

**ORIGINAL**

Decision No. 67577

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations,  
practices, rates, charges and  
contracts of AZUSA TRANSFER  
COMPANY, a corporation, and  
EAGLE EXPRESS, INC.

Case No. 7240

Petition of Kaiser Steel  
Corporation for Modification  
of Decision.

Kenneth M. Robinson, B. F. Maddux, and  
W. P. Pierce, for Kaiser Steel Corporation.  
Robert C. Marks, for the Commission staff.

ORDER DENYING MODIFICATION OF DECISIONS

By Decision No. 64449, as amended and supplemented by Decisions Nos. 65169 and 65183, Azusa Transfer Company, a corporation, was ordered, among other things, to collect undercharges in the aggregate amount of \$1,967.55. Included in said sum was an undercharge represented by freight bill No. 51305, dated September 1, 1960, in the amount of \$69.36. Exhibits Nos. 1 and 2 in the original proceeding show that this particular shipment was made by Kaiser Steel Corporation and consisted of a shipment of steel plate, wrought steel pipe and pipe iron/steel, destined to three separate consignees as shown by orders Nos. 1766, 1782 and 1783, dated August 31, August 31 and September 1, 1960, respectively.

It was the position of the Commission staff that this shipment did not comply with Minimum Rate Tariff No. 2, Item 85-D, in that a single multiple lot document for all three shipments was not issued at the time or prior to the initial pickup, as required by said item, and therefore shipments should have been rated separately resulting in the undercharge of \$69.36 as shown in Part 1 of

Exhibit No. 2. As Kaiser Steel Corporation was not a party to the original proceeding, and had not made an appearance at the hearing, it subsequently petitioned and was granted this opportunity to present evidence that there had been a compliance with the aforementioned provision of said Item 85-D.

The reopened hearing was held in Los Angeles, on November 22, 1963, before Examiner Chiesa. Petitioner having called Mr. W. P. Pierce, its assistant to the general traffic manager, to testify and explain said shipment, and having been cross-examined by staff counsel, the matter was submitted for decision.

Mr. Pierce, in explanation of the documents shown in Part 1 of staff's Exhibit No. 1, and in support of petitioner's contention that said documents constituted a substantial compliance, testified, in part, as follows:

"Because of our product range, customers can generally order a combination of different products, sizes and chemistry on the same purchase order.

As a result of the flexibility of Kaiser Steel Corporation to provide our customers with this wide range of steel products, it presents a very complicated shipping procedure to insure our customers the lowest possible transportation costs within the established regulatory provisions of the Public Utilities Commission.

As orders are received in our various sales offices, they are reviewed, screened and set up in a standardized manner and then teletyped to our Fontana mill.

The mill then coordinates their function of manufacturer and produces the material designated on the mill order. For each item on the mill order, a mill tally is made or if the material in the item exceeds the truckload quantity, a tally is made for each truckload therein.

For all intent and purpose the relationship between our mill and the customer will hereafter be by this assigned tally number.

For each tally an order for truck pickup is made showing the name of the customer, the destination and the weight.

Conceivably, if a customer ordered ten different sizes of product in one 20-ton mill order, there would be 10 tallies and 10 truck orders even though the material were loaded on one truck at one time to the one consignee.

The orders for truck pickup are accumulated at the truck desk in our shipping department. At least once each day, and in most cases twice, the orders for truck pickup are combined and cross-referenced to make a complete shipping document.

Needless to say, all truck order pickups for the same customer where the aggregate would be above the minimum weight necessary to protect the lowest rate are accumulated and combined into one shipping document.

Where there is insufficient tonnage for a customer to be protected by the lowest rate, the order for truck pickups is combined and cross-referenced with other customers facing the same situation to form a completed shipping document.

When the documents are completed and cross-referenced, the carriers are advised by phone that the documents are completed and are available for pickup.

The carriers' representative then picks up these completed documents the afternoon prior to the first morning's loading. If the trucker is from out of town and does not have local representation, the documents pertaining to his shipment are placed in our guard post and are signed by the first driver prior to his entering the plant. ....

To specifically explain Truck Orders 1766, 1782 and 1783 as part of Exhibit 1 in these proceedings, you will note on Truck Order 1766 that the consignee of the component was California Tank in Long Beach. The weight of that component was 45,230 pounds.

In the blank marked "in combination with other orders," it refers to 1782 and 1783 and the composite weight of these two components is shown as 62,000 pounds. The total weight of the entire shipment is 107,000 pounds. Truck Order 1766 was scheduled to load August 31, 1960, at 4:00 a.m. as shown by the dates in the upper right-hand corner of the document. ...

