MS/JR

ORIGINAL

Decision No. 78026

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 highway carriers, relating to the transportation of property in Los Angeles and Orange Counties (transportation for which rates are provided in Minimum Rate Tariff No. 5).	Case No. 5435 Petition for Modification No. 144 (Filed March 5, 1970)
In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all highway carriers, relating to the transportation of property within San Diego County (transportation for which rates are provided in Minimum Rate Tariff No. 9-B).	Case No. 5439 Petition for Modification No. 113
In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all highway carriers, relating to the transportation of property in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, Santa Clara, Santa Cruz, San Benito, San Mateo, Solano, and Sonoma.	Case No. 5441 Petition for Modification No. 188

R. W. Smith, H. F. Kollmyer and A. D. Poe, for California Trucking Association, petitioner.
Paul V. Miller and Harold Sumerfield, for Bethlehem Steel Corporation; John T. Reed, for California Manufacturers Association; Philip K. Davies, for State of California, Department of General Services; James S. Blaine and James R. Steele, for Leslie Salt Company; Allen I. Taylor, for Kaiser Steel Corporation; and John J. Wynne, by Ronald M. Zaller, for Industrial Traffic Association of San Francisco; protestants.
Elliott Eyring and A. J. Konicki, for Pacific Motor Trucking, respondent.
Don B. Shields, for Highway Carriers Association; Russell Bevans, for Draymen's Association of San Francisco, Inc.; Milton A. Walker, for Fibreboard Corporation; Ronald M. Zaller, for Continental Can Company, Inc.; and Raymond Mosser, for J. C. Penney Company; interested parties.
T. H. Peceimer, for the Commission staff.

O P I N I O N

In these proceedings, California Trucking Association (CTA) seeks amendment of the minimum rate tariffs applicable to local drayage in San Francisco, the East Bay area, Los Angeles and San Diego, to prohibit combinations of alternatively applied common carrier rail rates with the hourly minimum rates in said drayage tariffs.[1/]

Public hearing was held before Examiner Mallory in San Francisco on April 13 and 14, and May 1, 1970. The matters were submitted upon the receipt of concurrent briefs, which have been filed. Briefs in support of the relief sought were filed by CTA and by the Highway Carriers Association (HCA). A brief in opposition to the relief sought was filed by Bethlehem Steel Corporation (Bethlehem), in which the California Manufacturers Association (CMA) joined.

Evidence was presented on behalf of: CTA, by the Director of its Division of Transport Economics; protestant Bethlehem, by its District Traffic Manager for the Pacific Coast, and by the vice president of Doudell Trucking Company; protestant Department of General Services (General Services), by a transportation analyst employed by the Traffic Manager of that department; protestant Kaiser Steel Corporation (Kaiser), by its General Traffic Manager, Rates; Fibreboard Corporation, by its Manager of Transportation Research; protestant CMA, by its Transportation Manager; and for HCA, by its manager. The Commission staff presented no evidence nor stated any position with respect to the issues raised herein.

1/ Minimum Rate Tariffs Nos. 19, 1-B, 5 and 9, respectively.

Fabricated Steel to PG&E Building

The record shows, and the briefs filed herein acknowledge, that these petitions were precipitated by the transportation rates assessed for the movement of fabricated steel from Bethlehem's mills at Pinole Point (Richmond) and Torrance to the site of the erection of steelwork for the Pacific Gas and Electric (PG&E) building in San Francisco. The record discloses the following facts concerning this movement. Transportation service was performed by Doudell Trucking Company (Doudell) with trailers owned by Doudell and with tractors furnished by subhaulers. Doudell's witness estimated 1,000 to 1,200 loads were transported; the greatest portion of which was hauled from Richmond. The rates assessed were based on the alternatively applied rail carload rates from origin to a yard at Channel and Army Streets in San Francisco leased by Doudell and having facilities to unload rail cars. According to Doudell's witness the loads were moved from the yard to destination under hourly rates. Doudell's witness testified that some loads were stored on trailers in the yard, for which a storage charge was made; some trailer loads paused at the yard enroute to final destination; and a few trailer loads were unloaded at the yard and reloaded for movement to final destination.[2/] According to Doudell's witness portal-to-portal time for the round trip from the yard and return thereto was used as the basis for the assessment of the hourly rates. The witness indicated that the minimum time for the round trip was less than one hour and the maximum time was in excess of three hours, the average time being approximately 2-1/2 hours. According to this witness and the witness for

