid gate or entrance fees will be reasonable.

4. The minimum rates established by the order which follows will be just, reasonable and nondiscriminatory minimum rates for the transportation governed thereby; the increases resulting from the establishment of such rates have been justified; to the extent that the provisions of Minimum Rate Tariff No. 8 have been found heretofore to constitute reasonable minimum rates for common carriers as defined in the Public Utilities Act, said rates, as hereinafter adjusted are,



and will be, reasonable minimum rates for said common carriers; to the extent that the existing rates of said common carriers for the transportation involved are less in volume or effect than the minimum rates herein designated as reasonable for said carriers, to the same extent the rates and charges of said carriers are found to be, now and for the future, unreasonable, insufficient and not justified by the actual competitive rates of competing carriers or by the costs of other means of transportation.

5. In all other respects petitioner's proposals have not been justified and to that extent Petition for Modification No. 36 should be denied.

The surcharges hereinabove found justified are predicated on gate fees of Golden Gate Produce Terminal in effect in December 1962. Should it be known that said fees have subsequently been revised or should it transpire that they are revised at some future date the facts may be brought formally to the Commission's attention so that such further adjustment in the provisions of Minimum Rate Tariff No. 8 as appears proper may be made.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff No. 8 (Appendix C of Decision No. 33977, as amended) is hereby further amended by incorporating therein, to become effective November 23, 1963, Supplement 22 and Tenth Revised Page 27, which supplement and revised page are attached hereto and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to said Decision No. 33977, as amended, are directed to establish in their tariffs the rate increases necessary to conform to the further increases herein in rates established by said decision.

3. Tariff publications required to be made by common carriers as a result of the order herein may be made effective not earlier than the tenth day after the effective date of this order on not less than ten days' notice to the Commission and to the public and such tariff publications shall be made effective not later than November 23, 1963; and the 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 not earlier than the tenth day after the effective date of this order, and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff page incorporated in this order.

4. Common carriers, in establishing and maintaining the rates authorized hereinabove, are authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects Petition for Modification No. 36 is denied.

6. In all other respects said Decision No. 33977, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 1st day of October, 1963.

William A. Bennett  
President  
W. E. Mitchell  
Wesley W. Leage  
George T. Grover  
Fredrick B. Halaloff  
Commissioners

SPECIAL INCREASE SUPPLEMENT

SUPPLEMENT NO. 22

(Supplements Nos. 21 and 22 Contain All Changes)

TO

MINIMUM RATE TARIFF NO. 8

NAMING

MINIMUM RATES, RULES AND REGULATIONS

FOR THE

TRANSPORTATION OF FRESH FRUITS, FRESH VEGETABLES

AND EMPTY CONTAINERS OVER THE PUBLIC

HIGHWAYS BETWEEN POINTS IN THE

STATE OF CALIFORNIA AS DESCRIBED HEREIN

BY

CITY CARRIERS

RADIAL HIGHWAY COMMON CARRIERS

AND

HIGHWAY CONTRACT CARRIERS

◊ APPLICATION OF SURCHARGES  
(See Page 2 of This Supplement)

◊ Increase, Decision No.

**66124**

EFFECTIVE NOVEMBER 23, 1963

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

APPLICATION OF SURCHARGES

The surcharges herein provided apply only to shipments, or component parts of split delivery shipments, having point of destination within the GOLDEN GATE PRODUCE TERMINAL located at South San Francisco (See Item No. 290 for description).

The surcharges herein provided shall be in addition to all other rates, charges or surcharges provided by this tariff.

Compute the amount of charges in accordance with the provisions of this tariff and increase the amount so computed by the following amounts:

<u>Packages or Pieces Delivered at Golden Gate Produce Terminal</u>	<u>Surcharge (See Note 1)</u>
50 or less .....	No Charge
More than 50 but not more than 150.....	\$1.00
More than 150 but not more than 250.....	\$2.00
More than 250.....	\$1.00 Per axle (See Note 2)

NOTE 1.-- In the case of a shipment transported in multiple lots under the provisions of Item No. 185, the surcharges herein provided shall be determined by applying the table above separately to each single vehicle or train of vehicles transporting the shipment.

NOTE 2.-- All axles of the equipment on which the shipment, or portion of a multiple lot shipment, is transported are to be counted, whether said equipment consists of a single vehicle or of two or more vehicles operated as a single unit.

THE END

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Concluded)
ø290	<p style="text-align: center;">SINGLE MARKET AREAS</p> <p>Each of the markets described below constitutes a single market area, and includes both sides of streets and avenues named.</p> <p><u>Los Angeles</u></p> <p>All points within a radius of one mile of the intersection of 9th Street and Central Avenue.</p> <p><u>San Francisco</u></p> <p>(1) (a) The San Francisco Wholesale Market bounded on the north by Pacific Avenue, on the east by The Embarcadero, on the south by Sacramento Street, and on the west by Sansome Street.</p> <p>(b) The San Francisco Wholesale Market bounded on the northeast by Hudson Avenue, on the southeast by the Southern Pacific Company main line right-of-way (intersecting Rankin Street), on the southwest by McKinnon Avenue, and on the northwest by Upton Street.</p> <p><u>*South San Francisco</u></p> <p>The Golden Gate Produce Terminal bounded on the north by Terminal Court, on the east by Freeway Street and Bayshore Freeway (Highway U.S. 101), on the south by Navigable Slough, and on the west by the East San Bruno Drill Track of the Southern Pacific Company.</p> <p><u>Oakland</u></p> <p>The Oakland Wholesale Market bounded on the northwest by Franklin Street, on the northeast by 5th Street, on the southeast by Jackson Street, and on the southwest by 2nd Street.</p> <p><u>San Jose</u></p> <p>The San Jose Wholesale Market bounded on the northwest by Mission Street, on the northeast by the Southern Pacific Company right-of-way (8th Street), on the southeast by Taylor Street, and on the southwest by 7th Street.</p> <p><u>Stockton</u></p> <p>The Stockton Wholesale Market bounded on the north by East Channel Street, on the east by an imaginary extension of Locust Avenue, on the south by the Southern Pacific Company right-of-way (an extension of East Weber Avenue), and on the west by North Wilson Way.</p>

Sacramento (16th Street Market)

The Sacramento 16th Street Wholesale Market bounded on the north by North C Street, on the east by North 16th Street, on the south by North B Street, and on the west by the Southern Pacific Company right-of-way (that spur adjacent to and paralleling North 14th Street, an extension of Ahern Avenue).

Sacramento (5th Street Market)

The Sacramento 5th Street Wholesale Market bounded on the north by First Avenue, on the east by 5th Street, on the south by the Southern Pacific Company spur track (from the lead take off commencing near Front Street and Broadway), and on the west by 3rd Street.

Fresno

All points within a radius of one mile of the intersection of Tuolumne Street and G Street.

San Diego

All points within a radius of one-half mile of the intersection of 6th Street and J Street.

(1) Paragraph (a) expires with December 31, 1963.

∅ Change            )  
\* Addition         ) Decision No.    **66124**

EFFECTIVE NOVEMBER 23, 1963

Issued by the Public Utilities Commission of the State of California,  
San Francisco, California.  
Correction No. 334