

83407

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation
into the rates, rules, regulations,
charges, allowances, and practices
of all highway carriers relating to
the transportation of fresh fruits
and vegetables in Minimum Rate
Tariff 8.

Case No. 5438
Petition for Modification
No. 100
(Filed May 29, 1974)

Richard W. Smith, Attorney at Law, and H. Hughes,
for California Trucking Association, petitioner.
Silver, Rosen, Fischer & Stecher, by John P. Fischer
and Granville T. Harper, Attorneys at Law, for
Lucky Stores, Inc. (protestant), and California
Growers Association, interested party.
Vaughan, Paul & Lyons, by John G. Lyons, Attorney at
Law, for Golden Gate Produce Terminal, protestant.
Harold F. Culy, for Bayview Trucking, Inc., respondent.
Ralph O. Hubbard, for California Farm Bureau Federation;
Grant J. Hunt, Jr., for Grant J. Hunt Company;
Albert F. Reyher, for Alpha Beta Co.; Charles K.
Rivera, for California Grape & Tree Fruit League;
and James A. Roberts, for Ralphs Grocery Company;
interested parties.
E. Carmody, for the Commission staff.

O P I N I O N

Minimum Rate Tariff 8 (MRT 8) provides minimum rates and
rules which govern the statewide transportation of fresh fruits and
vegetables, nuts, and empty containers by highway carriers. Decision
No. 81450 dated May 30, 1973 restricted the application of MRT 8 rates
to include the services of a single carrier employee (driver) only.
If the services of helpers or other parties are employed the actual
charges assessed or incurred therefor shall be billed directly to

and collected from the debtor.^{1/} This tariff restriction was made subject to an expiration date of July 1, 1974 which the California Trucking Association (CTA) in Petition 100 sought to have extended to July 1, 1975 by ex parte order. Lucky Stores, Inc., Golden Gate Produce Terminal, and the San Francisco Produce Association objected to CTA's sought ex parte action and requested the matter be set for hearing.

In granting protestants request by Decision No. 83009 dated June 18, 1974 in this proceeding the Commission held: "Subject to further review upon consideration of evidence which may be adduced at a public hearing, the Commission finds that the 'status quo' in this matter should be preserved. The Commission concludes that the involved expiration date should be extended to midnight of October 1, 1974 pending the outcome of said hearing." Public hearing of Petition 100 was held before Examiner Gagnon at San Francisco on August 2, 1974 and the matter was submitted on the same date.

In restricting the services included in the rates named in MRT 8 to that performed by a single carrier employee, the Commission found in Decision No. 81450 that:

"5. The proposed tariff rule will enable produce carriers and shippers to obtain current information, not now available, concerning transportation conditions and circumstances surrounding the loading and unloading of produce shipments. Such information has been shown to be critical to the evidentiary value of contemplated MRT 8 full-scale cost and rate studies.

"6. The proposed tariff rule will formulate a basis for future evaluation, coordination and clarification of the existing joint jurisdictional involvement of the Commission and the Director of Industrial Relations relative to charges assessed by registered unloaders at established produce markets."

^{1/} The specific tariff provisions in question are set forth in Paragraph 1(b) of Item 120 (Application of Rates) of MRT 8.

The tariff provision restricting the scope of application of MRT 8 rates was made subject to an expiration date of July 1, 1974 pending completion of the full-scale cost and rate studies by the Commission's Transportation Division staff. On April 30, 1974 the Commission issued its Order Setting Hearing No. 99 in Case No. 5438 directing that public hearing be held at which time the results of the staff's full-scale cost and rate studies would be offered in evidence. At the hearing in Petition 100 the Commission staff representative advised that the staff's MRT 8 studies would be available for distribution to interested parties and presentation in evidence in OSH 99 within approximately 60 days.

