

ORIGINAL

Decision No. 78596

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).)

And Related Matters.)

Case No. 5432.
Petition for Modification
No. 610
(Filed November 17, 1970)

Petitions for Modification
Nos. 614, 615 and 616
(Filed December 15, 1970)

Cases Nos. 5435, 5441
and 7858
Petitions for Modification
Nos. 165, 211 and 88,
respectively
(Filed November 17, 1970)

(Appearances are shown in Decision No. 78381) ✓

O P I N I O N

Interim Decision No. 78096, dated December 15, 1970, in these proceedings temporarily extended to April 30, 1971, several tariff items scheduled to expire December 31, 1970, upon petition of the California Manufacturers Association (CMA) and the Traffic Managers Conference of California (TMC).

Public hearings on the several petitions herein were held on a common record before Examiner Mallory at San Francisco on January 28 and 29, 1971. The matters were submitted subject to the filing of concurrent briefs, which have been received.

Decision No. 78381 of March 3, 1971, in these proceedings extended the expiration date of Item 292 of Minimum Rate Tariff 2 (Volume Incentive Service) to December 31, 1971, and continued the

expiration date of Items 330 and 330.5 of MRT 2 (Carriers, Used Packages, Second Hand) and comparable items in other minimum rate tariffs to September 1, 1971. The expiration date of Item 45 of MRT 2 (Empty Pallets Returning) previously was extended to December 31, 1971, by Decision No. 78069, dated December 8, 1970, which decision also eliminated the expiration date in Item 291 of MRT 2 (Empty Package, Carriers, Second Hand).

The minimum rate tariff items included in the petitions herein which were not the subject of prior decisions, and thus remain for consideration, are the following:

Minimum Rate Tariff 2

Item 149 - Small Shipment Service

Item 300 - Packing Requirements

Exception Ratings Tariff 1

Item 820 - Returned Shipments

Background

For the past several years proceedings have been before the Commission to effect an orderly transition to the National Motor Freight Classification from the rail classification. As a result certain rail-oriented rules and ratings in the Commission's minimum rate tariffs have not yet been disposed of and are published in these tariffs with an expiration date.

Numerous classification exception items and rules initially were subject to expiration date upon the adoption of National Motor Freight Classification A-10 to replace National Motor Freight A-10 (Cal) by Decision No. 74310, dated July 28, 1968 (68 Cal. P.U.C. 445), including Item 300 of MRT 2 and Item 820 of ERT 1. Said decision states as follows at page 457:

"The established exceptions are founded on the premise that the transportation characteristics or conditions in California intrastate traffic for the various articles involved differ materially from those experienced elsewhere and observed as the norm in the governing classification, or, alternatively, are substantially similar to the transportation characteristics or conditions of other articles currently enjoying such ratings (citation). Therefore, it follows that when, as in the case now before us, a transition from one governing classification to another is contemplated, the exceptions to the original classification are automatically in jeopardy, insofar as their future retention as just and reasonable exceptions to the new governing classification is concerned."

Said decision designated Item 300 of MRT 2 and Item 820 of ERT 1 as temporary exceptions, and found that the evidence in that proceeding did not demonstrate whether said temporary exceptions would be appropriate or justified as permanent provisions. The decision contemplated that the temporary exceptions not be carried forward beyond their scheduled expiration date unless fully justified based on additional evidence to be presented to the Commission.

Item 149 - Small Shipment Service - has a different history. It originally was proposed by the California Trucking Association (CTA) in the proceeding leading to Decision No. 66453, dated December 10, 1963 (62 Cal. P.U.C. 14). Said provisions initially were scheduled to expire June 30, 1965. The charges have been extended (and increased) on a year-to-year basis at the request of CTA. CTA failed to seek an extension of the scheduled expiration date of December 31, 1970, resulting in the petitions of CMA and TMC.

Petitioners seek further extension of the expiration dates of the three items. CTA opposes the further extension of said items and urges that the items be allowed to expire. Upon

expiration of Item 149 - Small Shipment Service - the higher minimum charges per shipment set forth in Item 150 of MRT 2 will apply.^{1/}

Item 300 - Packing Requirements - provides that (1) the packing requirements of the Classification do not apply and commodities may be accepted for transportation in any container or shipping form which will render the transportation of the freight reasonably safe and practicable, and (2) if two or more ratings are provided in the Classification for the same article, subject to different packing requirements, the lowest of such ratings is applicable.^{2/} In the event Item 300 is allowed to expire (1) the

1/ Item 149 - Small Shipment Service provides, in part, as follows:

Rates provided in this item shall apply only when the shipping document is annotated by shipper with the words: "Small Shipment Service Requested." By such request, the shipper agrees to the requirements set forth in this item as prerequisite to application of the charges provided herein. Rates in this item will apply only to prepaid shipments, released to a value of 50 cents per pound or less per article, weighing not over 500 pounds and moving for distances not in excess of 400 constructive miles or under the provisions of Item 510 (Los Angeles Metropolitan Area-San Francisco Metropolitan Area class rates).

Rates in this item will not apply to:

1. Shipments including any commodity rated above Class 100; nor
2. Shipments weighing less than 100 pounds which contain more than five pieces, or any shipment which contains more than five pieces per 100 pounds, or fraction thereof, of total shipment weight; nor
3. Shipments which require temperature control service, C.O.D. or order notify service, or which have origin or destination on steamship docks or oil-well sites; nor
4. Shipments picked up or delivered at private residences of retail customers; nor
5. Shipments containing personal effects, baggage or used household goods; nor
6. Shipments moving on government bill of lading.

Rates provided in this item do not alternate with other rates and charges in this tariff, and rates provided in this item may not be used in combination with any other rates.

2/ The provisions of Item 300 are not applicable to commodities included under the heading "Furniture Group" in the Classification.

packing provisions of the Classification will be applicable, (2) the lowest rating provided for any package or shipping form will no longer be applicable unless the article is in such package or shipping form, and (3) the penalty provisions of the Classification for failure to conform to the packing requirements therein will become applicable.^{3/}

Item 820 of ERT 1 provides that articles refused by the consignee and returned to the shipper may be transported at one-half the outbound rate, subject to certain conditions. If this item is allowed to expire, the full rate would apply to returned shipments.^{4/}

Small Shipment Service

Evidence in support of the retention of the Small Shipment Service provisions was presented by witnesses appearing for Van Waters & Rogers, Pacific Gas and Electric Company (PG&E), and Astor Truck-Rite, Inc. A witness for CTA testified in opposition to the

^{3/} Rule 423 - Classification of Loose Articles (200 percent penalty) and Item 687 - Packing, Or Packaging - Noncompliance with (20% penalty LTL and 10% penalty TL).

^{4/} Item 820 - reads, in part, as follows:

Returned Shipments, viz.:

Articles refused by consignee may be returned to original shipper and to original point of shipment at one-half of the outbound rate (applicable to quantity returned) current at time of return movement, subject to established minimum rate and charge, only upon the following conditions:

- (a) When actual delivery to consignee has been accomplished, articles for return movement properly identified must be presented to carrier within ten (10) days from date of delivery of the original shipments. (This paragraph has no application on shipments which do not leave possession of carrier at original billed destination.)
- (b) All charges must be prepaid or guaranteed. Shipping order must show reference to original outbound shipment.
- (c) Goods must be returned over the same route and line as the original outbound movement.
- (d) (Omitted)

retention of Item 149. The briefs of CMA and the Commission staff urge that Item 149 be retained. In its brief, CTA argues that the item should be eliminated from the tariff.

The evidence in support of retaining the Small Shipment Service rule and charges is as follows: A transportation analyst employed by PG&E made an analysis of the number of highway common carriers participating in the Small Shipment Service items of the three principal motor common carrier tariffs, as compared with the total number of carriers participating in said tariffs. His analysis showed that in Western Motor Tariff Bureau Tariff No. 111, 23 percent of the carriers participated in the Small Shipment Service item in that tariff; in Pacific Motor Tariff Bureau Tariff No. 16, 28 percent of the carriers participated in a similar item; and in Pacific Coast Tariff Bureau Tariff No. 16, 80 percent of the carriers participated in a like item. The witness concluded from this analysis that many highway common carriers are willing to transport property at the Small Shipment Service rates. The witness also testified that PG&E requests Small Shipment Service on a large quantity of its shipments, and that cancellation of the Small Shipment Service provisions would increase PG&E's freight charges by approximately \$15,000 annually.

The Area Traffic Manager of Van Waters & Rogers, a chemical manufacturing and sales company, testified that said company made over 4,800 shipments in 1970 which were subject to the Small Shipment Service provisions; 47 percent of said shipments were from its Brisbane plant and 53 percent from its Los Angeles plant; and that if the Small Shipment Service provisions are deleted, the company's freight charges will be increased by more than \$6,100 annually.