Referring to Truck Order 1782, the consignee of that component was Lord Babcock in Los Angeles. The weight of that component was 22,000 pounds. In the blank marked "in combination with other orders," it refers to 1766 and 1783; and the composite weight of these two components is shown as 85,000 pounds, and the total weight of the entire shipment is 107,000 pounds.

Truck Order 1782 is scheduled to load August 31st at 9:00 a.m. as shown by the dates in the upper right-hand corner of the document. ....

Truck Order 1783 shows that the consignee of that component was Apex Steel in Los Angeles. The weight of that component was 40,000 pounds. In the blank marked "in combination with other orders," it refers to 1766 and 1782; and the composite weight of these two components is shown as 67,000 pounds. The total weight of the entire shipment is 107,000 pounds.

Truck Order 1783 was scheduled to load September 1, 1960, at 8:00 a.m. as shown by the dates in the upper right-hand corner of the document.

It is our understanding that the Commission contends that the order for Truck Pickup 1783 was dated September 1, 1960, while the first pickup, 1766 and 1782, appears to be made on August 31, 1960.

As we have discussed previously, a multiple lot shipping document was in the hands of the carrier the day prior to the first loading, and the dates shown on the document are the dates the material was to be loaded.

It would be quite ridiculous to issue documents 1766 and 1782 on one day with cross-references to another component to be issued the following day. This would serve no purpose. The fact that the cross-reference is shown indicates very clearly that at the time the completed document consisting of three parts was furnished to the carrier the material was known to be ready to load. ...."

The evidence does not support petitioner's contention that the three shipping orders Nos. 1766, 1782 and 1783 constitute a single multiple lot shipping document in compliance with Minimum Rate Tariff No. 2, Item 85-D. Shipping orders Nos. 1766 and 1782 were issued on August 31, 1960, the date of the initial pickup, and although each of said orders show, by number reference only, that the shipment was to be tendered with the other two shipments, said two orders did not show the 'name of the consignees, points of destination and the kind and quantity of property' for the entire shipment as required. The latter information was not shown on a single shipping document until September 1, 1960, when shipping order No. 1783 was issued.

Based upon the evidence the Commission finds that:

1. At the time of or prior to the initial pickup, August 31, 1960, the carrier, Azusa Transfer Company, did not issue to the consignor a single multiple lot document for the entire shipment as required by Minimum Rate Tariff No. 2, Item 85-D.

2. Orders Nos. 1766 and 1782, dated August 31, 1960, and order No. 1783, dated September 1, 1960, should have been rated separately as shown on Part 1 of Exhibit No. 2.

O R D E R

IT IS ORDERED that petition of Kaiser Steel Corporation requesting modification of Decisions Nos. 64449 and 65169 be and it hereby is denied.

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

Dated at San Francisco, California, this 21st day of July, 1964.

[Signature] President  
[Signature]  
[Signature]  
Commissioners

We dissent.

The evidence produced by the staff shows that shipping orders Nos. 1766 and 1782 were dated August 31, 1960, the date of the initial pickup, and shipping order No. 1783 was dated September 1, 1960, the date of the second pickup. All were cross-referenced to each other. The majority opinion finds that No. 1783 contained the information required by Item 85-D. From <sup>this</sup> ~~the~~ evidence it is argued that a single multiple lot document was not issued prior to the date of the initial pickup and that the shipments must be rated separately at a higher rate than billed, giving rise to an undercharge.

The evidence produced by the shipper shows that, although the three shipping orders were dated as the staff claims, these dates were the dates of pickup, not the dates of issuance of the shipping orders. The witness for the shipper testified that all three documents were in fact issued prior to the time of the first pickup.

Item 85-D does not require that the date of issuance of the multiple lot document be recorded on the document. It merely requires that the document be issued prior to the initial pickup. When the document was actually issued is a question of fact, to be decided in the same manner as any other fact question, that is, on the evidence adduced at the trial. Kaiser has shown that its shipments are of such quantity and frequency that it has great flexibility in combining shipments to obtain the lowest possible transportation rates. The evidence negates the possibility that the parties sought or needed to evade the minimum rate tariff in connection with this movement. These factors, plus an analysis of the three shipping orders in conjunction with other documentation relating to this movement (especially the references to weights), is convincing that shipping order No. 1783 was issued prior to the first pickup.

The shipment was properly rated as a multiple lot shipment and no undercharge is due.

George L. Grover  
Frederick B. Wolshoff

Commissioners