

ORIGINALDecision No. 67974

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 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
(Order Setting Hearing,
Dated February 4, 1964)

And Related Matters.

Cases Nos. 5330, 5433, 5435,
5436, 5437, 5438, 5439,
5440, 5441, 5603, 5604, and
6008
(Orders Setting Hearings,
Dated February 4, 1964)
and Case No. 7857

A. D. Poe, H. F. Kollmyer and C. D. Gilbert, by
C. D. Gilbert, for California Trucking Association,
protestant.

Lauren M. Wright of O'Melveny & Myers, for American
Cement Corporation; E. J. Bertana, for Pacific
Cement & Aggregates, Inc.; Ralph Hubbard, for
California Farm Bureau Federation; Russell Bevans,
for Draymen's Association of San Francisco, Inc.;
John W. Billett, for California Disaster Office;
Earl S. Williams, for Department of General
Services; J. William Conroy, for the Disaster Corps
of the City and County of San Francisco; John E.
Faulk, for the Department of Defense of the United
States; and E. O. Blackman, for California Dump
Truck Owners Association; interested parties.

Edward E. Tanner, for the Commission staff.

O P I N I O N

This matter is an investigation on the Commission's own
motion for the purpose of determining whether or not provisions of

certain minimum rate tariffs^{1/} should be made inapplicable to the transportation of commodities allocated to provide relief during a state of disaster or extreme emergency.

Public hearings were held before Examiner Lane on May 20, 1964 in San Francisco and June 10, 1964 in Los Angeles. The matter was taken under submission on July 24, 1964, subject to the late filing of an exhibit by the Commission staff on or before June 22, 1964 and to the filing of written closing statements by the parties on or before July 24, 1964. The staff filed its exhibit on June 22. Closing statements were filed on July 24 by the Defense Traffic Management Service on behalf of the Department of Defense and by the California Disaster Office.

A transportation rate expert on the Commission staff proposed that the transportation of "disaster supplies" by highway permit carriers and city carriers be exempted from the minimum rates. He testified that staff investigations of rates being assessed by highway permit carriers and city carriers disclosed that some of these carriers had transported disaster supplies for civil defense organizations free or at reduced rates. These carriers were of the opinion that they were not required to observe any rates on such traffic.

The staff witness pointed out that transportation of disaster supplies by these carriers was not exempted from the minimum rates. Highway common carriers, on the other hand, may under Section 530 of the Public Utilities Code transport free or at reduced rates property to provide relief in cases of general epidemic, pestilence, or calamity. They are not required to publish rates for this traffic in their tariffs.

^{1/} Minimum Rate Tariffs Nos. 1-B, 2, 3-A, 4-B, 5, 6-A, 7, 8, 9-B, 10, 11-A, 12, 13 and 14-A and City Carriers' Tariff No. 1-A are the tariffs involved. Minimum Rate Tariffs Nos. 6-A, 9-B and 14-A are reissues of Minimum Rate Tariffs Nos. 6, 9-A and 14, respectively, which were in effect when the orders setting hearings in these matters were issued.

Highway permit carriers may assess rates of common carriers for similar service. City carriers do not have this authority. The witness said that, while highway permit carriers were authorized to observe rates of highway common carriers for transporting disaster supplies, in actual practice this was impractical because highway permit carriers did not have knowledge, and were in no position to support the alleged assessment, of any such rate in the absence of published tariffs.

As a consequence, the staff was in a dilemma as to whether or not it properly could require highway permit carriers to assess minimum rates on disaster supplies and whether or not it should require these carriers and city carriers to do so.

To clarify the requirements of the minimum rate tariffs in this respect the staff witness recommended that disaster supplies be exempted from all of the minimum rate tariffs except Minimum Rate Tariff No. 15, which names vehicle unit rates. He said that it appears to be consistent with the legislative policy applicable to common carriers under Section 530 of the Public Utilities Code to relieve highway permit carriers and city carriers from the necessity of observing established minimum rates for the transportation of commodities which are allocated to provide aid during a state of public emergency, catastrophe or disaster. He asserted that it would, therefore, be in the public interest that highway permit carriers and city carriers be accorded the same tariff relief afforded to common carriers.

Representatives of the American Cement Corporation and the California Dump Truck Owners Association objected that the identification of relief and disaster organizations in the staff proposal was too broad and would lead to gross abuses of the proposed exemption. Responsive thereto, the staff witness revised his definition orally on the record to meet the objections.

In substance, his oral amendment limited the relief and disaster organizations to those covered by the California Disaster Act.^{2/} Late-filed Exhibit No. 3 purports to reflect the revision of the initial staff proposal made orally on the record.^{3/} The representatives of the cement company and the truck owners' association indicated at the close of the hearing that the staff proposal, with the proposed amendments, was acceptable to them.

