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Decision No. 85416

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)
for the purpose of considering and)
determining minimum rates for)
transportation of any and all)
commodities statewide including,)
but not limited to, those rates)
which are provided in Minimum Rate)
Tariff 2 and the revisions or)
reissues thereof.)

And Related Matters.

Case No. 5432
Petitions for Modification
Nos. 795 and 844
Order Setting Hearing 839

Case No. 5436
OSH 186

Case No. 5439
Pets. 209, 246; OSH 243

Case No. 5441
Pets. 296, 335; OSH 332

Case No. 7024
Pet. 35, OSH 34

Case No. 7858
Pets. 175, 193; OSH 190

(Appearances are listed in Appendix A)

O P I N I O N

In Case No. 5432 (Pet. 795) et al., filed March 19, 1974 and amended on May 24, and August 20, 1974, the California Trucking Association (CTA) seeks implementation of the definitions of the terms "origin", "destination", "point", "place", and "site", as presently employed in the Commission's several minimum rate tariffs.

Case No. 5432 (OSH 839) et al. was issued on February 19, 1975 for the purpose of determining whether Item 110, Sections 3(a), (b), and (c) of the National Motor Freight Classification (NMFC) should apply to the various minimum rate tariffs. In Case No. 5432 (Pet. 844) et al., filed March 18, 1975, CTA requests that the definition of the term "Carrier's Equipment," adopted in the several minimum rate tariffs pursuant to Decision No. 81070 dated February 21, 1973 in Case No. 5432 (Pet. 707) et al., be implemented concurrently with the tariff changes proposed in CTA's Pet. 795 et al.

These matters were consolidated for hearing before Examiner Gagnon on June 26 and 27, 1975 in San Francisco and October 7 and 8, 1975 in Los Angeles. The consolidated proceeding was submitted on the latter date subject to the receipt of late-filed Exhibit 16 (received November 10, 1975) and replies thereto due on or before November 24, 1975.

By Decision No. 85133 issued November 18, 1975 in this proceeding the Commission granted CTA's motion for dismissal of several of its petitions and concurrently vacated the related Orders Setting Hearing. The captioned proceedings are the only remaining matters now awaiting Commission determination.

Antecedents

Several of the Commission's current minimum rate tariffs are governed by certain specified rules named in NMFC 100-B. Item 110, Sections 3(a), (b), and (c) of the Classification provides the following general definitions for the terms "point", "place", and "site":

"Sec. 3(a). 'Point' means a particular city, town, village, community or other area which is treated as a unit for the application of rates.

"Sec. 3(b). 'Place' means a particular street address or other designation of a factory, store, warehouse, place of business, private residence, construction camp or the like, at a point.

"Sec. 3(c). 'Site' means a particular platform or specific location for loading or unloading at a place."

The aforementioned definitions apply whenever such terms are used in NMFC 100-B or in tariffs governed thereby. When different definitions are provided for the terms noted above in connection with rates, classes, rules, or other provisions, such specific definitions take precedence. Several of the Commission's minimum rate tariffs are, with certain exceptions, governed by the rules, class ratings, and other related provisions of NMFC 100-B.

By the Commission's ex parte order in Decision No. 77929 dated November 10, 1970 in Case No. 5432 (Pet. 593) et al., the general definitions for the terms "point", "place", and "site" contained in Item 110, Sections 3(a), (b), and (c) of NMFC A-10 (NMFC 100-B currently effective) were adopted, among other matters, by reference for application in connection with Minimum Rate Tariffs (MRTs) 1-B (East Bay Drayage), 2 (General Commodities Statewide), 9-B (San Diego Drayage), 19 (San Francisco Drayage), and Exception Ratings Tariff 1 (ERT 1). In adopting CTA's proposals Decision No. 77929 states:

"Copies of the petitions were mailed to various chambers of commerce, shipper organizations, carrier representatives and other interested parties... No objection to the granting of the petitions has been received.

"Staff analysis of petitioner's proposed amendments indicates that they pertain principally to (1) the elimination of provisions which duplicate similar provisions in the Governing Classification; (2) the simplification of provisions and documents; and (3) cancellation of obsolete provisions. Such changes are in the framework of the criteria heretofore announced by this Commission to effect an orderly transition to the Governing Classification.^{1/} The staff recommends that the petitions, as amended, be granted by ex parte order."

The minimum rates for the transportation of bulk petroleum products in tank trucks currently named in MRT 6-B were originally established by Decision No. 82350 dated January 15, 1974 in Case No. 5436. The tariff adopted by reference the definitions of the terms "point", "place", and "site" published in Item 110, Sections 3(a), (b), and (c) of NMFC 100-B. Such definitions are fully implemented throughout the tariff.

Except for minor changes in the definitions of "Point of Origin" and "Point of Destination" in MRTs 2 and 9-B, the adoption of the general definitions for the terms "point", "place", and "site" by reference to Item 110, Sections 3(a), (b), and (c) of NMFC 100-B in MRTs 1-B, 2, 9-B, and 19, has never been implemented throughout the tariffs wherever such terms are used or otherwise required.

^{1/} Decision No. 74310 (1968) 68 CPUC 445.

Pet. 795 and OSH 839 et al.

It has been more than five years since the definitions for the terms "point", "place", and "site" set forth in NMFC 100-B were adopted. The CTA now proposes that such terms, previously adopted by reference only, be fully implemented throughout the several minimum rate tariffs.

In order to accomplish its objectives CTA introduced several exhibits which incorporate the definitions in the several minimum rate tariffs. It is the position of CTA that its various tariff proposals will not result in any increase in existing minimum rates or charges. The CTA's sole criteria for its tariff proposals are tariff uniformity, simplicity, and clarification.

Shippers protesting adoption of CTA's tariff proposal introduced extensive evidence demonstrating that such recommended tariff changes would, in fact, have a material adverse effect upon their freight charges. The shippers were especially apprehensive over the substantive restrictions that would occur under CTA's proposal in the existing alternative application of common carrier rate provisions of the several minimum rate tariffs and the resulting increase in freight charges. This increase is, of course, directly opposite to the prior announced objectives of CTA.

The Commission's Transportation Division staff conducted a comprehensive analysis of CTA's tariff proposals. The staff concluded that the adoption of the NMFC's general definitions for the terms "point", "place", and "site" for purposes of minimum rate application was, in the first instance, ill advised. The staff contends that such general definitions are incompatible with the

specific usage of such terms in the minimum rate tariffs. The staff notes that CTA's tariff proposals fall far short of its intended objectives for tariff uniformity, simplicity, and clarification. The staff evidence clearly shows that CTA's tariff proposals are, in fact, inconsistent, ambiguous, and unduly complex. The principal staff objection to CTA's proposals is that, if adopted, they would unduly restrict the alternative application of common carrier rate provisions contained in the minimum rate tariffs.

It is the staff's position that none of the minimum rate tariffs, exception ratings tariff, distance tables, or directories should be subject to the NMFC general definitions for the terms "point", "place", and "site". Therefore, the staff recommends that the references to Item 110, Sections 3(a), (b), and (c) of the NMFC be canceled from Item 110, MRT 1-B; Item 50, MRT 2; Item 80, MRT 9-B; Item 70, MRT 19; Item 25, MRT 6-B; and anywhere else such reference may occur in these tariff publications. The staff also submitted (Exhibit 14, Appendix B) the tariff changes that would be necessary to make the provisions of MRT 6-B compatible with the other minimum rate tariff publications of the Commission.

The staff and shipper evidence has conclusively demonstrated that the general definitions for the terms "point", "place", and "site" contained in Item 110, Sections 3(a), (b), and (c) should not be employed in conjunction with the Commission's minimum rate tariffs. Secondly, the staff evidence has overwhelmingly proven that CTA's tariff proposals fail to meet its announced objectives and, in most instances, would achieve results opposite to that intended. The staff's recommended alternative tariff changes have been shown to be fully justified and should be adopted.

Pet. 844 et al.

The CTA did not present any evidence relative to its tariff proposal in Case No. 5432 (Pet. 844) et al. Such tariff revisions were advanced in contemplation of the adoption of CTA's proposals in Pet. 795 et al. Since the latter recommended course of action will not be pursued by the order herein, Pet. 844 et al. should be denied.

Findings

1. In Decision No. 77929 dated November 10, 1970 in Case No. 5432 (Pet. 593) et al., the general definitions for the terms "point", "place", and "site" contained in Item 110, Sections 3(a), (b), and (c) of the NMFC were adopted by reference for application in MRTs 1-B, 2, 9-B, and 19.

2. By Decision No. 82350 dated January 15, 1974 in Case No. 5436 the general definitions of the terms "point", "place", and "site", contained in Item 110, Sections 3(a), (b), and (c) of the governing classification, were adopted by reference and fully implemented in the establishment of minimum rates and rules governing the transportation of bulk petroleum products by tank truck carriers.

3. Except for minor revisions in the definitions of "Point of Origin" and "Point of Destination" in MRTs 2 and 9-B, the adoption of the general definitions for the terms "point", "place", and "site" contained in the governing classification has never been implemented throughout the various minimum rate tariffs wherever such terms are used or otherwise required.

4. The CTA now seeks to have the general definitions for the terms "point", "place", and "site" fully implemented in MRTs 1-B, 2, 9-B, 19, and in the Commission's Exception Ratings Tariff and Distance Table wherever such terms are employed or otherwise required.

5. The justification advanced by CTA for adoption of its proposal is the promotion of minimum rate tariff uniformity, simplicity, and clarification. No increases in minimum rates or charges are sought.

6. The Commission's Transportation Division staff has demonstrated that substantive increases in minimum rates and charges will, in fact, occur in the event CTA's tariff proposals are adopted. Moreover, the staff has shown that, in lieu of achieving CTA's desirable tariff objectives, adoption of its proposal would result in unduly complex, ambiguous, and conflicting minimum rate tariff provisions.

7. The initial adoption of the general definitions for the terms "point", "place", and "site" in several of the minimum rate tariffs by reference to Item 110, Sections 3(a), (b), and (c) of the governing classification has been shown to be ill advised.

8. The increases resulting under CTA's tariff proposals were not requested nor otherwise intended or justified.

9. The Commission staff's recommendations that references to and implementation of Item 110, Sections 3(a), (b), and (c) of the NMFC be canceled from the several minimum rate tariffs, including the exception ratings tariff, directories, and distance tables, have been shown to be fully justified and should be adopted.

10. No evidence was presented in support of CTA's tariff proposals set forth in Case No. 5432 (Pet. 844) et al. In the absence of such evidence Pet. 844 et al. should be denied.

Conclusions

1. The staff tariff amendments recommended in Case No. 5432 (OSH 839) et al. should be adopted and MRTs 1-B, 2, 6-B, 9-B, and 19 revised accordingly.

2. The CTA's Pets. 795 and 844 et al. should be denied and related orders setting hearing vacated.

3. For purposes of tariff distribution, the amendment of MRT 2 will be provided by the ensuing order and the required amendments of the other minimum rate tariffs will be accomplished by supplemental orders.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D of Decision No. 31606, as amended) is further amended by incorporating therein, to become effective March 6, 1976, Twenty-Eighth Revised Page 12 and Eighth Revised Page 15-C attached hereto and by this reference made a part hereof.

2. 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 tenth day after the effective date of this order, and may be made effective on not less than ten 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.

3. 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.


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

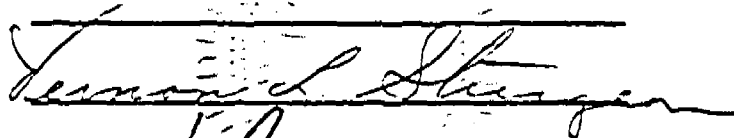
5. Petitions for Modification Nos. 795, 844 (Case No. 5432); 209, 246 (Case No. 5439); 296, 335 (Case No. 5441); 35 (Case No. 7024); and 175, 193 (Case No. 7858) are denied.

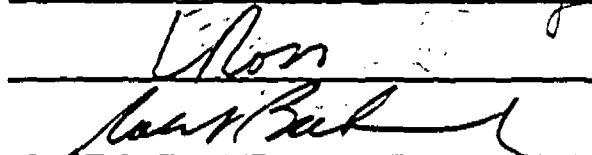
6. Orders Setting Hearing 34 (Case No. 7024) and 190 (Case No. 7858) are vacated.

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

Dated at San Francisco, California, this 3rd
day of FEBRUARY, 1976.


President




Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

LIST OF APPEARANCES

Petitioner: Richard W. Smith, Attorney at Law, Ronald C. Broberg, and Herbert W. Hughes, for California Trucking Association (also interested party in related matters).

Respondents: John Odoxta, for Shippers Imperial, Inc.; Lee Pfister, for Willig Freight Lines; Joseph MacDonald, for California Motor Express; Charles Coacher, for De Salvo Truck Lines; John McSweeney, for Delta Lines, Inc.; Armand Karp, for Rogers Motor Express; and E. H. Hunt, for Progressive Transportation Company.

Protestants: Loughran & Hegarty, by Ann Margaret Pougiales, Attorney at Law, for the Wine Institute; Leon R. Peikin, for RCA Corporation; Kenneth C. Delaney, for Los Angeles Area Chamber of Commerce; and Calhoun E. Jacobson, for Traffic Managers Conference of California.

Interested Parties: Harry C. Phelan, Jr., Jack Cedarblade, and E. O. Blackman, for California Asphalt Pavement Association, Aggregate & Concrete Association, and California Dump Truck Owners Association; Howard W. Haage, for National Can Corporation; Rodney E. Darby, for Alpha Beta Company; Thomas D. Kessler, for Kal Kan Foods, Inc.; Austin G. McDonald, for Lever Brothers Co.; E. A. Curcio, by A. W. Endicott, for Standard Oil of California; Asa Button, for Amstar Corp., Spreckels Sugar Division; Dale Johnson, for Tillie Lewis Foods, Inc.; J. M. Cunningham, for Bethlehem Steel Corp.; Jess J. Butcher, for California Manufacturers Association; W. A. Main, Attorney at Law, for U. S. Steel Corporation; William Mitze, for Riverside Cement Company; T. W. Anderson, for General Portland, Inc.; J. H. Johnson, for Banquet Foods Corp.; Carl F. Grover, for U. S. Gypsum Company; Robert L. Comyns, for Pacific Gas and Electric Company; Ralph J. Staunton, for County of Los Angeles; Richard Austin, for Kaiser Cement & Gypsum Corp.; R. A. Dand, for Norris Industries; Merlin G. Van Matre, for Department of General Services, Traffic Management Division; K. C. O'Brien, for Container Corporation of America; Karl L. Mallard, for C & H Sugar Company; John C. Jessup, for Foremost-McKesson, Inc.; G. Ralph Grago, for Associated Independent Owner Operators, Inc.; Justus T. Schreiber, for the Cannery League of California; Raymond E. Healy, for Del Monte Corp.; and Don B. Shields, for Highway Carriers Association.

Commission Staff: Leonard Diamond.

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">DEFINITION OF TECHNICAL TERMS (Continued) (Items 10, 11 and 12)</p> <p>LOW BED TRAILER means trailing equipment, other than van-type, having its principal load carrying bed or platform not more than 42 inches above ground or street level.</p> <p>MULTIPLE LOT SHIPMENT means a shipment transported in accordance with the provisions of Item 85.</p> <p>MULTIPLE SERVICE SHIPMENT means a single prepaid shipment consisting of (a) more than one component part picked up by the carrier and (b) more than one component part delivered to (1) one consignee at more than one point of destination or (2) more than one consignee at one or more points of destination.</p> <p>PALLETIZED SHIPMENT means a shipment tendered to and transported by the carrier on pallets (elevating-truck pallets or platforms or lift-truck skids, with or without standing sides or ends, but without tops).</p> <p>PERMIT SHIPMENT means a shipment which because of its width, length, height, weight or size, requires special authority from a governmental agency regulating the use of highways, roads or streets for the transportation of such shipment in whole or in part.</p> <p>PICKUP AND DELIVERY CHARGE means the full charge applicable without the deduction authorized by Item 110.</p> <p>POINT OF DESTINATION means the precise location at which property is tendered for physical delivery into the custody of the consignee or his agent. All points within a single industrial plant or receiving area of one consignee shall be considered as one point of destination. An industrial plant or receiving area of one consignee shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare.</p> <p>POINT OF ORIGIN means the precise location at which property is physically delivered by the consignor or his agent into the custody of the carrier for transportation. All points within a single industrial plant or shipping area of one consignor shall be considered as one point of origin. An industrial plant or shipping area of one consignor shall include only contiguous property which shall not be deemed separate if intersected only by public street or thoroughfare.</p> <p>POOL SHIPMENT means a shipment consisting of component parts which are for reshipment to two or more points of destination, such shipment being consigned to:</p> <ol style="list-style-type: none"> 1. A carrier with instructions for unloading, distribution and delivery of one or more component parts to consignees, their agents, or to other carriers; or 2. A consignee (other than a carrier) in connection with which pool shipment a carrier is instructed to unload, distribute and deliver one or more component parts to the consignee, subconsignees, their agents or to other carriers. <p>The term "delivery" as used in this definition means relinquishing the property to the consignee, his agent, or another carrier entitled to receive such property, whether at the point of distribution or elsewhere.</p> <p>POWER EQUIPMENT means any gasoline, diesel, electric or gas driven equipment including electric powered cranes and lift-truck equipment.</p> <p>RAILHEAD means a point at which facilities are maintained for the loading of property into or upon, or the unloading of property from rail cars. It also includes truck loading facilities of plants or industries located at such rail loading or unloading point.</p> <p>RATE means the figure stated in cents, dollars and cents, or fractions thereof, including the charge and, also, the ratings, minimum weight and rules governing, and the accessorial charges applying in connection therewith to be used in computing the charge on property transported.</p> <p>SAME TRANSPORTATION means transportation of the same kind and quantity of property between the same points, and subject to the same limitations, conditions and privileges, but not necessarily in an identical type of equipment.</p> <p style="text-align: center;">(Continued in Item 12)</p>	<p style="text-align: center;">§11</p>
<p>Change, Decision No.</p> <p style="text-align: center;">85416</p>	
EFFECTIVE	
<p style="text-align: center;">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF GOVERNING PUBLICATIONS</p> <p>1. This tariff is governed to the extent shown herein by:</p> <p>ø(a) The Governing Classification, except that this tariff is subject to the following rules (items) only thereof (See Notes 1, 2 and 3):</p> <p>110, Sections 1, **, **, **, 3(d), 4, 4(a), 4(b), 5, 6(a), 6(b), 6(c), 7, 7(a), 7(b), 7(c), 7(d), 8, 8(a), 8(b), 9, 10, 11(a), 11(b), 11(c), 12, 12(a), 12(b), 12(c), 12(d), 12(e), 12(f), 13(a), 13(b), 13(c), 14, 15, 15(a), 15(b), 15(c), 15(d), 15(e) and 16;</p> <p>112; 200; 205; 210; 215; 220; 222; 225; 230; 235; 240; 245; 250; 255; 257 260; 265; 270; 275; 280; 285; 291; 292; 294; 296; 297; 300; 310;</p> <p>360, Sections 1, 1(a), 1(b), 1(e), 1(f), 1(g), 1(h), 2, 2(a), 2(c), 2(d), 3 and 5;</p> <p>365; 381; 420, Sections 1, 2, 4 and 5; 421; 422; 423; 424; 426; 428;</p> <p>430; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11(a), 11(b), 13 and 14;</p> <p>455; 520; 535; 540; 565; 580; 595; 640; 645; 680; 685; 687; 689; 765; 770, Section 2; 780, Section 2; 845; 995; 997 (Section 2 only).</p> <p>Note 1.--The provisions of Item 41520, Sub 1 of the Governing Classification are the only provisions of this item applicable on California Intrastate Traffic. The ratings shown for the item proper and Sub 2 have no application on California Intrastate Traffic.</p> <p>Note 2.--The provisions of Item 55890, Sub 2 of the Governing Classification shall be subject to a Minimum Weight of 12,000 pounds on California Intrastate Traffic.</p> <p>NOTE 3.--Where dual provisions are set forth in Items 360, 580, 56900, 108145, 108147, 108150, 108152, 108154, 108155, 108156, 108157, 108158, and the Uniform Order Bill of Lading and the Uniform Through Export Bill of Lading Order Bill of Lading of the Governing Classification, only those provisions of said items preceded with the reference (P1), (P2), (P3), (P5), (S1), (S2) and (S4), will apply on California intrastate traffic. The explanation of such references are not, however, applicable to California intrastate traffic.</p> <p>(b) The Exception Ratings Tariff.</p> <p>(c) The Dangerous Articles Tariff (California Regulations).</p> <p>(d) The Distance Table.</p> <p>2. Where the ratings and rules or other provisions or conditions provided in the governing publications described in paragraphs 1(a), (b) and (d) hereof are in conflict with those provided in this tariff, the provisions of this tariff will apply. Except as otherwise specifically provided in this tariff, where the provisions of the Dangerous Articles Tariff are in conflict with the provisions set forth in this tariff or the otherwise governing publications referred to in paragraphs 1(a), (b) and (d) hereof, the provisions of the Dangerous Articles Tariff will apply.</p>	ø50
<p>ø Change) ** Eliminated) Decision No.</p> <p style="text-align: center; font-size: 1.5em;">85416</p>	
EFFECTIVE	
<p style="text-align: center;">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	