

**ORIGINAL**

Decision No. 82945

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 motor  
vehicles and related items (commod-  
ities for which rates are provided  
in Minimum Rate Tariff No. 12).

Case No. 5604, OSH 43  
(Filed January 15, 1974)

Silver, Rosen, Fischer & Stecher, by Granville Harper  
and Martin Rosen, Attorneys at Law, for General  
Overland Auto Transport, and Vaughan, Paul & Lyons,  
by John G. Lyons, Attorney at Law, for Insured  
Transporters, Inc., respondents.  
J. C. Kaspar and H. W. Hughes, for California Trucking  
Association, interested party.  
Freda Abbott, Attorney at Law, and E. Carmody, for  
the Commission staff.

O P I N I O N

The Commission's Transportation Division staff has been conducting cost and rate studies concerning transportation of motor vehicles in secondary movements by truckaway service subject to the provisions of Minimum Rate Tariff 12 (MRT 12). Included therein are imported automobiles which are shipped from factories located in Asia or Europe via charter or common carrier vessel to destination points in California. These vehicles are transported from the ship to mar- shalling yards near the port of entry. From the marshalling yards the vehicles are transported to various points in California. A question has arisen as to whether transportation from the marshalling yards to a point in California is intrastate in nature and whether this transportation should continue to be regulated by this Commission and be subject to the rates and rules of MRT 12. The purpose of this Order Setting Hearing is to consider this issue. A secondary issue is

whether, in the event the transportation is found not to be subject to the jurisdiction of this Commission, the public need requires the continuation of MRT 12.

Public hearing was held before Examiner Mooney in San Francisco on April 16 and 17, 1974. The matter was submitted on the latter date.

An Associate Transportation Rate Expert of the Commission's Transportation Division staff testified that he has made a study of the transportation subject to MRT 12, including the transportation of new cars imported from Europe and Asia, and that his study has disclosed that 81 percent of the revenue earned by carriers under MRT 12 results from the transportation of such imported vehicles. Exhibit 1, presented by the rate expert, includes information and a flow chart regarding the transportation of imported vehicles from point of origin to final destination. Following is a summary of the information in the exhibit and the witness' explanation thereof: The manufacturer in Europe or Asia is privately owned, state owned or controlled, or a subsidiary of a U. S. based company; shipments made by it are consigned to an importer, a distributor, a company which is both an importer and distributor, or a dealer; the importer may be an independent company, or may be owned by an American manufacturer, or may be owned by the foreign manufacturer but operated as a completely separate corporation in California; the distributor may be an independent company, or may be owned by an American manufacturer, or may be owned by the foreign manufacturer but operated as an independent and separate corporation within California, or may be owned by or the owner of the importer; the dealer is an independent company which sells the vehicles to the public; except for vehicles sold directly by the foreign manufacturer to a dealer, which accounts for only 1 or 2 percent of the vehicles shipped to California, the importer buys the vehicles from the manufacturer and sells them to the distributor which in turn sells them to a dealer; the vehicles received by the importer may or may not have been specifically ordered by it; when the

manufacturer makes a shipment, with the exception of the vehicles sold directly to a dealer, it does not have any knowledge of the dealer to which the subsequent shipment by the importer/distributor or distributor will be made; 87 percent of the shipments from the foreign manufacturer are via time or trip charter vessel and the balance are via common carrier vessel; the Federal Maritime Commission considers charter vessels to be private carriage and not subject to regulation by the Federal Government; title to the vehicle passes from the foreign manufacturer to the importer, importer/distributor, or distributor after it has been loaded on the vessel but before it has been transferred to a marshalling yard at the California port; the contents of a vessel, as to the types of vehicles on board, are not known to the importer, importer/distributor, or distributor before the vessel has left the foreign port and may not be known to it until the vessel has been unloaded at the California port; after the vehicles are unloaded from the vessel, they are either driven or trucked to a marshalling yard where they are held for a period of one to six weeks or longer pending sale; before the vehicles are sold to a dealer they are serviced, washed, necessary repairs are made, and sometimes the engines are checked and the vehicles are road tested; sales from the importer to the distributor are made on the basis of vehicles on hand at the marshalling yard or those en route to the California port via vessel; shipments from the importer/distributor or distributor to the dealer are via automobile transport; this transportation is a new movement and not part of a continuous movement from the foreign manufacturer; and the dealer will make final preparations of the vehicles for sale to the public. The rate expert testified that he knows of no instances wherein a dealer obtains title to a vehicle before the vehicle has been landed at a port in California. This is true, he asserted, even in instances where the dealer places its order while the vehicles are en route to California via vessel.

It is a staff position that the transportation in issue is intrastate in nature and subject to the jurisdiction of this Commission and the rates, rules, and regulations in MRT 12. In her closing statement, staff counsel asserted that it is the essential character of the commerce that determines whether it is interstate or intrastate and cited numerous cases including Texas & N. O. R. Co. v Sabin Tram Co. (1913) 227 US 111 and Atlantic Coastline R. Co. v Standard Oil Co. (1927) 275 US 257. The latter case held that the reshipment of an interstate shipment does not necessarily establish a continuity of movement or prevent the shipment to a point within the same state from having an independent or intrastate character. Counsel argued that the shipment from the overseas manufacturer terminated at the California port and that the movement of the vehicles to the dealers in California was a separate and distinct shipment with a different intent.

