

ORIGINALDecision No. 84053

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 fresh or
green fruits and vegetables and related
items (commodities for which rates are
provided in Minimum Rate Tariff
No. 8.

Case No. 5438
Petition for Modification
No. 104
(Filed December 20, 1974)

O P I N I O N

The minimum rates governing the highway transportation of fresh fruits and vegetables within California are set forth in Minimum Rate Tariff 8 (MRT 8). Supplement 40 of the tariff provides, with certain exceptions, that the freight charges computed in accordance with the tariff shall be subject to a surcharge of 26 percent.^{1/} In Petition 104 the California Trucking Association (CTA) requests that the surcharge of 26 percent be increased to 31 percent by ex parte order and that such sought increase be made effective not later than February 9, 1975 in anticipation of the ensuing California harvest season.

Except for upward adjustments in the existing fuel cost offset surcharge, the last general increase in MRT 8 rates and charges was established on March 31, 1974 pursuant to Decision No. 82623 dated March 25, 1974 in Case No. 5438. The decision raised the then existing interim surcharge from 20 percent to 26 percent in order to offset increases in labor costs and allied payroll expenses effective generally during the year 1973 and early 1974.

^{1/} The freight charges resulting under the provisions of Supplement 40 of the tariff are subject to an additional fuel cost offset surcharge of 6 percent as provided in Supplement 41 of MRT 8.

The Commission's Transportation Division staff has conducted full-scale cost and rate studies of the conditions surrounding the statewide transportation of fresh fruits and vegetables. On April 30, 1974 the Commission issued Order Setting Hearing 99 in Case No. 5438 for the receipt of evidence relative to the adjustment and/or establishment of minimum rates and rules for such transportation. The staff cost and rate studies have been distributed to interested parties in anticipation of their presentation in evidence at the February 1975 series of hearings scheduled pursuant to OSH 99. It is petitioner's view that Commission action relative to OSH 99 will require several months. In the interim the sought relief is considered to be essential in order to insure the availability of adequate transportation service for the 1975 harvest season.

The petition makes the general allegation that increased costs considered by the Commission in recent years have been limited to labor, taxes, and fuel in accordance with established cost offset procedures. Substantial increases in certain other categories of operating expense have not been reflected in the minimum rates. Petitioner states that the existing economic inflationary trends which have accelerated over the past two years have created a need for new cost offset methods and procedures.

In view of the pending submission of full-scale studies in OSH 99, the ex parte relief sought in Petition 104 is assertedly substantially less than proposed in other similar filings by petitioner. The rate proposal does not reflect any consideration for current fuel costs. A verified statement prepared by a CTA cost supervisor is attached to Petition 104 as Exhibit B. Attached to the verified statement are copies of several CTA exhibits previously

introduced in evidence in Case No. 5432 (Petition 821), et al. (Decision No. 83985 dated January 14, 1975). Much of the evidence adduced in this latter proceeding relates to the employment of wholesale price indices as a basis for measuring current economic inflationary trends in specific expense items incurred by highway carriers and not reflected in established offset procedures.

The cost supervisor states that increases in operating costs sustained by carriers frequently involve expenses not susceptible to precise measurements. Such expenses are generally classified as nonlabor items included in cost studies as indirect or overhead. The other major area most frequently excluded in present cost offset methods for adjusting minimum rates is the cost of operating trucking equipment. The costs for replacement parts have assertedly increased at a drastic rate. While the aforementioned statements of general cost increases do not relate to fuel cost increases it is stated that they do refer to the general inflationary pressures affecting the economy generally and increases in virtually all supplies necessary to maintain the trucking industry.

Schedule X of the verified statement indicates that non-labor cost increases, based upon evidence of record in Petition 821, et al. (Decision No. 83985), amounts to 8.18 percent. The employment of various wholesale price indices as a basis for measuring the effect of inflationary trends upon specific operating cost items incurred by highway carriers was thoroughly discussed and evaluated in Decision No. 83985. Further extensive commentary is unnecessary.

The California Farm Bureau Federation and the Western Growers Association have informed the Commission by letter that they support the petitioner's sought ex parte interim relief pending hearing and further consideration by the Commission pursuant to OSH 99. The California Grape & Tree Fruit League and Sunkist Growers, Inc., on the other hand, oppose the sought ex parte relief. The position of the Commission's Transportation Division staff relative to the sought relief is:

"Full scale cost and rate studies concerning statewide transportation of fresh fruit and vegetables were completed and distributed to interested parties on December 9, 1974.

"In view of the fact that the staff studies indicate substantial decreases are warranted in many areas, it would appear improper to consider ordering increases such as sought by petitioner herein without giving consideration to the full scale studies of the staff.

"Should it appear necessary to recognize the increased rates in the staff rate study on an interim basis it is recommended that such increases be restricted to the 40,000 pound and over rate scales for distances of 70 miles and over."

Petitioner does not contend that the data contained in the several exhibits it introduced in Case No. 5432 (Petition 821), et al., and now presented in support of this petition constitute the sole evidence of record upon which the conclusions reached by the Commission in Decision No. 83985 rest. In fact, a careful review of that decision clearly indicates the opposite to be true. The employment of various indices, such as the wholesale price index, is a useful tool to be used in conjunction with other pertinent data when evaluating the reasonableness of a given level of minimum rates. However, such indices, standing alone, do not necessarily constitute the quantum of proof required to justify an increase in minimum rates.

The suggestion implied in Petition 104 that the Commission's minimum rate structure should be kept in "hot pursuit" of the current rate of inflation has not been shown to be justified. Moreover, adoption of such course of action would be contrary to that urged by the President of the United States in an effort to stem the inflationary crisis now confronting the nation's economy.

The staff's full-scale cost and rate studies distributed on December 9, 1974 for presentation in OSH 99 indicate that upward adjustments in the current level of MRT 8 truckload rates are in order. It is also evident that the OSH 99 proceeding will require protracted hearing time before submission of that matter for Commission consideration is possible. Under the circumstances the partial adoption of petitioner's rate proposal as alternatively suggested by the staff would be appropriate. Permitted carriers transporting fresh fruits and vegetables under the provisions of MRT 8 who believe the sought ex parte relief is imperative to their performance of transportation service for the ensuing 1975 California harvest season are free to exercise independent action. In this connection it should be noted that a major portion of the initial movement of the forthcoming agricultural harvest is exempted from the minimum regulatory provisions of MRT 8.

Findings

1. The interim surcharge Supplement 40 of MRT 8 provides, with certain exceptions, that charges computed in accordance with the provisions of the tariff shall be increased by 26 percent. Petitioner (CTA) requests that this surcharge be increased to 31 percent pending Commission consideration of full-scale MRT 8 cost and rate studies pursuant to OSH 99 issued in Case No. 5438 on April 30, 1974.

2. The 26 percent cost offset surcharge set forth in Supplement 40 of MRT 8 reflects increases in labor costs and allied payroll expenses effective generally during the year 1973 and early 1974.

3. Petitioner states the purpose of the sought increase is to offset accelerating inflationary increases in those elements of operating costs historically excluded from established cost offset procedures selected pursuant to criteria described in Decision No. 76353 (1969) 70 CPUC 277, as amended for fuel costs offset surcharges in Decision No. 82905 dated May 29, 1974 in Case No. 5432 (Petition 780), et al.

4. The cost elements referred to in Finding 3 include such nonlabor items as (a) running costs, (b) fixed equipment costs, and (c) indirect expenses.

5. Since the increases in many of the nonlabor expense items are not susceptible to precise measurement, petitioner employed an analysis of various wholesale price indices as a means for determining the amount of increase in the existing MRT 8 surcharge required to offset the increase in such nonlabor expenses.

6. In view of the fact that MRT 8 full-scale cost and rate studies are to be presented in evidence at the February 1975 scheduled hearings in OSH 99, the Commission staff generally opposes granting of the sought ex parte relief at this time. However, if it is necessary to recognize the increases in rates suggested in the staff's rate study it is urged that the sought relief be restricted to volume truckload rates subject to minimum weights of 40,000 pounds or more named for distances of 70 miles and over.

7. It is now evident that the proceeding involving OSH 99 in Case No. 5438 will require protracted hearing time before the full-scale cost and rate evidence contemplated in that proceeding will be submitted for decision. Under the circumstances, the partial granting of the sought ex parte relief, as alternatively suggested by the staff, would not be inconsistent with or otherwise prejudicial to any other adjustment in MRT 8 rates ultimately found justified pursuant to OSH 99 in Case No. 5438.

8. The proposed increase in the current surcharge named in Supplement 40 of MRT 8 from 26 percent to 31 percent has been shown to be justified when restricted to charges computed at rates named in the tariff subject to a minimum weight of 40,000 pounds or more for distances of 70 miles and over. The resulting increased charges established in the order which follows will be just, reasonable, and nondiscriminatory minimum charges for the transportation services governed thereby.

9. To the extent that the provisions of MRT 8 have been found heretofore to constitute reasonable minimum rates and rules for common carriers as defined in the Public Utilities Act, said provisions as hereinafter adjusted, are, and will be, reasonable minimum rate provisions for said common carriers. To the extent that the existing rates and charges of said common carriers for the transportation involved are less in volume or effect than the minimum rates and charges herein designated as reasonable for such carriers, to that same extent the rates and charges of said carriers are hereby found to be, now and for the future, unreasonable, insufficient, and not justified by the actual rates of competing carriers or the costs of other means of transportation.

10. Where common carriers have been heretofore authorized to depart from the long- and short-haul prohibition of former Article XII, Section 21 of the Constitution, and Section 460 of the Public Utilities Code, such outstanding authorities should be modified, as requested by petitioner, to depart from Section 461.5 of the Public Utilities Code.

Conclusions

1. Petition for Modification No. 104 in Case No. 5438 should be granted to the extent indicated in the above findings, and MRT 8 should be amended by the publication of an appropriate surcharge supplement.

2. The surcharge supplement should be made effective on the earliest feasible date in order to be uniformly applied during the forthcoming harvest of California produce.

3. Common carriers should be authorized to depart from the long- and short-haul provisions of Section 461.5 of the Public Utilities Code and the Commission's tariff circular requirements only to the extent necessary to publish the offset surcharge ordered herein.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 8 (Appendix C of Decision No. 33977, as amended) is hereby further amended by incorporating therein, to become effective February 16, 1975, Supplement 42, 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 also to Decision No. 33977, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered by this decision.

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 by this decision for Minimum Rate Tariff 8 rates.

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 such rates by the same amounts authorized by this decision for Minimum Rate Tariff 8 rates.

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 such rates by the same amounts authorized by this decision for Minimum Rate Tariff 8 rates.

6. Tariff publications required or authorized 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 fifth day after the effective date of this order, on not less than five days' notice to the Commission and to the public; such tariff publications as are required shall be made effective not later than February 16, 1975; and as to tariff publications which are authorized but not required, the authority shall expire unless exercised within sixty days after the effective date of this order.

7. Common carriers are authorized to depart from the Commission's tariff circular requirements only to the extent necessary in establishing the interim surcharge authorized by this order.

8. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of Section 461.5 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.

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

10. To the extent not granted herein, Petition 104, as amended, in Case No. 5438 is denied.

The effective date of this order is the date hereof.

Dated at San Diego, California, this 4th day of FEBRUARY, 1975.

Vernon L. Stenger
President
William J. Lyons Jr.
[Signature]

I abstain. Leonard Ross
Commissioner

Commissioners

SPECIAL INCREASE SUPPLEMENT

SUPPLEMENT 42

(Cancels Supplements 38 and 40)

(Supplements 29, 41 and 42 Contain All Changes)

TO

MINIMUM RATE TARIFF 8

NAMING

MINIMUM RATES AND RULES

FOR THE

TRANSPORTATION OF FRESH FRUITS,
FRESH VEGETABLES AND EMPTY
CONTAINERS OVER THE PUBLIC HIGHWAYS
BETWEEN POINTS IN THE STATE OF
CALIFORNIA AS DESCRIBED HEREIN

BY

RADIAL HIGHWAY COMMON CARRIERS

AND

HIGHWAY CONTRACT CARRIERS

APPLICATION OF SURCHARGES
(See Page 2 of This Supplement)

Decision No. **84053**

EFFECTIVE

Issued by the
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
State Building, Civic Center
San Francisco, California 94102

APPLICATION OF SURCHARGES

Except as otherwise provided, compute the amount of charges in accordance with the provisions of this tariff, including any surcharges applicable thereto under other supplements to this tariff, and increase the amount so computed by:

- ◊(1) Thirty-one (31) percent on shipments which are subject to minimum weights of 40,000 pounds or more and move distances exceeding 60 constructive miles;
- (2) Twenty-six (26) percent on all other shipments.

For purposes of disposing of fractions under provisions hereof, fractions of less than one-half cent shall be dropped and fractions of one-half cent or greater shall be increased to the next higher whole cent.

EXCEPTION.--The surcharges herein shall not apply to:

- 1. Deductions from rates,
- 2. Collect on Delivery (C.O.D.) services,
- 3. Surcharges applicable to deliveries at Golden Gate Produce Terminal and to San Francisco Produce Terminal as set forth in Supplement 29, and
- 4. Accessorial charges resulting under Paragraph 1(b) of Item 120.

THE END