vo/jmd

ORIGINAL

Decision No. 79937

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. 621 (Filed January 5, 1971)
And Related Matters.	Case No. 5330, Petition No. 54 Case No. 5433, Petition No. 35 Case No. 5435, Petition No. 170 Case No. 5436, Petition No. 106 Case No. 5437, Petition No. 207 Case No. 5438, Petition No. 81 Case No. 5439, Petition No. 136 Case No. 5440, Petition No. 72 Case No. 5441, Petition No. 217 Case No. 5603, Petition No. 94 Case No. 5604, Petition No. 25 Case No. 7857, Petition No. 42 Case No. 8808, Petition No. 12 (Filed January 5, 1971)

(Appearances are shown in Appendix A)

O P I N I O N

The Proposed Report of Examiner Mallory was issued August 18, 1971 in this proceeding. Exceptions to the proposed report and replies to the exceptions were filed by interested parties.[1/] The matter is ready for decision.

1/ Exceptions were filed by twenty-three parties to the proceeding. Replies were filed by six parties.

No material exceptions were taken to the portions of the Examiner's proposed report under the headings "Background", "CTA Proposals", and "Protestants", as more specifically set forth on pages one through seven of the proposed report. We adopt said portions of the Examiner's proposed report as our statements of the facts and argument covered under the described headings.

Exceptions were taken to the Examiner's statement of the meaning of Section 3663 of the Public Utilities Code (Examiner's Report, page 8), and to the conclusion of the Examiner that highway carriers should not be able to assess lower charges under alternatively applied rail rates than if the shipment had actually moved by rail (pages 8 and 9 of the Examiner's report). These statements have been reviewed and restated in light of the exceptions and replies.

The Examiner discussed in individual numbered paragraphs the specific proposals of CTA and his recommendations in connection therewith (Examiner's report, pages 9 through 15). No exception was taken with respect to the proposal and discussion in paragraph 8 (page 15). Said proposal and discussion are adopted by the Commission. The balance of the Examiner's discussion of individual proposals of petitioner and conclusions and recommendations in connection therewith have been reviewed in light of the exceptions and replies.

The portions of the Examiner's report to which exceptions were taken are restated.

Nature of Proceedings

Petitioner, California Trucking Association (CTA), seeks amendment of the various minimum rate tariffs to limit the use of alternatively applied common carrier rates in lieu of the specific minimum rates contained in said tariffs.

Nine days of public hearing were held in San Francisco and Los Angeles commencing March 23, 1971 and ending May 4, 1971. Forty-eight persons presented evidence and twenty-six exhibits were received.

A proposed report, in accordance with Rule 79 of the Commission's Rules of Procedure, was issued August 18, 1971, as directed by the Commission. The matter was submitted November 5, 1971, upon the filing of replies to exceptions.

Background

Section 3663 of Division 2, Chapter 1 of the Public Utilities Code (Highway Carriers' Act) reads as follows:

> "3663. In the event the Commission establishes minimum rates for transportation 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 Section 10.)" 2/

The Commission has established minimum rates for highway permit carriers in its several minimum rate tariffs. Said tariffs contain rules under which common carrier rates may be applied in lieu of the specific rates in each tariff.

Inasmuch as the Highway Carriers' Act does not specify the manner in which Section 3663 should be implemented, it was necessary for the Commission to establish numerous tariff rules to provide the detailed manner in which alternation can be achieved. Many problems arose in connection with the establishment of reasonable rules governing alternation of rail carload rates with minimum rates for highway carriers because of the differences in operating methods and types of equipment furnished.

2/ Originally enacted as Chapter 223, page 881 of Statutes of 1935. The words "common carriers by land" were added by Chapter 465, Statutes of 1939.

Highway permit carriers may apply common carrier rates in lieu of specific minimum rates when such common carrier rates produce a lower aggregate charge for the same transportation than results from the minimum rates.[3] "Same Transportation" is defined as transportation of the same kind and quantity of property between the same points, and subject to the same limitations, conditions and privileges but not necessarily in an identical type of equipment.[4] Subject to "multiple lot" rules, highway permit carriers may pick up shipments rated at rail rates over a period of two days.[5] Rail rates may be applied by highway permit carriers between railheads, which include truckloading facilities of the plant having facilities to load and unload rail cars.[6] All sites within a single business place of one consignor or consignee are considered to be one point of origin or destination even though said property is intersected by a public street or thoroughfare.[7]

CTA's Position

CTA alleges that the current tariff provisions governing alternative application of common carrier rates go far beyond what is necessary to strictly comply with Section 3663. CTA states that the Commission recently found that Section 3663 prohibits the establishment of provisions resulting in minimum charges higher than those applicable under alternatively applied rail rates.[8] CTA

3/ Item 200 of Minimum Rate Tariff 2 (MRT 2).

4/ Item 11 of MRT 2.

5/ Item 85 of MRT 2.

6/ "Railhead", as defined in MRT 2, Item 11.

7/ Definitions of "Point of Origin" and "Point of Destination", Item 11, MRT 2.

8/ Decision No. 77786, dated October 6, 1970, in Case No. 5330, Petition No. 44, et al.

urges that, conversely, the charges assessed by highway permit carriers should be no lower than the rail carrier's charges for the same transportation service, when alternatively applied rates are used. CTA also asserts that the current tariff rules permit highway permit carriers to perform a different transportation service than provided by rail carriers.

CTA's Director of its Division of Transportation Economics testified that the Commission has established minimum rates for highway permit carriers based on operating costs of reasonably efficient motor carriers. CTA argued that minimum rates so established are "the lowest lawful rates based on the most efficient method of operation of any highway carrier". (California Manufacturers Association vs. Public Utilities Commission, 42 C.2d 530, at 537.) Said rates are permitted, under Items 200 through 241 of MRT 2 and similar items in other tariffs, to alternate with rail carload rates, when said rail carload rates provide lower charges than the specific minimum rates. It is CTA's contention that, in general, alternatively applied rail rates produce charges below a reasonable level.

The major premise on which CTA bases its proposal is that highway carriers should not be allowed to assess charges based on alternatively applied rail rates which are less, in total, than would result if a shipment of the same kind and quantity of freight had actually moved by rail. CTA's witness also contends that Commission decisions interpreting rail alternative provisions in enforcement proceedings have tended to unnecessarily liberalize such provisions, and thus are contrary to law.9/

9/ CTA cites, for example, decisions finding that receivers of property not served directly by rail spur, but which are located close by, may be accorded rail rates. [Howard Child and Sidney Raine (8 Ball Line), 70 Cal. P.U.C. 501, 512.]

Position of Railroads

Two witnesses appearing for the California rail lines testified in support of the amendment of alternative application provisions of the minimum rate tariff.

The principal reason advanced by the railroad witnesses for changes in the alternative provisions is that rail service is inherently less desirable than truck service because of greater in-transit time by rail, because shippers must load and brace rail cars, and because shippers must unload and dispose of dunnage; thus, railroads are at a distinct disadvantage in competing with motor carriers. The railroads urge, therefore, that highway carriers should not be able to assess rail rates under conditions which would increase the rail's competitive disadvantage.

CTA's Proposals

CTA requests the following rule be added to each minimum rate tariff:

> "When common carrier rates are applied under provisions of this item, all rules, regulations or other provisions or conditions of the common carrier tariff or tariffs governing the application of such rates shall also apply. When such rules, regulations or other provisions or conditions of the common carrier tariffs are in conflict with those provided in this tariff, the provisions of the common carrier tariff will apply. For purposes of this item, provisions of this tariff are in conflict with the provisions of a common carrier tariff when application of such provisions of this tariff results in lower or lesser total charges than would result if the applicable common carrier tariff provisions were applied by a common carrier."

The CTA tariff rule set forth above is a general concept, and said proposed rule does not indicate how this concept is to be applied in particular situations. CTA's Director of its Division of Transportation Economics explained how the proposal should be interpreted to apply in certain situations. The CTA witness also

adopted the explanations of the application of the proposed rule in the testimony of witnesses appearing for the California rail lines, who support petitioner's proposal. The testimony of petitioner's witness and the rail witnesses indicate that the following would result if CTA's proposal is adopted.

1. Each shipment handled by a highway carrier under alternatively applied rail rates must be loaded into a single unit of the highway carrier's equipment.

2. Freight handled by highway permit carriers under alternatively applied rail rates must be loaded or unloaded at the same building or in the same area at which rail cars are loaded or unloaded.

3. The highway permit carrier must load freight in the same type or size equipment as is specified in connection with the alternatively applied rail rate.

4. The highway carrier must load or unload the freight moving at rail alternative rates during the same period of time in which the freight must be loaded or unloaded under rail tariff rules.

5. Highway carriers may apply only intrastate rail rates under alternative application provisions.

6. Highway permit carriers would be required to assess a switching charge (where applicable) for the equivalent number of rail cars which would be required to move the shipment if handled by rail.

7. When certain rail routes are temporarily closed or rail service is temporarily discontinued, highway permit carriers should not be permitted to use alternative rail rates applicable over such closed rail routes.

8. When rail tariffs provide for the use of estimated or agreed weights in lieu of actual weights, the specific method of weight determination provided in connection with the alternatively applied rail rate must be used by the highway carrier.

9. When alternatively applied rail carload rates are used for bulk movements, the shipper and receiver of the property must have facilities for receiving bulk shipments by rail.

10. Charges should be collected (or credit granted) in accordance with rail provisions.

CTA requests that the Commission make a policy review of alternative application of common carrier rate provisions established in the various minimum rate tariffs; and, after such review, issue a statement of principles and policies which the Commission intends to follow, and amend the minimum rate tariffs accordingly. CTA also requests review of Transportation Division Informal Rulings dealing with alternative application of common carrier rates.[10/]

Protestants

Forty-five witnesses appeared in opposition to the proposals of petitioner, including many carriers. All of the witnesses opposed changes in the current tariff provisions and policies which would restrict the use of alternatively applied common carrier rates.

In general, the testimony in opposition to CTA proposals is that use of rail rates by highway permit carriers is profitable to said carriers; rates for truck service higher than the current levels of alternatively applied rail rates exceed the value of the service to shippers; shippers have located plants based on the availability of alternatively applied rail rates; and any restriction on present use of alternatively applied rail rates would cause shippers to discontinue use of for-hire carriers and to place their own equipment in operation. A Commission staff witness presented testimony designed to show that petitioner's proposal would effectively preclude alternative application of rail rates. The witness

---

10/ Informal Rulings of the Transportation Division are made in the absence of formal rulings by the Commission on the subject matter of the informal ruling. Informal Rulings 5, 40, 43, 51, 58, 82, 86, 110, 180, 192 and 196 deal with alternative application of common carrier rates.

concluded that because of the inherent differences between rail and truck operations, rail tariffs are not designed for use by highway carriers. Another staff witness presented an exhibit designed to show the minimum rate tariff provisions which would require change if petitioner's proposal is adopted.

A traffic consultant appearing in opposition to petitioner's proposal testified that the two most important changes which would result from petitioner's proposal would be that the minimum carload weight must be transported in one unit of highway carrier's equipment (or charges assessed on that basis), and that shipments must be loaded and unloaded by the highway carrier at the same plant location that rail shipments are loaded and unloaded. Analysis of the testimony of other protestants confirms the view of the traffic consultant.

The record is replete with testimony of how adoption of petitioner's proposal would affect the operations of individual shippers and carriers. Such testimony need not be described in detail herein. Shippers and individual highway carriers oppose the adoption of any tariff provisions limiting the use of alternatively applied rail rates.

Statutory Provisions

Testimony and argument were presented as to the legislative intent of Section 3663, and the meaning and force of Section 3663 within the context of all of the rate-making provisions of the Public Utilities Code. The record shows that numerous requests have been made to have Section 3663 repealed, without success.

The Commission has established minimum rates for highway permit carriers under Sections 3662 through 3665

of the Highway Carriers' Act; and Sections 452 and 726 of Division 1 of the Code. Together these sections constitute the statutory scheme of rate regulation for highway permit and highway common carriers. (California Manufacturers Association vs. Public Utilities Commission, 42 C.2d 530.)

The specific minimum rates for highway common and permit carriers established pursuant to said statutory provisions are the lowest lawful rates based on the most efficient method of operation by any class of highway carriers. (Ibid. at page 537.)[11/] After establishing specific minimum rates for highway common and highway permit carriers determined under Sections 726 and 3662, the Commission, in its minimum rate tariffs, authorized said minimum rates to alternate with the lowest common carrier rates for the same transportation to satisfy the requirements of Section 3663. Inasmuch as highway common carriers, with few exceptions, are subject to the Commission's minimum rates, the "alternative" provisions of the minimum rate tariffs are applied almost entirely in connection with rail carload rates.

11/ Section 726 reads, in part, as follows:

> "In any rate proceeding where more than one type or class of carrier, as defined in this part or in the Highway Carriers' Act, is involved, the commission shall consider all such types or classes of carriers, and, pursuant to the provisions of this part or the Highway Carriers' Act, fix as minimum rates applicable to all such types or classes of carriers the lowest of the lawful rates so determined for any such type or class of carrier. This provision does not prevent the commission from granting to carriers by water such differentials in rates as are permitted under other provisions of law."

The truckload minimum rates established by the Commission are the lowest lawful rates for any class of highway carrier (Ibid. page 537);[12/] and no lower rates are required under statutory provisions, except as result from the application of Section 3663. The Commission found in Decision No. 77786, (supra) that Section 3663 of the Public Utilities Code requires that rates set as minimum by the Commission for highway permit carriers be no higher than those of common carriers by land for the transportation of the same kind of property between the same points; and that to require higher rates or charges than rail rates to be assessed for the transportation of the same kind of property between the same points would violate the provisions of Section 3663. On the other hand, there is no statutory provision that either authorizes or requires the setting of minimum rates for highway permit carriers below the carload rates of rail carriers when the lowest costs of operations of any class of highway carriers indicate that rates higher than rail rates should be established as minimum. The reasoning of the Court in California Manufacturers Association and in Southern Pacific Co. vs. Railroad Commission (13 C. 2d 89, 106) would indicate that minimum rates which are both lower than justified by actual costs and lower than the actual competitive rates of rail carriers would be unlawful. Thus, the Commission must provide rules in its minimum rate tariffs which do not require highway permit carriers to charge rates higher than rail rates; but, conversely, the Commission should provide rules which do not require highway permit carriers to charge rates which are both lower than the specific minimum rates established in said tariffs and the actual rail carload rates applicable to the same movement.

12/ The carload rates of rail carriers are not subject to minimum rates and, therefore, rail operating costs for carload traffic are not used in determining "the lowest costs of any class of carriers" under Section 726. (Excluding rail carload rates on bulk petroleum and petroleum products.)

Discussion

Several parties excepted to the conclusion of the Examiner that the major concept embodied in CTA's proposals has merit and should be adopted as the guide in reviewing proposals of CTA with respect to the application of rail rates by highway carriers under the ten specific situations described above under the heading "CTA Proposals".

In light of our analysis of the statutory provisions governing the establishment of minimum rates for highway carriers, it is our conclusion that we should provide rules in the various minimum rate tariffs which do not allow highway permit carriers to charge rates which are both lower than the specific rates in said tariffs and which also are lower than the actual rail carload rates applicable to the same movement. This general conclusion must be tempered by the fact that, because of the inherent differences in rail and truck operations, exact parity between charges under actual rail rates and alternatively applied rail rates cannot always be achieved. Thus, when an attempt to achieve parity of actual rail rates and alternatively applied rail rates would cause the alternatively applied rail rates under some conditions to exceed actual rail rates, the alternatively applied rates must not exceed the actual rail rates. Current minimum rate tariff provisions should be analyzed in light of these conclusions.[13/]

13/ The contention of the railroads that the effect of Section 3663 should be abolished for the reason that the inherent disadvantages of rail service as compared with truck service have caused loss of traffic to the rails is a matter for the Legislature to consider in its determination whether Section 3663 should be rescinded; and should not be further considered herein.

The following is a discussion of each of the proposed changes which assertedly would result under CTA's proposal applying the conclusions expressed in the foregoing paragraph:

1. Each shipment handled by a highway carrier under alternatively applied rail rates must be loaded into a single unit of highway carrier's equipment.

The maximum legal carrying capacity of a unit of highway carrier equipment generally is not in excess of 53,000 pounds. The record shows that most alternatively applied rail carload rates bear minimum weights of 60,000 pounds or more. In addition, the rail lines intend to propose (in separate proceedings) the cancellation of most existing rail carload rates on general commodities applicable between the San Francisco Bay and Los Angeles Metropolitan areas and the substitution therefor of freight-all-kinds rates having minimum weights of 60,000 pounds or more.

If this facet of CTA's proposal is adopted, rail carload rates having minimum weights of 60,000 pounds or greater no longer will be available for use by highway permit carriers because of the inability of highway carriers to load that minimum weight in a single unit of equipment.

Lower total charges to the shipper do not result under alternatively applied rail rates than if the shipment had actually moved by rail when highway carriers use more than one unit (or one piece) of equipment to transport a shipment if other rail provisions are met.

We find that this proposal of CTA is not justified under our conclusions expressed hereinbefore and should not be adopted.

2. Freight handled by highway carriers under alternatively applied rail rates must be loaded or unloaded at the same building or area at which rail cars are unloaded.

The record shows that, in a single industrial plant, truck loading and rail loading facilities may be located in separate parts of the plant, in separate buildings, or at different doors of the

same building. In the instances where truck loading and rail loading areas are separated, it would often be impossible to load trucks at rail loading facilities because rail-track areas are not paved and because rail cars are loaded from side doors, while most trucks are loaded from end doors.

If this facet of CTA's proposal is adopted, only limited use of rail rates may be made by highway permit carriers because of highway carriers' inability to physically load and unload at the precise locations that rail cars are loaded and unloaded within the same industrial plant. The Commission, in the proceeding leading to Decision No. 60128, dated May 17, 1960, in Case No. 5432 (unreported), conducted a lengthy and detailed investigation into this facet of rail rate alternation. Said decision found, among other things, that if the rail rate does not apply at all points within an industrial plant, it would be virtually impossible to determine in advance of movement (or subsequent to the movement) what the applicable rate would be; therefore, enforcement of minimum rates would be extremely difficult.

The Examiner's report would adopt restrictions on locations within an industrial plant at which alternative rail traffic could be loaded or unloaded, which, as pointed out in the exceptions, would be impossible to comply with or enforce. The exceptions correctly point out that the factual situation has not changed since Decision No. 60128 was issued, and that said decision should not be overturned herein.

In view of the foregoing we find that the tariff amendment set forth in paragraph (b) on page 11 of the Examiner's report would not be practical for shippers and carriers to comply with and would be difficult to enforce; therefore, said tariff amendment should not be adopted .

The Examiner's report also contains (in paragraph (a) on page 11) a recommended tariff requirement that an industrial plant must be served by useable spur track facilities, as evidenced by a current spur track agreement, in order that alternative rail carload rates may be applied to or from such plant. Exceptions point out that this changes the burden of proof from the carrier to the shipper of determining when rail rates may be applied. Exceptions also state that spur track agreements date back many years for some plant locations and were initially entered into by predecessor tenants or owners. The exceptions claim that current users of industrial properties may not have access to spur track agreements and, therefore, could not show the existence of such an agreement. In the circumstances, we find the Examiner's recommended rule would not be practical in application and should not be adopted.

Based on the foregoing, we conclude that the definitions of "Point of Origin", "Point of Destination" and "Railhead" in Item 11 of MRT 2, and in related items of other tariffs, should not be changed as a result of this proceeding.

3. <u>The highway carrier must load freight in the same type or size equipment as is specified in connection with the alternatively applied rail rate.</u>

A few rail carload rates specify the type of car (such as gondola, flat-car or covered hopper) applicable to transportation under said rail rates. If a particular type of rail car is specified, the highway permit carrier would be required to furnish a similar type of equipment. We find this would not be possible because there is no direct comparability between highway and rail equipment. Some rail rates provide that they are applicable in connection with cars not exceeding specified lengths or weight-carrying capacities. Highway carriers would be prohibited from furnishing equipment having greater lengths or weight-carrying capabilities. We find that this also would not be possible of reasonable application because there is no comparability between rail and highway equipment.

Some rail rates are subject to a specified minimum weight such as 60,000 pounds, but if the car used is fully loaded actual weight will apply. (Other examples are cited in the testimony of witnesses appearing for the railroads.) Under present staff interpretation, highway carriers would not have to satisfy the 60,000-pound minimum weight if the highway carrier's equipment was fully loaded. CTA urges that the 60,000-pound minimum be used by the highway carrier in the foregoing example. In the circumstances where a weight less than the published minimum weight in the rail tariff is used by a highway carrier because the highway carrier's equipment is fully loaded, the total charges under the alternatively applied rail rate most likely would be less than if the shipment moved by rail because the capacities of rail cars generally exceed those of motor vehicle equipment. The Examiner's report states that, to protect against this, the minimum rate tariffs should provide that the published rail minimum weight must be used, and Informal Ruling 58-A (which provides the contrary) should be rescinded.

Exceptions to the foregoing rule were filed by several parties who assert that adoption of this recommendation of the Examiner would produce higher charges under the alternatively applied rail rate than when the shipment actually moved by rail. An example of this situation is set forth in the exception of Fibreboard Corporation, which shows that several rail shipments of waste paper moved at actual weights of 45,000 pounds, when the rail carload minimum weight was 60,000 pounds. Fibreboard and other exceptors state that the rule recommended by the Examiner would produce charges under rail alternative rates which exceed rates actually applicable to rail shipments contrary to the findings of the Commission in Decision No. 77786 (supra), and therefore would be unlawful. We find that the rule proposed by the Examiner would result, in some instances, in charges under alternatively applied rail rates which would exceed actual charges under rail rates. Therefore, such recommendation will not be adopted.

In view of the foregoing, we also find that Informal Ruling 58-A correctly states the application of the tariff in light of Decision No. 77786 and should be incorporated in MRT 2 for clarification.

4. The highway carrier must load or unload the freight moving at rail alternative rates during the same period of time in which the freight must be loaded or unloaded under rail tariff rules.

Rail tariffs provide that a shipment must be tendered at one time on one bill of lading and must be moved on the day of tender. Under "multiple-lot" provisions of the minimum rate tariffs, a shipment must be tendered at one time, but separate components may be picked up over a two-day period (five days under MRT 7 and 17).

Carrier and shipper witnesses testified that almost all multiple-lot shipments moving under alternatively applied rail rates are transported in one day, and a one-day limitation in the multiple-lot rules would not be unreasonable. The Examiner recommended that the minimum rate tariffs should be amended accordingly.

Twelve parties excepted to this recommendation of the Examiner. Most of the exceptors point out that under rail tariffs, shippers and receivers have two days to load and unload rail cars without penalty. They assert that when more than one unit of highway carrier's equipment is needed to move the shipment (such as when the rail rate is subject to a 100,000-pound minimum weight) the freight is available to the highway carrier the first day, but for its own convenience the highway carrier transports the shipment over the two-day period now permissible under Item 85 of MRT 2.[14/]

14/ C & H Sugar in its Exceptions, states that it has no objection to a tariff requirement that the shipper have adequate facilities to permit loading the entire quantity tendered in one day.

Some exceptors claim that, because of the free time allowed to load or unload a rail car, a more restrictive time to load or unload highway carriers' equipment would violate Section 3663.

When the highway carrier's equipment and driver are available for loading and unloading services, the highway carrier is furnishing a substantially greater service than that available under rail carload rates, because when rail service is actually performed the rail carrier furnishes no personnel for loading and unloading and such service must be accomplished by the shipper. Charges for accessorial services involving loading, unloading, stacking, sorting, and similar functions performed by highway carrier personnel in connection with shipments transported under alternatively applied rail carload rates are set forth in Items 240 and 241 of MRT 2. However, MRT 2 provides no time period in which these services need be performed.

We find that, in order to provide equality of application, Item 85 of MRT 2 should provide that the two-day period for loading of shipments transported under alternatively applied rail carload rates is limited to the situation where the highway carrier spots its trailer equipment for loading by the shipper without the presence of the highway carrier's personnel; and that a one-day period for loading should be applicable to the entire shipment when the highway carrier's personnel or motive equipment is present at time of loading or unloading. We conclude that the minimum rate tariffs should be amended accordingly.

5. Highway permit carriers may apply only intrastate rail rates under alternative application provisions.

The Commission's minimum rate tariffs generally authorize the use of interstate and foreign rates, as well as intrastate rates, under alternative provisions under definitions of "Common Carrier Rate" (Item 10 of MRT 2).

Rail carriers cannot apply interstate rates to intrastate traffic.[15/] The Examiner's report concluded that tariff provisions authorizing the application of alternatively applied interstate or foreign rail rates to California intrastate traffic would result in lower charges than would obtain if the shipment actually moved by rail, and recommended that such tariff provisions should be rescinded.

The exceptions to this recommendation of the Examiner point out that this provision has been in the tariff for many years, that shippers now use such provisions in rating shipments and, thus, the provisions should not be cancelled. The Commission staff also points out that interstate rail routes must be used for movements of lumber from Susanville to the San Francisco Bay area, but that highway carriers move the traffic by routes which are entirely within the state. The staff alleges that the use by truckers of interstate rail rates does not result in lower charges than would result if the shipment actually moved by rail.

Section 3663 does not require nor authorize the application of interstate rates for intrastate transportation. There is no statutory mandate that interstate rail rates alternate with intrastate minimum rates of highway carriers. We conclude that said alternation is contrary to the statutory provisions under which minimum rates are established, inasmuch as alternation of interstate rail rates is not required by Section 3663; such alternation provides rates which are less than the minimum rates found just and reasonable for highway carriers based on highway carriers' operating costs, pursuant to Sections 726 and 3662; and lower than

---

15/ Rail tariff rules provide that some interstate rates apply as maximum at intrastate points; such interstate rates become intrastate rates through application of said rules.

the competitive intrastate charges of other carriers or the cost of other means of transportation (Section 452). Therefore, we find that cancellation of that portion of the definition of "Common Carrier Rate" in Item 10 of MRT 2 (and similar provisions of other tariffs) relating to interstate or foreign rail rates will result in just and reasonable charges for highway permit carriers.

6. Highway permit carriers would be required to assess a switching charge (where applicable) for the equivalent number of rail cars which would be required to move the shipment if handled by rail.

The Commission's Transportation Division has issued its Informal Ruling 40, which reads as follows:

> "Railroad switching charges usually are stated in dollars and cents per car. Questions have been asked whether, under the provisions of minimum rate tariffs relating to the alternative application of common carrier rates, more than one switching charge must be assessed by a highway permit carrier when the total shipment exceeds the weight that normally could be loaded in a single car. Under the circumstances in question, it is not required that the highway permit carrier assess more than one switching charge."

The Examiner's report points out that there is no possible way of knowing the exact number of rail freight cars required to actually move the traffic and states that it can reasonably be assumed that the minimum weight attached to the rail carload rate represents an amount that can be loaded into a single car. The report states that the above informal ruling results in total charges to the shipper which are less than if the shipment had actually moved by rail; therefore, the informal ruling should be rescinded. The Examiner recommended that the minimum rate tariffs should provide that a switching charge be assessed for each multiple of the carload minimum weight or portion thereof transported in a single shipment by the highway carrier.

The exceptions to the Examiner's report state that under actual rail movements, rail cars are generally loaded to a weight well in excess of the tariff minimum weight, and that to require highway carriers to charge a switching charge for each multiple of the tariff minimum weight would result in charges by highway carriers which are higher than the charges for actual rail movements. We find that the Examiner's recommendation would be contrary to the Commission's findings in Decision No. 77786 (supra) in that higher charges would result thereunder than if the shipment actually moved by rail. We conclude, therefore, that Informal Ruling 40 should be incorporated in the Commission's minimum rate tariffs for clarification.

7. When certain rail routes are temporarily closed or rail service is temporarily discontinued, highway permit carriers should not be permitted to use alternative rail rates applicable over such closed rail routes.

The situation cited in support of this facet of the CTA's proposal was the Puerto Suello Tunnel fire which closed off operations by Northwestern Pacific Railroad to and from points south of said tunnel. Service via rail was not available for a period of years while the tunnel was rebuilt. During the period that said rail route was closed, shippers and carriers continued to use alternatively applied rail carload rates applicable over the closed rail route.

The Examiner's report states that railroads temporarily embargo shipments over their lines because of labor strikes, wrecks, or natural disasters. Apparently, the CTA proposal would apply to embargoes of any kind which would preclude shipment by railroad. The Examiner concluded that use by a highway carrier of alternatively applied rail rates which are applicable over a closed rail route

clearly would provide charges to the shipper lower than if the shipment had actually been moved by rail. The Examiner recommended that the minimum rate tariffs should be amended to prohibit the use of an alternatively applied rail rate when actual shipment cannot be made over the route via which such rail rate is applicable.

The exceptions point out that it is difficult or impossible for shippers to determine when short-term closures of rail routes occur. They also point out that when rail routes are temporarily closed, rail carriers frequently use substituted motor carrier service or operate over the routes of other rail carriers. It is only in the event that the rail route is closed and an alternative route is not available that actual rail shipments cannot be made. When breaks in rail service are of short duration, it would be virtually impossible to determine whether the highway carrier transported the shipment during such break in rail service. The exceptions indicate it would be impossible to determine charges if the rule recommended by the Examiner is established.

We find that the Examiner's recommended rule should not be adopted because said rule is not practical of application during short-term closures of rail routes. We conclude that it would be proper, in the future, to instruct rail carriers to suspend or withdraw rates over rail routes which are to be closed for a substantial period of time, such as occurred in connection with the Puerto Suello Tunnel fire.

8. When rail tariffs provide for the use of estimated or agreed weights in lieu of actual weights, the specific method of weight determination provided in connection with the alternatively applied rail rate must be used by the highway carrier.

The Examiner's Report states that the only certain method of assuring that charges assessed to the shipper would not fall below what actually would be assessed if the shipment moved by rail is to require the determination of shipment weights using the same method that would be applicable if the shipment had moved by rail. The Examiner concluded that minimum rate tariffs should be amended accordingly.[16] No exceptions were taken to this recommendation. We find that such recommendation will result in reasonable provisions and should be adopted.

9. When alternatively applied rail carload rates are used for bulk movements, the shipper and receiver of the property must have facilities for receiving bulk shipments by rail.

The Examiner's Report states that if the shipper and/or receiver cannot load and/or unload bulk shipments if moved by rail, application of alternatively applied rail rates to such bulk movements would provide lower charges than if the shipment had actually moved by rail. The Examiner concluded that the minimum rate tariffs should provide that the shipper and receiver must have adequate facilities to ship and receive the same type and quantity of property by rail in order to apply rail carload rates to such movements. The report recommended that Informal Ruling 82, which provides to the contrary, should be rescinded.[17]

16/ Informal Ruling 43 now provides that under MRT 8 alternatively applied rail rates on fresh fruits and vegetables must be applied in this manner.

17/ Informal Ruling 82 reads as follows:

"The question has been asked whether a highway permit carrier may use rail rates in lieu of rates provided in Minimum Rate Tariff No. 2 for the transportation of bulk sugar, when the consignee is located on rail spur but has no facilities for unloading bulk sugar from rail cars.

The alternative application of the common carrier (railroad) rates is governed by the provisions of the common carrier tariffs lawfully on file with the Commission and in effect at time of shipment, rather then by the presence or absence of particular bulk sugar handling facilities on the premises of the consignor or consignee."

The exceptions taken to this recommendation of the Examiner point out that often temporary or portable facilities are used by consignors to load and consignees to unload rail shipments of dry or liquid bulk commodities; and that, in many cases, shippers or receivers do not maintain permanent facilities for bulk storage at the points where rail cars are loaded or unloaded. They urge, therefore, that it is impossible for a highway permit carrier or the Commission staff to determine with accuracy whether or not a shipper or receiver has facilities to load or unload rail cars of commodities in bulk. For the foregoing reason, we find that the Examiner's recommendation is not practical, and should not be adopted. We conclude that Informal Ruling 82 should not be rescinded.

10. Charges should be collected (or credit extended) in accordance with rail provisions.

The Examiner's Report states that the railroads provide a less liberal credit period than is provided under MRT 2. The Examiner concluded that MRT 2 credit provisions result in lower total charges than under rail provisions. The Examiner recommended that the MRT 2 credit rule (Item 250) be amended to provide that when shipments are rated under alternatively rail rates, the provisions of the rail tariffs shall apply to the extension of credit or collection of charges.

The Commission has found that extension of credit beyond the period specified in rules governing collection of charges results in a violation of minimum rates, and the Commission has required highway permit carriers to obtain specific authority to depart from tariff credit provisions (J. A. Beard and Louis A. Hahn, Inc., 70 Cal. P.U.C. 534). Fines have been imposed for credit rule violations by highway permit carriers (Kerner Trucking Service, Inc., 70 Cal. P.U.C. 614).

Extension of credit by highway carriers for periods greater than permitted by the railroads results in more favorable credit conditions to the shipper than if the shipment had actually moved

by rail, inasmuch as the use of another's money for any period of time involves a real and measurable cost. The rail carriers extend credit for periods up to five days under rules uniformly applied to shippers engaged in both interstate and intrastate traffic. MRT 2 provides a seven-day credit period; other minimum rate tariffs provide periods of seven days or longer.

The exceptions to the recommendation of the Examiner point out that confusion may result from having two separate credit periods, one for alternatively applied rail-rated shipments and another for shipments rated at minimum rates. The exceptions also point out that separate credit periods may be difficult to administer and enforce. Industrial firms that ship both by rail and by truck have to observe different credit periods at the present time; and different credit periods are provided for truck transportation depending on the commodity shipped. Therefore, the difficulties arising from different credit periods for rail-rated and truck-rated shipments are not insurmountable.

We find that extension of credit for a longer period than if the shipment had actually moved by rail, when alternatively applied rail rates are used by a highway carrier, results in more favorable provisions for the truck movement than if the same shipment had moved by rail. We conclude that the minimum rate tariffs should be amended to limit extension of credit to five days on shipments rated at alternatively applied rail rates.

Review of Informal Rulings and Prior Decisions

CTA requests that the Commission review Informal Rulings of its Transportation Division and its prior decisions in light of the rule changes CTA proposes to be adopted herein.

As a result of this proceeding, Transportation Division Informal Rulings should be modified or rescinded to the extent they are contrary to the concepts recommended for adoption herein. Informal Rulings 43, 58-A, 86, 110 and 192 agree with the concepts

outlined in paragraphs 1 through 10 above. Informal Rulings 40, 58-A and 82 have been analyzed in the foregoing opinion in connection with specific proposals; and we found that the substance of Informal Rulings 40 and 58-A should be incorporated in MRT 2, and that Informal Ruling 82 should stand. We have also reviewed, in connection with "Point of Origin" and "Point of Destination" the findings and conclusions in Decision No. 60128 (supra) and we reaffirm said findings and conclusions.

Tariff modifications in accordance with specific findings expressed in the preceding portion of this opinion will be made by the order herein. Prior decisions which are modified as a result of these specific findings are superseded in whole or part only to the extent of such specific findings and resulting tariff revisions.[18/]

Additional Findings

1. Section 3663 (Statutes of 1935, Chapter 223, page 881, as amended by Statutes of 1939, Chapter 465) requires that minimum rates for highway permit carriers not exceed the current rates of common carriers by land.

2. The Commission has implemented Section 3663 by the establishment of rules in its minimum rates specifying the manner and extent that common carrier rates may be applied by highway permit carriers in lieu of the specific rates set forth in said tariffs.

3. The preponderant use of alternatively applied common carrier rates by highway permit carriers is the use of the carload rates of rail carriers.

4. It is necessary that minimum rate tariff rules (such as Items 200 through 211 of MRT 2) provide detailed methods under which rail carload rates may be applied by highway permit carriers because the operating methods and equipment of rail and motor carriers are not compatible.

18/ For example, Decision No. 65482 (61 Cal. P.U.C. 78) would be superseded. That decision found that the definition of "common carrier rate" should be broadened to include interstate rail rates. The rationale in that decision is no longer appropriate.

5. Petitioner seeks amendment of minimum rate tariff rules, as more specifically set forth under the heading "CTA Proposals".

6. The Commission, in Decision No. 77786, dated October 6, 1970, in Case No. 5330, et al., found that Section 3663 of the Public Utilities Code prohibits the establishment of provisions resulting in minimum rate and charges higher than those applicable under alternatively applied rail rates.

7. The provisions of Sections 452, 726 and 3662 through 3666 do not require the establishment of minimum rates for highway carriers below the level of alternatively applied rail rates resulting from the requirement of Section 3663.

8. The specific minimum rates for highway permit carriers set forth in the Commission's minimum rate tariffs are established pursuant to the methods described in and approved by the California Supreme Court in California Manufacturers Association vs. Public Utilities Commission, 42 C.2d 530. Said minimum rates reflect the lowest reasonable operating costs of various classes of highway carriers.

9. Rates for highway carriers which are below the level of the specific minimum rates and below the level of rail carload rates are lower than the lawful rates for any class of highway carrier (Section 726) and less than the charges of competing rail carriers (Section 452) and are not justified by transportation conditions.

10. Existing minimum rate tariff rules governing the alternative application of common carrier rates should be amended so as to provide, to the fullest practical extent, charges under alternatively applied rail rates that are not less than if rail carload rates had actually been applied.

11. Revision of the provisions of Minimum Rate Tariff 2 (and related provisions of other minimum rate tariffs) found to be reasonable and justified in the preceding opinion, as more specifically set forth in said opinion, will result in just, reasonable, and non-discriminatory minimum rates, charges and rules. To the extent increases may result from said tariff revisions, said increases are justified.

12. Other than as specified above, the current provisions of Minimum Rate Tariff 2 (and related provisions of other tariffs) governing alternative application of common carrier rates have not been shown to be unjust, unreasonable, or unlawful, and should be retained.

Additional Conclusions

1. Minimum Rate Tariff 2 should be amended as specifically set forth in the tariff pages accompanying this order.

2. Other minimum rate tariffs should be amended by separate order.

3. Common carriers should be authorized and directed to amend their tariffs to conform to the tariff revisions established by the orders issued as a result of this proceeding.

4. Long- and short-haul relief should be granted to common carriers to the extent necessary for said carriers to comply with the order herein.

5. To the extent not granted by the orders issued in these proceedings, the petitions should be denied.

6. Motions not heretofore ruled upon 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 May 20, 1972, the revised pages attached hereto and listed in Appendix B, also attached hereto, which pages and appendix by this reference are made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject to said Decision No. 31606, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered herein.

3. Any provisions currently maintained in common carrier tariffs which are more restrictive than, or which produce charges greater than, those contained in Minimum Rate Tariff 2, are authorized to be maintained in connection with the increased rates and charges directed to be established by ordering paragraph 2 hereof.

4. Common carriers maintaining rates on a level other than the minimum rates for transportation for which rates are prescribed in Minimum Rate Tariff 2 are authorized to increase such rates by the same amounts authorized for Minimum Rate Tariff 2 rates herein.

5. Common carriers maintaining rates on the same level as Minimum Rate Tariff 2 rates for the transportation of commodities and/or for transportation not subject to Minimum Rate Tariff 2 are authorized to increase said rates by the same amounts authorized for Minimum Rate Tariff 2 rates herein.

6. Common carriers maintaining rates at levels other than the minimum rates for the transportation of commodities and/or for transportation not subject to Minimum Rate Tariff 2 are authorized to increase said rates by the same amounts authorized for Minimum Rate Tariff 2 rates herein.

7. 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 May 20, 1972; and the 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.

8. Common carriers, in establishing and maintaining the rates 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 rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

9. In all other respects said Decision No. 31606, as amended, shall remain in full force and effect.

10. To the extent not granted herein, Petition for Modification No. 621 and related petitions in other proceedings are denied.

11. To the extent not heretofore ruled upon, all motions are denied.

12. Inasmuch as technical increases are involved, the certification required by the Code of Federal Regulations is attached as Appendix C.

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

Dated at San Francisco, California, this 11th day of APRIL, 1972.

I will file a concurring opinion.

Chairman

Commissioners

LIST OF APPEARANCES

Petitioner: Richard W. Smith, Attorney at Law, H. F. Kollmyer, and A. D. Poe, Attorney at Law, for California Trucking Association.

Respondents: John MacDonald Smith, Leland E. Butler, and Albert T. Suter, Attorneys at Law, for California Rail Carrier Members of Pacific Southcoast Freight Bureau; John McSweeney, for Delta Lines; W. N. Greenham, for Pacific Motor Trucking Company; William R. Kinnaird, for American Transfer Company; Lee Pfister, for Willig Freight Lines; R. C. Ellis and Joe MacDonald, for California Motor Express and California Motor Transport Co.; Philip S. Rogers, for Carver Trucking Co.; Stanley R. Christensen, for Southern Pacific Transportation Company; James Allen Ortloff, for Eager Beaver Trucking; John B. Robinson, for Brothers Transportation, Inc.; T. W. Curley, for Western Milk Transport; George J. Fernandes, for Silvey Transportation, Inc.; Vincent Ganduglia, for Vincent Ganduglia Trucking; and Joseph Casella, for Casella Transportation.

Protestants: A. L. Libra, Attorney at Law, and Jess J. Butcher, for California Manufacturers Association; Dale J. Trapp, for Shell Oil Company; Asa Button, for Spreckels Sugar Division, Amstar Corp.; Milton A. Walker and Patrick W. Pollock, for Fibreboard Corporation; Meyer Kapler, for American Forest Products Corp.; Harold Hudson, for Arizona Pacific Tank Lines; R. Canham, by A. A. Wright, for Standard Oil Company of California; James L. Roney and Franklin T. McNeil, for Dart Transportation Service; Gordon Larsen, for American Can Company; James R. Steele, for Leslie Salt Company; Karl L. Mallard, for C & H Sugar; Donald M. Enos, for Owens Illinois, Inc.; Jack P. Sanders, for Gerber Products Company; James H. Williams, for K-M Truck Lines; Clifford L. Aksland, for C. L. Aksland Trucking; Darryl Ritsch, for Dole Company, Division of Castle & Cooke, Inc.; Dewey A. Cole, for A.I.D.S. Service; Ivan Brown, for Northern California Grain Exchange; Ronald P. McCloskey, for Monsanto Company; Kenneth C. O'Brien, for Container Corporation of America; Anthony J. Heywood, for West Transportation Company; Edward A. Guldaman, for Stauffer Chemical Company; R. M. Zaller, for Continental Can Company, Inc., and Industrial Traffic Association of San Francisco; Milton W. Flack, Attorney at Law, and Don B. Shields, for Highway Carriers Association; Philip K. Davies, for Department of General Services, Traffic Management; Charles D. Weist, for Cates Carr Co; Edward H. Close, for Close & Son Trucking; Harold H. Johnson, for Harold Johnson Truck Lines; Stanley N. Chiarucci, for

S & W Fine Foods, Inc.; Maurice J. Heyerick, for Purex Corp., Ltd.; Lawrence Zaro, for Fuller-O'Brien Corporation; Allen I. Taylor, for Kaiser Steel Corporation; Earl L. Cranston, for Inmont Corp.; Keith E. Miller, for Miller Traffic Service, Inc.; Arthur E. Heughins, for A & D Truck Company; Ben Seaton, for Seaton Trucking; John Teresi, for Teresi Trucking, Inc.; Steve Hopper, for S & H Truck Lines, Inc.; Frank M. Texeira, for Frank's Trucking Co.; Daniel H. Brehm, for Allyn Transportation; John Fontanot, for J & L Trucking; and William D. Mayer, for Canners League of California.

Interested Parties: Helen J. Dalby, for Delmar Fernandez, De Fazio Trucking, and Duartie Trucking Service; Folger Athearn, Jr., for Athearn & Company and Lakeshore Equipment Company; Richard F. Hanley, for United Vintners, Inc.; Tad Muraoka, Elmer E. Tharp, and Hugh F. Reilly, for International Business Machine Corp.; B. R. Garcia, for California Redwood Association; Richard L. Bredeman, for B. R. Garcia Traffic Service; Frank Nunes, for Sunshine Biscuit, Inc.; H. W. Haage, for Can Manufacturers Institute; Jennifer Kenworthy, for United Shippers Association; Ralph Hubbard, for California Farm Bureau Federation; Lloyd E. Baumann, for The Standard Register Company; W. P. Tarter, for William Volker & Company; William D. Grindrod, for Norris Industries; Robert A. Kormel, for Pacific Gas and Electric Company; Philip K. Davies, for William Farris, Traffic Manager, Los Angeles County, and M. A. Passman, Traffic Manager, University of California, Berkeley; William M. Larimore, for Wigle and Larimore; Harold Sumerfield and William A. Watkins, for Bethlehem Steel Corporation; D. H. Marken, Attorney at Law (Washington), for Traffic Managers Conference of California; Eustace O. Pate, for MJB Company and Western Can Company; Raymond D. Vinick, for Hunt Wesson Foods, Inc.; C. D. Gilbert, for Standard Brands, Inc.; Patrick F. Murphree, for Johnson & Johnson; George B. Shannon, for Southwestern Portland Cement Company; Vernon Hampton, for Certain-Teed Products Corporation; Robert L. Kreutz, for National Gypsum Company; Charles H. Caterino, for The Flintkote Company, Pioneer Division; Lang D. Lewis, for Van Waters & Rogers; Jack N. Schumann, for Kal Kan Foods, Inc.; Ernest E. Gallego, Attorney at Law, for Southern California Rock Products Association; Jack Cedarblade, by Ernest E. Gallego, Attorney at Law, for Rock, Sand and Gravel Producers Association of Northern California and Northern California Ready Mixed Concrete and Materials Association; James S. Blaine, for Leslie Salt Company; Donald W. Scott, for Atlantic Richfield Company; Albert F. Reyher, for Alpha Beta Markets; Richard A. Starr, for Morton Salt Company; Wayne Tinker, for Diamond Shamrock Chemical Corporation; and Harry W. Timmerman, for Zellerbach Paper Company.

Commission Staff: Eugene Q. Carmody and Robert E. Walker.

APPENDIX B

LIST OF REVISED PAGES TO
MINIMUM RATE TARIFF 2

FORTY-FIFTH REVISED PAGE 11

FIFTEENTH REVISED PAGE 16

TENTH REVISED PAGE 16-A

SEVENTEENTH REVISED PAGE 23

SECOND REVISED PAGE 27

(END OF APPENDIX B LIST)

SECTION 1--RULES OF GENERAL APPLICATION | ITEM

DEFINITION OF TECHNICAL TERMS
(Items 10, 11 and 12)

AIR-MILE means a statute mile measured in a straight line without regard to terrain features or differences in elevation.

ARMORED CAR means any motor truck and/or other highway vehicle which has been armored with bullet resistant metal and/or bullet proof glass, and which is manned by an armed crew.

CARRIER means a radial highway common carrier, a highway contract carrier, a cement contract carrier or a dump truck carrier as defined in the Highway Carriers' Act, or a household goods carrier as defined in the Household Goods Carriers Act.

CARRIER'S EQUIPMENT means any motor truck or other self-propelled highway vehicle, trailer, semitrailer, or any combination of such highway vehicles operated as a single unit.

◊COMMON CARRIER RATE means any intrastate rate or rates of any common carrier or common carriers, as defined in the Public Utilities Act, lawfully on file with the Commission and in effect at time of shipment.

COMPONENT PART means any part of a shipment received by the carrier whether or not such part is separately delivered by the carrier; and any part of a shipment separately delivered by the carrier whether or not such part is separately received by the carrier.

CONSIGNOR means the person, firm or corporation shown on the bill of lading as the shipper of the property received by the carrier for transportation.

DANGEROUS ARTICLES TARIFF means Motor Carriers' Explosives and Dangerous Articles Tariff 14, Cal.P.U.C. 9, of American Trucking Associations, Inc., Agent. ø10

DEBTOR means the person obligated to pay freight charges to the carrier, whether consignor, consignee or other party.

DISTANCE TABLE means Distance Table 7 issued by the Cal.P.U.C.

ESCORT SERVICE means the furnishing of pilot cars or vehicles by a carrier as may be required by any governmental agency to accompany a shipment for highway safety.

ESTABLISHED DEPOT means a freight terminal owned or leased and maintained by a carrier for the receipt and delivery of shipments.

EXCEPTION RATINGS TARIFF means Exception Ratings Tariff 1 issued by the Cal.P.U.C.

GOVERNING CLASSIFICATION means National Motor Freight Classification A-12, Cal. P.U.C. 10, of National Motor Freight Traffic Association, Inc., Agent.

HOLIDAYS means New Year's Day (January 1), Washington's Birthday (the third Monday in February), Memorial Day (the last Monday in May), Fourth of July, Labor Day (the first Monday in September), Thanksgiving Day, the Day after Thanksgiving, December 24 and Christmas Day (December 25). When a holiday falls on Sunday, the following Monday shall be considered as a holiday.

INDEPENDENT-CONTRACTOR SUBHAULER means any carrier who renders service for a principal carrier, for a specified recompense, for a specified result, under the control of the principal as to result of the work only and not as to the means by which such result is accomplished.

(Continued in Item 11)

ø Change)
◊ Increase) Decision No. 79937

EFFECTIVE

Correction

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

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
APPLICATION OF GOVERNING PUBLICATIONS This tariff is governed to the extent shown herein by: (a) The Governing Classification (See Item 280 herein), (b) The Exception Ratings Tariff, (c) The Dangerous Articles Tariff (California Regulations) and (d) The Distance Table. Where the ratings and rules or other provisions or conditions provided in the governing publications described in paragraphs (a), (b) and (d) hereof are in conflict with those provided in this tariff, the provisions of this tariff will apply. Except as otherwise specifically provided in this tariff, where the provisions of the Dangerous Articles Tariff are in conflict with provisions set forth in this tariff or the otherwise governing publications referred to in paragraphs (a), (b) and (d) hereof, the provisions of the Dangerous Articles Tariff will apply.	50
SHIPMENTS TO BE RATED SEPARATELY Each shipment shall be rated separately. Shipments shall not be consolidated or combined by the carrier. (Shipments may be picked up in multiple lots in accordance with the provisions of Item 85. Component parts of split pickup or split delivery shipments, as defined in Item 12, may be combined under the provisions of Items 160-163, 170-173, 220 and 230.)	60
WEIGHTS--GROSS WEIGHTS AND DUNNAGE (Exception to Sec. 1 and Sec. 3 of Item 995 of the Governing Classification) Unless otherwise provided, charges shall be computed on actual gross weights, except when estimated weights are authorized such estimated weights shall be used. (See Exceptions 1 and 2) EXCEPTION 1.--When palletized shipments subject to minimum weights of 20,000 pounds or more are loaded or unloaded by power equipment, the weight of the pallets (elevating truck pallets or platforms or lift truck skids) shall not be used in determining the weight of the shipment nor the charges thereon. This exception applies only in connection with rates contained in this tariff, and is not applicable to shipments of empty pallets. When rail rates are used under the provisions of Items 200 through 230 of this tariff, the weight of the pallets shall be included or excluded in accordance with the provisions of the governing rail tariff. *EXCEPTION 2.--When rail rates are used under the provisions of Items 200 through 230 of this tariff, actual, estimated or agreed weights shall be used to compute charges in accordance with the provisions of the governing rail tariff.	ø70

ø Change)
* Addition) Decision No. 79937

EFFECTIVE

Correction

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

SECTION 1--RULES OF GENERAL APPLICATION (Continued) | ITEM

SHIPMENTS TRANSPORTED IN MULTIPLE LOTS

(a) When a carrier does not pick up an entire shipment, including a split delivery shipment and a split pickup shipment at one time, the following provisions shall apply in addition to other applicable rules and regulations:

1. The entire shipment shall be available to the carrier for immediate transportation at the time of the first pickup.

2. The carrier shall not transport a multiple lot shipment unless, prior to or at the time of the initial pickup, written information has been received from the consignor describing the kind and quantity of property which will constitute the multiple lot shipment. Preparation by the shipper of the required single multiple lot document for the entire shipment, referred to in paragraph 3 of this item, for execution by the shipper and carrier prior to or at the time of initial pickup, will constitute compliance with this paragraph.

3. At the time of or prior to the initial pickup, the carrier shall issue to the consignor a single multiple lot document for the entire shipment. It shall show the name of the consignor, point of origin, date of the initial pickup, name of the consignee (or consignees), point of destination (or points of destinations), and the kind and quantity of property. In addition, a bill of lading (see Item 255) shall be issued for each pickup (including the initial pickup) which shall give reference to the single multiple lot document governing the entire shipment, by its date and number (if assigned a number), the name of the consignor, and such other information as may be necessary to clearly identify the single multiple lot document.

ø4. a. If rated under the rates in this tariff, the entire shipment shall be picked up by the carrier within a period of two days computed from 12:01 a.m. of the date on which the initial pickup commences, excluding Saturdays, Sundays and legal holidays. ø85

*b. If rated under the provisions of Items 200, 210 (paragraph (b)), and 230 of this tariff, the entire shipment shall be picked up by the carrier within:

(1) a period of two days computed from 12:01 a.m. of the date on which the initial pickup commences, excluding Saturdays, Sundays and legal holidays, when the highway carrier's trailer equipment is placed for loading by the consignor without the presence of carrier personnel or motive equipment.

◊(2) a 24-hour period computed from 12:01 a.m. of the date on which the initial pickup commences, when the shipment is loaded other than under the conditions specified in subparagraph (1) above.

5. The separate pickups made in accordance with the foregoing provisions shall constitute a composite shipment which shall be subject to the rates named or provided for in this tariff, including Items 200, 210, 220 and 230, in effect on the date of the first pickup, for the transportation of a single shipment of like kind and quantity of property picked up or transported on a single vehicle or connected train of vehicles.

(b) If any of the property described in the single multiple lot document is picked up without complying with the foregoing provisions, each such pickup shall be rated as a separate shipment under other provisions of this tariff. The property picked up in accordance with the provisions of paragraph (a) hereof shall constitute the multiple lot shipment.

ø Change)
* Addition) Decision No. 79937
◊ Increase)

EFFECTIVE

Correction

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

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
ALTERNATIVE APPLICATION OF RATES NAMED IN THIS TARIFF In the event two or more rates are named in this tariff for the same transportation, the lower rate shall apply. In the event a combination of rates makes a lower aggregate through rate or charge than a single rate, such lower combination of rates shall apply.	190
ALTERNATIVE APPLICATION OF COMMON CARRIER RATES (a) Common carrier rates, except rates of coastwise common carriers by vessel, may be applied in lieu of the rates provided in this tariff, when such common carrier rates produce a lower aggregate charge for the same transportation than results from the application of the rates herein provided. (See Notes 1, 2, 3, 4 and 5) (b) Team track-to-team track rates of common carriers by railroad or of common carriers by vessel operating over inland waters may be applied in lieu of the rates provided in this tariff, in connection with transportation between established depots in the same cities or unincorporated communities in which such team tracks are located, when such team track-to-team track rates produce a lower aggregate charge than results from the application of the rates provided in this tariff for depot-to-depot movements. (See Notes 1, 2, 3, 4 and 5) ØNOTE 1.--When a rail carload rate is subject to varying minimum weights, dependent upon the size of the car ordered or used, the lowest minimum weight obtainable under such minimum weight provisions may be used in applying the basis provided in this item. *When the rail carload rate is subject to a specified minimum weight, subject to the condition that if the car is loaded to full visible or weight carrying capacity, actual weight will apply, or to actual weight but not less than a lesser carload minimum weight, the actual weight will apply subject to the lesser carload minimum weight, if any. *NOTE 2.--When rail switching charges are applicable in connection with line-haul movements by rail and the gross weight of the shipment exceeds the applicable carload minimum weight, only one rail switching charge shall be assessed. NOTE 3.--In determining the aggregate charge by railroad for the transportation of commodities accorded temperature control service, the charge for temperature control service shall be the charge for Mechanical Refrigeration Service named in the applicable rail tariff or tariffs. NOTE 4.--In applying the provisions of this item, a rate no lower than the common carrier rate and a weight no lower than the actual weight or published minimum weight (whichever is the higher) applicable in connection with the common carrier rate shall be used. NOTE 5.--For the purpose of applying the provisions of this item, the definitions of Point of Destination and Point of Origin set forth in Item 11 will be applicable.	Ø200

Ø Change)
* Addition) Decision No. 79937

EFFECTIVE

Correction

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

SECTION 1--RULES OF GENERAL APPLICATION (Continued) | ITEM

(1) COLLECTION OF CHARGES

ø(a) Except as otherwise provided in this rule, transportation and accessorial charges shall be collected by the carriers prior to relinquishing physical possession of shipments entrusted to them for transportation.

ø(b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of freight in advance of the payment of the charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called debtors, for a period of 7 days, excluding Sundays and legal holidays other than Saturday half-holidays. When the freight bill covering a shipment is presented to the shipper on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the freight. When the freight bill is not presented to the debtor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill. *◊(See Exception)

ø(c) Where a carrier has relinquished possession of freight and collected the amount of charges represented in a freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the debtor, the carrier may extend credit in the amount of such additional charges for a period of 30 calendar days to be computed from the first 12 o'clock midnight following the presentation of the subsequently presented freight bill. *◊(See Exception) | ø250

ø(d) Freight bills for all transportation and accessorial charges shall be presented to the debtors within 7 calendar days from the first 12 o'clock midnight following delivery of the freight. *◊(See Exception)

ø(e) Debtors may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by the carrier, as evidenced by the postmark, shall be deemed to be the time of presentation of the freight bills. *◊(See Exception)

(f) The mailing by the debtor of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such debtor may be deemed to be the collection of the charges within the credit period for the purpose of these rules. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.

*◊(g) When alternative rail carload rates are applied under the provisions of Items 200 through 230 of this tariff, carriers may relinquish possession of freight in advance of payment thereon and extend credit in the amount of said charges to those responsible for payment for period of five days (120 hours) beginning at twelve midnight of the day delivery is accomplished.

*EXCEPTION.--Not applicable in connection with alternatively applied rail carload rates assessed under the provisions of Items 200 through 230 of this tariff.

(1) Will not apply to the transportation of property for the United States, state, county or municipal governments.

ø Change)
* Addition) Decision No. 79937
◊ Increase)

EFFECTIVE

Correction

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

APPENDIX C

DATA REGARDING INCREASE IN CHARGES IN CONNECTION WITH ALTERNATIVELY APPLIED RAIL CARLOAD RATES IN MINIMUM RATE TARIFF NO. 2

(1) The decision of the California Public Utilities Commission to which this appendix is attached authorizes and directs certain changes in rules governing the application of alternatively applied rail carload rates by highway carriers under provisions of the Commission's Minimum Rate Tariff 2.

(2) Some of said rule changes result in increases. Said increases are minor; the total amount of said increases is unknown and are impossible of determination; the total amount of said increases, however, should not increase carriers' gross revenues by as much as one percent.

(3) The increases authorized are technical in nature; are for the purposes of equalizing rates between rail and highway carriers; and, therefore, are not cost based. Said increases do not reflect future inflationary expections.

(4) This appendix to the rate decision constitutes the certification required by the Code of Federal Regulations.

C-5432, P[redacted]21, et al. MM
D-79937

D. W. HOLMES, COMMISSIONER, Concurring:

I concur with the instant decision solely on the basis of the legal issue involved.

I would, however, strenuously object if this decision were considered as precedential by the Commission that it will readily eliminate alternate rail rates when such elimination would work to the detriment of the shipping public.

Commissioner

Dated at San Francisco, California,
April 11, 1972.