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Decision No. 81478

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

And Related Matters.

Case No. 5432
Petitions for Modification
Nos. 671 and 678

Case No. 5441
Petition for Modification
No. 235

Case No. 7858
Petitions for Modification
Nos. 106, 107, 108, 109,
110, 112, 113, 114, 115,
116, 118, 120, 121, 122,
123, 124, and 125
(Order Setting Hearing 131
Dated February 23, 1972)

(Appearances are listed in Appendix A)

O P I N I O N

Seven days of public hearing in the above-entitled cases were held on a consolidated record before Examiner Mooney in San Francisco during the first four months of 1972. The matters were submitted upon the receipt of briefs which have been received. Because of the similarity in the major issues in the petitions and the order setting hearing, the matters have been joined for a single decision.

Introduction

The 17 petitions in Case No. 7858, with minor exceptions, seek the extension, modification, or permanent effectiveness of the exception ratings in Section 2-B of Exception Ratings Tariff 1 (ERT 1). Order Setting Hearing 131 in Case No. 7858 is for the purpose of determining whether the exception ratings in Section 2-C of ERT 1 should be canceled or retained. Both sections were scheduled to expire December 31, 1971. The Section 2-B exception ratings were extended until further order of the Commission by Decision No. 79328 dated November 16, 1971 and Decision No. 79442 dated December 7, 1971 in Case No. 7858, et al., both unreported, and the Section 2-C exception ratings were likewise extended until further order of the Commission by the latter decision.

The exception ratings in Sections 2-B and 2-C refer to item numbers in the current edition of the National Motor Freight Classification (NMFC) for commodity descriptions. There are a total of 76 separate NMFC item numbers plus various subitem numbers listed in Section 2-B. One of the items, Item 60000, is a released value item and includes approximately 570 drug, chemical, toilet preparation, and other articles in the classification which make reference to it for rating purposes when a released value of the property, not exceeding 50 cents per pound, is declared in writing by the shipper. The commodity descriptions in the remaining 75 items listed in Section 2-B include bricks, chemicals, clay, gravel, earthen pipe, box material, roofing and floor tile, adhesives, animal feed, and related commodities. There are a total of 49 separate NMFC item numbers and various subitem numbers listed in Section 2-C. The commodities included are certain acids, chemicals, and paper commodities. The exception ratings in Section 2-B are truckload ratings which are lower than those in the NMFC and corresponding minimum weights which are greater, and less, than those in the classification. The exception ratings in Section 2-C are less than truckload and/or truckload ratings which are generally higher than those in the NMFC.

Historically, the rail-oriented Western Classification (WC) was the governing classification for minimum rates. The class rate scales in the various minimum rate tariffs which include such rates were stated in the terms used in the WC, Class 1, 2, 3, 4, 90 percent of 4, 5, A, B, C, D, and E. In 1963, the WC was replaced by the California Supplement to the NMFC as the governing classification for minimum rates pursuant to Decision No. 66268 (1963) 61 CPUC 665. The ratings in the NMFC are percentage ratings stated as Class 100 or a percentage thereof. The classification ratings in the supplement were stated on the same numerical and lettered basis used in the WC and used in stating class rates in the minimum rate tariffs. This was an interim step pending revision of the class rate structures in the various minimum rate tariffs to correspond with the percentage ratings in the NMFC. When the class rate structures were revised, the California Supplement was canceled, and the NMFC became the governing classification for minimum rates, Decision No. 74310 (1968) 68 CPUC 445. The NMFC contains no ratings lower than Class 35 which is approximately equivalent to the fifth class rating in the WC. Prior to the classification transition, the current Section 2-B commodities were subject to WC Class B, C, D, or E ratings, which were lower than fifth class, and the current Section 2-C commodities were subject to WC ratings which were generally higher than the ratings on the same commodities in the NMFC. Decision No. 74310 and related decisions established the exception ratings for said commodities and certain other commodities in Sections 2-B and 2-C on an interim basis to expire December 31, 1969.^{1/} It was pointed out in Decision No. 74310 that

^{1/} The exception ratings in Section 2-C were initially published in Minimum Rate Tariff 2 pursuant to Decision No. 74310. They were transferred to Section 2-C by Decision No. 74449 dated July 23, 1968 in Case No. 7858 (Pet. 40), et al., unreported.

the adoption of a new classification requires that any exceptions to the original classification either be canceled or their retention be fully justified, and that any new exceptions be likewise justified. The decision further stated that although there was no evidence to support a finding that the Section 2-B exceptions were reasonable, per se, the various interested shippers had presented a plausible case of temporary undue hardship under the classification transition program and should be allowed ample time to adjust their shipping practices or develop the required evidence to support a continuance of the temporary ratings. It also held that the exceptions requested by carriers, which are higher than the NMFC ratings, should likewise be authorized on a temporary basis in order to maintain the carriers' revenue balance. The expiration date for Sections 2-B and 2-C were extended to December 31, 1970 by Decision No. 76408 (1969) 70 CPUC 374, and Decision No. 76371 dated November 4, 1969 in Case No. 5432 (Pet. 546), et al., unreported, respectively. Both sections were again extended to December 31, 1971 by Decision No. 77979 dated November 24, 1970 in Case No. 7858 (Pet. 80), unreported. Various exceptions in the two sections were canceled by the aforementioned decisions in those instances where it had been determined that little or no traffic was moving under them or that they were no longer required. Also, these and other decisions made certain adjustments in some of the remaining exceptions and added several temporary exception ratings.

Petition 671 in Case No. 5432 and Petition 235 in Case No. 5441 seek the establishment of commodity rates on gypsum and plaster board in Minimum Rate Tariff 2 (MRT 2).

C. 5432, Pet. 671 et al. ek

Petition 678 in Case No. 5432 requests the establishment of commodity rates on asbestos-cement pipe, conduit, or couplings in MRT 2.

Our discussion will be divided into four separate sections as follows: (1) Petitions in Case No. 7858, (2) Order Setting Hearing in Case No. 7858, (3) Petition 671 in Case No. 5432 and Petition 235 in Case No. 5441, and (4) Petition No. 678 in Case No. 5432.

Petitions in Case No. 7858

As stated above, the 17 petitions in Case No. 7858 all relate to Section 2-B of ERT 1. Two of the petitions, Petitions 121 and 122 filed by Diamond Shamrock Chemical Company on November 17, 1971, were withdrawn by the petitioner at the outset of the hearing. Its representative stated that the authority it sought was included in other petitions. The 15 remaining petitions fall generally into three categories. Twelve of the petitions each seek a one-year extension of the temporary exception ratings on certain commodities. Two of the petitions each seek a temporary extension on certain commodities until commodity rates are published in MRT 2 on those particular commodities. One petition requests that all exception ratings in Section 2-B be made permanent.

1. One-Year Extension

The following tabulation lists the petition number, date filed, petitioner, and the particular Section 2 commodities involved for each of the 12 petitions which request a one-year extension.

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<u>Pet. No.</u>	<u>Date Filed</u>	<u>Petitioner</u>	<u>Commodities Involved</u>
106	8/18/71	Interpace Corp.	Adhesives, brick, tile, clay pipe, and related commodities.
107	8/18/71	Standard Ind. Minerals, Inc.	Clay and pyrophyllite.
108	8/23/71	C. B. Hobbs Corp.	Charcoal
Amend.	12/8/71		
109	8/23/71	C. E. Grosjean Rice Milling Co.	Rice bran and rice hulls.
110	9/7/71	Industrial Minerals, Inc.	Clay and soapstone.
113	9/29/71	Allied Chem. Corp.	Various acids, chemicals, drugs, and toilet preparations.
Amend.	10/15/71	Chevron Chem. Co.	
Amend.	1/11/72	Cities Services Co.	
		Dow Chem. Co.	
		Drug & Toilet Prep. Conf.	
		Jones Hamilton Co.	
		Monsanto Co.	
		Stauffer Chem. Co.	
		U.S. Borax & Chem. Co.	
		Interpace Corp.	
116	10/4/71	Diamond Springs Lime Co.	Lime.
112	9/21/71	U.S. Borax & Chem. Corp.	Borate rock.
114	9/30/71	Lone Star Industries, Inc.	Clay, sand, and gravel.
120	11/5/71	Purex Corp., Ltd.	Liquid laundry bleach.
Amend.	11/18/71		
124	11/19/71	U.S. Steel Corp.	Pig iron or steel.
125	11/19/71	Pacific Clay Products	Drain tile or fittings.

(Note: Any reference hereinafter to any of the above petitions includes the amendments thereto.)

Petitions 106, 107, 108, 109, 110, 113, and 116 were filed by a traffic consultant on behalf of the petitioners. Each of the petitions relates to certain NMFC items listed in Section 2-B and states that CTA and the Commission staff are making cost and traffic flow studies that will be presented in evidence in future proceedings and will be the basis for revisions of the rates and regulations in MRT 2 and other Commission tariffs; that the studies will not be completed for some time; that in the interim, the specific Section 2-B exception ratings referred to should be extended on a modified basis for one year and that CTA is agreeable to this.

With the exception of Petition 113, the petitions filed by the consultant propose an increase of four or five thousand pounds in the applicable minimum weight for most of the items listed therein and that all of the listed items be made subject to an Item 2 which states as follows:

"RESTRICTED APPLICATION OF EXCEPTION RATINGS

(Applies only when specific reference is made hereto)

"Exception ratings making reference hereto will apply only when all provisions of the following Notes are met.

"Otherwise, apply provisions of the governing classification.

"NOTE 1 - Applies only when no temperature control service is provided.

"NOTE 2 - No collect on delivery (C.O.D.) or order notify service is requested.

"NOTE 3 - No delivery is made to an oil, water or gas well site.

"NOTE 4 - The shipment does not move on a U. S. Government bill of lading.

"NOTE 5 - If more than one vehicle or combination of vehicles constituting a single unit of carrier's equipment is used for the transportation of a single shipment, each such vehicle or combination of vehicles shall be subject to the applicable minimum weight."

Petition 113 relates to the exception rating in Section 2-B for NMFC Item 60000. As pointed out above, approximately 570 chemical, drug, toilet preparation, and other articles listed in the NMFC refer to Item 60000 for released value ratings. The petition states that not all of the 570 commodities move in truckload shipments in California; that the chemical companies and the drug and toilet preparation association on whose behalf the petition was filed are interested in released value ratings for 101 of the 570 articles; and that the continuation of the released value exception ratings is sought only for the 101 articles which are listed in the petition. The petition requests that the NMFC item numbers for the 101 commodities be listed in Section 2-B in lieu of the blanket reference to all NMFC commodities which are subject to Item 60000. A dual scale of ratings is proposed. The present 35.2 rating would have an increase in the minimum weight from 40,000 to 44,000 pounds and a restriction on the number of split pickups or deliveries to five or less. A new higher rating of 35.1 would have a minimum weight of 40,000 pounds and no restriction on the number of splits.

The traffic consultant presented an exhibit which showed the annual weight in pounds moved by truck in California and the pounds per cubic foot for the commodities listed in Petition 113 for which records were available. For most of the commodities, the weight transported per year exceeded a million pounds and the density was around 50 pounds per cubic foot. Exhibits showing similar information for the commodities in the other six petitions were also presented by the consultant. They showed that for most of the commodities, the weight was many thousands of tons per year, the density exceeded 50 pounds per cubic foot, and the value was less than five cents per pound.

The traffic consultant testified that the shipping restrictions in his proposed Item Z result, in effect, in a technical increase. His justification for the proposed restrictions was the favorable exception ratings on the commodities to which they would apply. As to the proposed increase in minimum weight to 44,000 pounds on many of the commodities in his petitions, he stated that the carrying capacity of modern trucks has increased to 44,000 pounds, and that the minimum weight should be based on this carrying capacity.

Petition 116 was protested by the traffic manager of The Flintkote Company, Pioneer & U. S. Lime Division. The petition proposes an increase in the minimum weight for the exception rating on lime from 40,000 to 44,000 pounds. The traffic manager asserted that it is not possible to legally load more than 40,000 pounds of the lime shipped by his company on a vehicle.

Petitions 112, 114, 124, and 125 each propose, in addition to requesting the one-year extension, that the particular exception ratings covered by each be made subject to the same restrictions in the above-quoted Item Z. The reasoning in each for the sought extension is substantially similar to that stated in the aforementioned seven petitions filed by the traffic consultant. Petitions 114 and 125 also propose a 4,000 pound increase in the minimum weight for the commodities listed therein. Petitions 112 and 124 do not propose any weight increases. Witnesses testified on behalf of each of the four petitioners. Their testimony was as follows: The proposed restrictions in Item Z would have no effect on the commodities they ship or their shipping practices or costs; the restrictions were proposed at the request of the carrier industry; if the proposed extension is not granted and increased rates result, a substantial part of their traffic now handled by for-hire carriers would be lost to proprietary hauling; also, increased costs would have an adverse effect on the size of their market areas; they have little or no loss or damage claims against carriers.

Petition 120 filed by Purex Corporation, Ltd. seeks a one-year extension of the Section 2-B exception rating for NMFC Item 60000 for Sodium Hypochlorite Solution (liquid laundry bleach) only with no increase in minimum weight. The Western Traffic Manager of petitioner testified that the present pricing and distribution procedures for bleach are based on 40,000 pounds; that it is not practical to ship in larger quantities; that if the exception rating were to expire, the rate on bleach would increase 21 percent; and that the transportation characteristics of bleach are very favorable and justify the proposed extension.

A traffic consultant representing certain manufacturers of waste wood by-products for use in gardening and landscaping testified that he is making a study of the exception ratings for the products shipped by his clients and requested a one-year extension for those particular ratings.

2. Temporary Extension

Petitions 118 and 123 request the temporary extension of the Section 2-B exception ratings on plaster board, asbestos cement pipe, and related commodities until commodity rates on these commodities are published in MRT 2 as requested by Petitions 671 and 678 in Case No. 5432 and Petition 235 in Case No. 5441. In effect, the petitions request the permanent extension of the exceptions in the form of commodity rates in MRT 2. To avoid needless duplication, the two petitions are discussed hereinafter with the discussion of the requests for the commodity rates.

3. Permanent Extension

Petition 115 filed by the California Manufacturers Association (CMA) requests that the exception ratings in Section 2-B be made permanent. The petition traces the history of the exception ratings and asserts that based on the volume of movement of the commodities in issue and their favorable transportation characteristics, their continuance on a permanent basis is justified; that until such

time as the staff studies of rate structures have been completed, there is no reasonable basis for revising or changing the exception ratings; and that shippers should not be required to expend time and money every 12 months to have the ratings extended.

The Manager of Traffic and Distribution Research of Fibreboard Corporation testified that his company supports Petition 115; that Fibreboard has cooperated with CTA in the past in having Section 2-B exception ratings eliminated for commodities for which there were comparable commodity rates or which had little or no movement; that Fibreboard is concerned primarily with the exception ratings on waste paper, wood moulding, paper covered box shook, sawdust, and bark; that CTA informed Fibreboard it would oppose the continuance of the exception rating on waste paper unless the minimum weight was increased from 40,000 to 44,000 pounds; that because of differences in baling equipment, many small suppliers from whom Fibreboard obtains waste paper cannot load over 40,000 pounds on equipment; and that no cost evidence has been presented to justify the increases that would result should the exception ratings not be continued.

The witnesses who appeared on behalf of most of the petitioners who requested a one-year extension and the traffic consultant representing the manufacturers of waste wood by-products testified that they were not opposed to the permanent extension of the Section 2-B exceptions with no changes as proposed in Petition 115 for the commodities in which they were interested. Petition 115 was also supported by several additional shippers and by the Traffic Managers Conference of California.

4. CTA

Exhibits and testimony on behalf of CTA were presented by the Supervisor of Research of its Economics Bureau. Exhibit CTA-1 includes a detailed analysis of the classification transition program, the background and current status of the Section 2-B exception ratings,

and the Commission policy regarding exception ratings.^{2/} Exhibit CTA-3 lists by category the exception ratings for which the witness is of the opinion no evidence, inadequate evidence, or a reasonably sufficient amount of evidence has been presented by the parties herein to support a further temporary extension.

CTA did not object to the sought one-year extension with an increase in minimum weight and/or the Item Z restrictions for the specific items listed in Petitions 106, 107, 108, 109, 110, 112, 114, 116, 124, and 125, or the similar one-year extension with certain increases and restrictions for the 101 commodities subject to the released value provisions of Item 60000 listed in Petition 113. The witness was of the opinion that a sufficient showing had been made to support the extension sought in the 11 petitions and included the ratings listed in them in the third category of his Exhibit CTA-3. CTA was opposed to Petition 115 of CMA which requested that all Section 2-B exception ratings be made permanent. It likewise opposed any extension whatsoever of the exception ratings listed in the first and second categories of its exhibit. The witness asserted that although some testimony was presented by various parties seeking the continuation of the ratings listed in the second category, the evidence presented was inadequate, and that no evidence was presented to justify the continuance of the ratings listed in the first category. It is noted that the exception rating in Petition 120 is in the second category and the exception ratings in Petitions 118 and 123 are in the first category.

^{2/} The CTA exhibits refer to all the petitions relating to Section 2-B. For convenience, they have been filed in Petition 115 only.

5. Staff

The Commission staff presented no evidence. In its statement of position, it asserted that it and certain other parties are conducting cost and rate studies of the existing minimum rate structures set forth in MRT 2 and that it is contemplated such studies will embrace the truckload transportation of all commodities for the purpose of developing realistic rate structures. It recommended that the existing provisions in Section 2-B be continued until such time as the staff and other parties have completed their studies with respect to all traffic subject to MRT 2 and the Commission has established appropriate rates for the commodities involved herein.

6. Discussion

The issue for our determination herein is whether any or all of the temporary exception ratings in Section 2-B should be canceled or whether they should be extended for a further temporary period or permanently with or without certain modifications. We are of the opinion that all of the temporary exception ratings should be retained in ERT 1 without change until further order of the Commission.

As pointed out in Decision No. 74310, supra, and subsequent related decisions, the Section 2-B exception ratings were initially adopted in 1968 as an interim measure and have never been found to be just and reasonable, per se. The extent to which they do or do not result in reasonable rates and charges has not been demonstrated on this record with any degree of certainty. However, the evidence clearly establishes that most of the temporary exception ratings are being used to move the traffic to which they apply. It is reasonable to presume from this, in the absence of any convincing evidence to the contrary, that if they were not compensatory, for-hire carriage would not move the traffic at the resulting rates and charges. No evidence was presented to show that carriers performing transportation at these ratings are losing money in connection with such transportation. It would seem obvious that if charges resulting from

these ratings were below the cost of performing the service, such evidence would have been presented at this or prior proceedings. Furthermore, although the temporary exception ratings have, for the most part, been in ERT 1 since 1968 with no major modification, the transportation rates in the various minimum rate tariffs applying in connection therewith have been subject to numerous revisions and changes to reflect carrier costs and current economic trends. Each time such a change has occurred earnings from the application of these ratings have been adjusted accordingly.

Cancellation of the temporary ratings at this time would result in substantive increases in rates and charges which may subsequently on further consideration be shown to be unreasonable. The ratings in the NMFC for the commodities involved are generally substantially higher than those in Section 2-B of ERT 1. In numerous instances they are 20 or more percent higher. According to the evidence, such drastic increases could not be absorbed by petitioners and would have an inflationary influence on their pricing structures at a time when such influences are adversely affecting the economy; the marketing areas for petitioners' commodities would be severely curtailed and the competitive threat from suppliers outside the state would be intensified; and there would be a shift from for-hire to proprietary carriage for many of the commodities.

Without more precise evidence than has been presented here, there is no rational basis for concluding that the Section 2-B temporary exception ratings should be made permanent. We have at most a presumption that they are compensatory based on the lack of evidence to the contrary. There is sufficient evidence, however, to adequately show that an abrupt termination of the temporary exception ratings would immediately cause economic hardship for the shippers and the loss to for-hire carriers of at least some of the traffic. A plausible case for the continuation of the ratings as temporary exception ratings has been made.

As stated, no changes will be made in the temporary exception ratings. The proposals to increase the minimum weight for some of the items and make certain others subject to the suggested Item Z restrictions will not be adopted. No real need for these revisions has been shown. Furthermore, according to the evidence, many shippers of the commodities for which increased minimum weights are proposed ship at the suggested higher weights, and in most instances, the shipping practices for the commodities proposed to be made subject to Item Z restrictions are such that the restrictions would have little or no effect on them.

We recognize that there were variations in the amount of evidence presented in connection with the various items. However, we are not persuaded by the record before us that any or all of the exception ratings should be canceled.

One point deserving comment is the statements in the record that no one had ever requested the National Motor Freight Classification Committee to include any or all of the Section 2-B exception ratings in the NMFC. We agree with those who asserted that this would be an idle act. As pointed out above, no ratings lower than Class 35 are published in the NMFC and all of the exception ratings involved herein are below Class 35.

Our determination that the Section 2-B temporary exception ratings should be extended until further order of the Commission does not require the issuance of any revised tariff pages for ERT 1. The current Section 2-B pages issued by Decision No. 81158 in Case No. 7858 dated March 13, 1973 each has the following notation thereon: "Expires upon further order of the Commission". The final disposition of the temporary exception ratings whether it be the permanent adoption, cancellation, or modification of any or all of them, will be further considered by the Commission in a future proceeding. We are mindful of the fact that the temporary ratings have been in the tariff for a considerable period of time and that it is not desirable

to continue them in this indefinite manner. While we will not require interested parties to file additional petitions regarding Section 2-B, we will, in the absence of such filings within a reasonable time, further consider the matter on our own motion to determine what final disposition should be made thereof.

Order Setting Hearing 131 in Case No. 7858

Order Setting Hearing 131 in Case No. 7858 is for the purpose of receiving evidence to determine to what extent, if at all, the provisions of Section 2-C of ERT 1 should be retained or should be terminated and revoked. Section 2-C includes temporary exception ratings for certain acids, chemicals, and paper articles, the majority of which are higher than the NMFC ratings for the same commodities. OSH 131 states that the circumstances and conditions concerning the establishment of the exception ratings in Section 2-B of ERT 1 also relate to the establishment of the exception ratings in Section 2-C thereof, and that for this reason, Section 2-C should be considered along with the Section 2-B petitions.

Evidence was presented by CTA only. The witness for CTA testified that many of the exception ratings that were originally in Section 2-C have heretofore been canceled; that matters regarding ratings for Section 2-C commodities which were referred to the National Classification Board for consideration by CTA have been disposed of; that the tonnage of traffic in California moving under the exception ratings in Section 2-C is insignificant, and the effect on carrier revenues should they be canceled would be infinitesimal; and that CTA would support the cancellation of the Section 2-C exception ratings so long as any exception ratings in Section 2-B for which there is not sufficient evidence to justify their continuance are likewise canceled.

No definitive recommendations were made by the staff regarding the Section 2-C exception ratings other than the statement by its representative that although CTA has the burden of proof

regarding any continuation of the ratings, the staff would agree to having any determination deferred until statewide studies regarding Sections 2-B and 2-C have been completed. As to any studies being undertaken or contemplated by the staff or anyone else, there is no certainty that they will in fact include the temporary exception ratings in either section.

Although no real interest has been shown in the Section 2-C temporary exception ratings, we agree with CTA that we should apply the same standards in our disposition to this section as have been applied to Section 2-B. In the circumstances, they will be continued until further order of the Commission. The current pages in Section 2-C of ERT 1 so provide. No additional tariff pages are required. Also, as with Section 2-B, if no petitions regarding Section 2-C are filed within a reasonable time, we will, on our own motion, give further consideration to the final disposition to be made thereof. Petition No. 671 in Case No. 5432, et al.

Petition 671 in Case No. 5432, Petition 235 in Case No. 5441, and Petition 118 in Case No. 7858, filed on October 12, 1971 by United States Gypsum Company (U.S. Gypsum), National Gypsum Company (National), The Flintkote Company (Flintkote), and Kaiser Gypsum Company, Inc. (Kaiser), seek the establishment of commodity rates on gypsum products and related items in MRT 2 in lieu of the exception ratings in Section 2-B of ERT 1 on these commodities. Additionally, the petitions request that the temporary exception ratings be continued until the petitions have been acted upon. The petitions were supported by CMA.

Petitioners are manufacturers and shippers of gypsum products. They ship these commodities, under minimum rates published in MRT 2, by for-hire truck to dealers and jobbers within California from approximately 12 major shipping points. The specific commodities for which they request commodity rates are Gypsum or Gypsum Products, as described in Items 91850 through 91970 of the NMFC, and Plasterboard Joint System or Plasterboard Joint or Topping Cement or

Compound as described in Item 35240 thereof. The proposed commodity rates include two distance rate scales for constructive mileages ranging from 0 to 1,200. The Column 1 scale has a minimum weight of 40,000 pounds and is based on the temporary exception rating of 35.2 in Section 2-B of ERT 1 for certain gypsum products and the applicable MRT 2 distance class rates for this rating. The Column 2 scale has a minimum weight of 45,000 pounds and is based on the 35.3 Volume Incentive Service rating in Item 292 of MRT 2 for these commodities and the MRT 2 distance class rates for this rating. Counsel for petitioners in his opening remarks stated that in order to avoid any concern by CTA regarding general rate adjustments, petitioners suggest that the proposed commodity rates be made subject to the same general adjustments that may be made in the MRT 2 class rates from time to time. The proposed Column 2 scale is not made subject to the restrictions in Item 292 which are generally similar to the proposed Item 2 restrictions referred to above under the heading "Petitions in Case No. 7858". The petitioners also request that the proposed commodity rate item include a Note 1 which would permit the inclusion in shipments of gypsum products of certain related articles (iron or steel channels, angles, lathing, screws, nails, and similar commodities) not to exceed five percent of the total weight of the shipment.

There are 11 item numbers plus several subitem numbers which include ratings for various gypsum products between Items 91850 and 91970 in the NMFC. All are included in the proposed commodity rate item. However, only six of the item numbers are now listed in Section 2-B of ERT 1. These cover gypsum blocks and boards, gypsum or anhydrite rock, calcined and land plaster, and retarder or accelerator. The five which are not listed in Section 2-B cover ground gypsum, thermal and structural gypsum board, gypsum concrete, and gypsum filler. NMFC Item 35240 which is listed in the proposed item is also listed in Section 2-B. The exception rating for four of the NMFC gypsum items listed in Section 2-B is 35.2 and for the other

two is 35.4; the rates in the proposed item are all based on the 35.2 rating. The commodities listed in Note 1 of the proposed item are all subject to Class 35 or higher ratings.

Testimony and exhibits were presented by an official from the traffic department of each of the four petitioners. Following is a summation of this evidence: Petitioners have plants and distribution centers in California and also outside the state which produce and distribute gypsum products. In the past four years, the industry has changed from almost exclusive rail distribution to over 90 percent truck distribution. The reason for this shift is that the majority of shipments now go directly to job sites rather than to customers' places of business. Most of the truck transportation is by for-hire carriers. In other states, these products move under commodity rates, many of which are lower than the proposed rates. Gypsum products have favorable transportation characteristics including unitized packaging which permits loading and unloading in substantially less than the eight minutes per ton allowed in MRT 2; low value and favorable density; very few loss and damage claims; the exclusive utilization of flat bed equipment which requires a lower investment by the carrier than van equipment; almost all are truckload shipments which result in operating economies; the prepayment of all transportation charges which minimizes collection problems and losses; no seasonal fluctuations as experienced in other parts of the country, resulting in more efficient use of the equipment; and a relatively high volume of movement in California. The Commission does publish commodity rates for other products. These include commodity rates in MRT 2 for canned goods, lumber, sugar, and certain other commodities and special minimum rate tariffs for cement, petroleum, used household goods, and for rock, sand, and gravel. The transportation characteristics of lumber are substantially similar to gypsum board and products, and the lumber commodity rates in MRT 2 for plywood and veneer boards or sheets are lower than the proposed rates.

for gypsum products, and for other lumber items; they are lower than the proposed rates for distances up to 190 miles. Most shipments of gypsum products move less than 200 miles. The main markets are the major population centers although there are movements throughout the state to any location where building is in progress. Most shipments exceed 44,000 pounds; however, there are some that are less and a 40,000 pound rate scale is needed for these. Most of the carriers of gypsum products also perform stocking, which includes unloading the equipment and carrying the items into the location in a building where they are to be used, and other dealer services for which they are compensated by the consignee. These additional services are not performed outside California. The additional commodities listed in Note 1 of the proposed item are used in the installation of wallboard. By allowing them to be included with the shipment the necessity of preparing additional bills of lading and freight bills is eliminated. Only an insignificant number of wallboard shipments include the commodities listed in Note 1, and its effect on carriers' revenue would be de minimus. Exception ratings do not have the flexibility of commodity rates. New commodities could easily be added to the list of items, and they can be adjusted independently of the class rates. If the exception ratings on which the proposed commodity rates are based were to expire, the average increase in transportation costs resulting therefrom would exceed 20 percent. Petitioners could not absorb this increase, and there would be a shift to proprietary hauling. Each of the four witnesses asserted that the proposed rates are justified and compensatory for the services involved.

Cost evidence to show carrier operating results under the current temporary exception ratings for gypsum products in Section 2-B of ERT 1 was presented by a certified public accountant and the president of a Bay Area carrier who performs 22.6 percent of the transportation for the Antioch plant of Kaiser and 7.5 percent of the transportation for the Fremont plant of U. S. Gypsum, and by the owner

of a Southern California carrier who performs 12.9 percent of the transportation for the Plaster City and .8 percent of the transportation for the Santa Fe Springs plants of U. S. Gypsum. Numerous other for-hire carriers also serve these plants.

Exhibit 15 relates to the Bay Area carrier's operations for January 1972. According to the exhibit, the carrier's operating ratio under the temporary exception ratings was 72.3 percent and would have been 60.4 percent had the higher NMFC ratings been utilized. The carrier's president testified as follows: His company hauls gypsum products only. Seventy-five percent of its hauling is for the Antioch plant, and the balance is for the Fremont plant. Four three-axle tractors leased from owner-operators and eight 40-foot flat bed trailers owned by his company are used for this transportation. Each tractor pulls a single trailer. Extra trailers are left at the Antioch plant and are loaded by the shipper. The owner-operators are compensated on a running mile basis with a minimum for short hauls. Most of the hauls are not over 150 miles, and the average is approximately 67 miles. No backhaul traffic is handled. Although the volume of traffic in 1972 was a bit heavier than usual, generally there is very little fluctuation throughout the year. These commodities are easy to handle and are not susceptible to loss or damage. His company also performs stocking services utilizing other personnel.

The owner of the Southern California carrier testified as follows regarding his gypsum hauling: It accounts for 40 percent of his revenue. Practically all of the transportation is for the Plaster City plant of U. S. Gypsum and is for distances of 150 miles or more. He performs no stocking or other dealer services. Most of the equipment is leased. Tractor owner-operators are paid on a mileage basis plus a loading and unloading fee, and trailer rentals are on a mileage basis. As shown in Exhibit 16, the profit per load, before taxes based on the current Section 2-B exception ratings at the MRT 2

45,000 pound volume incentive rates utilizing leased equipment and with an allowance for overhead range from \$41.30 for 150 miles down to \$8.00 for 350 miles and for distances over 350 miles the cost, exceeds the revenue. The loss for the greater distances is offset by revenue from backhaul traffic. The tabulation in Exhibit 18 shows that for short haul traffic, the current volume incentive rates produce more revenue than the hourly vehicle unit rates in Minimum Rate Tariff 15. Gypsum products are more desirable to transport than plywood which has comparable shipping characteristics but is more valuable.

The attorney for petitioners in his closing summation asserted that because of the regular movement of gypsum products in California, commodity rates are more appropriate than exception ratings for them.

CTA did not agree with petitioners' request. Its attorney argued that the cost data did not relate to carrier owned equipment and was concerned only with transportation for several plants. For this reason, he asserted, it was not a valid basis for the establishment of statewide commodity rates for the future. He stated that commodity rates contemplate a continuous, regular movement between the same points, whereas, the kind of movement here is one that radiates out from particular shipping points; that the evidence relates more to exception ratings than to commodity rates; and that the proposal is solely for the benefit of the shipper and not the carrier.

A commodity rate applies to the transportation of a particular commodity or commodities. It is a direct method of rate determination and does not involve the use of a classification or exception rating. To justify the establishment of a commodity rate, it is necessary to show that there are some special circumstances surrounding the transportation of the commodity or commodities in issue and that the sought rate or rates are just and reasonable for the transportation. Special circumstances would include regular and

substantial movements between certain points or areas; the use of special equipment for performing the transportation; ease of loading and unloading and other favorable transportation conditions; the particular value, weight, and density of the commodity; and like considerations. Here, most of the evidence was concerned with the circumstances surrounding the transportation of gypsum products. According to the witnesses, the products are transported in truckload shipments, they are low value and have a favorable density, there is a regular year-round movement, power equipment is used for loading and unloading, and there is little or no loss or damage. However, the cost evidence presented to establish the reasonableness of the proposed rates was extremely meager. The evidence shows that each of the petitioners uses substantial numbers of carriers. Cost evidence was presented for only two of the carriers and related only to movements from a few plants. The data for one was based on leased owner-operator tractors and for the other was based on leased power and trailer equipment. This is certainly not typical of the results a carrier utilizing its own equipment would experience under the proposed rates and cannot be considered representative for the carrier industry. The cost evidence is patently deficient, and is not a reasonable basis on which to promulgate statewide commodity rates for the future.

There was some evidence to show that the proposed rates for wallboard are similar to the MRT 2 commodity rates on plywood. This comparison is certainly not valid for all gypsum products, and, in any event, is not sufficient to overcome the other deficiencies in the record. Likewise, the fact that commodity rates are used in some other states is not a compelling reason for adopting commodity rates in California.

Petition 671 in Case No. 5432 and Petition 235 in Case No. 5441 will be denied. Having so determined, other issues raised by the petitions need not be considered.

The evidence does reasonably support a further temporary extension of the exception ratings in Section 2-B of ERT 1 for the gypsum products referred to in Petition 118 in Case No. 7858. It has been shown that the ratings are being used to move the traffic to which they apply; that transportation charges for the commodities involved would increase approximately 20 percent if they were canceled; and that petitioners could not absorb such substantial increases. These ratings will be extended with the other Section 2-B exception ratings until further order of the Commission.

Petition No. 678 in Case No. 5432, et al.

Petition No. 678 in Case No. 5432 and Petition No. 123 in Case No. 7858 seek the establishment of commodity rates on asbestos-cement pipe products and related accessories in MRT 2 to replace the temporary exception ratings on these products in Section 2-B of ERT 1, and the further extension of the temporary exception ratings until the request for commodity rates has been acted upon.

Petitioners Johns-Manville and Certain-Teed each own and operate two plants in California, located at Stockton and Watson, and at Santa Clara and Crestmore, respectively, for the manufacture of asbestos-cement pipe, conduit, and couplings. Petitioners are the only manufacturers of these products in California. The pipe and conduit are primarily used in water, sewer, and irrigation systems. Sales are made directly to municipalities, contractors, dealers, distributors, and government agencies. Approximately 9,409 truckloads of these commodities weighing 170,502 tons were shipped by petitioners within California in 1970. All intrastate transportation is under MRT 2.

The particular products for which petitioners request the establishment of the commodity rates are cement and asbestos fibre conduit or pipe and couplings as described in Items 50930 and 51010 of the NMFC. Both items are listed in Section 2-B of ERT 1. NMFC Item 50930 is subject to the note in Item 50932 which authorizes the

inclusion of rubber washers, not to exceed 5 percent of the weight on which charges are assessed, with pipe or conduit shipments. Two scales of rates for minimum weights of 40,000 and 45,000 pounds are proposed for various distances up to 1,200 constructive miles. The Column 1 40,000-pound rates are based on the 35.2 temporary exception rating in Section 2-B for the aforementioned pipe and conduit commodities and the applicable MRT 2 class rates. The Column 2 45,000-pound rates are based on the MRT 2 35.3 Volume Incentive Service rating for these products and the class rates therein for this rating. The Column 2 scale is not made subject to the restrictions in MRT 2 for Volume Incentive Service. The proposed commodity rate item would also authorize the inclusion of lubricant, PVC Collars, and iron or steel fittings as accessories, in addition to the currently authorized rubber washers, with shipments of the conduit or pipe and couplings, and would increase the current five percent weight restriction to 10 percent.

Following is a summary of evidence presented by the traffic manager of Certain-Teed's San Jose plant on behalf of both petitioners: The products in issue have favorable transportation characteristics. They are transported in truckload quantities, loading and unloading is by power equipment, transportation charges are prepaid which assures prompt receipt of payment by the carrier, the average value of the commodities is eight cents per pound, and loss and damage experience has been minimal. Most deliveries are direct to job sites. In many instances, the carrier also performs pipe stringing services at the job site for which it receives additional payment. The transportation conditions in other states are similar to those in California. In most other states, these products move under commodity rates, many of which have lower minimum weight requirements than those proposed herein. If the current exception ratings are allowed to expire and the sought commodity rates are not established, the transportation costs in California will increase an average of 21.8 percent.

Such an increase would result in unreasonable and unwarranted competition from plants outside California and would have an extremely adverse effect on petitioners. In this regard, a substantial amount of foreign asbestos cement pipe and conduit products are now imported into California. These imports exceeded 14,000 tons and over 1.2 million dollars in value during the first ten months of 1971. The pricing structure of many pipe products has decreased due to this outside competition. The suggested ten percent accessory allowance with pipe and conduit shipments would save added paper work and billing for the carrier. A five percent allowance would also be acceptable. With the exception of the rubber washers, these items are now billed separately at class rates. Commodity rates are preferable to permanent exception ratings as they are more flexible. Although they would be subject to the same general increases as the MRT 2 class rates, they could be adjusted separately if circumstances warranted. Although no specific carrier costs have been developed, it is apparent, based on past carrier experience, that the proposed commodity rates are just and reasonable for the transportation in issue. A study of the possibility of switching to proprietary trucking if the rates are allowed to increase is being undertaken.

Witnesses from two large trucking concerns that perform transportation services for petitioners testified that the present temporary exception ratings are compensatory and that they support the commodity rate proposal. It was stipulated by the parties that representatives of five other carriers who haul for petitioners would have presented similar testimony had they been called as witnesses.

The attorney for CTA argued that the evidence does not support petitioners' proposal.

The record herein follows generally the same pattern as that in the gypsum petitions. The evidence was concerned primarily with the favorable transportation characteristics of the pipe and conduit and the adverse effect increased freight rates would have on petitioners. Additionally, it was pointed out that competition from

foreign manufacturers is keen. However, as with the gypsum petitions, the evidence regarding cost of performing the service was extremely meager. There are only the statements of the witnesses that the sought commodity rates, which are based on the current temporary exception ratings, are compensatory and reasonable. No specific cost data to support these allegations were presented. Such evidence is indispensable when establishing commodity rates for the future. A finding of reasonableness cannot be made without it.

Petition 678 in Case No. 5432 will be denied. However, a credible case has been made for the further continuation of the temporary exception ratings in Section 2-B of ERT 1 for the asbestos-cement pipe products and related accessories referred to in Petition 123 in Case No. 7858. For the same reasons stated in connection with the other petitions in Case No. 7858, they will be continued with the other Section 2-B exception ratings until further order of the Commission.

Findings

1. The exception ratings in Sections 2-B and 2-C of ERT 1 are temporary exceptions to the NMFC. They were initially scheduled to expire on December 31, 1969 and were extended to December 31, 1970 and again to December 31, 1971 with certain modifications, additions, and deletions. They were once more extended until further order of the Commission pending the determination of the petitions herein.

2. The temporary exception ratings in Section 2-B of ERT 1 are truckload ratings which are lower than the applicable ratings in the NMFC for the commodities involved.

3. The temporary exception ratings in Section 2-C of ERT 1 are less than truckload and truckload ratings which are generally higher than the applicable ratings in the NMFC for the commodities involved.

4. The evidence does not clearly demonstrate the extent to which the temporary exception ratings in Sections 2-B and 2-C of ERT 1 will or will not result for the future in just and reasonable rates and charges.

5. The exception ratings in Sections 2-B and 2-C of ERT 1 have been shown to be justified for a further temporary period to allow interested parties additional time to develop the necessary evidence to support their positions regarding the final disposition thereof.

6. The temporary extension of the exception ratings should be until further order of the Commission. It is understood that if petitions regarding Sections 2-B and 2-C have not been filed by interested parties within a reasonable time, the Commission will, on its own motion, further consider the final disposition to be made of the exception ratings in issue.

7. The proposed changes in or cancellation of certain of the exception ratings in issue have not been shown to be justified.

8. The petitioners in Petition 671 in Case No. 5432 and Petition 235 in Case No. 5441 are manufacturers and shippers of gypsum products, many of which have temporary exception ratings published in Section 2-B of ERT 1.

9. The petitioners in Petition 678 in Case No. 5432 are manufacturers and shippers of asbestos-cement pipe and related products, most of which have temporary exception ratings in Section 2-B of ERT 1.

10. The commodity rates for gypsum products and for asbestos-cement pipe products proposed to be published in MRT 2 by the petitions referred to in Findings 8 and 9, respectively, are for the most part based on the temporary exception ratings in Section 2-B of ERT 1 with certain modifications and the MRT 2 class rates applying in connection therewith.

11. The proposed commodity rates for gypsum products and for asbestos-cement pipe products referred to in Finding 10 have not been shown for the future to be just and reasonable.

12. The petitioners in Petitions 121 and 122 in Case No. 7858 have requested that their petitions be dismissed.

C. 5432, Pet. 671 et al. ek

Conclusions

1. The current exception ratings in Sections 2-B and 2-C of ERT 1 should be continued until further order of the Commission.
2. Petitions 121 and 122 in Case No. 7858 should be dismissed.
3. Except as provided in Conclusion 1, all other petitions in Case No. 7858 should be denied, and Order Setting Hearing 131 in Case No. 7858 should be discontinued.
4. Petitions 671 and 678 in Case No. 5432 and Petition 235 in Case No. 5441 should be denied.

O R D E R

IT IS ORDERED that:

1. All temporary exception ratings in Sections 2-B and 2-C of Exception Ratings Tariff 1 are continued until further order of the Commission as presently provided by Decision No. 81158 dated March 13, 1973 in Case No. 7858.
2. Petitions Nos. 121 and 122 in Case No. 7858 are dismissed.
3. Except as provided in Ordering Paragraph 1, Petitions Nos. 106, 107, 108, 109, 110, 112, 113, 114, 115, 116, 118, 120, 123, 124, and 125 in Case No. 7858 are denied, and Order Setting Hearing No. 131 in Case No. 7858 is discontinued.

C. 5432, Pet. 671 et al. ek

4. Petitions Nos. 671 and 678 in Case No. 5432 and Petition No. 235 in Case No. 5441 are denied.

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

Dated at San Francisco, California, this 12th day of JUNE, 1973.

Vernon L. Stinson
President
William J. Brown
[Signature]
[Signature]
Commissioners

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

APPENDIX A

LIST OF APPEARANCES

Petitioners in Case No. 7858: William M. Larimore, for Interpace Corporation (Pet. 106), Standard Industrial Minerals (Pet. 107), C. B. Hobbs Corporation (Pet. 108), C. E. Grosjean Rice Milling Company (Pet. 109), Industrial Minerals Company (Pet. 110), Chemical and Drug Group (Pet. 113), and Diamond Springs Lime Company (Pet. 116); Joseph D. Cumliffe, for United States Borax & Chemical Corporation (Pet. 112); E. J. Bertana, for Lone Star Industries, Inc., Northern California Division (Pet. 114); Jess J. Butcher, for California Manufacturers Association (Pet. 115); Maurice J. Heyerick, for Purex Corp., LTD. (Pet. 120); Wayne R. Tinker, for Diamond Shamrock Chemical Company (Pets. 121 & 122); William A. Main, Attorney at Law, for U. S. Steel (Pet. 124); and Roy Thomsen, for Pacific Clay Products (Pet. 125).

Petitioners in Case No. 5432, et al: Carl F. Grover, for U. S. Gypsum Company; Richard B. Colby, for The Flintkote Company, Gypsum Products Division; Loren D. Olsen, for Kaiser Gypsum Co., Inc.; Kirk S. Eyer II, for National Gypsum Company; Brobeck, Phleger & Harrison, by Robert N. Lowry, Attorney at Law, for the four petitioners (Pet. 118 in Case 5432, Pet. 235 in Case 5441, and Pet. 118 in Case 7858); and Harvey E. Hamilton, for Johns-Manville Products Corp. and Certain-Teed Products Corp. (Pet. 678 in Case 5432 and Pet. 123 in Case 7858).

Respondents in Case No. 7858, et al: Joe MacDonald, for California Motor Express; J. McSweeney, for Delta Lines; Armand Karp, for Alltrans Express California, Inc.; Lee Pfister, for Willig Freight Lines; Tom D. Neely, for Neely Trucking Company; John H. Briggs, for PCP Transportation Co.; and Gordon S. Raney, for DISalvo Trucking Co.

Interested Parties in Case No. 7858, et al: Richard W. Smith, Attorney at Law, H. F. Kollmyer, and A. D. Poe, Attorney at Law, for California Trucking Association; Milton A. Walker, for Fibre-board Corporation; G. B. Fink, for The Dow Chemical Company; Charles Fording, for PFG Industries (Chemical Division); R. J. Kreps, by R. R. Johnson, for Chevron Chemical Company; W. Paul Tarter, for William Volker & Company; Ronald P. McCloskey, for Monsanto Company; Charles H. Caterino, for The Flintkote Company (Pioneer & U. S. Lime Division) and Traffic Managers Conference of California; Sheldon R. King, for Stauffer Chemical Company; Gordon A. Rodgers, for Allied Chemical Corporation; Kenneth C. O'Brien, for Container Corporation of America; John F. Shannon, for Avon Products; R. M. Zaller, for Continental Can Company, Inc.; R. F. Lott, for County Materials Company, Inc.; Francis J. Spellman, for The Triskelion Corporation; and Arden Riess, for Sheldon Mitchell and Associates and others.

Commission Staff: B. I. Shoda.