

Decision No. 79491

ORIGINAL

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

(Appearances are shown in Appendix A)

O P I N I O N

California Manufacturers Association (CMA) and Local and Short Haul Carriers Conference (Conference) filed separate petitions for rehearing of Decision No. 78596. Said decision, among other things, denied petitions seeking the continuation on a permanent basis of the temporary charges for Small Shipment Service contained in Item 149 of Minimum Rate Tariff 2 (MRT 2) and said item was allowed to expire. Decision No. 78929, dated July 13, 1971, ordered rehearing of Decision No. 78596 for the limited purpose of receiving evidence relative to Minimum Rate Tariff 2, Item 149.

Rehearing, as ordered in Decision No. 78929, was held before Examiner Mallory in San Francisco on August 26 and October 21, and in Los Angeles on September 28, 1971. Commissioner Holmes was present at the October 21, 1971 hearing. The matter was submitted on that date. Witnesses appearing on behalf of CMA, Conference and the Commission staff testified in support of the reinstatement of the

Small Shipment Service item.^{1/} A witness for California Trucking Association (CTA) testified in opposition to the foregoing request.

The record shows that Item 149 was added to MRT 2, effective September 23, 1960, pursuant to Decision No. 60621 in Case No. 5432, Petition No. 178. Said item contained charges for shipments accorded Small Shipment Service weighing not over 250 pounds and moving not over 150 miles. Said item bore no expiration date. The application of the item was substantially broadened, effective January 18, 1964, pursuant to Decision No. 66453 in Case No. 5432, Petition No. 223. (62 Cal. P.U.C. 14.) Said decision expanded the provisions of Item 149 to apply to shipments

1/ Item 149 - Small Shipment Service provided, 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.

weighing not over 500 pounds and transported for distances not exceeding 400 miles. Said item was subjected to an expiration date of one year, which subsequently was extended by periodic orders to April 30, 1971, at which time the item expired.

It is the position of CMA that at the time Item 149 expired many highway carriers were actively soliciting business for transportation under Item 149, and thus such carriers believed that Small Shipment Service rates were compensatory. Ten shipper witnesses testified to the effect that their companies used Small Shipment Service when it was included in MRT 2, and that upon the expiration of said charges, the higher minimum charges in Item No. 150 of MRT 2 resulted in increased freight costs to their companies. Said witnesses also testified that if the charges for Small Shipment Service were reinstated, their companies would again request such service from carriers. Generally, the witnesses indicated that Small Shipment Service was used and again would be required for transportation within 100 to 150 miles of the Metropolitan San Francisco Bay Area or the Metropolitan Los Angeles Area. Some of the shipper witnesses indicated that if Small Shipment Service charges are not reinstated, they would evaluate the possibility of conducting proprietary services within the Metropolitan areas.

The Local and Shorthaul Conference presented four witnesses representing carriers whose operations are centered in the Metropolitan San Francisco Bay Area.^{2/} These witnesses indicated that their companies operate as common carriers of general commodities within a radius of 150 miles or less of San Francisco or Oakland, and specialize in handling less-truckload shipments. Said carriers maintain terminals only in the Bay Area. The witnesses testified

^{2/} It was stipulated that, if called as witnesses, representatives of eight highway carriers would have testified substantially to the same effect as the four witnesses called on behalf of Local and Short Haul Carriers Conference.

that Small Shipment Service accounted for 15 percent, 18 percent, 28 percent and 40 percent of the total business of said carriers. The witnesses testified that, in their opinion, former rates for Small Shipment Service were compensatory. No data were presented by said witnesses to support such opinion testimony. Annual reports for 1970 indicate that three of said carriers operated at a profit and one carrier operated at a loss.

Witnesses appearing for two carriers operating in the Metropolitan Los Angeles area also testified in support of the reinstatement of the Small Shipment Service charges in MRT 2. The witness appearing for Virgil's Delivery Service, Inc. (Virgil's) testified that 70 percent of the traffic handled by said company had moved under Small Shipment Service charges prior to Expiration of Item 149 of MRT 2. The witness testified that such transportation was compensatory. The 1970 annual report of said company was incorporated in the record herein by reference.^{3/} Said annual report indicates the following:

Operating Revenues	\$402,407
Operating Expenses	\$370,274
Net Operating Revenue	\$ 32,133
Deductions from Operating	
Income	\$ 10,281
Net Income	\$ 21,852

The witness explained that Virgil's operates a specialized type of service. Pickups are made with the type of equipment ("bobtail" trucks) used by other carriers for local pickup and delivery service. Shipments are taken to Virgil's terminal and then routed to destination. Delivery is accomplished by the use of smaller equipment, similar in size and capacity to Ford Econoline trucks.^{4/} Pickup routes are limited to 50 miles of Virgil's depot.

^{3/} Virgil's operates as a highway permit carrier. Annual reports were not required to be filed by Virgil's prior to 1970.

^{4/} The usual pickup and delivery route-truck operated by for-hire carriers has a capacity of 8,000 pounds or more. The small vans operated by Virgil's have a capacity not exceeding 2,500 pounds.

Deliveries are made for distances up to 150 miles, although most deliveries are made within a 50-mile radius of the carrier's terminal in Montebello.

The second carrier witness appearing at the Los Angeles hearing supported the petition, but presented no factual data.

An associate transportation rate expert from the Commission staff presented data concerning Small Shipment Service derived from traffic flow information accumulated by the Systems and Procedures Branch of the Transportation Division in connection with its data bank program. By extrapolation of the traffic flow data and revenue data in the files of the Transportation Division, the witness estimated that in 1969 there were a total of 2,770,755 shipments accorded Small Shipment Service, and the charges on said shipments amounted to \$17,012,439; in 1970 there were a total of 1,299,600 shipments accorded small shipment service, and the revenues on said shipments amounted to \$7,277,760. The staff witness attributed the decline from 1969 to 1970 in the number of shipments accorded Small Shipment Service to the fact that many highway common carriers cancelled their participation in Small Shipment Service tariff items in that period. For example, as of April 30, 1971, when Item 149 of MRT 2 expired, 28.5 percent of the carriers participating in Western Motor Tariff Bureau Tariff No. 111 participated in the Small Shipment Service item in that tariff.

The staff witness recommended that the Small Shipment Service provisions be reinstated in MRT 2, in view of the substantial amount of traffic that has been transported under Small Shipment Service, and the significant number of carriers who were holding themselves out to perform Small Shipment Service at the time the item expired, including those who desire to continue performing such service. No cost or other information that would show that the level of Small Shipment Service charges would be reasonable was presented by the staff.

The director of CTA's Division of Transportation Economics testified in opposition to the reinstatement of the Small Shipment Service item in MRT 2. The principal reason advanced by the witness is that the charges for said service are non-compensatory as they fall below the estimated costs of providing the service. The witness presented an exhibit comparing Small Shipment Service charges with the costs per shipment for shipments of 500 pounds or less, as developed by CTA and presented in proceedings in Case No. 5432 leading to the adjustment of the class and commodity rates in MRT 2. This exhibit shows that the charges in effect at the time Item 149 expired are generally less than the estimated full costs without provision for profit.

The CTA witness pointed out that the full-scale cost study which currently underlies the rates in MRT 2 is based on factors (other than wages and taxes) in effect in 1958. (Exhibit 223-1 in Case No. 5432, Petition No. 223.) The witness testified that a subsequent cost study was made by the Commission staff covering for-hire carrier operations in the Metropolitan Los Angeles Area and introduced in evidence in Case No. 6322. (Exhibit 86 in Case No. 6322.) The witness asserted that in Decision No. 78264 the Commission adopted the staff recommendation that, based on the cost data introduced by the staff in Case No. 6322, the Small Shipment Service charges in Item 149 of MRT 2 not be applicable to service within the Metropolitan Area, and that the higher charges set forth in Item 530 of MRT 2 be applicable within said area. The witness stated that, for shipments of 500 pounds or less, the level of rates in Item 530 of MRT 2 applicable within the Metropolitan Los Angeles Area are on the same level as the minimum charges in Item 150 applicable within the balance of the state. It is the view of this witness that the current minimum charges in Item 150 are below full costs and, thus, are non-compensatory. Said opinion is based on preliminary analysis of data developed by CTA in the conduct of a current full-scale cost statewide cost study, which is not yet completed.