2/ The witness was vague as to: whether Doudell had an exclusive lease for property used as a yard; the level of rail rates assessed; the means of loading and reloading steel at the yard; the level of storage charges assessed at the yard; and whether free time was involved in connection with storage charges.

Bethlehem, the arrangement so described had been discussed with representatives of the Commission's Transportation Division prior to commencement of the service.

In connection with movements of steel described above, the governing tariff is Minimum Rate Tariff No. 2 (MRT 2). Item No. 210, entitled, "Alternative Application of Combinations With Common Carrier Rates", contains the provisions under which a rail rate from Richmond or Torrance to San Francisco may be combined with a highway carrier minimum rate to develop a through rate from an on-rail origin point to final destination at an off-rail point in San Francisco. Item No. 210 provides that combinations of a rail common carrier rate and a minimum rate may be constructed as follows: where the point of origin is located at railhead and the point of destination is located beyond railhead or an established depot, and the destination is in the same incorporated city as the team track or depot, add to the common carrier rate either (a) the rates provided in MRT 2 for 3 miles or less, or (b) the rates in Minimum Rate Tariff 19 (MRT 19) for transportation within San Francisco, whichever is less.[3/] The freight charges on the steel shipments to the PG&E building in San Francisco were constructed by using a rail rate from an on-rail point of origin to the "established depot" of the highway carrier, in combination with the hourly rate provided in MRT 19 from said "depot" to destination. Said hourly rates require the prior written agreement of the carrier and shipper

3/ "Railhead" means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from, rail cars or vessels. It also includes truck loading facilities of plants or industries located at such rail or vessel loading or unloading point.
"Established Depot" means a freight terminal owned or leased and maintained by a carrier for the receipt and delivery of shipments.

for their use, apply only for the transportation of property by one carrier for one shipper, apply for the exclusive use of the equipment furnished, and include the services of the driver only. Time for hourly rates is computed from the time the vehicle leaves the carrier's place of business until said vehicle arrives back at the carrier's place of business. The minimum charge is for one hour. Neither MRT 2 nor MRT 19 provides specific charges for the service of storage-in-transit or delays to equipment enroute to final destination.

In the circumstance where the shipments physically moved into Doudell's "established depot", and then were moved directly to the building site, no storage was involved. In the majority of instances the inbound shipments moved to the carrier's established depot and were stored for periods of at least one day before being delivered to the building site, and storage charges were assessed. The record does not show whether or not separate freight bills were issued for the inbound movements to, and outbound movements from, the storage yard.

In the first example, where the shipments moved through the depot but were not stopped there, it appears, but the record does not conclusively show, that the same tractor-and-trailer unit was used inbound and outbound from the depot. On the other hand, the record shows that different tractors were used for the inbound and outbound movement when the steel was stored at the depot. In these circumstances, hourly rates would be calculated from the time the vehicle left the depot (the carrier's place of business) until the time it returned thereto.

