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ORIGINAL

Decision No. 81943

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  
Petition for Modification  
No. 621  
(Filed January 5, 1971)

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

(For appearances see Appendix A)

OPINION AND ORDER ON REHEARING

Decision No. 79937 dated April 11, 1972 was issued following lengthy hearings, the issuance of a Proposed Report by the presiding examiner, and the filing of exceptions and replies thereto.

California Trucking Association (the petitioner in the captioned proceedings) and the California Railroads filed petitions for rehearing of Decision No. 79937, which were granted by Decision No. 80698 dated November 8, 1972.<sup>1/</sup>

A prehearing conference was held before Commissioner Holmes and Examiner Mallory on January 22, 1973 for the purposes of defining the issues in the proceeding on rehearing. Thereafter, the Commission issued Decision No. 81013 dated January 30, 1973 entitled "Order Modifying Order Granting Rehearing." Decision No. 81013 discussed the contentions raised in the petitions for rehearing and ordered modification of Decision No. 80698 to limit rehearing of Decision No. 79937 to the receipt of evidence and argument on:

- (a) That portion of Proposal No. 2 of Decision No. 79937 dealing with spur track agreements.
- (b) Proposal No. 3 of Decision No. 79937.
- (c) Proposal No. 7 of Decision No. 79937.
- (d) Proposal No. 9 of Decision No. 79937.

The rehearing of Decision No. 79937 was held before Examiner Mallory on May 30 and 31, 1973. The matter was submitted, upon the filing of concurrent briefs, on June 20, 1973.

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<sup>1/</sup> The petitions for rehearing did not automatically stay the effective date of Decision No. 79937, under Section 1733 of the Public Utilities Code, and that decision became effective on May 5, 1972. The tariff pages attached to that decision and companion orders became effective May 20, 1972.

Evidence concerning the subjects itemized in Decision No. 81013 were presented by witnesses testifying on behalf of Fibreboard Corporation (Exhibits 621-27 and 621-28); Spreckels Sugar Division, Amstar Corporation (Exhibit 621-29); U. S. Brewers Association, Inc. (Exhibit 621-30); Guild Wineries and Distilleries (Exhibit 621-31); E & J Gallo Winery (Exhibit 621-32); United Vintners, Inc. (Exhibit 621-33); Shell Oil Company (Exhibit 621-34); Monsanto Company (Exhibit 621-35); Shelters Material Division of Certain-Teed Products Corporation (Exhibit 621-36); California and Hawaiian Sugar Company (Exhibit 621-37); Del Monte Corporation (Exhibit 621-38); Pacific Gas and Electric Company (Exhibit 621-39); Owens-Illinois, Inc. (Exhibit 621-40); Container Corporation of America (Exhibit 621-41); and National Can Corporation (Exhibit 621-42).

Proposal No. 2

Evidence in connection with the subject matter described in the order in Decision No. 81013 as "a) That portion of proposal No. 2 of Decision No. 79937 dealing with spur track agreements." was presented in Exhibits 621-27, 30, 31, 32, 33, 35, 36, 38, and 39. The evidence so introduced confirms the statements in Decision No. 79937 (under the discussion of Proposal No. 2) that rail spur track agreements are not readily available to owners and tenants of industrial property and that the owners and tenants could not readily show the existence of such an agreement. We affirm our prior finding that the requirement that a current spur track agreement must be available to evidence the fact that a usable spur track exists at an industrial plant is not practical and should not be adopted.

Proposal No. 3

Proposal No. 3 of Decision No. 79937 is that the highway carrier must load freight in the same type or size equipment as is specified in connection with the alternatively applied rail rate. Decision No. 79937 referred to the exception filed by Fibreboard Corporation to the effect that rail shipments of waste paper moved at actual weights of 45,000 pounds, when the rail carload minimum was 60,000 pounds. Exhibit 621-28 introduced by Fibreboard details the information concerning the shipments of waste paper referred to in its exceptions, and substantiates the fact that 55 carloads of waste paper were shipped by Fibreboard between January 1, 1971 and September 3, 1971 at actual weights which were less than the tariff minimum weight of 60,000 pounds. Exhibit 621-33, presented by United Vintners, Inc., also details examples of rail shipments of wine which moved at actual weights less than the specified rail tariff minimum weight. Similar comparisons concerning shipments of diatomaceous earth were presented in Exhibit 621-38 of Del Monte Corporation.

We affirm our finding in Decision No. 79937 that if the rail carload minimum weight is required to be used by a highway permit carrier in the instances where the rail tariffs provide a specific minimum weight, subject to the use of actual weight if the rail car is fully loaded, the charges under alternatively applied rail rates could exceed actual charges under rail rates. We also affirm our conclusion that the Examiner's recommendation to this effect in the proposed report should not be adopted.

Proposal No. 7

Proposal No. 7 of Decision No. 79937 states that when certain rail routes are temporarily closed or rail service is temporarily discontinued, highway permit carriers should not be permitted to use alternatively applied rail rates applicable over such closed rail routes. Decision No. 81013 states that exceptions referred to and relied upon in the discussion of Proposal No. 7 (mimeo p. 21) contain factual matter not of record, and that evidence should be received on rehearing relating to Proposal No. 7.

Exhibits 621-29, 31, 32, 33, 37, 38, 40, 41, and 42 cite several instances of short-term closures of rail routes because of natural calamities or other reasons and point out the difficulties which would be presented if Proposal No. 7 was adopted.

The record now contains, if it did not do so before, abundant evidence to support our finding in Decision No. 79937 that said proposal should not be adopted because of impractical application during short-term closures of rail routes. That finding is affirmed.

Proposal No. 9

Proposal No. 9 provides that when alternatively applied rail carload rates are used for bulk movements, the shipper and receiver of the property must have facilities for receiving bulk shipments by rail. Decision No. 81013 states that the exceptions to Proposal No. 9 contain new factual matter which were relied upon in reaching a decision, and that evidence should be received on rehearing relating to Proposal No. 9.

Exhibits 621-29, 34, 35, and 37 contain evidence with respect to this proposal. The evidence shows that loading and unloading of bulk shipments by rail is often performed with portable equipment at points where no permanent special facilities exist. This testimony confirms the statements in Decision No. 79937 which apparently were based solely upon allegations contained in exceptions to the examiner's proposed report. We affirm our prior findings under this heading.

CTA Brief

California Trucking Association (CTA), in its brief filed June 20, 1973, asserts that the Commission, by issuing Decision No. 81013 limiting the scope of rehearing, completely ignored the 10 errors of law raised in CTA's petition for rehearing and requests that the Commission make findings of fact and conclusions of law on each of the 11 points raised in its petition for rehearing. The Commission considered all of the asserted errors raised in CTA's petition for rehearing and concluded that the only asserted errors which had merit were those to which rehearing was granted in Decision No. 81013. Having previously considered the points raised in CTA's brief and having denied rehearing or reconsideration with respect thereto, and, as it is beyond the scope of the order in Decision No. 81013 to comply with CTA's request in its brief, that request is denied.

Disposition of Proceeding on Rehearing

All of the findings made in Decision No. 79937 pertaining to the proposals in issue are fully supported by the record upon rehearing.

Decision No. 79937 became effective on May 5, 1972, as it was not automatically stayed by the filing of the petitions for rehearing, nor was the effective date stayed by the Commission. Decision No. 79937 expresses the findings and conclusions of the Commission with respect to all pertinent matters of fact and law. Therefore, we should affirm those findings and conclusions in an appropriate order.

IT IS ORDERED that Decision No. 79937 dated April 11, 1972 and effective May 5, 1972 (together with companion orders concurrently issued and effective) is the final order of the Commission in Case No. 5432, Petition for Modification No. 621, and related proceedings, and those proceedings are closed.

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

Dated at San Francisco, California, this 2nd day of OCTOBER, 1973.

William J. Sturgeon President  
[Signature]  
[Signature] Commissioners

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

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

APPENDIX A

A List of Appearances is  
attached as Appendix A  
to Decision No. 79937  
dated April 11, 1972 in  
these proceedings.

ADDITIONAL APPEARANCES

For Respondents: Richard S. Kopf, Attorney at Law, for railroad members of Pacific Southcoast Freight Bureau.

Protestants: R. Canham, by A. A. Wright, for Standard Oil Company of California, Vernon Hampton, for Certain-Teed Products; Donald B. Murray, for United Vintners.

Interested Parties: Ann M. Pougiales, Attorney at Law, for United States Brewers Association and Wine Institute; J. M. Cunningham, for Bethlehem Steel Corporation; W. A. Main, Attorney at Law, for United States Steel Corporation; Calhoun E. Jacobson, for Traffic Managers Conference of California; William Mitze, for Riverside Cement Company; William T. Barkie, for California Portland Cement Company; T. W. Anderson, for General Portland Inc., California Division; Eugene R. Rhodes, for Monolith Portland Cement Company; Thomas D. Kessler, for Kal Kan Foods, Inc.; Duward L. Manning, for JohnsManville Products Corporation; Towne James, for Container Corporation of America; George B. Shannon, for Southwestern Portland Cement Company; Kenneth C. Delaney, for Los Angeles Area Chamber of Commerce; Gordon G. Gale, for The Clorox Company; and K. M. Shaver, for Colgate Palmolive Company.

Commission Staff: Walter H. Kessenick, Jr., Attorney at Law.