

ORIGINAL

Decision No. 81710

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 2).

AND RELATED MATTERS.

Case No. 5432
Petition for Modification
No. 710
(Filed August 1, 1972)

Case No. 5330, Petition 65
Case No. 5433, Petition 42
Case No. 5435, Petition 178
Case No. 5436, Petition 125
Case No. 5437, Petition 230
Case No. 5438, Petition 87
Case No. 5439, Petition 164
Case No. 5440, Petition 80
Case No. 5441, Petition 250
Case No. 5603, Petition 109
Case No. 5604, Petition 33
Case No. 7857, Petition 62
Case No. 8808, Petition 19
(Filed August 1, 1972)

Jess J. Butcher, for California Manufacturers Association, petitioner.
Robert A. Kormel, for Pacific Gas and Electric Company; and Richard W. Smith and A. D. Poe, Attorneys at Law, and E. Hughes, for California Trucking Association; interested parties.
J. L. Glovka, for the Commission staff.

O P I N I O N

In Decision No. 77937 dated April 11, 1972 in Case No. 5432, Petition No. 621, and related proceedings, the Commission revised the rules in its several minimum rate tariffs governing the collection of charges in connection with shipments transported by highway permit carriers under alternatively applied rail carload rates. As an example, Item 250 of Minimum Rate Tariff 2 (MRT 2) was revised with the addition of a new paragraph effective May 20, 1972 which reads as follows:

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

In the instant petitions, California Manufacturers Association (CMA) alleges that there is uncertainty concerning the application of the revised collection of charges provisions applicable to alternatively applied rail carload rates, and requests that the collection of charges related to alternative rail carload rates, as contained in the Commission's minimum rate tariffs, be changed to read as follows:

A. "(g) When alternative rail carload rates are applied under the provisions of this tariff, carriers may relinquish possession of freight in advance of payment thereon and extend credit in the amount of said charges to those responsible for payment for a period of five days (120 hours) beginning:

(1) When the freight bill covering a shipment is presented to the shipper on or before the day of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the freight,

- (2) When the freight bill is not presented to the debtor, on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill."

- B. "Delete the 'See Exception' reference in Item 250, paragraph (e) to allow this paragraph to apply to truck movements at rail rates."

Public hearing was held and the petitions were submitted before Examiner Mallory at San Francisco on November 13, 1972. Evidence was presented by the Director of the Transportation and Distribution Department of petitioner, and by an Associate Transportation Rate Expert from the Commission staff.

Petitioner's witness testified substantially as follows: The application of the rule change resulting from Decision No. 79937 has produced doubts and uncertainties in the minds of shippers tendering such alternatively applied rail rated shipments to highway carriers. The interpretation that the extension of credit to the shipper is allowed for a period of five days only from the day of delivery of the freight results in a situation whereby the shipper, receiver, or the person responsible for the payment of the freight charges is or could be in violation of the Commission's rules. Clearly, this circumstance could occur when the highway carrier fails to deliver the freight invoice to the shipper within the five-day (120 hours) period so established by the Commission in Decision No. 79937.

The credit provisions applicable to shipments other than those involved herein permit a seven-day credit period, subject to the following provision:

"When the freight bill is not presented to the debtor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill."

The witness stated that CMA has no quarrel with the Commission's decision reducing the credit period on shipments transported at alternatively applied rail carload rates from seven to five days. However, CMA believes that it is discriminatory not to allow payment in the same manner as if the shipment had moved by rail. The witness testified that the railroads' freight bills are generally mailed, and that the five-day credit period extends from the date of the postmark. CMA requests that the tariff rule be amended to permit highway permit carriers to bill accordingly.

The witness for the Commission staff testified that he had reviewed all tariffs and other documents filed by the railroads with this Commission governing their California intrastate freight operations and found no provisions dealing with collection of charges. Based on this analysis the staff representative stated that there are no rules imposed on intrastate shipments by the railroads as to the manner in which freight charges are to be collected. It is the position of the Transportation Division that there is no need for a different rule governing the collection of charges on shipments transported at alternatively applied rail carload rates than for other shipments transported by highway permit carriers.

California Trucking Association (CTA) and petitioner filed concurrent closing statements on November 28, 1972. CMA's pleading contains the following statements:

" . . . Of greater importance is the evidence placed in the record by the Commission Staff representative that rail carriers do not publish rules or procedures related to collection of freight charges on California intrastate traffic. Therefore, it is apparent that this Commission erred in its Decision 79937 when it stated:

'the rail carriers extend credit for periods up to five days under rules uniformly applied to shippers engaged in interstate and intrastate traffic.'

CTA's position, as stated in its closing statement, is as follows:

"CTA supports the application of all common carrier tariff provisions to alternatively applied common carrier rates. However, question was raised on this record about whether or not any credit rules apply to intrastate carload commodity rates of common carrier railroads. That issue was injected by the Commission staff representative. The record is uncertain on this point since no investigation was made of what credit rules the railroads currently apply to intrastate shipments.

