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ORIGINAL

Decision No. 70560

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 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 (Petition for Modification No. 391) (Filed August 9, 1965)

Arlo D. Poe, J. C. Kaspar and H. F. Kollmyer, for California Trucking Association; petitioner.
W. C. Johnston and Glendell H. Hays, for Western Milk Transport, Inc.; Louis J. Seely, for Kings County Truck Lines; E. R. Chapman, for Foremost Dairies; protestants.
Gordon A. Rodgers, for Union Carbide Corp.; John T. Reed, for California Manufacturers Association; interested parties.
Charles F. Geraghty, for the Commission staff.

O P I N I O N

This petition was heard and submitted January 21, 1966 before Examiner Thompson at San Francisco. Copies of the petition and notice of hearing were served in accordance with the Commission's procedural rules.

California Trucking Association requests amendment of Note 1 of Item No. 90 of Minimum Rate Tariff No. 2 (Mixed Shipment Rule) to provide:

> "The provisions of this rule will not apply to mixed shipments containing products in bulk in tank or dump trucks, tank or dump trailers or tank or dump semi-trailers."

Western Milk Transport, Inc., Kings County Truck Lines, and Foremost Dairies, Inc., protest the suggested change.

The proposed rule would be applicable only to shipments of commodities for which minimum rates are provided in Minimum Rate Tariff No. 2 mixed with commodities, in bulk, for which minimum rates are not provided in said tariff. The effect of the proposed rule on such mixed shipments would be to require that the packaged commodities for which rates are provided in the Minimum Rate Tariff No. 2 be considered, for rate purposes, to be one shipment and the bulk commodities to comprise a separate shipment.

Petitioner at first contended that the reason for the proposed change is to clarify what appeared to be the intent and purpose of the Commission in restricting the application of the present Note 1 of Item No. 90 which provides that the general rule does not apply to mixed shipments containing petroleum products in bulk in tank trucks, tank trailers or tank semi-trailers for which rates are provided in Minimum Rate Tariff No. 6-A. Subsequently, the testimony of petitioner's director of transportation economics made it clear that the purpose of the proposed rule is to curtail certain shipping practices that are having adverse effects upon carrier operating revenues. The witness stated that he did not desire to pinpoint the methods used on a public record so as to impart this knowledge to shippers generally; nor do we. It is sufficient to illustrate the problem by setting forth the pertinent provision of Item No. 90 and to recite one obvious method, one similar to that explained in Decision No. 33836 of January 28, 1941 in Case No. 4246.

The pertinent portion of Item No. 90 concerning the rates that may be applied to mixed shipments of so-called exempt commodities and commodities subject to Minimum Rate Tariff No. 2 is:

> "..., the charges on the traffic subject to the rates named in this tariff may be computed at the separate rates applicable to such traffic based upon the combined weight of the entire mixed shipment, but in no event shall the total charges for the entire mixed shipment be less than the charges for the weight of the commodities for which rates are provided in this tariff when computed as a separate shipment;..."

For the purpose of illustration we will assume that a shipper of coal tenders a carrier a shipment, or even a split-delivery shipment, consisting of 38,000 pounds of coal suspended in liquid (coal slurry) in bulk to be transported in tanker equipment together with 7,000 pounds of anthracite coal in sacks. Such shipment would require the use of two power units of carrier equipment unless the carrier had acquired some unusual combination of vehicles designed specifically for handling that type of shipment. From the standpoint of the actual physical movement of the goods the commodities tendered would be two shipments, one a tanker of slurry and the other a less-than-truckload lot of coal.

Under the provisions of Item No. 90, the tender could be rated as a single mixed shipment. Commodities in suspension in liquids in bulk in tanker equipment are not subject to the rates in Minimum Rate Tariff No. 2. Coal in sacks is subject to the minimum rates. Under the rules the carrier may assess a combined charge for the mixed shipment of 38,000 pounds, at his rate for transporting 45,000 pounds, in the tanker equipment and 7,000 pounds at the truckload class rate for coal in sacks provided the combined charge is not less than the charge resulting from the application of the minimum rate for 7,000 pounds of coal. It is obvious that unless there were other circumstances the combined charge could be unreasonably low and insufficient to cover the cost of providing the service. This is one type of circumstance that petitioner desires be prevented.

Protestants pointed out that by Decision No. 55984, dated December 16, 1957, in Case No. 5432 (Petitions for Modification Nos. 87 and 88) the Commission established that portion of Rule 90 quoted above which permits the application of rates to the combined weight of the mixed shipment. Western Milk Transport, a protestant herein, was the petitioner in that proceeding. The other protestants herein supported Western Milk Transport in that case.

