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Decision No. 83788

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).	Case No. 5432 Petition for Modification No. 660 (Filed July 16, 1971)
And Related Matters.	Case No. 5433, Petition No. 38 Case No. 5436, Petition No. 112 Case No. 5437, Petition No. 211 Case No. 5438, Petition No. 83 Case No. 5440, Petition No. 75 Case No. 5604, Petition No. 28 Case No. 7857, Petition No. 50 Case No. 8808, Petition No. 15 (Filed July 16, 1971)

(For appearances see Appendix A.)

O P I N I O N

California Trucking Association (CTA), petitioner, seeks to amend various minimum rate tariffs issued by this Commission to cancel provisions authorizing the combination of rates in those tariffs with alternatively applied common carrier rates.

California Manufacturers Association (CMA), on July 27, 1971, filed a motion to dismiss these proceedings, and requested that the motion be set for hearing and decided prior to the taking of evidence. Following hearing, the Commission issued Decision No. 79665 dated February 1, 1972 which denied the motion.

Following the setting of these matters for further hearing, CMA, on December 21, 1973, filed a pleading entitled "Motion to Dismiss". Further hearing was held before Examiner Mallory on January 30 and April 1, 1974 at which evidence was presented by petitioner and several protestants. CMA's motion was withdrawn at the hearing. These matters were taken under submission upon the filing of closing briefs on June 17, 1974.[1/]

Background

The ratemaking provisions of the Public Utilities Code with respect to highway permit carriers are set forth in Division 2, Chapter 1 (Highway Carriers' Act), Sections 3661 through 3671. Insofar as pertinent here, Section 3662 provides that the Commission shall establish or approve just, reasonable, and nondiscriminatory maximum or minimum rates to be charged by any highway permit carrier for the transportation of property. Pursuant to this mandate, the Commission has established minimum rates for the transportation of most commodities found in commerce in this State.

1/ Briefs were filed by CTA, CMA, Wine Institute, Traffic Managers Conference of California, Teresi Trucking, Inc., Seaton Trucking, and the Commission staff.

Section 3663 provides that in the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points.

To comply with Section 3663 the Commission established rules in its several minimum rate tariffs providing that when the consignor and consignee of the shipment are served by rail spur the rates specifically named in the minimum rate tariffs alternate with the lowest common carrier (rail) rate for the same transportation.

Decision No. 77786 dated October 6, 1970 (71 CPUC 465) found that Section 3663 of the Public Utilities Code prohibits the establishment of provisions resulting in minimum rates and charges higher than those applicable under alternatively applied rail rates.

Decision No. 79937 dated April 11, 1972 (73 CPUC 309) determined that it would be improper to establish rules in minimum rate tariffs which, in the guise of complying with the mandate in Section 3663, would permit highway permit carriers to charge rates below the lower of the actual rail rate or the specific minimum rate applicable to the shipment. That decision further found that existing minimum rate tariff rules governing the alternative application of common carrier rates should be amended so as to provide, to the fullest practical extent, charges under alternatively applied rail rates that are not less than if rail carload rates had actually been applied.

CTA was the petitioner in the proceedings leading to Decisions Nos. 77786 and 79937 cited above. This proceeding was held in abeyance until the issues raised in prior proceedings were resolved. Decision No. 81943 dated October 3, 1973 decided the issues with respect to the limited rehearing of Decision No. 79937 granted by the Commission, and Decision No. 79937 was made final.

CTA Petitions

The petitions herein allege as follows: The Commission has included in its minimum rate tariffs rules which allow the construction of combination rates by combining the specific rates and charges of such tariffs with the rates and charges of common carriers.[2/] Such tariff provisions allow highway permit carriers to apply combination minimum rates and common carrier rates to a transportation service which the rate publishing common carrier does not itself offer or perform. Such combination rates are commonly constructed by combining common carrier line-haul rates with highway carrier minimum rates beyond. Such combinations result in a lower through rate between origin and destination than the applicable highway carrier minimum through rate between the same points. Petitioner is informed and believes that common carrier railroads do not publish through rates to, from, or between off-rail locations which are lower than the

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2/ Such rules are contained in Items Nos. 210, 220, and 230 of MRT 2; Items Nos. 220 and 221 of MRT 3-A; Item No. 90 of MRT 6-A; Items Nos. 85, 86, 90, and 91 of MRT 7; Items Nos. 220, 230, and 240 of MRT 8; Item No. 160 of MRT 10; Items Nos. 190-A, 200, and 210 of MRT 12; Item No. 210 of MRT 14; Items Nos. 420 and 421 of MRT 17; and Item No. 300 of MRT 18.

highway carrier minimum rates. Application of combination minimum-common carrier railroad rates by highway carriers allows highway carriers to use common carrier railroad rates in a way which common carrier railroads do not. Additionally, application of combination minimum-highway common carrier rates by highway permit carriers allows highway permit carriers to use highway common carrier rates in a way which highway common carriers do not unless such rates are combined in accordance with a highway common carrier tariff provision. Petitioner is further informed and believes that the transportation performed by highway carriers under such combination minimum-common carrier rates is not the transportation to which the common carrier rates are applicable, and that such transportation is not that "...transportation of...property between the same points" covered by Public Utilities Code Section 3663.

CTA proposes that the tariff provisions in issue be canceled and that the following statement be set forth in the title of the referenced minimum rate tariffs:

> "The rates and charges set forth in this tariff may not be used in combination with the rates and charges set forth in the tariffs of common carriers."

Evidence

Evidence was presented herein on behalf of petitioner, CMA, Wine Institute, and Pacific Gas and Electric Company (PG&E).

The witness appearing for CTA testified that in the rate combinations referred to in its petitions the common carrier rates are almost exclusively rail carload rates. Rail carload rates may be alternatively applied under minimum rate tariff rules only when both the points of origin and destination physically are served by rail. When the shipper or receiver of the property is not directly served by rail, the tariff provisions in issue permit the combination of rail rates applicable between railheads with the minimum mileage rates from origin to railhead or from railhead to destination. The witness stated that, typically, the resulting combination rates produce lower charges than the minimum rates for the through movement set forth in the minimum rate tariff. The witness testified that the rationale underlying such rate combinations is that the freight could actually move via railhead, if the freight was actually separately tendered by the shipper to a highway carrier for movement from origin to railhead or from railhead to destination, and to a rail carrier for movement between railheads.

The witness for the Wine Institute presented in evidence an exhibit designed to show examples of the use of rail-truck combination rates for the movements of wine. The exhibit demonstrates that the combination rates in question produce total freight charges substantially below the charges resulting under the applicable minimum rates.

The witness appearing for CMA presented an exhibit containing extracts from the tariffs of Ted Peters Trucking Company, Inc. and West Transportation, Inc. to show the manner in which highway common carriers publish combination rail-truck rates. The CMA also presented exhibits showing comparisons of truckload rates on steel articles applicable within California and from Salt Lake and Geneva, Utah, and Phoenix, Arizona, to San Francisco and Los Angeles. These comparisons were designed to show that the interstate rates are lower than corresponding intrastate rates. The CMA presented excerpts from Pacific Southcoast Freight Bureau Freight Tariff 294-E to show that trailer-on-flatcar rates on various commodities were formerly maintained by California railroads which include store-door-to-store-door service by the railroads. Such rates originally became effective October 1, 1955 and were canceled effective May 15, 1965. These facts were developed to show that railroads could again establish store-door-to-store-door rail trailer-on-flatcar rates, and that such republication assertedly could negate petitioner's proposal herein.

A witness for PG&E presented information concerning PG&E's use of alternatively applied common carrier rates, and also a comparison of rates on iron and steel pipe which shows that increases of 13 to 69 percent would result if petitioner's proposal is adopted.

Testimony was presented by CTA to rebut the evidence of CMA with respect to the reasonableness of rail-truck combination rates. It is the contention of CMA's witness that such rates are compensatory and the view of CTA's witness that such rates are noncompensatory.

