

Decision No. 81306

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation  
into the rates, rules, regulations,  
charges, allowances, and practices  
of all highway 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. 719  
(Filed October 24, 1972)

William Daniel Mayer, for Cannery League of  
California, petitioner.  
Hugh T. Jones, for Continental Can Co.;  
Richard W. Smith and Arlo D. Poe, Attorneys  
at Law, and Herbert W. Hughes, for  
California Trucking Association; and  
Don B. Shields, for Highway Carriers  
Association; interested parties.  
Kenny Nakashima, for the Commission staff.

O P I N I O N

Cannery League of California seeks an extension of the  
expiration date of Item 45 of Minimum Rate Tariff 2 (MRT 2). Item 45  
provides for free return of empty pallets within a defined mileage  
radius when certain conditions specified in the item are met.

By interim order in Decision No. 80837 dated  
December 12, 1972, the expiration date was extended on an interim  
basis until June 30, 1973. Decision No. 80837 also ordered that  
a public hearing be scheduled for the receipt of evidence. A public  
hearing was held on February 20, 1973 before Examiner O'Leary at  
San Francisco.

A representative of petitioner testified that petitioner is a nonprofit trade association comprised of 31 members who produce over 85 percent of California's canned fruit and vegetables. Petitioner's members use all types of carriers to transport canned foodstuffs and various types of cannery supplies.

The representative of petitioner also testified that the provisions of Item 45 were established initially on an experimental basis and reflected the rate-making judgments of both shippers and truckers. The initial item had an expiration date of December 31, 1967. The expiration date of the item has been extended annually. Since the establishment of the original item certain amendments have been incorporated therein.

Subsequent to the issuance of Decision No. 80837 discussions involving carriers and petitioner were held. As a result of the discussions petitioner proposes two amendments to the item as follows:

1. Limit the application of the item to pallets as described in Item 150390, Sub 4 of the Governing Classification without bodies, enclosures, sides, stakes, standards, or stacking posts. The item presently is applicable to empty pallets with platforms, or skids as described in Item 150370, Sub 1; Item 150380; Item 150390, Sub 4; or Item 150430, Sub 2, of the Governing Classification; six inches or less in height or nested solid (as defined in Rule 110 of the Governing Classification), and of wood, metal or wood and metal construction.
2. Require that palletized shipments be loaded by consignor and unloaded by consignee with power equipment furnished and used without expense to the carrier. The item presently requires such loading or unloading by either the consignor or the consignee.

The representative of petitioner requests that Item 45, incorporating the above changes, be continued until June 30, 1974 because experience is still being gained and to evaluate the impact of the proposed changes.

There are no objections to the changes proposed; however, the Commission staff urges that Item 45 be established on a permanent basis. The California Trucking Association is opposed to the establishment of the item on a permanent basis at this time.

Item 45 was established some seven years ago on a temporary experimental basis. Since that time the item has been continued with certain modifications on a year-to-year basis. The extension of expiration dates was authorized in order to afford both shippers and carriers opportunity to develop knowledge concerning the provisions of the item. Thereafter it was expected that parties would come forward with a proposal concerning final disposition of the item. Yearly extensions of temporary tariff provisions over a prolonged period of time, such as in this matter, serve no useful purpose, are misleading as to the real permanent nature of the tariff item involved, and frequently reflect an expensive misuse of the Commission's procedural time and energy. In the event it is deemed necessary to seek changes in any of the tariff provisions contained in MRT 2 an appropriate petition can be filed.

#### Findings

1. The proposed rule changes proposed by petitioner are reasonable and to the extent that said rules will result in increases such increases are justified.

2. Item 45 of MRT 2 was originally established some seven years ago on a temporary basis to afford both carriers and shippers opportunity to develop knowledge concerning the provisions of the item.

3. Since its original establishment Item 45 of MRT 2 has been continued with certain modifications on a year-to-year basis.

The Commission further finds, pursuant to the provisions of Rule 23.1 of the Commission's Rules of Procedure, that any increases in minimum rates and charges are minor; the total amount of said increases is unknown and is impossible to determine; the total amount of increases should not increase any carrier's gross revenue by as much as one percent; the increases which will result involve a comparatively small amount of traffic and will have little, if any, effect upon any carrier's operating ratio and/or rate of return, and will not reflect future inflationary expectations; and there is no evidence that any carrier is willing and capable of providing the service at the existing rates.

The Commission concludes that Petition for Modification No. 719 should be granted except for the retention of an expiration date in connection with the provisions of Item 45 of Minimum Rate Tariff 2.

#### 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 July 1, 1973, Thirteenth Revised Page 15-B attached hereto and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject to Decision No. 31606, as amended, and currently maintain in their tariffs the provisions involved herein, are hereby directed to establish in said tariffs the amendments necessary to conform with the further adjustment ordered herein.

3. Tariff publications required or 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 fifth day after the effective date of this order, on not less than five days' notice to the Commission and to the public; such tariff publications as are required shall be made effective not later than July 1, 1973; and as to tariff publications which are authorized but not required, the authority herein granted shall expire unless exercised within sixty days after the effective date of this order.

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

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

C 5432 Pet. 719 af

6. To the extent not granted herein Petition No. 719 in Case No. 5432 is denied.

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

Dated at San Francisco, California, this 24th day of APRIL, 1973.

Vernon L. Sturgeon  
President  
William L. Sturgeon, Jr.  
Richard L. Sturgeon  
Commissioners

Commissioner Thomas Moran, 30102 necessarily absent, did not participate in the disposition of this proceeding.

Commissioner D. W. Helmen, being necessarily absent, did not participate in the disposition of this proceeding.

MINIMUM RATE TARIFF 2

C. 5432 (Pet. 719) \*

SECTION 1—RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;"><b>EMPTY PALLET RETURN</b></p> <p><b>SECTION 1</b>—The provisions of this section apply only in connection with shipments of commodities named in paragraph (c) and shipments transported under provisions of Items 316, 320, 320-1, 335-S, 338, 345, 350, 390 and 6544:</p> <p>(a) When palletized shipments are transported at rates subject to minimum weights of 10,000 pounds or more, empty pallets may be transported without charge for distances not exceeding 75 constructive miles when returning to the point of origin of an outbound palletized shipment or when transported for a returning palletized shipment, subject to the provisions of Notes 1, 2, 3 and 4, below:</p> <p><b>NOTE 1</b>—Palletized shipments must be loaded by consignor and unloaded by consignee with power equipment, furnished and used without expense to the carrier.</p> <p><b>NOTE 2</b>—Shipper must indicate on the bill of lading that palletized shipments were loaded onto carrier's equipment with power equipment operated by personnel furnished by the shipper. Consignee must indicate on carrier's delivery receipt that the palletized shipments were removed from carrier's equipment with power equipment operated by personnel furnished by the consignee.</p> <p><b>NOTE 3</b>—Bills of lading covering the shipment of returning empty pallets shall identify the palletized shipments. Bills of lading covering returning palletized loads shall identify the shipments of empty pallets.</p> <p><b>NOTE 4</b>—For purposes of applying the provisions of this section, the terms "pallets" or "empty pallets" means wooden pallets as described in Item 150390, Sub 4, of the Governing Classification, without bodies, enclosures, ends, sides, stakes, standards or stacking posts.</p> <p>(b) Carriers must assess provisions of Section 2 of this Item or other provisions of this tariff, as applicable, under conditions set forth in Notes 1, 2 and 3, below:</p> <p><b>NOTE 1</b>—If immediately upon receipt of a palletized shipment consignee fails to provide carrier with up to a like number of empty pallets for return to point of origin of the palletized shipment.</p> <p><b>NOTE 2</b>—When empty pallets are furnished by consignee and forwarded to point of origin of a palletized shipment, if consignor immediately upon receipt of the empty pallets fails to provide carrier with a palletized shipment containing up to a like number of pallets loaded for shipment to consignee at point of origin of the empty pallets.</p> <p><b>NOTE 3</b>—For transportation of all empty pallets exceeding the number authorized under provisions of Notes 1 or 2 of paragraph (b).</p> <p>(c) When palletized shipments of Toilet Preparations, NOI (as described in Item 59420 of the Governing Classification), Aluminum Foil, NOI (as described in Item 71720 of the Governing Classification) or commodities described in Items 360 or 732 of this tariff are transported at class rates named in Section 2 of this tariff subject to minimum weights of 10,000 pounds or more, the empty pallets may be transported under provisions of paragraphs (a) and (b) of this section.</p> <p><b>SECTION 2</b>—Subject to the provisions of Item 291 of this tariff, shipments of empty pallets as described below, when not subject to the provisions of Section 1 of this Item and when returning to the point of origin of an outbound palletized shipment or when transported for a return palletized shipment, are subject to the following exception to the Governing Classification:</p> <p style="padding-left: 40px;">Wooden pallets as described in Item 150390, Sub 4, of the Governing Classification, without bodies, enclosures, ends, sides, stakes, standards or stacking posts:</p> <p style="padding-left: 80px;">Less truckload-----50% of Class 55 (1)          (1) Subject to a minimum rate of 44 cents per 100 pounds.</p>	600 45
(1) Suspended by Supplement 101 of Change ) of Increase ) Decision No <b>81306</b> of Reduction )	
<b>EFFECTIVE</b>	
Correction	ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA