

ORIGINALDecision No. 72995

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 household goods carriers, common)
 carriers, highway carriers and city)
 carriers, relating to the trans-)
 portation of used household goods and)
 related property.)

Case No. 5330
 (Order Setting Hearing
 dated May 16, 1961)

And related matters.

Cases Nos. 5432, 5433,
 5435, 5436, 5437, 5438,
 5439, 5440, 5441, 5603,
 5604 and 6008.

(Appearances are listed in Appendix A)

O P I N I O N

By order dated May 16, 1961, the Commission ordered that hearings be held in the 13 above-enumerated minimum rate cases to receive evidence relative to the practices of carriers with respect to payments and allowances to shippers and the supplying of articles or services of value to shippers, and relative to the establishment or revision of rules, in the Commission's minimum rate tariffs and the issuance of an appropriate order relative to such practices.

Following notice to parties believed to be interested, public hearings were held before Examiner Turpen at San Francisco on August 30 and 31, November 15, December 11 and 12, 1961, and February 19, 1962, and at Los Angeles on October 31, 1961. The matter was submitted on February 19, 1962. Following review of the record, the Commission issued, on March 3, 1964, an order setting

aside submission and reopening the proceedings for further hearing. Such hearing was held on August 12, 1964, and then continued to a date to be set.

A rate expert from the Commission's staff explained the purpose of the proceeding. He testified that although the Public Utilities Code prohibits rebates to shippers and devices or practices that would result in freight charges less than those prescribed by the minimum rates, the various minimum rate tariffs do not contain provisions that spell out with clarity permitted practices that would fall within the framework of the law. A transportation representative from the staff, cited numerous instances where various practices engaged in by shippers and carriers had been investigated by the staff and following formal hearing were found to be illegal by the Commission. According to this witness, these proceedings established the policy for the particular circumstances involved, but may not be applicable if the circumstances in another situation are slightly different. Also, according to the witness, the results of those proceedings are not generally known to the vast majority of shippers and carriers.

In view of this situation, the rate witness testified, the staff of the Commission's Transportation Division came to the conclusion that rules should be incorporated in the various minimum rate tariffs prohibiting virtually any transactions between shippers and carriers except those specifically authorized in the tariffs. As a result of cross-examination of the staff witnesses at the initial set of hearings, at adjourned hearings about two months later the rate witness offered a revised set of rules. In effect, the revisions relax the proposed prohibitions to the extent that carriers would be permitted to purchase supplies from shippers who are in the

regular business of furnishing such supplies to the public. The revised rules, as proposed by the staff witness, are set forth in Appendix B to this decision.

The rate witness characterized his proposals as a "closed door policy" in which any type of transaction between a shipper and a carrier not specifically permitted in the tariff would be prohibited unless prior authorization is secured from the Commission. The witnesses believed that adoption of the proposed rules would eliminate a great many of the investigation cases before the Commission.

A large number of interested parties questioned the witnesses as to application of the proposed rules. A multitude of situations were discussed. Practically all of the parties opposed adoption of the staff proposed rules. The California Trucking Association suggested that specific areas of uncertainty be eliminated by specific tariff publications instead of by adopting general rules. Several parties felt that the Commission should pursue the rate enforcement program more vigorously. The rail lines were particularly opposed to adoption of the staff rules. Counsel for the rail lines cited, as hardship examples, that the rules would seriously interfere with the sale of scrap rail in other states, that they would seriously delay emergency repairs on shippers' spur tracks, and that they would prevent short-term leases on an emergency basis. Many other possible situations were mentioned by the rail lines. The San Francisco Chamber of Commerce contended that the proposed rules would result in unlawful restraint of trade, that they are ambiguous and are incapable of enforcement. The California Manufacturers Association opposed particularly the restriction on leases for less than 30 days. Representatives of several cement companies also opposed the proposed rules and urged the Commission

to review its enforcement procedures towards improving that field. The manager of the California Dump Truck Owners Association was in favor of the proposed rules, but only insofar as they would apply to Minimum Rate Tariff No. 7.

It does not appear necessary to enumerate further the many problems mentioned by the parties which would arise if the rules were adopted.

The record shows that the rules proposed by the staff could hamper the conduct of business of shippers and carriers and might be a burden that would be adverse to the public interest. Probably only a very minute proportion of all carrier transactions would be improper, but the proposed rules, to take care of the small number of improper transactions, would put a heavy restraining burden on all carrier transactions. The record did not contain data that would permit the formulation of specific rules to take care of various problems cited in the testimony of the two staff witnesses. In view of this situation the Commission, by order dated March 3, 1964, set aside submission and reopened the proceedings for the limited purpose of determining whether a uniform rule should be incorporated in each minimum rate tariff, the following language being illustrative of the substance of such a uniform rule:

"Unless otherwise specifically provided in this tariff, any contract or agreement, written or oral, entered into between a carrier and a shipper whereby anything of value passes from the carrier to the shipper (or to an agent or employee of the shipper) in connection with any transaction of carriage involving said carrier and said shipper, is hereby declared to be presumptively unlawful and the burden rests upon the carrier to prove by a preponderance of the evidence that said contract or agreement is lawful. This rule is not to be construed as approving or authorizing any contract or agreement between a carrier and a shipper except as provided for in said tariff of which this rule is a part."

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Further hearing was held accordingly on August 12, 1964. No evidence was presented. The further hearing consisted entirely of discussion among counsel as to interpretation of the above-quoted rule. The general consensus was that it was indefinite and that the parties could not determine how it would apply. In view of this, many of the parties said that they could not state how this rule would affect their clients. The staff did not produce a witness to testify in respect to the rule. The hearing was adjourned to a date to be set with the understanding that the parties could file a motion requesting the Commission to order the staff to present a witness, such motion to be filed fifteen days after filing of the transcript. Such a motion was filed by the rail lines on September 30, 1964.

In the meantime, several proceedings had been initiated in individual minimum rate cases involving carrier-chipper relations, and it was decided to hold the instant proceedings in abeyance pending the outcome of the other matters. These other proceedings are summarized below.

Petition No. 23 in Case No. 5440, filed July 20, 1964, sought rules in Minimum Rate Tariff No. 10 (cement) pertaining to leasing of trailers and payments to subhaulers. Decision No. 69557, dated August 17, 1965, adopted the proposed rules. This took care of the matters in this proceeding insofar as Minimum Rate Tariff No. 10 is concerned.

Order Setting Hearing dated February 17, 1964, in Case No. 5330, dealt with estimating practices of Used Household Goods Carriers. Rules pertaining to this were established by Decision No. 68306, dated November 30, 1964. However, rehearing was granted and slightly modified rules were adopted by Decision No. 70330, dated February 8, 1966.

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Petition No. 123 in Case No. 5437, filed January 4, 1966, included questions involving payments to subhaulers in dump-truck operations. Decision No. 72020, dated February 15, 1967, found that this matter should be given further study.

The Commission instituted an investigation (Case No. 8481) on July 19, 1966, on the leasing of motor vehicles by highway carriers. Hearings are still in progress in this matter.

As stated previously, the rules originally proposed by the staff were not satisfactory. The further hearing showed that a single uniform rule was not appropriate to cover all the various types and modes of transportation. The separate proceedings in Cases Nos. 5440, 5330 and 5437, referred to above, also show that different kinds of transportation need different treatment insofar as carrier-shipper relations are concerned.

The Commission finds that the rules proposed by the staff are not practical and should not be adopted. We conclude that these proceedings should be discontinued. If it is desirable to propose rules to meet specific situations, such proposals may be brought to the Commission's attention by appropriate means. The action taken here, however, in no way relieves shippers or carriers from the responsibility of conducting transactions entered into between them in conformity with the rules of the Commission and the provisions of the Public Utilities Code.

Carriers and shippers are reminded that attempts to evade the minimum rates can subject them to punitive action by the Commission.^{1/} The Commission's staff constantly checks carrier records, and in the event violations of the minimum rates are uncovered, actively prosecutes the case before the Commission or in the courts.^{2/}

In view of the conclusions reached herein, action on the rail lines' motion is not necessary.

1/ See Secs. 2100, 3774 and 3800 of the Public Utilities Code.

2/ For example see:

Maples Trucking Co., Inc., 60 Cal.P.U.C. 725;

Garibaldi Equipment Co., Inc., 60 Cal.P.U.C. 509;

James T. Martin, 61 Cal.P.U.C. 141;

H. A. Morrison Trucking Co., 61 Cal.P.U.C. 234;

Cascade Refrigerated Lines, Inc., 62 Cal.P.U.C. 42;

Denio Bros. Trucking Co., 65 Cal.P.U.C. 66;

L. Morgan, 66 Cal.P.U.C. 86;

and many additional cases.

O R D E R

IT IS ORDERED that the proceedings in Order Setting Hearing dated May 16, 1961, in Cases Nos. 5330, 5432, 5433, 5435, 5436, 5437, 5438, 5439, 5440, 5441, 5603, 5604 and 6008, are discontinued.

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

Dated at San Francisco, California, this 29th day of AUGUST, 1967.

[Signature]
President
[Signature]
[Signature]
[Signature]
[Signature]
Commissioners

APPENDIX A

LIST OF APPEARANCES

For Various Carriers, Respondents

E. J. McSweeney, Gerald P. Kalian, Armand Karp, J. McSweeney, W. N. Greenham, Richard N. Murphy, Richard D. Stokes, Berol, Loughran & Geernaert, by Geo. M. Carr, F. S. Kohles, B. E. Rowland, R. C. Ellis, C. J. Boddington, L. R. Guerra, E. D. Yeomans and Walt A. Steiger, by Walt A. Steiger, Albert T. Suter, Jay Frederick, Charles W. Burkett, Frederick G. Pfrommer, Eugene Garfinkle, Leighton Hatch, J. H. Watson, and Marshall W. Vorkink.