"CTA does not oppose CMA's proposal if it conforms to the current credit provisions applicable to railroads. CTA does request, however, that a maximum period for billing be included in the rule proposed by CMA. Absent such a provision discrimination can run rampant. On the other hand, if no such provision is deemed proper in this proceeding, CTA respectfully requests that all relief sought herein be either denied or withheld until such time as the Commission directs common carrier railroads to publish in their tariffs for intrastate California application a credit rule which conforms to interstate credit regulation and which establishes a maximum period after delivery of a shipment for tender of the freight bill."

CTA further contends that the proposed rule should substantially establish the credit provisions made applicable to interstate rail rates by Interstate Commerce Commission order in Ex Parte 73 (326 ICC 483).

Discussion, Findings, and Conclusions

It was our intent in Decision No. 79937, supra, to require that shipments transported by highway carriers under alternatively applied rail carload rates be subject, to the extent possible, to the same tariff rules that would apply if the shipment had actually moved by rail. The record herein established that California rail carriers publish no tariff rules governing the collection of charges on intrastate rail carload shipments, and the record fails to shed light on the current practices of rail carriers with respect to collection of charges on their intrastate rail carload shipments.

In the circumstances, we find that in the absence of any specific intrastate rail tariff provisions covering the extension of credit, highway carriers should not be held to any more restrictive provisions than those which apply to other intrastate transportation by highway permit carriers. We also find that it is not reasonable on this record to require highway permit carriers to extend credit on shipments transported under alternatively applied intrastate rail carload rates in accordance with regulations established by the Interstate Commerce Commission applicable to interstate rail shipments.

We conclude that Minimum Rate Tariff 2 should be amended in the order that follows, and that separate orders should be issued amending Minimum Rate Tariffs 1-B, 3-A, 4-B, 6-A, 7, 8, 9-B, 10, 11-A, 12, 14-A, 17-A, and 18 in accordance with the foregoing findings. The petitions herein filed by CMA are granted to the extent provided by the order which follows and by the separate orders referred to above; in all other respects said petitions are denied.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision No. 31606, as amended) is further amended by incorporating therein, to become

effective September 15, 1973, Third Revised Page 27, attached hereto and by this reference made a part hereof.

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

3. Tariff publications authorized to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff page incorporated in this order.

4. 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.


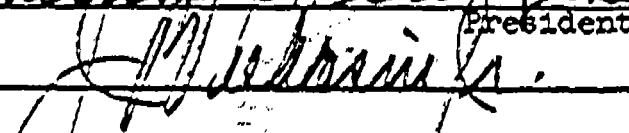
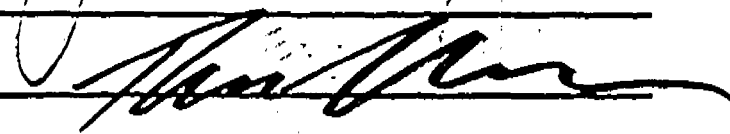
5. In all other respects Decision No. 31606, as amended, shall remain in full force and effect.

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6. Except to the extent granted in this order and the separate orders pertaining to tariffs other than Minimum Rate Tariff 2, the petitions herein are denied.

The effective date of this order shall be September 4, 1973.

Dated at San Francisco, California, this 14th
day of AUGUST, 1973.

 President


Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner D. W. Holmes, 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;">(1) COLLECTION OF CHARGES</p> <p>(a) Except as otherwise provided in this rule, transportation and accessorial charges shall be collected by the carriers prior to relinquishing physical possession of shipments entrusted to them for transportation.</p> <p>§ (b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of freight in advance of the payment of the charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called debtors, for a period of 7 days, excluding Sundays and legal holidays other than Saturday half-holidays. When the freight bill covering a shipment is presented to the debtor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the freight. When the freight bill is not presented to the debtor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill. **</p> <p>§ (c) Where a carrier has relinquished possession of freight and collected the amount of charges represented in a freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the debtor, the carrier may extend credit in the amount of such additional charges for a period of 30 calendar days to be computed from the first 12 o'clock midnight following the presentation of the subsequently presented freight bill. **</p> <p>§ (d) Freight bills for all transportation and accessorial charges shall be presented to the debtors within 7 calendar days from the first 12 o'clock midnight following delivery of the freight. **</p> <p>§ (e) Debtors may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by the carrier, as evidenced by the postmark, shall be deemed to be the time of presentation of the freight bills. **</p> <p>(f) The mailing by the debtor of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such debtor may be deemed to be the collection of the charges within the credit period for the purpose of these rules. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.</p> <p style="text-align: center;">**</p> <p style="text-align: center;">**</p>	o 250
<p>(1) Will not apply to the transportation of property for the United States, state, county or municipal governments.</p> <p>§ Change) § Reduction) Decision No. 81710 ** Eliminated)</p>	
EFFECTIVE	
<p>Correction</p> <p style="text-align: right;">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA</p>	