Representatives of federal and local offices of civil defense supported the staff proposal. They testified in effect that much of the transportation of disaster supplies is for short distances and is the responsibility of local political authorities. Usually, funds are not available to pay established drayage rates. The type of carriers available to perform the service is thereby limited to highway common carriers. This creates problems in the selection of carriers and in arranging for union clearance of long-haul drivers in local drayage operations.

The California State Traffic Manager supported the staff proposal.

The Defense Traffic Management Service and the California Disaster Office, in their closing statements, assert that Section 1518.2 of the Military and Veterans Code relates to the California Disaster Office and does not deal with local civil defense and local disaster mitigating organizations. Reference to that section in the staff proposal precludes movement of disaster supplies by legally

^{2/} The California Disaster Act consists of Sections 1500 to and including Section 1601 of the Military and Veterans Code.

^{3/} The revised definition of disaster supplies proposed by the staff witness is: "Those commodities which are allocated to provide relief upon proclamation and for the duration of a state of extreme emergency or disaster; and those commodities which are transported for a civil defense or disaster mitigation organization with rights and powers specified in Section 1518.2 of the Military and Veterans Code to ultimate point of storage for use prior to or during a state of disaster or extreme emergency."

constituted disaster mitigating organizations other than the California Disaster Office. They recommend that the staff proposal be restated as follows to facilitate transportation at free or reduced rates of disaster supplies by the state, cities, counties, cities and counties, regional civil defense organizations and public service organizations such as the American Red Cross and National Defense Transportation Association:

"Disaster Supplies, i.e., those commodities which are allocated to provide relief during a state of extreme emergency or state of disaster; and those commodities which are transported for a civil defense or disaster organization established and functioning in accordance with the California Disaster Act to ultimate point of storage or use prior to or during a state of extreme emergency."

The California Trucking Association (CTA) opposed the staff recommendation. CTA's representative said that, as a general matter, CTA is against the exemption of traffic from the application of the minimum rates for reasons of carrier economy. He said that in a true emergency the service would be provided whether it was subject to minimum rates or not. The Draymen's Association of San Francisco concurred in the position of CTA.

The supplies herein involved are for the relief of human suffering or for survival in the event of a man-made or natural disaster. The movement of such supplies to places of use in anticipation of or in connection with a general calamity should be free from unnecessary impediments.

At the present time, transportation of disaster supplies by one type of for-hire highway carriers (highway common carriers) is free from rate regulation while similar transportation by other types of for-hire highway carriers (highway permit and city carriers) is not. The record shows that as a result the application and regulation of rates on defense supplies is unnecessarily confused and the shipment of such supplies needlessly complicated.

Based on the evidence, the Commission finds that it is not reasonable to require highway permit carriers and city carriers to assess minimum rates for the transportation of disaster supplies when highway common carriers may transport this traffic free or at reduced rates under the provisions of the Public Utilities Act. The Commission further finds that to require the assessment of minimum rates by highway permit carriers and city carriers on the traffic in question is not consistent with the public interest.

The Commission concludes that disaster supplies as hereinafter defined should be exempted from the minimum rates.

In order to avoid duplication of tariff distribution in the establishment of said exemption, all minimum rate tariffs herein involved, other than Minimum Rate Tariff No. 2, will be amended to the extent necessary by separate orders.

O R D E R

IT IS ORDERED that Minimum Rate Tariff No. 2 (Appendix D to Decision No. 31606, as amended) is hereby further amended by incorporating therein, to become effective November 14, 1964, Fifty-fourth Revised Page 14 attached hereto and by this reference made a part hereof.

In all other respects said Decision No. 31606, 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, 1964.

