

Decision No. 85233

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE-STATE OF CALIFORNIA

Order Instituting Investigation on )  
the Commission's own motion into )  
the Rules Governing the Extension )  
of Credit by Highway Carriers. )

Case No. 9811  
(Filed October 22, 1974;  
Supplemental Order Filed  
November 26, 1974)

And Related Matters.

Cases Nos. 5330, 5432, 5433,  
5436, 5438, 5439, 5440, 5441,  
5603, 5604, 6008, 7857, 7783,  
and 8808

INTERIM OPINION

By its Order Instituting Investigation dated October 22, 1974 the Commission notified over 19,500 carriers, their associations, shippers, and shippers' associations that it was considering the question whether the rules governing the extension of credit, set forth in Minimum Rate Tariffs (MRT) 1-B, 2, 3-A, 4-B, 6-B, 8, 9-B, 10, 11-A, 12, 13, 14-A, 15, 18, and 19 and in the tariffs of certificated highway carriers, should be revised. The issues being considered are:

1. Whether it is desirable that the rules clarify the manner in which a carrier might avoid apparent violation.
2. Whether the present time allowances are in need of change.
3. Whether interest charges or penalties should be applied to late payments.
4. Whether further shipments should be required to be accepted on a cash basis only.

To these ends the Commission's staff proposed a draft revision of Item 250 (Collection of Charges rule) of MRT 2. That draft proposes changes in the various paragraphs of that Item, substantially as follows:

Par. (b) (Add.)

"In the event collection is not made within the credit period herein prescribed, the carrier may be required to establish that he did, in fact, take such precautions to insure prompt payment as appear reasonable to the Commission."

Par. (g) "If the freight bill is not paid within 10 days after expiration of the credit period referred to in (b) or (c) above, the carrier shall, within 5 days, submit an invoice demanding payment within 10 days of the charges on the freight bill, plus a collection charge of \$3.00 or 5% of the original bill, whichever is greater. . . ."

Par. (h) "If the original freight charges plus the collection charge are not paid within 10 days of the issuance of the invoice required in subsection (g) above, the carrier shall not relinquish possession of any future shipment for the debtor involved in advance of the payment of transportation charges thereon and shall so advise the debtor in writing. . . ."

Par. (i) "If, following the 10-day period referred to in subsection (h) above, the debtor has not made payment of the freight charges plus the collection charges, the carrier shall pursue all reasonable measures to effect collection."

The written views of interested parties were solicited. If it appeared necessary from the responses received, public hearings would be scheduled.

By supplemental order of November 26, 1974, special procedural rules were established for the investigation, which provided for answering or rebuttal pleadings and replies thereto.

Sixty responses were received by the deadline of December 30, 1974, and two answers to specific responses were filed.

#### Discussion

A statistical analysis of the responses is set forth in the following table:

	Number Responding	Position		
		Oppose	Support	None
Highway Carriers	11 <sup>1/</sup>	5	5	
Carrier Associations	3	2		1
Shippers, Commercial	32	28	1	3
Shipper Assn's. & Tfc. Conslt.	9 <sup>2/</sup>	8	1	
Government Agencies	5	1	-	4
Total	60	44	7	8

1/ One carrier requested that the transportation of new, imported autos be exempted from the credit rule and both supported and opposed the proposed rule in part.

2/ One traffic consultant stated he represented two shipper associations and 21 separate shippers. His position was in opposition.

The comments received from the highway carriers and their associations may be fairly summarized as follows:


Agricultural hauling should be exempted; the credit rule should be specifically modified for MRT 13; time should be made more strict; a new rule should be promulgated, not a modification; the Commission should aid the carrier in the collection of freight bills; the rule should follow current business practice; and the household goods carriers should be severed from this proceeding.

The comments of shippers and their associations generally fall into the following categories: the status quo should be maintained; the present seven day time limit is unrealistic; no action should be taken until the Interstate Commerce Commission has acted; one credit rule for intrastate shipments and another credit rule for interstate shipments would create an impossible burden; no study has been undertaken to demonstrate that there is a need for a change in the rule; and the Commission should enforce the present rule.

The government agencies were all in agreement that federal, state, and local governmental agencies should be exempt from the credit provisions.

A few shippers provided the Commission with comprehensive comments and thoughtful suggestions. Some excerpts from these are:

"The Commission should first institute an undertaking to determine that shippers and carriers are wilfully and consistently violating existing provisions of the tariffs; that the proposed modification of the tariffs item is necessary; that improved administration by the carriers cannot improve performance under the existing items; that the proposed changes are viable and effective alternatives to the existing provisions, and most important that recent deterioration in United States mail deliveries will not unfairly burden shippers, in particular, with the responsibility to make payments with unreasonable or impractical time periods, and that subjecting shippers to financial penalties for failure to meet unreasonable performance standards because of delays or reasons beyond their control or desire is, in fact, a reasonable requirement [sic].



"The rapid technological advancements of the past twenty years has had effects, both detrimental and progressive, to the business world. An example of regression is our present day mail service which does not compare favorably to the service of more than ten years ago. Sheer volume has outdone progress here and the carriers and shippers are among the many victims of this service. An illustration of progress is payment by computer machines of hundreds of thousands of freight bills to various and numerous carriers in almost immeasurably less time today than by the manual means used in the past. However, due to certain pragmatic systems, there are parameters in computers that must be adhered to in order to maximize efficiency and energy."

Concurrent with the Commission's investigation into the carrier credit rule, the Interstate Commerce Commission (ICC) had under consideration a rulemaking governing the extension of credit to shippers. (Ex Parte 73, instituted February 14, 1973.) That inquiry had been focused toward applying credit regulations directly to shippers. (Proposed Amendments, 38 FR 7820, March 24, 1973.) Instead, on August 5, 1975, the ICC promulgated revisions of credit rules, remarkably similar in concept to proposed revisions under consideration in this OII. (Ex Parte 73, 40 FR 41528.)

The proposal before us would automatically extend credit from the 17th day to the 27th day with the imposition of a credit charge of "...\$3.00 or 5% of the original bill whichever is greater..." The ICC rule would automatically extend credit from 7 days to 30 days with the impositions of a service charge "...equal to 1 percent of the amount...subject to a \$10 minimum charge..."

Both proposals use automatic extensions of credit for a set number of days and impose a service charge for the extension measured in a set percent of the amount of the freight bill, with an alternative minimum charge. However, each proposal, presumably developed independently of each other, uses different figures for the number of days, percent of freight bill, and minimum charge.

The advantage of uniformity between regulations of intra-state and interstate commerce had been recognized on many previous occasions by this Commission. ICC decisions on rules for extension of credit should be seriously considered before final determination in this case. We take official notice that the ICC order is not final, but that the effective date of the order has been stayed pending further order of the ICC and that the due date for filing petitions for reconsideration has been extended until December 4, 1975. Thereafter, modifications of the rule are possible. We therefore think it premature at this point to reach a final determination on the issue of automatic extension of credit time periods and charges for such automatic extensions. However, after full consideration of all of the comments and replies received to date, we are convinced at this point that the seven-day time limit is unrealistic under present conditions and should be extended to fifteen days. In this connection we take official notice of the deteriorating mail service.

As to further clarification of the responsibilities of the carrier under the credit rule, we hold as sufficient at this time the further guidance provided by the Commission as to the application and enforcement of the credit rule in Decision No. 84262 dated March 25, 1975 in the Eager Beaver Trucking matter, Case No. 9515.

We believe it would be useful to have a representative study of the operation of the credit rule under current economic conditions, as well as an evaluation of the ICC proposals prior to final determination of the issues before us.

### Findings

1. The comments and replies demonstrate no unanimity of opinion with reference to the proposed changes to the credit rule, but a majority of the responses favor an extension of the seven-day time limit.

2. No change in the credit period in MRT's 1-B, 9-B, and 19 is necessary since they now provide for extended credit periods.

3. The uncertainty of the mail delivery is such that the present seven-day time limit is unrealistic and should be extended to 15 days in MRT's 2, 3-A, 4-B, 6-B, 8, 10, 11-A, 12, 13, 14-A, 15, and 18.

4. On August 5, 1975, the ICC ordered revisions in regulations governing extension of credit in interstate shipping which included automatic extension of the period of credit with imposition of a service charge. The ICC order differs in specifics, but is similar in concept to the proposal under consideration in this OII. The ICC order is not presently effective and may still be subject to modification before it is made effective.

### Conclusions

1. The modification of the present rules as indicated in Finding 3 should be implemented.

2. For purposes involving distribution of tariffs, the amendment to MRT 2 will be provided in the ensuing order and the amendments to the other minimum rate tariffs will be made by supplemental orders.

3. The investigation should continue in order that consideration can be given to ICC revisions of regulations governing extension of credit by interstate carriers, and, also, to evaluate evidence on the operations of the credit rule as modified herein, under current economic conditions.

INTERIM ORDER

IT IS ORDERED that:

1. The Collection of Charges rule in Minimum Rate Tariff 2 (Appendix D of Decision No. 31606, as amended) is further amended by incorporating therein, to become effective February 1, 1976, Fourth Revised Page 27, 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. 31606, as amended, are authorized to establish in their tariffs the amendments necessary to conform with the further adjustments of said decision ordered herein.

3. Any provisions currently maintained in common carrier tariffs, which are more restrictive than those contained in Minimum Rate Tariff 2, are authorized to be maintained in connection with the changes authorized by Ordering Paragraph 2.

4. Tariff publications 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, and may be made effective on not less than five days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff pages incorporated in this order.

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

6. In all other respects, Decision No. 31606, as amended, shall remain in full force and effect.

7. The staff shall study and report to the Commission as follows:

- a. Using a representative sample, a current report on the extension of credit by intra-state freight carriers, including a report on credit extensions which exceed the time provisions of the credit rule and an evaluation of the need for further credit rule modifications.
- b. The advisability of the California Commission adopting the same rule as the Interstate Commerce Commission finally adopts. This section of the report will comment specifically on the regulatory and factual differences between interstate and intrastate trucking, and whether each feature of the Interstate Commerce Commission rule is compatible with our responsibilities and California's needs.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th  
day of DECEMBER, 1975.

William G. Garrison President  
Leonard M. ...  
Paul ... Commissioners

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">(1) COLLECTION OF CHARGES</p> <p>(a) Except as otherwise provided in this rule, transportation and accessorial charges shall be collected by the carriers prior to relinquishing physical possession of shipments entrusted to them for transportation.</p> <p>§ (b) Upon taking precautions deemed by them to be sufficient to assure payment of charges within the credit period herein specified, carriers may relinquish possession of freight in advance of the payment of the charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called debtors, for a period of 615 days, excluding Sundays and legal holidays other than Saturday half-holidays. When the freight bill covering a shipment is presented to the debtor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the freight. When the freight bill is not presented to the debtor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill.</p> <p>(c) Where a carrier has relinquished possession of freight and collected the amount of charges represented in a freight bill presented by it as the total amount of such charges, and another freight bill for additional charges is thereafter presented to the debtor, the carrier may extend credit in the amount of such additional charges for a period of 30 calendar days to be computed from the first 12 o'clock midnight following the presentation of the subsequently presented freight bill.</p> <p>(d) Freight bills for all transportation and accessorial charges shall be presented to the debtors within 7 calendar days from the first 12 o'clock midnight following delivery of the freight.</p> <p>(e) Debtors may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailing by the carrier, as evidenced by the postmark, shall be deemed to be the time of presentation of the freight bills.</p> <p>(f) The mailing by the debtor of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such debtor may be deemed to be the collection of the charges within the credit period for the purpose of these rules. In case of dispute as to the time of mailing, the postmark shall be accepted as showing such time.</p> <p>(1) Will not apply to the transportation of property for the United States, state, county or municipal governments.</p>	6250
<p>§ Change )          § Reduction ) Decision No. <b>85233</b></p>	
EFFECTIVE	
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.	

Correction