The owner of Astor Truck-Rite Inc., a highway common carrier serving the Metropolitan Los Angeles Area, testified that in the period between December 28, 1970 and January 26, 1971, said carrier issued 5,119 billings of which 1,505 billings or 27.4 percent, and 16.7 percent of total revenues, were from Small Shipment Service. The witness indicated that he believed the charges for Small Shipment Service are compensatory and that said tariff provisions should be retained.

CTA's Director of its Division of Transportation Economics presented an exhibit designed to show that the current costs of handling small shipments exceed the charges provided in Item 149 of MRT 2. This witness testified that the provisions of Item 149 were initially proposed by CTA at the request of the Northern California Shippers League, and said provisions were developed to encourage shippers to do things that would reduce the cost of handling small shipments. The witness averred that the requirements of the item have failed to produce any overall reduction in carriers' costs of handling small shipments. The witness stated that, for the foregoing reasons, the majority of highway common carriers engaged in handling less-truckload shipments have cancelled Small Shipment Service tariff provisions.

The testimony with respect to Small Shipment Service is conflicting. A key consideration herein is whether sufficient cost savings result from the restrictions in Item 149 to offset the reduction in revenues resulting from the lower rates in that item. The cost evidence presented by CTA is not specifically addressed to this question, as said costs are bottomed on performance data accumulated prior to the advent of the Small Shipment Service item; thus such costs cover all shipments in the weight group involved and are not

restricted to shipments handled under the service conditions imposed by Item 149. CTA's witness testified that said service conditions do not redound in cost savings to carriers, inasmuch as most of the conditions in the item are met by shippers in connection with their usual methods of tendering small shipments to highway carriers.

It is generally recognized that the preponderance of less-truckload traffic is handled by highway common carriers (as opposed to highway permit carriers). The record shows that Small Shipment Service rates are not attractive to highway common carriers, as indicated by the number of carriers which do not participate in tariff items containing said rates. Also two of the three highway common carrier tariffs used as examples herein contain higher charges for shipments transported 300 miles and over than the minimum rates in Item 149 of MRT 2.

The record does not show that the Small Shipment Service provisions in Item 149 of MRT 2 have provided the cost savings contemplated at the time the item was initially proposed. The rates provided in the item are below the full average costs applicable to the handling of all shipments in the weight groups involved. Decision No. 66453, supra, indicated that it was the Commission's intention to establish cost-oriented rates; that is, all rates, to the extent possible, should cover the related full costs of providing service. It was not the Commission's intent that any large amount of traffic would be carried below such costs, thus relying upon other traffic to make carriers whole. Therefore, the Small Shipment Service provisions should be allowed to expire.

Packing Requirements

Evidence supporting retention of the provisions of Item 300 of MRT 2, the so-called Liberalized Packing Rule, was presented

by a traffic consultant testifying on behalf of CMA, and by the traffic manager of Foremost Foods Company. The witnesses stated that the strict packing rules of the Classification are not necessary for the safe transportation of the many commodities covered by the ratings in that publication. It was their position that shippers currently use packaging sufficiently strong to withstand ordinary handling in connection with truck shipments, and no need appears for shippers to conform strictly to the packaging in the Classification. Furthermore, the witness for Foremost stated that continuation of the rule is necessary because certain dairy foods are shipped in containers not provided for in the Classification's packaging requirements. These witnesses also testified that the present system works well and there is no apparent need to change it.

CTA's witness testified in opposition to the retention of the Liberalized Packing Rule. The witness stated that the rule was initially introduced into the Commission's minimum rate tariffs because the packing requirements in the rail-oriented Classification originally adopted by the Commission were too stringent for truck shipments. The Commission subsequently adopted a truck-oriented Classification to govern its class-rate tariffs. The latter Classification contains packing requirements specifically designed for truck transportation. Said Classification applies on a nationwide basis, and shippers moving truck traffic intrastate in most states and all interstate shippers must comply with the packing requirements of the current Classification. The great majority of shippers located in California ship both interstate and intrastate; such shippers would not find it practical to pack their goods differently for intrastate shipments than for interstate shipments;

therefore, it can be inferred that most California shippers now conform to Classification packing requirements. The witness also indicated that packages not conforming to the specific packing requirements of the Classification may be shipped subject to the penalty provisions of that tariff.

This Commission has iterated in its decisions that provisions of the National Classification should govern California intrastate truck shipments of general commodities unless it can be shown that transportation conditions within California are materially different than those encountered elsewhere. (Decision No. 74310, 68 Cal. P.U.C. 445, 457 and Decision No. 65639, 61 Cal. P.U.C. 162.) It has not been shown on this record that current transportation conditions within California with respect to the need for, and the ability to comply with, Classification packing requirements are materially different than those encountered nationally; therefore, there is no basis for continuation of exceptions to the requirements of the current Classification as set forth in the Liberalized Packing Rule in Item 300 of MRT 2.^{5/}

Evidence was presented by witnesses appearing for IBM and Xerox with respect to transportation of uncrated business machines by carriers specializing in the handling of this traffic. The testimony indicates that a special situation exists in connection with such transportation. Subsequent to the submission of the proceeding herein petitions were filed by IBM and Xerox seeking the establishment of an exception to the Classification

5/ The Liberalized Packing Rule provisions in other minimum rate tariffs were not sought to be extended by the petitions herein. Thus, such provisions in MRT 1-B, MRT 19, MRT 5 and MRT 9-B expired December 31, 1970.

packing provisions with respect to such transportation.^{6/} Said petitions will be decided in a separate opinion and order.

Returned Shipments

Testimony with respect to retention of Item 820 of ERT 1 was presented by the aforementioned traffic consultant and by traffic representatives appearing for Fibreboard Corporation and CertainTeed Products Corporation. The witness for Fibreboard proposed that said item be amended by cancelling the portions thereof which permit return of shipments within a ten-day period after tender for delivery, and the substitution of a requirement that the rule would apply only when the shipment has not been unloaded from the carrier's equipment at original billed destination. The witnesses outlined several situations wherein shipments are not accepted at the billed destination and are returned.

CTA opposed the retention of the Returned Shipment rule, as it contends that the half-rate for a return move provides revenues less than the costs of returning the shipment. CTA urged that if the rule is retained it be limited to truckload shipments. The latter proposal was opposed by the shipper witnesses.

The Returned Shipment rule is a carryover from an exception to the rail Classification. The ten-day return period apparently was designed to fit conditions found in rail transportation. A restriction that the shipment not be unloaded if it is to enjoy the half-rate for a return movement more nearly fits conditions

^{6/} Petitions 630, 174, 142, 223, 5 and 94 in Cases Nos. 5432, 5435, 5439, 5441, 6322 and 7858, filed February 22, 1971, by International Business Machines Corporation (IBM); and Petitions Nos. 632, 176, 143, 225, 6 and 95 in Cases Nos. 5432, 5435, 5439, 5441, 6322 and 7858, filed February 26, 1971, by Xerox Corporation (Xerox).

encountered in connection with truck movements. The record shows that there is a continual use of these tariff provisions, and there are certain cost savings to the carrier if the shipment is not removed from the truck at the original destination. It appears that the rule, with the proposed modification discussed above, will be reasonable and should be retained.

Findings

The Commission finds as follows:

1. Item 149 of MRT 2 (Small Shipment Service) provides charges which are less than the minimum charges provided in Item 150 of MRT 2. Small Shipment Service is subject to several conditions and restrictions designed to reduce carrier operating costs. Item 149 was placed in MRT 2 with an expiration date so that further review of the item would be undertaken. Such further review does not show that the conditions set forth in the item result in efficiencies which lower carrier operating costs below the average costs of handling all small shipments in the same weight group. The average costs of record for said weight group exceed the charges in Item 149. It has not been shown that the charges provided in Item 149 will be just, reasonable and nondiscriminatory.

2. Item 300 of MRT 2 (Packing Requirements) was included in Highway Carriers' Tariff No. 2 (predecessor to MRT 2) when said tariff was originally established (the original tariff was effective August 7, 1939). Highway Carriers' Tariff No. 2 initially was governed by the Western Classification and by the Pacific Southcoast Freight Bureau Exception Sheet No. 1 (series), both published by the railroads. Item 300 was included in the minimum rate tariff because the Commission deemed that packaging requirements appropriate to rail transportation were more restrictive than those reasonably

required for truck transportation. The rail-oriented Western Classification has been replaced by the National Motor Freight Classification, and the PSFB Exception Sheet has been replaced by the Commission's Exception Ratings Tariff 1. Decision No. 74310 (supra), which initially adopted the National Motor Freight Classification, placed several tariff exception items in jeopardy by subjecting such items to an expiration date (including Item 300 of MRT 2). Decision No. 74310 found that if said items were to be continued beyond their scheduled expiration date, the provisions of the items must be fully justified. The record in this proceeding contains no justification for continuing Item 300 beyond its scheduled expiration date. The record further indicates that transportation conditions in California (except with respect to business machines) are not materially different than those generally encountered nationally, thus the national packaging provisions should also be applicable in California.

3. A special situation exists with respect to package requirements for certain business machines. Separate petitions have been filed by IBM and Xerox with respect to packing requirements for business machines.

4. Item 820 of ERT 1 (Returned Shipments) was brought into ERT 1 from the PSFB Exception Sheet. The origin of the PSFB Exception Sheet item antedates the initial establishment of minimum rates by this Commission. Item 820 was designed to fit conditions encountered in connection with rail traffic. The modifications proposed herein are designed to fit the provisions of said item to conditions encountered in truck transportation. The record shows that said item has been and will continue to be used by shippers when delivery cannot be effected. It also shows that direct return

of shipments without the necessity of unloading and reloading at original billed destination will provide cost savings to carriers. With the modifications proposed, the provisions of Item 820 of ERT 1 will result in just, reasonable and nondiscriminatory minimum rates and charges; and to the extent that said revised provisions result in increases, such increases are justified.

Conclusions

The Commission concludes that:

1. Item 820 of ERT 1 (Returned Shipments), with the modifications discussed in the preceding opinion, should be permanently established without an expiration date.
2. Items 149 (Small Shipment Service) and 300 (Packing Requirements) of MRT 2 should be allowed to expire.
3. The issues with respect to packing requirements for certain business machines should be decided in Petitions Nos. 630 and 632, et al.
4. To the extent not granted herein or in Decisions Nos. 78096, 78381, 78382 and 78383, the petitions herein should be denied.

O R D E R

IT IS ORDERED that:

1. Exception Ratings Tariff 1 (Appendix A to Decision No. 66195, as amended) is further amended by incorporating therein, to become effective June 5, 1971, Supplement 9 and First Revised Page 22-A, attached hereto and by this reference made a part hereof.
2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 66195, as amended, are hereby directed to establish in their tariffs the

amendments necessary to conform with the further adjustments ordered herein.

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 June 5, 1971; tariff publications which are authorized but not required to be made by common carriers as a result of the order herein may be made effective not earlier than the tenth day after the effective date of this order, and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff pages incorporated in this order.

4. Common carriers, in establishing and maintaining the ratings authorized hereinabove, are hereby authorized to depart from the provisions of Section 460 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the ratings published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects, Decision No. 66195, as amended, shall remain in full force and effect.

6. To the extent not granted by this order or in Decisions Nos. 78096, 78381, 78382 and 78383, the petitions herein are denied.

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

Dated at San Francisco, California, this 20th day of APRIL, 1971.

William Symons Jr. Chairman
James L. Strayer
Commissioners

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

SUPPLEMENT 9

(Cancels Interim Tariff Supplement and Order Extending Expiration Dates,
Effective December 28, 1970)

(Supplements 8 and 9 Contain All Changes)

TO

EXCEPTION RATINGS TARIFF 1

CONTAINING

RATINGS AND RULES

WHICH ARE EXCEPTIONS TO THE

GOVERNING CLASSIFICATION

APPLICABLE TO MINIMUM RATE TARIFFS

MAKING SPECIFIC REFERENCE THERETO

CANCELLATION NOTICE

Second Revised Page 27-X and the tariff pages referred to therein are canceled
and Second Revised Page 27-X should be removed from the active tariff.

Decision No. 78596

ISSUED

Issued by the
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
State Building, Civic Center
San Francisco, California 94102

EXCEPTION RATINGS TARIFF 1

SECTION 2--RATINGS WHICH ARE EXCEPTIONS TO THE GC (Continued)			ITEM
(Numbers within parentheses immediately following commodities shown below refer to such commodities as they are described in the corresponding item numbers of the Governing Classification.)			
ARTICLES	Rating		
	LTL	TL	
Pads, sanitary (148960, Sub 1). Any Quantity----- Minimum Weight 5,000 pounds----- Minimum Weight 15,000 pounds, subject to Note----- NOTE.--Minimum weight applies to each unit of carrier's equipment used in the transportation of a single shipment. A unit of equipment includes any motor truck or other self-propelled highway vehicle, trailer, semi-trailer, or any combination of such highway vehicles operated as a single unit.	150 125	924	755
Returned Shipments, viz.: Articles refused by consignee may be returned to original shipper and to original point of shipment at one-half of the outbound rate (applicable to quantity returned) current at time of return movement, subject to established minimum rate and charge, only upon the following conditions: (a) When no portion of the shipment has been unloaded from carrier's equipment at original billed destination. (b) All charges must be prepaid or guaranteed. Shipping order must show reference to original outbound shipment. (c) Goods must be returned over the same route and line as the original outbound movement. ** **			6820
Change ** Paragraph (d) and Note eliminated) Decision No. 78596			
EFFECTIVE			
Correction	ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA		