

ORIGINAL

Decision No. 85584

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investiga- )  
 tion for the purpose of consid- )  
 ering 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. )

Case No. 5432

And Related Matters )

Case No. 5439

Case No. 5441

SUPPLEMENTAL OPINION AND ORDER

On October 1, 1975, there was sent to interested parties for comments or suggestions a report prepared by the Commission's Transportation Division Freight Economics Branch staff, recommending that the transportation of empty sea vans be exempted from the provisions of Minimum Rate Tariffs 2, 1-B, 9-B and 19.

The transportation of empty sea vans by for-hire motor carriers to, from, and within ports in California is a specialized transportation service. Over 75 percent of the movement of these empty sea vans is performed on shipper furnished chassis. The carrier supplies the tractor and driver only. The remaining movements are performed on carrier furnished flatbed equipment with carrier's tractor and driver. The largest movement of empty sea vans within California is in connection with the loaded movement of the sea vans. There is some transportation of shipper-furnished chassis only.

The transportation characteristics for the movement of empty sea vans differ greatly from the transportation characteristics for the movement of general commodities. The shipment is the sea van itself, rather than the articles or packages that when tendered

to the carrier must be loaded into carrier's equipment for shipment. The carrier when transporting sea vans is not required to perform any on or off loading functions.

Written comments were received from American President Lines, Ltd., California Manufacturers Association, California Trucking Association, Flintkote, Howard E. Myers, RCA Corporation and Steamship Operators Intermodal Committee. Excepting California Trucking Association (CTA), the aforementioned parties support the staff's proposal.

CTA requests hearing in this matter and alleges that the proposal is inconsistent with the Commission's statutory responsibilities citing Section 3662 of the Public Utilities Code which provides that the Commission "...shall...establish just, reasonable and nondiscriminatory minimum rates."

This Commission has historically exempted commodities from minimum rates when it was of the opinion that the applicable minimum rates and rules were not appropriate or practicable of application to the transportation of the commodity involved. (See Decisions 50530, 51134, 58732 and 65794.) Contrary to CTA's allegation, the exemption of unusual commodities from minimum rates does not violate existing law and legislative policy. (See Decision 80134, rehearing denied by Decision 80596, Writ of Review denied.)

The issue that this Commission must determine is whether the transportation of sea vans is such that "the rules and regulations upon which minimum rates are predicated were not intended and are not appropriate for this type of service." (See Decision 65794.) The Commission is convinced that the transportation of sea vans falls within that category. As cited in the staff report the transportation of sea vans is totally dissimilar from the transportation characteristics of general commodities. The request for hearing by CTA will, therefore, be denied.

Steamship Operators Intermodal Committee (Steamship) expresses the concern that the scope of the exemption may not be inclusive enough to exempt the movement of all empty sea vans. Steamship cites the positioning of an empty sea van that is made empty at one inland point and positioned directly to a shipper at another inland point for movement overseas and suggests additional language for the exemption to include such instances. The staff agrees with Steamship's suggestion and has amended the exemption accordingly.

The staff report and replies thereto are respectively received in evidence as Ex Parte Exhibits 025 and 026 in Case 5432.

Upon consideration of the evidence in this proceeding, the Commission finds that the staff proposal with the suggested amendment is reasonable and justified. A public hearing is not necessary. The Commission concludes that Minimum Rate Tariff 2 should be amended accordingly by the order herein. The other tariffs will be amended by separate orders and the involved tariff revisions will be consolidated with other tariff amendments required by Decision 85585 to avoid dual adjustments in common tariff pages and the added printing and distribution expenses.

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision 31606, as amended) is further amended by incorporating therein to become effective April 17, 1976, Original Page 14-A and Sixty-fourth Revised Page 15 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 31606, as amended, are hereby authorized to establish in their tariffs the revisions necessary to conform with the further adjustment ordered herein.


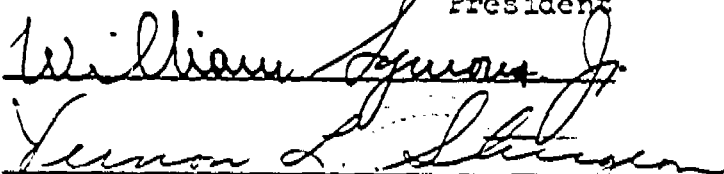


3. Tariff publications authorized to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order, on not less than ten days' notice to the Commission 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.

4. Common carriers, in establishing and maintaining the amendments authorized hereinabove, are hereby 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 amendments published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects Decision 31506, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 16<sup>th</sup> day of March, 1976.

  
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President  
  
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Commissioners

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--COMMODITIES (Continued) (Items 40, 41 and 42)</p> <p>2. Rates in this tariff will not apply to shipments consisting of the following commodities (concluded):</p> <ul style="list-style-type: none"> <li>Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles (the terms "tank trucks, tank trailers, tank semitrailers" include truck, trailer or semitrailer with carrier or shipper provided collapsible tank or bags, 20 feet or more in length, 2,000 gallons or more in capacity and 20,000 pounds or more weight carrying capacity)</li> <li>Livestock (when rates are not otherwise provided in Minimum Rate Tariff 3-A)</li> <li>Logs (wood)</li> <li>Milk, liquid (subject to Note 1)</li> <li>Newspapers, newspaper supplements, sections or inserts (not scrap or waste)</li> <li>Nuts, in the shell (when rates are not otherwise provided in Minimum Rate Tariff 8)</li> <li>Nuts, field shelled (when rates are not otherwise provided in Minimum Rate Tariff 8)</li> <li>Optical goods transported from or to wholesale houses in packages weighing 10 pounds or less</li> <li>Pits, fruit</li> <li>Pot Cheese (subject to Note 1)</li> <li>Poultry, live</li> <li>Sea shells, crushed, ground, powdered or disintegrated (subject to Note 5)</li> <li>Seeds, as described under that heading in the Governing Classification, when shipped from point of growth to an accumulation station or point of initial processing, or from an accumulation station to point of initial processing; in bulk, or in containers with a capacity exceeding 40 cubic feet, or in packages weighing 50 pounds or more</li> <li>Shell Marl, crushed, ground or powdered (subject to Note 5)</li> <li>Shells, walnut</li> <li>Sulphur</li> <li>United States mail transported for the Post Office Department under contract</li> <li>Used property, as described in Minimum Rate Tariff 4-B, of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services</li> <li>*Vans, sea, viz.: A container not owned or furnished by the motor carrier, into which merchandise may be loaded for transportation, of not less than 800 cubic feet inside dimensions, and having either origin or destination at a port within the State of California. This exemption also applies to:             <ul style="list-style-type: none"> <li>(1) the movement of such container from any point in California to any other point in California when the purpose of such movement is to position the container for an export load or to return the empty container from which an import shipment has been unloaded to a sea van pool facility and (2) the movement of shipper-furnished chassis when such movement is in connection with the exempt transportation of sea vans as described herein.</li> </ul> </li> <li>Vegetables, fresh or green, including mushrooms, fresh, not cold pack nor frozen (when rates are not otherwise provided in Minimum Rate Tariff 8)</li> <li>Vegetables, which are placed in a preservative and are destined to a cannery for processing into a preserved or pickled vegetable</li> <li>Vegetables, dried, unmanufactured, viz.: Beans (except Mesquite), Lentils, Onions, Peas (except Cow Peas), Pepper Pods</li> <li>Voting Booths, Ballot Boxes, Election Tents and Election Supplies, when transported from or to polling places</li> </ul> <p style="text-align: center;">(Continued in Item 41)</p>	<p>41</p>
<p>(1) The provisions on this page transferred from Sixty-third Revised Page 15.</p> <p>             d Change     )              * Addition   ) Decision No. <b>85584</b> </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 data-bbox="470 327 1070 371">APPLICATION OF TARIFF--COMMODITIES (Continued) (Items 40, 41 and 42)</p> <p data-bbox="211 393 1308 471">NOTE 1--(a) Except as provided in paragraph (b), exemption applies only in connection with straight or mixed shipments of commodities making reference hereto and only when shipped in quantities of not less than 20,000 pounds.</p> <p data-bbox="381 466 1281 515">(b) The provisions of paragraph (a) of this note do not apply in connection with:</p> <p data-bbox="381 510 1273 559">(1) The transportation of eggs moving in straight shipments from point of production.</p> <p data-bbox="381 555 1334 625">(2) Shipments moving in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles or in milk shipping cans from point of production.</p> <p data-bbox="211 621 1308 721">NOTE 2--Includes only used empty carriers which are returning from an outbound paying load of traffic for which rates are not provided in this tariff, or which are being forwarded for a return paying load of traffic for which rates are not provided in this tariff (subject to Item 80 of the Exception Ratings Tariff).</p> <p data-bbox="211 716 1361 787">NOTE 3--Exemption applies only as to dried fruit in the natural state and which has not been cleaned, washed, stemmed or otherwise prepared or partially prepared for human consumption.</p> <p data-bbox="211 783 1384 831">NOTE 4--Exemption applies only when the distance between point of origin and destination does not exceed 35 miles, computed in accordance with the provisions of Item 100.</p> <p data-bbox="211 827 1334 898">NOTE 5--Exemption applies only when shipper certifies on the shipping document covering the transportation that the shells or shell marl are being shipped for use as a fertilizer.</p> <p data-bbox="645 1130 921 1156">(Continued in Item 42)</p>	<p data-bbox="1389 847 1473 913">ø41 (Con- cluded)</p>
<p data-bbox="241 1201 1291 1227">(1) The provisions formerly shown on this page transferred to Original Page 14-A.</p> <p data-bbox="274 1245 773 1289">ø Change, Decision No. <b>85584</b></p>	
EFFECTIVE	
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