Petitioner's Evidence

CTA's witness testified that the basic relief petitioner seeks herein is a finding by the Commission that hourly rates may not be used in combination with rates developed under alternative application of common carrier rates provisions of the Commission's minimum rate tariffs. Said alternative provisions are set forth in each of the minimum rate tariffs issued by the Commission. Said provisions stem from Section 3663 of the Public Utilities Code. 4/

The witness for CTA pointed out in his testimony that ordinarily shipments moving under through rates based on a combination of rail and highway rates are transported directly from point of origin to point of destination, and the highway carrier does not maintain a "depot" in the destination city. In those circumstances the witness asserted that it would be impossible to calculate the hourly rate under MRT 19 (and MRT 1-B) because the hourly rate applies from the time the vehicle leaves the carrier's place of business, and carriers which do not have a place of business within the confines of MRT 19 (or MRT 1-B) do not have a physical point from which to make the time calculation. In the event a carrier does maintain a place of business within the confines of the tariff, unless the shipment is taken to such point enroute to final destination, there is no physical basis for making the time calculation. The witness stated that to require a carrier to divert a shipment

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4/ Section 3663 reads as follows:

"In the event the commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points. (Part of former Sec. 10.)"

through its depot in order to make such calculation is to require a circuitous movement, which is costly to the carrier and would be unnecessary if other types of rates are applied.

The CTA witness pointed out that Minimum Rate Tariff No. 9-B (MRT 9-B) provides that hourly rates may not be combined with common carrier rates for transportation within the San Diego Drayage Area, nor with common carrier rates applicable to transportation from or to said area. The witness stated that the essence of CTA's proposal already is incorporated in MRT 9-B.

The CTA witness also pointed out that the hourly rates in Minimum Rate Tariff No. 5 (MRT 5) for movements within the Los Angeles Drayage Area apply differently than the rates in MRT 19 and MRT 1-B for service in the San Francisco and East Bay Drayage Areas. MRT 5 provides that time shall be computed based on the total of the loading, unloading and driving time from the arrival of carrier's equipment at point of origin, to the time unloading is completed at point of destination. The witness asserted that, because there is no "point of origin" as such and no loading is performed within the confines of the Los Angeles Drayage Area, it is impossible to calculate hourly charges on shipments moving from a point outside the

drayage area to a point within it under a combination rail-truck rate.[5/] The record indicates that no party to the proceeding had knowledge of any person actually constructing through rates using a combination of rail rates and hourly rates applicable in the Los Angeles Drayage Area. Parties opposing CTA's proposal argue that the provision of MRT 5 would present no problem as loading time would be zero. Such parties fail to consider, however, that time must be calculated from the "arrival of carrier's equipment at point of origin" and, technically speaking, there is no such point in the drayage area.

The CTA proposal would prohibit the application of hourly rates to any shipment when the goods had moved under alternatively applied rail rates inbound to the point from which the hourly rates

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5/ Informal Ruling No. 165 reads as follows:

"Question has been asked whether a carrier may combine rail rates with minimum hourly rates in Minimum Rate Tariff No. 5, under the alternative application provisions of various minimum rate tariffs.

"Item No. 420 (Rates in Cents per Hour) in Minimum Rate Tariff No. 5 requires use of the actual elapsed time for loading, driving and unloading, computed from the arrival of carrier's equipment at point of origin to the time unloading is completed at point of destination.

"In the absence of actual loading, the time computation requirements in Item No. 420 cannot be met. Therefore, rates may not be applied."

The ruling set forth above is an informal ruling of the Transportation Division of the Public Utilities Commission of the State of California made in response to questions propounded by the public, indicating what is deemed by the Division to be the correct application and interpretation of the particular tariffs involved. This ruling is tentative and provisional and is made in the absence of formal decisions upon the subject by the Commission.

are to be applied, regardless of the remoteness in time between the inbound and outbound movements and regardless of whether the inbound freight moving at alternative rates had been commingled with other freight. The record discloses that some limitations upon this proposal are necessary if it is to be adopted, because of the practical impossibility of determining type of rate applied to the inbound shipment, once the shipment has come to rest and/or is commingled with other freight. CTA indicated that its proposal is not intended to apply to situations where the goods are actually moved by rail, such as trailer-on-flatcar shipments moved from origin to ramp or from ramp to destination by highway permit carrier. Therefore, no further consideration herein is necessary as to evidence adduced opposing elimination of the application of hourly rates to origin-to-ramp and ramp-to-destination movements of trailer-on-flatcar rail shipments.