Frederick B. Holdcraft
President

John E. Mitchell

George T. Trover

William C. Bennett

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

-6- Commissioners

Item No.	SECTION NO. 1 - RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	<p style="text-align: center;">APPLICATION OF TARIFF-COMMODITIES (Items Nos. 40 and 41)</p> <p>Rates in this tariff apply for the transportation of all commodities except as follows:</p> <p>Accessories, motion picture, Automobiles, set up, Automobile parts, accessories and related articles in secondary movement by Truck-away Service when subject to the rates, rules and regulations set forth in Minimum Rate Tariff No. 12,</p> <p>Baggage,</p> <p>Buttermilk, liquid (Subject to Note 2),</p> <p>Carriers (used packages), as described in Items Nos. 320 and 321 of the Exception Ratings Tariff, empty returning or forwarded for return loads (Subject to Note 1),</p> <p>Cement, hydraulic, masonry, natural or Portland—also lime, common (including magnesium lime, hydrated or hydraulic lime, quick or slaked), cement flue dust, and/or limestone, powdered, shipped in mixed shipments with cement—when transported in shipments of 47,500 pounds or more, or when transported in shipments of lesser weights subject to the rates, rules and regulations, including the minimum charge computed on a minimum weight of 47,500 pounds, which are set forth in Minimum Rate Tariff No. 10.</p> <p>Cement Clinker,</p> <p>Chips, wood, in bulk (Subject to Note 13),</p> <p>Commodities as described in and for which rates are provided in Minimum Rate Tariff No. 14-A,</p> <p>Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low bed trailers,</p> <p>Commodities when transported in an armored car operated under permit from the Commissioner of the California Highway Patrol,</p> <p>Concrete transported in motor vehicles equipped for mechanical mixing in transit,</p> <p>Cottage Cheese,</p> <p>Cotton,</p> <p>Cream (Subject to Note 2),</p> <p>Directories, telephone,</p> <p>*Disaster Supplies, i.e., those commodities which are allocated to provide relief during a state of extreme emergency or state of disaster; and those commodities which are transported for a civil defense or disaster organization established and functioning in accordance with the California Disaster Act to ultimate point of storage or use prior to or during a state of disaster or state of extreme emergency.</p> <p>Eggs (other than shelled, desiccated or frozen),</p> <p>Fertilizers, as described in Items Nos. 540, 560 and 580 of the Exception Ratings Tariff,</p> <p>Film, motion picture,</p> <p>Fruit, dried, unmanufactured and unprocessed (Subject to Note 4),</p> <p>Fruit, fresh or green, including dates, fresh, (not cold pack nor frozen),</p> <p>Fruits, which are placed in a preservative and are destined to a cannery for processing into a preserved or pickled fruit,</p> <p>Fungicides, agricultural,</p> <p>Furniture, household appliances and other home furnishings which have been sold at retail by a retail merchant, transported from retail stores or retail store warehouse, or transported from retail customers to retail stores or retail store warehouses (Subject to Note 3),</p> <p>Furniture, uncrated, new, as described in and for which rates are provided in Minimum Rate Tariff No. 11-A, and furniture, uncrated, new, of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services,</p> <p>Hops,</p> <p>House Trailers, set up</p> <p>Hulls, almond, including shells and other waste from the hulling and shelling of almonds, not processed for use as animal or poultry feed,</p>

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Commodities when transported in dump trucks, for which rates are provided in Minimum Rate Tariff No. 7,

Commodities when transported under the vehicle unit rates, rules and regulations of Minimum Rate Tariffs No. 5 and 15.

Commodities which consists of or contain materials essential to National Defense and which have been donated to and are transported for the United States Government, governmental agencies, or nonprofit organizations acting for or in behalf of said government in the collection, assembly or transportation of said commodities in connection with the recovery of said essential materials from the commodities transported.

Commodities which have been sold at retail by a retail merchant, and transported from a retail store or retail store warehouse to residences of retail customers, or transported from residences of retail customers to retail stores or retail store warehouses, and such transportation is performed in vehicles in the exclusive use of the retailer and providing no shipment exceeds 2,000 pounds in weight; further, that the merchandise is for the use or consumption of retail customers and is not for use in the furtherance of an industrial or commercial enterprise; and provided that the retailer shall certify on the shipping document for each delivery that the merchandise was sold at retail to a retail customer,

Ice Cream mix, unflavored,
Insecticides, agricultural,
Jewelry transported from or to wholesale houses in packages weighing 10 pounds or less,
Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles.

Livestock,

Logs (wood),

Milk, liquid (Subject to Note 2),

Mushrooms, fresh (not cold pack nor frozen),

Newspapers, newspaper supplements, sections or inserts (not scrap or waste),

Nuts, in the shell,

Nuts, field shelled (rough shelled, with or without removal of broken shells, dirt, residue, or foreign material, and not cleaned nor further processed),

Optical goods transported from or to wholesale houses in packages weighing 10 pounds or less,

Pits, fruit,

Pot Cheese,

Poultry, live or dressed,

Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services,

Property shipped to or from producers of motion pictures or television shows when transported subject to the rates, rules and regulations provided by Decision No. 33226, in Cases Nos. 4246 and 4434, as amended,

(Continued in Item No. 41)

6 Change)
* Addition) Decision No. 67974

EFFECTIVE NOVEMBER 14, 1964

Issued by the Public Utilities Commission of the State of California,
San Francisco, California.
Correction No. 1542