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ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into
the rates, rules and 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. 689
(Filed Feb. 7, 1972)

Arden Riess, Sheldon Mitchell & Associates, and Joseph
C. Nelle, for Delta Prestress Concrete, Inc.,
petitioner.

J. C. Kaspar, A. D. Poe, Attorney at Law, and H. F.
Kollmeyer, for California Trucking Association,
protestant.

Jess J. Butcher, for California Manufacturers Associa-
tion, interested party.

B. I. Shoda, for the Commission staff.

O P I N I O N

Minimum Rate Tariff 2 (MRT 2) contains minimum rates and rules governing the statewide transportation of general commodities. Item 30 (paragraph (d)) of said tariff provides that the rates named therein do not apply to transportation of shipments between the following points:

- (d) Shipments (1) between Sacramento and North Sacramento;
(2) between said cities, on the one hand, and the adjacent plants of the Lumbermen's Supply, Inc., Essex Lumber Company, Campbell Soup Company, McKesson & Robbins, Inc., Howard Terminal Warehouse, Royal Packing Company, Procter & Gamble Manufacturing Company, Fort Sutter Warehouse Co., Libby, McNeil & Libby, Boone Warehouses, Inc., and Graybar Electric Company, Inc., on the other hand; (3) between said cities and plants, on the one hand, and the Sacramento Air Depot, the Sacramento Municipal Airport

and the Sacramento Signal Depot, on the other hand; (4) between the Sacramento Air Depot, the Sacramento Municipal Airport and the Sacramento Signal Depot; (5) between points and places within the area described as follows:

Beginning at the junction of the Sacramento River Barge Canal and the Sacramento River, westerly along the Sacramento River Barge Canal to Jefferson Boulevard, southwesterly along Jefferson Boulevard to Arlington Road, northerly along Arlington Road to Thorpe Road, westerly along Thorpe Road and its meanderings, thence along the westerly prolongation of Thorpe Road to the east levee of the Yolo Bypass, northerly along the east levee of the Yolo Bypass to the right-of-way of the Southern Pacific Company, northeasterly along the right-of-way of the Southern Pacific Company to Harbor Boulevard northerly along Harbor Boulevard to Riverbank Road, thence northerly along an imaginary line to the Sacramento River, easterly and southerly along the Sacramento River to its junction with the Sacramento River Barge Canal, the point of beginning (includes Port of Sacramento and the communities of West Sacramento, Broderick and Bryte);

and (6) between any of the communities, plants, or other locations identified in paragraph (d) hereof.

In this proceeding, Delta Prestress Concrete, Inc., petitioner, seeks amendment of paragraph (d), subparagraph (2) of Item 30, by adding Delta Prestress Concrete, Inc., to the list of plant locations named therein. The effect of this tariff amendment is to exempt from the application of the rates in MRT 2 the transportation of shipments between Delta Prestress Concrete, Inc., on the one hand, and points in Sacramento, on the other hand.

A duly noticed public hearing was held before Examiner Mallory in Sacramento on April 27, 1972. The matter was submitted on the receipt of closing statements on May 31, 1972. Evidence was presented on behalf of petitioner by its president and manager.

The record shows the following: Delta Prestress Concrete, Inc. (Delta) is located at 7020 Tokay Avenue. Said location is not within the city limits of Sacramento although the north property line of Delta is adjacent to the southern city limits of Sacramento. Delta engages in the manufacture, sale, and installation of precast (prestressed) concrete building and bridge members, which are used in the erection of large buildings and highway bridges. The transportation of such concrete products from petitioner's plant is by for-hire highway carriers, and petitioner pays the freight charges thereon. Petitioner's sales area is within a radius of 100 miles of Sacramento. Sales vary from year-to-year depending upon the number of buildings and bridges erected within its sales area. Petitioner competes with a firm which manufactures similar concrete products and which is located in West Sacramento. Said competitor is exempt from minimum rates under provisions of paragraph (d) of Item 30 of MRT 2. Petitioner is informed and believes that it operates under a competitive disadvantage in the sale of concrete articles in Sacramento and West Sacramento because its transportation to said points is subject to minimum rates while its competitor located in West Sacramento is not. The record does not establish that any sales have been lost to said competitor for any reason, nor that said competitor enjoys lower freight charges to Sacramento than Delta because of the exemption from minimum rates on shipments from West Sacramento to Sacramento.

Protestant California Trucking Association (CTA) opposes the granting of the petition. CTA argued that there is no showing that the present situation has been unduly detrimental to petitioner and that petitioner has won contracts in recent years within Sacramento in competition with the firm located in West Sacramento.

CTA also argued that Section 3662 requires that the Commission establish and maintain minimum rates between all points. CTA points out that the present exemptions in paragraph (d) of

Item 30 preceded the repeal of the City Carriers' Act (Statutes 1968, Chapter 1007). MRT 2 did not apply to city carrier operations subject to the City Carriers' Act. Upon repeal of that statute, the Commission issued Decision No. 74749, dated October 1, 1968, in the various minimum rate proceedings, which deleted reference to city carriers.^{1/} CTA further points out that the Commission has instituted Case No. 6328 (issued August 4, 1959) for the purpose of receiving evidence with respect to the establishment of specific minimum rates applicable to the transportation of general commodities within the Sacramento Metropolitan area. CTA argued that the establishment of appropriate minimum rates pursuant to the mandate contained in the Highway Carriers' Act within the Sacramento Metropolitan area would remove the need for the present exemptions or the addition of new exemptions for shippers located in that metropolitan area. CTA urged that petitioner has made no showing of overwhelming need for immediate rate relief, and that the proper disposition of this matter is a denial of petitioner's request and the simultaneous direction of the Commission staff to expedite the completion of the studies necessary to the establishment of minimum rates in Case No. 6328.

The Commission staff argued that the existing territorial exemptions in MRT 2 having been granted by formal action of the Commission, reflect specific transportation circumstances and conditions; the applicability and reasonableness of such provisions were not changed when the City Carriers' Act was repealed by the State Legislature; thus the repeal of the City Carriers' Act does not prohibit authorizing of additional exemptions such as the one sought by petitioner in this proceeding. For the foregoing reasons the staff is of the opinion that the repeal of the City Carriers' Act has no bearing on the determination of this proceeding.

^{1/} Said decision also added a provision that the rates in MRT 2 do not apply to shipments transported wholly within the exterior boundaries of an incorporated city.

Petitioner argued that it should not be subjected to higher rates merely because it is located across the line from the Sacramento city limits; and that both it and its competitor in West Sacramento are located in the same commercial area, as both are within the boundaries of the Sacramento Extended Area as defined in Section 2-D of Distance Table 7. It also argued that the granting of the petition would be consistent with prior Commission decisions granting similar exemptions.

The Commission finds as follows:

1. Delta is a manufacturer of precast concrete building and bridge members used in the construction of multistory buildings and highway bridges. Delta's plant at 7020 Tokay Avenue is adjacent to, but outside the southerly city limits of the City of Sacramento.

2. A company manufacturing similar commodities is located in West Sacramento.

3. Delta and its competitor bid on the furnishing of prestressed concrete materials on construction projects located within the corporate limits of Sacramento and West Sacramento.

4. The above-described transportation of precast concrete building and bridge members is exempt from the minimum rates in MRT 2 when the transportation is from the plant of Delta's competitor in West Sacramento, but is subject to said tariff when the transportation is from Delta's plant at 7020 Tokay Avenue.

5. Petitioner has not established that its competitor has received lower freight charges, nor that Delta has lost business to its competitor because of any differential in freight rates between Sacramento and the plant locations of Delta and its competitor.

6. The present exemptions in paragraph (d) of Item 30 of MRT 2 were established to afford a competitive balance within a single commercial and industrial community, part of which lies within the corporate boundaries of the city of Sacramento and

part of which lies outside, but immediately adjacent to, said community. Additional exemptions of specific plant locations were added to paragraph (d) of Item 30 of MRT 2 as the greater Sacramento commercial and industrial area expanded.

The Commission concludes as follows:

1. The repeal of the City Carriers' Act in 1968 has no material bearing on the issues in this proceeding.
2. Neither the Commission staff nor other interested parties have taken any affirmative action to present the studies and proposals necessary to the establishment of minimum rates in the Sacramento Metropolitan area, as contemplated by Case No. 6328, in the 12 years since that case was instituted; therefore, relief sought in the petition herein should not be deferred because of the pendency of said proceeding.
3. It is not necessary to show that petitioner has actually lost business to a competitor located within an area where minimum rates are not applicable in order to be accorded relief herein. The record shows that both petitioner and the firm located in West Sacramento compete for business within the Sacramento exempt area, and each firm furnishes a like commodity under similar transportation conditions and circumstances. Petitioner, therefore, should be placed in the same position as its competitor with respect to freight rates.
4. The requested exemption should be granted.

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 September 2, 1972, Twenty-sixth Revised Page 13, Sixth Revised Page 13-A and Second Revised Page 13-B, attached hereto and made a part hereof.
2. 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.

3. 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.

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

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

Dated at San Francisco, California, this 25th day of JULY, 1972.

William Sproule Jr. President
[Signature]
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

-7- Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--TERRITORIAL (Items 30, 31 and 32)</p> <p>Subject to Note 1 of Item 32 the rates in this tariff apply for transportation of shipments between all points within the State of California, except:</p> <p>(a) Shipments having point of origin in Alameda, Albany, Berkeley, Emeryville, Oakland or Piedmont, and point of destination in another of those cities;</p> <p>(b) Shipments having both point of origin and point of destination within the San Diego Drayage Area as described in Minimum Rate Tariff 9-B;</p> <p>(c) Shipments (1) between Sacramento on the one hand and the adjacent plants of the Boone Warehouses, Inc., Campbell Soup Company, Delta Prestress Concrete, Inc., Essex Lumber Company, Fort Sutter Warehouse Co., Graybar Electric Company, Inc., Howard Terminal Warehouse, Libby, McNeil & Libby, Lumbermen's Supply, Inc., McKesson & Robbins, Inc., Procter & Gamble Manufacturing Company and Royal Packing Company, on the other hand; (2) between said cities and plants on the one hand and the Sacramento Air Depot, the Sacramento Municipal Airport and the Sacramento Signal Depot on the other hand; (3) between the Sacramento Air Depot, the Sacramento Municipal Airport and the Sacramento Signal Depot; (4) between points and places within the area described as follows:</p> <p>Beginning at the junction of the Sacramento River Barge Canal and Sacramento River, westerly along the Sacramento River Barge Canal to Jefferson Boulevard, southwesterly along Jefferson Boulevard to Arlington Road, northerly along Arlington Road to Thorpe Road, westerly along Thorpe Road and its meanderings, thence along the westerly prolongation of Thorpe Road to the east levee of the Yolo Bypass, northerly along the east levee of the Yolo Bypass to the right of way of the Southern Pacific Company, northeasterly along the right of way of the Southern Pacific Company to Harbor Boulevard, northerly along Harbor Boulevard to Riverbank Road, thence northerly along an imaginary line to the Sacramento River, easterly and southerly along the Sacramento River to its junction with the Sacramento River Barge Canal, the point of beginning (includes Port of Sacramento and the communities of West Sacramento, Broderick and Aryte);</p> <p>and (5) between any of the plants or other locations identified in paragraph (c) hereof;</p> <p>(d) Shipments between Marysville and Yuba City and between said cities on the one hand and the adjacent plant of the Harter Packing Company on the other hand;</p> <p>(e) Shipments between the Sonoma freight depot of the Sierra Railroad Company and Sonoma;</p> <p style="text-align: right;">(Continued in Item 31)</p>	30
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> * Change * Addition </div> <div style="font-size: 2em; margin-right: 10px;">}</div> <div> Decision No. <div style="font-size: 1.5em; font-weight: bold;">80313</div> </div> </div>	
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<div style="display: flex; justify-content: space-between;"> <div>Correction</div> <div> ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA SAN FRANCISCO, CALIFORNIA </div> </div>	

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--TERRITORIAL (Continued) (Items 30, 31 and 32)</p> <p>Subject to Note 1 of Item 32 the rates in this tariff apply for transportation of shipments between all points within the State of California, except:</p> <p>(f) Shipments (1) having both point of origin and point of destination within the metropolitan Fresno area embraced by the following boundaries (includes both sides of streets, boulevards, roads, avenues or highways named):</p> <p>Beginning at the intersection of Hayes Avenue and Shaw Avenue, easterly along Shaw Avenue to U. S. Highway 99, northwesterly along U. S. Highway 99 to the San Joaquin River, easterly along the San Joaquin River to Friant Road, southerly along Friant Road to Alluvial Avenue, easterly along Alluvial Avenue to Fresno Avenue, southerly along Fresno Avenue to Herndon Avenue, easterly along Herndon Avenue to Chestnut Avenue, southerly along Chestnut Avenue to Shaw Avenue, easterly along Shaw Avenue to Fowler Avenue, southerly along Fowler Avenue to Jensen Avenue, westerly along Jensen Avenue to Willow Avenue, southerly along Willow Avenue to Central Avenue, westerly along Central Avenue to U. S. Highway 99, northwesterly along U. S. Highway 99 to North Avenue, westerly along North Avenue to Marks Avenue, northerly along Marks Avenue to Jensen Avenue, westerly along Jensen Avenue to Cornelia Avenue, northerly along Cornelia Avenue to Kearney Avenue, westerly along Kearney Avenue to Hayes Avenue, northerly along Hayes Avenue to point of beginning; and</p> <p>(2) between points in the area described in paragraph (1) hereof and the adjacent plant of PPG Industries, Inc. at 3333 South Peach Avenue.</p> <p>(g) Shipments having both point of origin and point of destination within the metropolitan Modesto area embraced by the following boundaries (includes both sides of streets, boulevards, roads, avenues or highways named):</p> <p>All of the City of Modesto, also the territory bounded as follows:</p> <p>Beginning at the point where the southerly city limits diverge from the Tuolumne River at Beard Brook; thence southerly and easterly along the Tuolumne River to its intersection with Riverside Drive; thence northerly along Riverside Drive to Yosemite Boulevard; thence westerly along Yosemite Boulevard to the city limits at El Vista Avenue.</p> <p>(h) Shipments having both point of origin and point of destination within the metropolitan Crescent City area embraced by the following boundaries:</p> <p>All of the City of Crescent City, also territory located within three miles of the city limits.</p> <p style="text-align: center;">(Continued in Item 32)</p>	631
<p>6 Change in format only, Decision No. 80313</p>	
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<p>Correction</p>	<p>ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--TERRITORIAL (Concluded) (Items 30, 31 and 32)</p> <p>Subject to Note 1 of this item the rates in this tariff apply for transportation of shipments between all points within the State of California, except:</p> <p>(1) Shipments having both point of origin and point of destination within the Watsonville area embraced by the following boundaries:</p> <p>All of the City of Watsonville, also the territory bounded as follows:</p> <p>All points and places within two miles of Wall and Main Streets, Watsonville, and all points on or within one-fourth mile of Freedom Boulevard between the corporate city limits of Watsonville and a point commonly known as 5 Mile House, approximately three miles northwest of the corporate city limits of Watsonville.</p> <p>(3) Shipments having both point of origin and point of destination within the metropolitan Stockton area embraced by the following boundaries (includes both sides of streets, boulevards, roads, avenues or highways named):</p> <p>All of the City of Stockton, also the territory bounded as follows:</p> <p>Beginning at the junction of the San Joaquin and the Calaveras Rivers, easterly along the Calaveras River to the city limits, northerly on an imaginary line to March Lane, westerly, northerly and easterly along the west boundary of the city limits to Don Road, northerly on Don Road to Lucille Avenue, easterly on Lucille Avenue to Thornton Road, southeasterly along Thornton Road to Paloma Avenue, easterly along Paloma Avenue to the city limits, northerly, easterly and southerly along the city limits to Hammer Lane, easterly along Hammer Lane to U. S. Highway 99, southerly along U. S. Highway 99 to the Central California Traction Company's right-of-way, easterly to Hubbard Avenue, southerly along Hubbard Avenue and an imaginary line including the Wilcox Road to the Diverting Canal, southeasterly along the Diverting Canal to the Southern Pacific Company's right-of-way, easterly along the Southern Pacific Company's right-of-way, to a point opposite to the Budd Road, southerly to East Main Street, westerly along East Main Street to Walker Lane, southerly on Walker Lane an an imaginary line to the Carpenter Road, westerly along the Carpenter Road to Sharps Lane, southerly on Sharps Lane to the Sperry Road, including Stockton Field Airport, westerly on Sperry Road and continuing westerly along an imaginery line to U. S. Highway 50 and the French Camp Slough, northerly along the French Camp Slough to the San Joaquin River, northerly along the San Joaquin River to the junction of the Calaveras River, and including the U. S. Naval Supply Annex on Rough and Ready Island.</p> <p>(c) Shipments transported wholly within the exterior boundaries of an incorporated city (except incorporated cities within the Metropolitan Los Angeles Area described in Item 270-3).</p> <p>NOTE 1.--The exceptions provided in Items 30, 31 and 32 do not apply in connection with the transportation of split pickup or split delivery shipments having one or more points of origin or destination outside of the cities or areas designated in these items.</p>	#32
<p>Change in format only, Decision No.</p>	80313
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<p>Correction</p>	<p>ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p>