Protestants' Evidence

Bethlehem's witness testified concerning the specific movement of steel to the PG&E building site in San Francisco, and to the company's asserted need for hourly rates to meet the unusual requirements concerning placement of steel at said site. Bethlehem's closing brief argues the need for hourly rates for movements of steel to building sites and, in summary, urges that the use of hourly charges in connection with delivery of fabricated structural steel at construction sites is a service reasonably required to meet the requirements of erectors and properly to measure reasonable charges for carriers; that the availability of such a service contributes to the economy of the construction of bridges, buildings and other structures; and that some means should be provided to permit common carriers by motor vehicle to provide service under these conditions.

Bethlehem further urges that CTA has advanced no firm ground which would justify prohibition of the use of hourly charges as an addition to the common carrier alternative rates; the proposed rules are uncertain in terminology and application and would likely result in undue discrimination; thus, the CTA proposals should not be approved.

The witness for Kaiser pointed out certain difficulties which may be encountered if CTA's proposal is adopted. The witness also asserted that the proposed rules would violate Article XII, Section 21 of the State Constitution, which prohibits the assessment of a rate for a through movement which exceeds the aggregate of the intermediate rates. The witness urged that to prevent highway carriers from meeting common carrier rail rates by restricting use of hourly rates in combination with said rail rates would be discriminatory and contrary to Section 3663 of the Public Utilities Code, inasmuch as it is now possible to move rail shipments into drayage areas, and to use highway permit carriers to transport the rail shipments to final destination at hourly rates.

The witness for Fibreboard also urged denial of CTA's requests. It is Fibreboard's position that such proposal is in direct conflict with Section 21, Article XII of the Constitution dealing with the aggregate of intermediate rates. This witness was most concerned with movements terminating within the Los Angeles Drayage Area. The witness testified that he knew of no actual movements wherein hourly rates in MRT 5 had been combined with alternatively applied rail rates. The witness declared, however, that there is a potential for such movements and that his company desired that provisions be retained under which such combinations could be made.

Other protestants testified in opposition to restrictions upon the use of hourly rates in the drayage areas to move loaded or empty trailers to and from railroad trailer-on-flatcar ramps within the drayage areas for prior or subsequent movement by rail.

Discussion

There is only one actual example before us in this proceeding in which hourly drayage rates have been combined with alternatively applied rail rates to develop a rate for a through movement. The circumstances concerning this movement are not fully explained on the record; the record does not show, for example, whether separate freight bills were issued for the inbound and outbound movements of steel that came to rest at the carrier's yard in San Francisco. The carrier involved is a highway common carrier, which must observe its filed tariffs. Its tariffs provide for the assessment of alternatively applied rail rates in combination with hourly rates on the same levels as those set forth in MRT 19 and MRT 1-B for shipments terminating in the geographic areas covered by said drayage tariffs.[6/] The carrier's tariffs, however, do not provide rules or charges for storage-in-transit. It is not possible, based on the limited information in this record, to determine whether the carrier had correctly applied its tariffs on movements of fabricated steel from Pinole Point and Torrance to San Francisco, nor is such determination necessary to resolve the issues in this proceeding.[7/]

6/ The carrier participates in Pacific Coast Tariff Bureau Tariffs Nos. 14, 16 and 19, Cal. P.U.C. Nos. 16, 19 and 44, respectively, of C. R. Nickerson, Agent.

7/ While we conclude that the record herein is insufficient to determine whether Doudell misapplied its tariff; the action of furnishing storage-in-transit without specific tariff provisions to cover such holding-out would seem to present a prima facie violation of Sections 486 and 487 of the Code. (See Inv. Steel Transport, Inc. and Kaiser Steel Corp., Decision No. 76280 of October 15, 1969 in Case No. 8869.)

We shall be concerned hereinafter only with the provisions of MRT 19 and MRT 1-B, inasmuch as we conclude that no revisions at this time are necessary in the provisions of MRT 5. MRT 9-B now contains provisions prohibiting the combination of alternatively applied rail rates with hourly rates named in that tariff to develop through rates on a continuous movement. Inasmuch as petitioner has indicated that such tariff language does not clearly prohibit all combinations of hourly and rail rates, the tariff wording hereinafter adopted for MRT 19 amd MRT 1-B will be substituted for the present MRT 9-B tariff provisions.[8/]

It is clear, as stated in Informal Ruling No. 165 of our Transportation Division, that in the absence of actual loading, it is impossible to apply the hourly rates in MRT 5; thus, said hourly rates may not be used in combination with alternatively applied rail rates to develop rates for a through movement from or to a point outside the Los Angeles Drayage Area. Moreover, in the proceeding in Case No. 6322 involving the establishment of a new minimum rate tariff to govern movements in an expanded Los Angeles Metropolitan Area, there are four proposals dealing with the application of hourly rates under circumstances in issue herein.[9/] That proceeding is

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8/ The title page of Section No. 3 of MRT 9-B, entitled, "EQUIPMENT RATES, RULES AND REGULATIONS", contains the following:
"Rates on this section may not be combined with common carrier rates for transportation within the San Diego Drayage Area, nor with common carrier rates applicable for transportation from or to said area."

9/ Said proceeding is Case No. 6322, et al., Order Setting Hearing in Decision No. 74991. Proposals are set forth in Exhibits 87 and 133 (Commission Staff), Exhibit 118 (California Trucking Association), Exhibit 102 (California Manufacturers Association), and Exhibit 110 (Highway Carriers Association). The Commission staff, CTA, and ECA propose that hourly rates not apply in combination with alternatively applied rail rates. CMA proposes the contrary. The proposals also contain methods of time calculation different from the present MRT 5 provisions.

coming to a conclusion and a new tariff to supersede MRT 5 will result therefrom. The more specific proposals and more extensive evidence in the Case No. 6322 proceeding should be the basis for the determination of the issues regarding the application of the hourly rates in that geographic area.

The evidence indicates that the provisions of MRT 19 and MRT 1-B dealing with computation of time for hourly rates cannot be calculated when a carrier moves a shipment from (or to) a point outside the drayage area to (or from) a point inside said area. The exception is in circumstance where the carrier maintains a place of business in the drayage area and said carrier physically moves the goods through said place of business enroute to (from) the point of destination (origin) within the drayage area. In the latter circumstance an otherwise unnecessary action of the carrier is required, i.e., an out-of-line movement of equipment through the carrier's depot. It appears that clarification of MRT 19 and MRT 1-B should be made to indicate that hourly rates in said tariffs may not be combined with alternatively applied common carrier rates to develop through movements. This action would not prohibit, as requested by petitioner, the use of alternatively applied rail rates and hourly rates on the same freight when separate shipments are involved, when the freight actually comes to rest at a point within the drayage area, and the freight is physically moved in such a manner that hourly-rate time factors can be applied. In the latter circumstances, the use of hourly rates for the movement of fabricated steel to construction sites within the two drayage areas would be preserved, as urged by Bethlehem.

Protestants argue that under Article XII, Section 21 of the State Constitution, which provides that a through rate shall not exceed the aggregate of intermediate rates, the Commission is prohibited from restricting the combination of hourly rates with alternatively applied common carrier rates. We conclude differently. Protestants do not specify in their arguments what through rate would be exceeded. The minimum rate tariffs now provide and would continue to provide for the combination of alternatively applied rail rates with the local drayage rates or MRT 2 mileage rates in cents per 100 pounds, if such combination is less than the through minimum rate in said tariffs. Apparently protestants are urging that when the combination of cents-per-100 pound rates and alternative rail rates exceeds the combination of hourly rates and alternative rail rates, the latter is the through rate under the aggregate-of-intermediate-rates provisions of Article XII, Section 21. Neither of the rates in the example is a through rate within the meaning of the constitutional provision; therefore, the argument advanced by protestants has no merit. Moreover, the California Supreme Court has stated that the aggregate of intermediate rates provisions of Section 21 does not apply where two different services are involved, with rates established for each kind of service by different and reasonable methods. [Pasadena v. Railroad Commission, 192 Cal. 61, 66 (1923), and Fibreboard Paper Products Corp. v. Southern Pacific Co., 62 Cal. PUC 766, 768 (1964).] It is clear that hourly rates are provided for different services than are class rates, otherwise there would be no necessity for hourly rates.

Also, there is no merit in the argument that Section 3663 requires that hourly rates not be restricted in application with

alternatively applied rail rates. Section 3663 of the Highway Carriers' Act does not require the alternative application of combinations of common carrier rates with minimum rates for highway permit carriers; the statute requires only that the established minimum rates for transportation services by highway permit carriers "shall not exceed the current rates of common carriers by land... for the transportation of the same kind of property between the same points."

Findings and Conclusions

The Commission finds:

1. Reasonable provisions do not result from the use of hourly rates in MRT 19 and MRT 1-B in connection with alternatively applied rail common carrier rates to develop rates for a through movement from or to points outside the geographical scope of said tariffs because (a) time factors cannot be determined when the freight is not moved through a depot located in the drayage area of the carrier performing the transportation service, or (b) if the freight is physically moved through such depot an otherwise unnecessary act is required to be performed by said carrier.

2. It will result in just, reasonable, and non-discriminatory minimum rates to restrict the application of hourly rates in MRT 19 and MRT 1-B to provide that said hourly rates may not be used in connection with alternatively applied common carrier rates to develop rates for a through movement originating or destined to a point located outside the geographical limits of said tariffs.

3. MRT 9-B now contains provisions substantially the same as those found reasonable in the preceding finding for application in MRT 19 and MRT 1-B.

4. The method of calculating time factors for hourly rates in MRT 5 does not permit the use of said hourly rates in combination with alternatively applied common carrier rates to develop rates for a through movement of freight from or to a point outside the geographical limits of said tariff.

5. It has not been shown that reasonable tariff provisions will result from the proposal to prohibit the application of hourly drayage rates to freight which has been moved under separate billing into the drayage area at alternatively applied common carrier rates and which freight subsequently has come to rest within the drayage area and/or has been commingled with other freight.

The Commission concludes:

1. MRT 19 and MRT 1-B should be amended as indicated in finding 2.

2. MRT 9-B should be amended to provide tariff language similar to that adopted for MRT 19 and MRT 1-B.

3. Non-application of hourly drayage rates in combination with alternatively applied rail common carrier rates is not in violation of Article XII, Section 21 of the State Constitution.

In order to avoid duplication of tariff distribution, MRT 19 will be amended by the order which follows and MRT 1-B and MRT 9-B will be amended by separate orders.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 19 (Appendix A to Decision No. 41363, as amended) is further amended by incorporating therein, to become effective January 24, 1971, Third Revised Page 44 attached hereto and by this reference is 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. 41363, as amended, or to Decision No. 31606, as amended, be and they are hereby directed to establish in their tariffs the tariff provisions necessary to conform with the further amendment herein of that decision.

3. Tariff publications required to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and 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 January 24, 1971.

4. In all other respects said Decision No. 41363, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 8th day of DECEMBER, 1970.

Chairman

Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

SECTION 5

HOURLY RATES

The rates and charges in this Section shall not apply for services for which rates and charges are provided in Items 220, 221 and 222 of this tariff.

*Rates in this section shall not be combined with alternatively applied common carrier rates to develop through rates for transportation between points within this drayage area, nor between points within this drayage area and points outside this drayage area.

* Addition, Decision No. 78026

EFFECTIVE