Position of Petitioner

The position of CTA as set forth in its opening brief is that the current policy and regulations of the Commission which permit the combining of alternatively applied rail rates and minimum rates are inconsistent with the controlling provisions of law, and the relief sought in these proceedings should be granted for the following reasons:

1. Public policy requires the equality of opportunity to compete between classes of carriers.
2. The Commission is responsible to implement legislative policy.
3. Public policy forecloses exclusive application of Section 3663.
4. The legislature did not intend that permit carriers apply the rates of common carriers where there is no actual competition between the two classes.
5. The tariff rules in issue do not comply with Section 3662.
6. Cancellation of rules combining railroad common carrier rates with Commission established minimum rates is not prohibited by law.

From the foregoing CTA concludes that duly promulgated public policy requires that all classes of for-hire carriers be allowed equal opportunity to compete. (Calif. Manufacturers Assn. v Calif. Public Util. Com. (1954) 42 C 2d 530.) CTA asserts that the Commission must implement that policy by establishing minimum rates for all competing types or classes of carriers before it in the same proceeding at the level of the lowest lawful rates for any of the involved types or classes (Public Utilities Code Section 726); the Commission may not

allow any of such types or classes to charge less than minimum rates except as provided by Public Utilities Code Sections 452, 3663, and 3666; and that none of those code sections authorize or require the Commission to maintain combination rail-truck rates for application to off-rail locations. CTA argues that the Commission has previously determined that the law which applies to this proceeding requires that the relief sought by petitioner be granted.

Position of Other Parties

Briefs filed by parties other than petitioner oppose the relief sought in the petitions. CMA urges that there is sound decisional law to reach conclusions contrary to those presented by CTA. It asserts, for example, that in a proceeding dealing with accessorial charges to be assessed by highway carriers in addition to rail rates, the Commission stated as follows:

> "With respect to the effect of the proposed 'exception' on city carrier movements, it is to be observed that such movements are presently subject to the use of common carrier rates where such rates produce lower charges than result under the rates specifically published in the minimum rate tariffs here under consideration, and have enjoyed such alternative application rates ever since the respective minimum rate tariffs were first established. The fact that the City Carriers' Act contains no provision corresponding to Section 3663 of the Highway Carriers' Act leaves the Commission free to provide for the rate alternation, or not, as the needs of commerce may require. The evidence adduced in support of the proposed exception is not persuasive and the latter should not be incorporated in the drayage tariffs." [Decision No. 66981 (1964) 62 CPUC 499, 507.]

CMA states that one of the basic arguments offered by CTA and the railroads in Petition 621, Case No. 5432, was that combination rail-minimum rates were unlawful and CTA has again raised the identical argument in this proceeding. CMA believes that the Commission established sufficient precedent in its Decision No. 79937 to deny CTA's allegation in this proceeding and to demonstrate the following numbered findings from that decision are quoted:

> "4. It is necessary that Minimum Rate Tariff rules (such as Items 200-211 of MRT 2) provide detailed methods under which rail carload rates may be applied by highway permit carriers because the operating methods and equipment of rail and motor carriers are not compatible."
>
> "8. The specific minimum rates for highway permit carriers set forth in the Commission's minimum rate tariffs are established pursuant to the methods described in and approved by the California Supreme Court in California Manufacturers Association vs. Public Utilities Commission, 42 C 2d 530. Said minimum rates reflect the lowest reasonable operating costs of various classes of highway carriers.
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> "9. Rates for highway carriers which are below the level of the specific minimum rates and below the level of rail carload rates are lower than the lawful rate for any class of highway carrier (Section 726), and less than the charges of competing rail carriers (Section 452), and are not justified by transportation conditions." (Emphasis supplied.) [Decision No. 79937 (1972) 73 CPUC 309, 327.]

Wine Institute asserts that CTA's contention that Section 3663 does not authorize combinations of alternative rail rates and highway carrier minimum rates contradicts the Commission's historic interpretation of Section 3663 since its enactment in 1935. Wine Institute states that one of the earliest cases decided on this issue was Los Angeles & Salt Lake Railroad Co. (1935) 39 CRC 498, 509 where the Commission accepted the contention of the highway carriers that:

> "The rate fixed for the truck carrier must be based on two elements. First, a minimum rate which cannot exceed the common carrier rate under the law; and, second, an additional charge, the amount of which is discretionary with the Commission, and which is composed of a charge for the 'additional transportation beyond the railway terminus and for the accessorial services.'"

In a related case, Los Angeles & Salt Lake Railroad Co. (1938) 41 CRC 314, 321, the Commission reestablished the principle first enunciated in the aforecited case, i.e.,

> "When charging the rail rates trucks should also be permitted to accord whatever added services or privileges may be included in such rates. On the other hand, where truck rates are reduced below the overhead truck scale by rail competition, and truck carriers perform accessorial services which the rails do not undertake to perform, suitable additional charges should be provided, based upon the value of such accessorial service."

Discussion

The factual situation is not in dispute. All parties agree that the minimum rate provisions sought to be canceled are of long standing, having been incorporated in the Commission's initial orders establishing statewide minimum rates on general commodities. The preponderant use of the tariff provisions in issue is to provide combinations of rail carload rates and truck rates which provide lower total charges than the specific minimum rate applicable to the transportation service.

The questions presented to the Commission are whether the applicable statutory provisions require the maintenance of the tariff rules in issue and, if not, whether those rules should be canceled.

It is clear from the facts and arguments that the applicable statutes (in particular, Section 3663) do not require the combination of rail and truck rates as an alternative to the specific minimum rates established by this Commission. The issue whether such combinations of rates should continue is clearly within the discretion of the Commission, as pointed out in Decision No. 66981. Because the tariff provisions in issue are of long standing and, as pointed out in testimony of shipper witnesses, large volumes of traffic important to the economy of this State move under such combination rates, the Commission in the exercise of its discretionary power chooses to continue these provisions in force.

Findings of Fact

1. Section 3663 (Statutes of 1935, Chapter 223, page 881, as amended by Statutes of 1939, Chapter 465) requires that minimum rates for highway permit carriers not exceed the current rates of common carriers by land.

2. The Commission has implemented Section 3663 by the establishment of rules in its minimum rates specifying the manner and extent that common carrier rates may be applied by highway permit carriers in lieu of the specific minimum rates.

3. The preponderant use of alternatively applied common carrier rates by highway permit carriers is the use of carload rates of rail carriers.

4. The minimum rate tariffs issued by the Commission contain rules (such as Items Nos. 210 through 230 of MRT 2) which provide detailed methods under which rail carload rates may be applied by highway permit carriers in combination with the rates named in those tariffs.

5. The minimum rate tariff provisions referred to above are of long standing, having been incorporated in the general commodity minimum rate tariffs since their inception. (For example, the alternative rate provisions of MRT 2 were initially established in Decision No. 31606 (1938) 41 CRC 671, 722.)

6. The minimum rate tariff rules referred to above allow the construction of combination common carrier rail carload rates and highway carrier minimum rates to, from, or between locations not physically served by railroads. Although such combination rates may be either higher or lower than the through truckload minimum rates, the combination rates are only used when they are lower than the truckload minimum rates.

7. Railroads, with very few exceptions, do not currently publish carload rates which include either pickup and/or delivery to off-rail locations.

8. Petitioner seeks amendment of minimum rate tariff rules to prohibit the utilization by highway permit carriers of combinations of rail carload rates and minimum rates.

9. The Commission, in Decision No. 77786 dated October 6, 1970 in Case No. 5330, et al. (71 CPUC 465), found that Section 3663 of the Public Utilities Code prohibits the establishment of provisions resulting in minimum rates and charges higher than those applicable under alternatively applied rail rates. The findings in that decision are not applicable to the combinations of rail carload rates and minimum rates in issue herein.

10. The Commission, in Decision No. 79937 dated April 11, 1972 in Case No. 5432, et al. (73 CPUC 309), made the following finding:

> "9. Rates for highway carriers which are below the level of the specific minimum rates and below the level of rail carload rates are lower than the lawful rates for any class of highway carrier (Section 726) and less than the charges of competing rail carriers (Section 452) and are not justified by transportation conditions."

11. Rates for highway carriers determined under the "alternative application of combinations with common carrier rates" provisions of the Commission's minimum rate tariffs are not below the level of the rail carload rates (see above finding), inasmuch as such rail rates form part of the combination rate.

12. Decision No. 66981 dated March 17, 1964 in Case No. 5432, et al. (62 CPUC 499) concluded that the fact that the City Carriers' Act (repealed by Statutes of 1968, Chapter 1007) contained no provisions corresponding to Section 3663 of the Highway Carriers' Act leaves the Commission free to provide for the rate alternation, or not, as the needs of commerce may require.

13. The record contains evidence to show, and all parties submit, that the "alternative application of combinations with common carrier rates" provisions of the Commission's minimum rate tariffs are widely used to determine the transportation charges of highway permit carriers.

14. In view of foregoing findings, in particular, Findings 5 and 13, the needs of commerce require the continuation of the "alternative application of combinations with common carrier rates" provisions in the Commission's minimum rate tariffs.

Conclusions of Law

1. The Commission has established minimum rates for highway permit carriers under Sections 3662 through 3665 of the Highway Carriers' Act and Sections 452 and 726 of Division 1 of the Public Utilities Code. Together these sections constitute the statutory scheme of rate regulation for highway permit and highway common carriers. (California Manufacturers Association v Public Utilities Commission (1954) 42 C 2d 530.)

2. The truckload minimum rates established by the Commission are the lowest lawful rates for any class of highway carrier (ibid. page 537), and no lower rates are required under statutory provisions, except as result from the application of Section 3663.

3. Section 3663 does not require that highway permit carriers be allowed to apply combinations of railroad common carrier and highway carrier minimum rates to, from, or between locations not served by common carrier railroads.

4. The combination rail and highway carrier rates in issue are not prohibited by statutory provisions described in Conclusion 1 nor are they against public policy as expressed by the Legislature of the State of California.

5. It is within the discretion of the Commission whether or not to continue in effect the tariff provisions sought to be canceled, depending upon the needs of commerce.

6. The tariff provisions in issue should be continued in effect, and the petitions should be denied.

O R D E R

IT IS ORDERED that the following petitions are denied:

Petition No.	Case No.
660	5432
38	5433
112	5436
211	5437
83	5438
75	5440
28	5604
50	7857
15	8808

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

Dated at San Francisco, California, this 10th day of DECEMBER, 1974.

Vernon L. Sturgeon
President
William Symons Jr.
Thomas Moran
Robert E. Wayland
Commissioners

C. 5432, Pet. 660, et al. ep

APPENDIX A

LIST OF APPEARANCES

Petitioner: Richard W. Smith, Attorney at Law, and H. Hughes, for California Trucking Association.

Respondents: Eldon M. Johnson, for Teresi Trucking, Inc. and Seaton Trucking; Anthony J. Heywood, for West Transportation, Inc.; Joe MacDonald, for California Motor Express; Michael J. Blohm for Joan Sickles, for Cargo Truckloads; Art Wilson, for Wilson Trucking; and Lee Pfister, for Willig Freight Lines.

Protestants: Jess J. Butcher, for California Manufacturers Association; J. M. Cunningham, for Bethlehem Steel Corporation; Loughran, Berol & Hegarty, by Ann M. Pougiales, Attorney at Law, and Hugh Cook, for Wine Institute; William Larimore, for Wine Institute and California Manufacturers Association; Tim R. Bishop and Jon Sacchetti, for Shell Oil Company; A. A. Wright for E. A. Curcio, for Standard Oil Company of California; Allen I. Taylor, for Kaiser Steel Corporation; James P. Feeney, Jr., for E & J Gallo Winery; and W. A. Main, Attorney at Law, and William J. Nelson for Wayne L. Emery, for United States Steel Corporation.

Interested Parties: T. W. Anderson, for General Portland, Inc. - California Division; Earl L. Cranston, for Inmont Corporation; Meyer L. Kapler, for American Forest Products Corporation; R. J. Willhoit, for Paso Grain & Livestock, Inc.; Robert A. Kormel, for Pacific Gas and Electric Company; Asa Button, for Spreckels Sugar Division - Amstar Corporation; and Calhoun E. Jacobson, for Traffic Managers Conference of California.

Commission Staff: Walter H. Kessenick and Freda Abbott, Attorneys at Law, and Charles Gerughty.