Discussion

Decision No. 78596 (supra) discusses the evidence received in the initial phase of this proceeding and incorporated in the record in the current phase. We adopt said discussion.

The additional evidence adduced in the current phase of this proceeding in support of the reestablishment of the Small Shipment Service provisions in Item 149 of MRT 2 falls into the following categories:

1. Shipper evidence that the former provisions of Item 149 were being used, and that upon expiration of said provisions increases in freight charges resulted.
2. Carrier evidence that traffic (or revenue) was lost when the provisions of Item 149 expired, because shippers consolidated shipments or found other means of handling freight in small lots.
3. Carrier evidence that within a limited geographical area carriers would again solicit business under the provisions of Item 149 if said item was reinstated.
4. Opinion evidence by carriers that the rates for Small Shipment Service were believed to be compensatory.
5. Staff evidence that in 1969 a substantial amount of traffic was moved under Small Shipment Service charges, and that a lesser volume of traffic was moved under said item in 1970.

The foregoing evidence indicates that a group of carriers operating in the San Francisco Metropolitan Bay Area desire the reinstatement of Small Shipment Service provisions in Item 149; and that these carriers and their shippers would use the provisions of said item in the future in an area within a radius of 150 miles of San Francisco or Oakland. Those carriers who have found Small Shipment Service to be unprofitable have already withdrawn from such service. Such action results in concentrating the Small Shipment Service in a fewer number of carriers who thus have a greater volume. The petitioning carriers are short-haul local carriers who do not offer

statewide service and thus need this specialized service and the lower rates to compete with statewide carriers.

The cost evidence is not as complete as it might be, but when reductions are proposed it does not seem we should hold the petitioner to such strict proof as when increases are proposed.

The only factual evidence concerning operations within the Los Angeles Metropolitan Area was adduced by a single highway carrier which provides a specialized service within a limited geographical area. While this carrier's operations are compensatory, they are not indicative of the operations of other carriers under the former Small Shipment Service provisions in the Los Angeles Metropolitan Area.

Small Shipment Service within said area was cancelled before the provisions of Item 149 expired. Therefore, Small Shipment Service should not be made applicable for movements to, from or within the Los Angeles Metropolitan Area. Therefore, we will order reinstatement of the Small Shipment Service item in effect on April 30, 1971, but limited to service performed within a 150-mile radius of San Francisco or Oakland.

Findings and Conclusion

1. Item 149 of MRT 2 expired April 30, 1971. Said item provided charges which were less than the otherwise applicable minimum charges set forth in Item 150 of MRT 2. Small Shipment Service (Item 149) was subject to several restrictions and conditions designed to reduce carrier operating costs.

2. Item 149 was placed in MRT 2 with an expiration date so that further review of said item would be undertaken. Although the item was included in MRT 2 for a period of about nine years, the only review of said item was undertaken in the proceedings leading to Decision No. 78596. Said decision, among other things, denied the petition of CMA to continue the provisions of Item 149 on a permanent basis.

3. Rehearing of Decision No. 78596 was granted by Decision No. 72929 with respect to Item 149 of MRT 2. Duly noticed public hearings were held, at which several parties appeared and were heard. The additional evidence adduced by individual shippers indicated that if Item 149 was reinstated said shippers would use such charges within points within a radius of about 100 miles of the San Francisco and Los Angeles Metropolitan Areas. Several carriers located in the San Francisco Bay Area testified or their testimony was stipulated that if Item 149 was reinstated, said carriers would solicit traffic under said rates within a radius of about 100 miles of San Francisco or Oakland. Said carriers testified that in their opinion their operations under former Item 149 were compensatory.

4. A single carrier in the Los Angeles Area offered probative evidence in support of the reinstatement of Item 149. The latter carrier engages in a specialized type of operations which are unlike the operations of other carriers in the area.