For Various Shippers, Organizations and Associations, Interested Parties

Philip J. Ryan, W. R. Donovan, E. R. Chapman, Norman R. Moon, Ralph Hubbard, J. C. Kaspar, A. D. Poe, J. X. Quintrall, Eugene A. Read, E. H. Griffiths, O'Melveny & Myers, by Lauren M. Wright, J. R. Green, Jay D. Brown, Meyer L. Kapler, Russell & Schureman, by R. Y. Schureman, R. L. Whitehead, Robert A. Blocki, E. O. Blackman, Stuart Ogle, Wallace K. Downey, David M. Wade, Waldo A. Gillette, Enright-Elliott-Betz, Jefferson H. Myers, Keith M. Brown, William D. Wagstaffe, Floyd W. Betts, B. F. Bolling, V. A. Bordelon, C. R. Boyer, Morton S. Colgrove, Fred A. Emslie, Carl H. Fritze, D. K. Graham, Frank Hartney, Jackson W. Kendall, H. M. Long, W. F. McCann, Charles C. Miller, William L. Mizelle, C. G. Rickenbaugh, Ed W. Swift, Phil M. Welch, Charles A. Woelfel, E. K. Slusser, Milton A. Walker, R. A. Morin, H. W. Timmerman, Emil J. Bertana, Clifford F. Campbell, Ross W. Bennington, James M. Cooper, Frank Loughran, Richard Canham, by Harry Fielding, Frank J. Hardesty III, R. J. Stangel, and C. D. Walz, Jr.

For the Commission Staff

B. A. Peeters, J. W. Mallory and Edward E. Tanner.

APPENDIX B
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RECOMMENDED RULE FOR ALL MINIMUM RATE TARIFFS

shall: "Otherwise than as provided in this tariff, no carrier

indirectly: (1) Make any payment or allowance directly or

- (a) to any consignor,
- (b) to any consignee,
- (c) to any party having a possessory interest in the property being transported, or
- (d) to any person who (either as principal or as agent or employee) selects or has the right or duty to select the carrier or pays or incurs the obligation to pay the charges for the carrier's transportation service,

for any service or for the supplying of any equipment or instrumentality used in or in connection with the transportation of the property, except that direct payment for such services, equipment or instrumentalities may be made to those whose regular business is the supplying of such services or equipment or instrumentalities to the public.

(2) Lend, lease or supply any article or property (except real property sold or leased for a period of thirty days or longer) or render any service of value to any consignor, to any consignee, to any party having a possessory interest in the property being transported, or to any person who (either as principal or as agent or employee) selects or has the right or duty to select the carrier or pays or incurs the obligation to pay the charges for the carrier's transportation service.

(3) Furnish or supply:

- (a) to any consignor,
- (b) to any consignee,
- (c) to any party having a possessory interest in the property being transported, or
- (d) to any person who (either as principal or as agent or employee) selects or has the right or duty to select the carrier or pays or incurs the obligation to pay the charges for the carrier's transportation service,

any pallets (elevating truck pallets or platforms or lift truck skids), or any containers, wrapping or covering material to protect the lading while in transit."

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RECOMMENDED RULE FOR INCLUSION IN MINIMUM RATE
TARIFFS NOS. 2, 5, 8, 9, 10 and 12, and CITY
CARRIERS' TARIFF NO. 1-A and HIGHWAY CARRIERS' TARIFF
NO. 1-A - CITY CARRIERS' TARIFF NO. 2-A.

"Rates in this tariff include the supplying of carrier's equipment to transport the property; equipment necessary to secure the property to the carrier's vehicle, such as ropes, tarpaulins, corner irons, cables, cable brackets, U-frames, car stakes, or side rails; the use of tarpaulins or other cover to protect the lading from the elements; and the use of dollies, hand trucks or other equipment (other than power equipment) necessary to load and unload the property."

RECOMMENDED RULE FOR INCLUSION IN MINIMUM RATE
TARIFF NO. 4-A and MINIMUM RATE TARIFF NO. 11-A

"Rates in this tariff include the supplying of motor vehicle equipment to transport the property; equipment necessary to secure the property to the motor vehicle equipment; the use of blankets, tarpaulins or other cover to protect the property in transit; and the use of dollies, hand trucks, or other equipment (other than power equipment) necessary to load and unload the motor vehicle equipment."

RECOMMENDED RULE FOR INCLUSION IN MINIMUM RATE
TARIFFS NOS. 6 and 13

"Rates include the supplying of carrier's equipment to transport the property." (Addition to Item No. 20 of MRT 6 and Item No. 50 of MRT 13.)

RECOMMENDED RULE FOR INCLUSION IN MINIMUM RATE
TARIFF NO. 3-A

"Rates in this tariff include the supplying of carrier's equipment to transport the property; the use of tail-gate ramps or other hand equipment necessary to facilitate the loading and unloading of the property; the service of the driver only for loading into and unloading from the carrier's equipment; and the furnishing of bedding material incidental to the transportation of livestock." (Amended Item No. 100 Series.)

RECOMMENDED RULE FOR INCLUSION IN MINIMUM RATE
TARIFF NO. 7

"Rates in this tariff include the supplying of dump truck equipment to transport the property; the services of the driver only for operating such dump truck equipment; and tarpaulins or other covering necessary to protect the property while in transit."