The aforementioned decision describes the circumstance of the transportation of mixed shipments of liquid milk and dry milk solids by Western Milk Transport for Foremost Dairies, Inc. The evidence offered herein by protestants Western and Foremost discloses that those circumstances which persuaded the Commission to establish the aforementioned portion of Rule 90 have not changed. Foremost has facilities in the Los Banos-Gustine area for processing fresh milk into various dairy products. It has a regular movement of dry milk solids from those facilities to Los Angeles. Depending upon the demand and supply of liquid milk in the two areas, it sometimes ships milk from Los Banos to Los Angeles and sometimes ships milk in the reverse direction. It normally ships those commodities in straight truckloads. However, it often occurs that it is necessary to ship only 20,000 pounds of liquid milk to Los Angeles. Western Milk Transport operates "doubles" equipment, that is to say it operates two semi-trailers (each approximately 24' long) in a train. It has both tanker semi-trailers and flatbed semi-trailers. It has maintained rates for transportation of a single tanker of milk subject to a minimum weight of 20,000 pounds. On those occasions when Foremost has only 20,000 pounds of milk to ship to Los Angeles, it also tenders to the carrier as a part of a mixed shipment 10,000 pounds or more of dry milk solids. The latter is loaded on a flatbed

trailer and it and the tanker are hauled as a unit to destination. The mixed shipment is rated pursuant to the aforementioned rule in Item No. 90 for applying the individual rates applicable to the combined weight of the shipment.

Under the aforementioned circumstances, and assuming that the rate assessed by Western Milk Transport for a tanker of milk is reasonable, the charges assessed by the foregoing method on the combined weight of the mixed shipment are reasonable and it would appear that charges resulting from the application of the rates as though the trailer load of dry milk solids and the tanker of milk constituted separate shipments might be excessive.

The foregoing demonstrates that under one set of circumstances, namely when the mixed shipment is actually transported as a complete truckload for one shipper, the charges under the present rule are reasonable; whereas, under other circumstances, namely when the mixed shipment does not move in a single train, the charges are almost certainly unreasonable. It would appear to be obvious that Item No. 90 should be amended so as to permit the application of the present rule in the one circumstance and to prevent its application in the other.

The question presented is whether petitioner's proposal accomplishes the desired result. The answer is in the negative because the proposed rule would prohibit the application of rates in the manner presently authorized for the type of transportation performed by Western Milk Transport described above. Prior to the issuance of Decision No. 55984, rules in Minimum Rate Tariff No. 2 did not permit the assessment of rates at minimum weights based upon the combined weight of the mixed shipment. It is pertinent that we recite herein the Commission's findings and conclusions in Decision No. 55984.

> "Purposes of the regulation of rates of for-hire carriers operating over public highways are the preservation of the highways without unnecessary congestion and wear thereof, and the securing for the people of just and reasonable rates /citation/. The evidence on these matters is persuasive that the mixed shipment provisions of Minimum Rate Tariff No. 2 which are in issue have not operated and do not now operate in consonance with such purposes; that said provisions induce wasteful transportation practices and unnecessary congestion and wear on the public highways; and that in requiring non-exempt portions of mixed shipments to be treated as separate shipments, said provisions do not permit the carriers to reflect in their charges the lower operating costs per 100 pounds which they attain through combining exempt and non-exempt commodities into truckload shipments."

With respect to petitioner's assertion that it was the intent of the Commission in establishing the present Note 1 to Item No. 90 to cover commodities other than petroleum products, a reading of Decision No. 33836, cited by petitioner, discloses that the conclusions made by the Commission were based on findings concerning circumstances surrounding the shipment and distribution of products by the petroleum industry:

> "It does not appear from the present record that the mixing of bulk petroleum products in tank equipment with packaged petroleum products on flat-bed equipment would permit any material saving in transportation expense to the carriers performing such services over the cost of handling the bulk and packaged goods separately. The proposed mixture appears to be an artificial one made primarily for the purpose of reducing a shipper's transportation charges under a particular tariff rule, rather than a natural mixture of commodities tendered and transported together as a convenience to the shipper or as a saving to the carrier."

In said decision when discussing the matter of mixed shipments of commodities generally, the Commission stated:

> "When minimum rates have been established on various commodities based largely upon the cost of transporting such commodities separately, it is readily apparent that commodities of different classes should not be transported in mixed shipments at the lower rates applicable to the combined weight unless it is demonstrated that the net cost per unit of transporting the mixed commodities as a single shipment would be sufficiently less than the net cost per unit of transporting the commodities separately to make transportation at the lower rates compensatory."

There is nothing inconsistent with the findings and conclusions in Decision No. 33836 and those made by the Commission in Decision No. 55984. The intent and purpose of Note 1 of Item No. 90 is to remove the application of the general rule from mixed shipments containing petroleum products in bulk transported in tanker equipment.

We find that petitioner's proposal has not been shown to provide for just, reasonable and non-discriminatory minimum rates and that the proposed rule would not clarify the present situation nor prevent existing undesirable shipping practices. We conclude that the petition should be denied.

Petitioner is invited, however, to prepare and present another rule, designed to accomplish its purposes, which is free from the defects found in the present proposal.

ORDER

IT IS ORDERED that Petition for Modification No. 391 of California Trucking Association is denied.

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

Dated at San Francisco, California, this 12th day of APRIL, 1966.

President

Commissioners