5. Decision No. 78264 made the charges for Small Shipment Service in former Item 149 inapplicable within the Los Angeles Metropolitan Area prior to the issuance of Decision No. 78596. The rates in Item 560 of MRT 2 applicable within Los Angeles Metropolitan Area for the transportation of shipments weighing 500 pounds or less, established pursuant to Decision No. 78264, are on the same level as the statewide minimum charges in Item 150 of MRT 2.

6. The reestablishment of the provisions of Item 149 of MRT 2, limited in application to transportation moving for distances of 150 constructive miles or less, and having point of origin or destination in San Francisco Territory, will result in just, reasonable, and non-discriminatory minimum rates and charges.

7. It has not been shown that reestablishment of the provisions of Item 149 for application from, to, or within the Los Angeles Metropolitan Area will be just, reasonable and nondiscriminatory.

The Commission concludes that further relief sought in Petition No. 610 should be granted to the extent provided in the order which follows, and to any other extent should be denied.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision No. 31606, as amended) is further amended by incorporating therein, to become effective February 15, 1972, Twenty-fourth Revised Page 19-C, 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 to Decision No. 31606, as amended, are hereby authorized to establish in their tariffs the amendments necessary to conform with the further adjustments ordered herein.

3. Tariff publications authorized 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 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. 31606, as amended, shall remain in full force and effect.

6. To the extent not granted herein, Petition No. 610 in Case No. 5432 is hereby denied.

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

Dated at San Francisco, California, this 21st
day of DECEMBER, 1974.

[Signature]
Chairman

[Signature]

[Signature]
Commissioners

I dissent

Vernon L. Sturgeon
William Lyons Jr.
Commissioners

APPENDIX A

List of Appearances

Jess J. Butcher, for California Manufacturers Association, petitioner in Petition for Modification No. 610.
Scott Elder, Attorney at Law, and C. N. Bates, for Local and Short-Haul Carriers Conference, petitioner for rehearing of Decision No. 78596.
Russell G. Carlson, for Tyler Bros. Drayage Co.; Thomas A. Duffy, for Scannell Bros. Drayage; Louis C. Schmitt, for Keller's Freight Line; E. H. Griffiths, for Aero Special Delivery Service, Inc., James Oates, dba Bus Express Service, and John A. Raggio, dba Minute Man Delivery Service; and Robert Helgeson, for Smith Transportation Company, respondents.
William D. Mayer, for Del Monte Corporation; Ralph L. Arista, for Van Waters & Rogers; Jack H. Donner, for Allied Western Distributors; Robert A. Kormel, for Pacific Gas and Electric Company; Phillip G. Blackmore, Jr., for California & Hawaiian Sugar Company; Richard W. Smith and A. D. Poe, Attorneys at Law, and H. F. Kollmyer, for California Trucking Association; Frank M. Wilcox, for Minnesota Mining & Manufacturing Company; Lloyd H. Shanks, for Union Carbide Corporation; Allan D. Fonseca, for Diamond National Corporation; Warren Hamlett, for Garehime Corporation; Charles A. Caterino, for The Flintkote Company, Pioneer Division; Warren L. Ellis, for Nationwide Papers; Warren P. Mayhugh, for Mobil Oil Corporation; Patrick F. Murphree, for Johnson & Johnson; Otha A. Brooks and Paul J. Burnett, for Shell Oil Company; and D. M. Newkirk, for Highway Carriers Association, interested parties.
Eugene Q. Carmody, for the Commission staff.

SECTION 1--RULES OF GENERAL APPLICATION (Continued)

ITEM

 SMALL SHIPMENT SERVICE
 (Not subject to the provisions of Item 150)

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 pre-requisite 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 150 constructive miles.

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.

6149

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.

The charge per shipment for Small Shipment Service shall be as follows:

<u>Weight of Shipment</u> <u>(In Pounds)</u>		<u>(1) Charge in Cents</u>
<u>Over</u>	<u>But Not Over</u>	
0	25	325
25	50	395
50	75	460
75	100	495
100	150	600
150	200	710
200	250	810
250	300	920
300	400	1110
400	500	1285

- (1) Applies only on shipments having point of origin or point of destination within San Francisco Territory and moving distances not exceeding 150 constructive miles.

o Reduction, Decision No.

79491

EFFECTIVE

Correction

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
SAN FRANCISCO, CALIFORNIA