Protestants now argue that since the temporary tariff rule (Paragraph 1(b) in Item 120 of MRT 8) has generated the data necessary to enable the staff to complete its full-scale studies, such temporary tariff provision should now be permitted to expire rather than be extended to July 1, 1975. In addition to having assertedly served its purpose, as enunciated in Findings 5 and 6 of Decision No. 81450, Lucky Stores, Inc. contends that the temporary loading and unloading provisions set forth in Item 120 of MRT 8 has, and is now, casting an undue burden upon its produce warehouse and distribution operations.

Public hearings in OSH 99 are to be scheduled in the near future. Practically all of the testimony and factual evidence offered in Petition 100 relative to the question of extending the expiration date of Paragraph 1(b) in Item 120 of MRT 8 directly concern issues which are totally within the scope of OSH 99. It is clear at this time that a decision in this latter proceeding cannot be reached, even under the most expeditious procedures consistent with "due process", prior to the October 1, 1974 expiration date of the tariff provision in question.

The Commission, recognizing a rather complex and pressing economic problem arising from current loading and unloading practices of produce shipments at various markets when moving under the governing provisions of MRT 8, adopted a temporary solution thereof based upon evidence then available and pending the receipt of contemplated full-scale cost and rate studies relative thereto. It should not now further aggravate the controversial issues surrounding the loading and unloading of produce shipments by prematurely terminating a temporary tariff rule it adopted to alleviate the problem in the first instance. The California Farm Bureau Federation presented a motion urging the Commission to:

"...(1) stay further hearings on Petition for Modification No. 100, (2) issue its order consolidating said petition for public hearing with Order Setting Hearing No. 99, (3) maintain the 'status quo' referred to in Decision No. 83009 by extending the expiration date of October 1, 1974, established thereby in Item 120 of MRT 8, for a period sufficient to allow Petition No. 100 and OSH No. 99 to be heard on a common record."

The motion of the California Farm Bureau Federation should be granted to the extent that it urges an extension in the period of time the temporary tariff provisions published as Paragraph 1(b) of Item 120 in MRT 8 should be continued in effect. Extending the date when the temporary tariff rate is presently scheduled to expire to July 1, 1975, as requested by CTA, unless sooner canceled, modified, or extended by the Commission would, however, render moot the sought consolidation of Petition 100 with OSH 99.

Subject to further review upon consideration of evidence to be adduced at public hearing in Order Setting Hearing No. 99 issued April 30, 1974 in Case No. 5438, the Commission finds that the temporary provisions of Paragraph 1(b) in Item 120 of MRT 8 should be continued in effect. It is concluded that CTA's sought extension of the October 1, 1974 expiration date to July 1, 1975, unless sooner canceled, modified, or otherwise extended by further order of the Commission, should be granted.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 8 (Appendix C to Decision No. 33977, as amended) is further amended by incorporating therein, to become effective October 1, 1974, Seventeenth Revised Page 13 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. 33977, as amended, are hereby authorized to establish in their tariffs the amendments necessary to conform with the further adjustments ordered herein.
3. Common carriers maintaining rates on a level other than the minimum rates for transportation for which rates are prescribed in Minimum Rate Tariff 8 are authorized to increase such rates by the same amounts authorized for Minimum Rate Tariff 8 rates herein.
4. Common carriers maintaining rates on the same level as Minimum Rate Tariff 8 rates for the transportation of commodities and/or for transportation not subject to Minimum Rate Tariff 8 are authorized to increase said rates by the same amounts authorized for Minimum Rate Tariff 8 rates herein.
5. Common carriers maintaining rates at levels other than the minimum rates for the transportation of commodities and/or for transportation not subject to Minimum Rate Tariff 8 are authorized to increase said rates by the same amounts authorized for Minimum Rate Tariff 8 rates herein.
6. Tariff publications required to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than the first day after the effective date of this order on not less than one day's notice to the Commission and to the public and such tariff publications shall be made effective not later than October 1, 1974; and tariff publications which are authorized but not required to be made by common carriers as a result of this order

may be made effective not earlier than the first day after the effective date of this order, and may be made effective on not less than one day's 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.

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

8. In all other respects, Decision No. 33977, as amended, shall remain in full force and effect.

9. To the extent not granted herein the motion of the California Farm Bureau Federation is denied.

The effective date of this order shall be September 24, 1974.

Dated at San Francisco, California, this 4th day of SEPTEMBER, 1974.

Vernon L. Stearns
President
William J. McGuire, Jr.
William J. McGuire, Jr.
William J. McGuire, Jr.
William J. McGuire, Jr.
Commissioners

| SECTION 1--RULES OF GENERAL APPLICATION (CONTINUED) | | ITEM |
|---|---|------|
| APPLICATION OF RATES | | |
| 1. GENERAL | | |
| (a) Rates provided in this tariff are for the transportation of shipments, as defined in Item 11 from point of origin to point of destination, subject to Items 130, 140 and 150. | | |
| (E) (b) The rates and charges named in this tariff include the services of a single carrier employee (driver) only. If the services of helpers or other parties are employed to perform, or assist in the performance of accessorial services rendered under this tariff, the actual charges assessed or incurred therefor (not to exceed the scale of charges established pursuant to Sections 56801 through 56982, Chapter 8 of the California Food and Agricultural Code) shall be billed directly to and collected from the debtor. These charges shall be in addition to all other rates and charges accruing under this tariff and in no event shall such charges, if assessed or incurred on an hourly basis, be less than those provided in Item 150 (Subject to Notes 1, 2 and 3). | | |
| NOTE 1.--The accessorial charges resulting under Paragraph 1(b) are not applicable in connection with shipments subject to Any-Quantity rates. | | |
| NOTE 2.--The accessorial charges provided in Paragraph 1(b) are in addition to those named in Items 130 and 140 of the tariff. | | |
| NOTE 3.--Paragraph 1(b) does not apply in connection with Item 309 and Section 4 of the tariff. | | |
| 2. DEDUCTIONS | | |
| Except as provided in Notes 1, 2, 3 and 4 hereof, when point of origin or point of destination is carrier's established depot, the pickup and delivery rates specifically named in this tariff shall be subject to the following deductions: | | |
| When shipment moves under rates subject to minimum weights of: | Deductions, in cents per 100 lbs. except as shown: Columns | ø120 |
| Less than 2,000 pounds----- | (1) (2) (3) 20 5 25 | |
| 2,000 but less than 4,000 pounds----- | 10 5 15 | |
| 4,000 but less than 10,000 pounds----- | 5 5 10 | |
| In cents per shipment when shipment weighs less than 100 pounds. | | |
| Column (1)--Applies on shipments originating at carrier's established depot. | | |
| Column (2)--Applies on shipments destined to carrier's established depot. | | |
| Column (3)--Applies on shipments originating at and destined to carrier's established depots. | | |
| NOTE 1.--No deduction shall be made under this rule from rates based upon a minimum weight of 10,000 pounds or more, or from minimum charges provided by Item 160. | | |
| NOTE 2.--No deduction shall be made under this rule on shipments transported for persons, companies or corporations upon whose premises depots from or to which the transportation is performed are located. | | |
| NOTE 3.--Deductions made under this rule on split pickup or split delivery shipments shall be made only on the weight of the component parts having point of origin or point of destination, or both (as the case may be), at the carrier's established depots, subject to Note 2. | | |
| NOTE 4.--In no case shall the net transportation rate be less than 14 cents per 100 pounds, or less than the pickup and delivery rate, whichever is lower. | | |
| 3. DELIVERIES WITHIN A SINGLE MARKET AREA | | |
| For the purpose of applying the rates in this tariff, multiple deliveries, not exceeding six in number, will be permitted within a single market area as defined in Item 290 and shall be deemed to be made to one consignee at one point of destination provided charges are paid by a single consignor or a single consignee. | | |
| ø(E) Expires with July 1, 1975. | | |
| ø Change) | | |
| ø Increase) Decision No. 83407 | | |
| ø Reduction) | | |
| EFFECTIVE | | |
| ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA. | | |
| Correction | | |