The representative of the California Trucking Association asserted, in his closing statement, that the minimum rates provided in MRT 12 have been and are being applied to the overwhelming predominance of the transportation of foreign imported vehicles within California; that this is an important tariff to both shippers and carriers of motor vehicles; and that the latest available figures in the Commission's Data Bank for the year 1971 show total revenues earned under MRT 12 (including exempt traffic revenue) of approximately \$20 million, based on the operations of 65 carriers, 44 of which operate exclusively in the service in issue. It is CTA's position that the Commission should issue an early order finding that the transportation under investigation is intrastate traffic subject to the jurisdiction of this Commission and that the public need requires the continuation of MRT 12. The representative urged that Informal Ruling 41 be re-established or that the order resulting from this proceeding be substituted for the cited decisions

in the cancellation of the ruling. In this regard, he pointed out that Informal Ruling 41, issued November 18, 1958, stated that the movement of imported vehicles via a highway carrier from the port to various consignees and destinations in California is an intrastate movement; that the ruling was subsequently canceled, and the reason stated for such action in the cancellation is Decisions Nos. 74993 and 75006; and that neither decision was concerned with the transportation involved herein. He also requested that staff studies involving MRT 12 which have been delayed pending clarification of the jurisdictional questions raised in this proceeding be immediately recommenced.

The attorney for General Overland Auto Transport concurred in the CTA's statement. The attorney for Insured Transporters, Inc. likewise concurred in the CTA's statement and asserted that, in the circumstances, he was of the opinion that a finding that public convenience and necessity required the continuation of MRT 12 was not necessary.

Based on the information presented by the staff regarding the transportation of the imported vehicles within California, we agree with all parties to this proceeding that, with the possible exception of the 2 percent that are ordered by a dealer directly from a foreign manufacturer, the transportation is intrastate in nature and subject to the jurisdiction of this Commission and MRT 12. As pointed out by the CTA, Decisions Nos. 74993 and 75006 referred to in the cancellation of the informal ruling were not concerned with the same factual situation we have before us. The two decisions were based on the decisions by the federal courts in

Long Beach Banana Distributors, Inc., et al. v Atchison, Topeka & Santa Fe Railway Company, Inc., et al. (1969) 407 F 2d 1173, certiorari denied 90 S Ct 56, 396 US 819, 24 L ed 2d 70 and Baltimore Shippers and Receivers Association, Inc., et al. v Public Utilities Commission of the State of California (1967) 268 F Supp 836. The Long Beach Banana Distributors case was concerned with the transportation of bananas which had been imported from a foreign country via vessel and were immediately transferred from the vessel to rail cars for shipment beyond the dock to points in California. The decision held that the transportation within California was interstate in nature and not subject to the jurisdiction of the state commission. The Baltimore Shippers and Receivers Association case was concerned with delivery service performed wholly within commercial zones from the break-bulk point on interstate shipments handled by the Association and held that, although such delivery service was exempt from rate regulation by the Interstate Commerce Act, it was nonetheless interstate in nature, and the state commission had no jurisdiction to impose minimum rates for such transportation. In both cases the transportation involved was a continuous movement from a point outside of California to a final destination within the State. However, according to the evidence presented by the staff, this is not the situation here. As pointed out by the staff witness and in his exhibit, it was the intent of the foreign manufacturer in arranging for the ocean transportation to have the vehicles transported to the port of entry only; the transportation beyond the marshalling yard to the dealer within California is subsequently arranged for by the distributor or importer/distributor; and this latter transportation is a new, separate and distinct shipment which is intrastate in nature and subject to the jurisdiction of this Commission and MRT 12.

Having so determined, we concur with the attorney for Insured Transporters, Inc. that a finding that public convenience and necessity require the continuation of MRT 12 is not necessary, and with the representative of the CTA that the Transportation Division staff should immediately recommence and proceed with its study of the transportation subject to and the rates, rules, and regulations included in MRT 12.

The Commission finds that, with the exception of imported vehicles that are ordered directly by a dealer from a manufacturer in a foreign country, the transportation of imported vehicles from a California marshalling yard to a dealer within the State, as described in Exhibit 1, is a separate intrastate shipment and concludes that such transportation is subject to this Commission's jurisdiction and MRT 12.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 12 shall be applied to the transportation of imported vehicles from a marshalling yard at the California port of entry to dealers within California, except for imported vehicles that are ordered directly by a dealer from a manufacturer in a foreign country.

2. The Transportation Division shall immediately proceed with its study of transportation subject to Minimum Rate Tariff 12.

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

Dated at San Francisco, California, this 5<sup>th</sup>  
day of JUNE, 1974.

Vernon L. Sturgeon  
President  
William J. ...  
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...  
Commissioners