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Decision 84 07 095 JUL 5 1984 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, in bulk, of agricultural products and related articles statewide as provided in Minimum Rate Tariff 14-A and the revisions or reissues thereof.

Case 7857, Pet. 174
(Filed May 29, 1981)

Case 7857, OSH 159
(Filed April 12, 1977)

(For appearances see Appendix A.)

O P I N I O N

Minimum Rate Tariff 14-A (MRT 14-A) contains minimum rates for the transportation of grain, animal feed, rice, hay, cottonseed, and related products statewide by highway permit carriers.

Order Setting Hearing (OSH) 159 was issued for the purpose of exploring whether this Commission should establish a regulatory program whereby carriers would establish rates and initiate changes in rate levels. The staff responded to OSH 159 by preparing a study of the transportation services conducted under MRT 14-A and presenting its recommendations.

In Petition (Pet.) 174, Ranchers Cotton Oil and four other cotton oil producers seek cancellation of the rates in MRT 14-A applicable to the transportation of cottonseed from cotton gins to cotton oil producers.

OSH 159 and Pet. 174 were consolidated for hearing and nine days of public hearings were held before Administrative Law Judge Mallory in San Francisco, Bakersfield, and Willows in the period November 29, 1983 through May 9, 1984. The matters were submitted following oral argument before the Commission en banc on May 31, 1984.

Testimony was presented on behalf of the Commission's Transportation Division staff (staff), California Farm Bureau Federation (Farm Bureau), California Grain and Feed Association (Grain and Feed Association), petitioners in Pet. 174 (Oil Producers), California Trucking Association (CTA), California Association of Port Authorities (Ports), and representatives of individual highway carriers and shippers.

Oral argument was presented by our staff, Farm Bureau, Grain and Feed Association, Ports, CTA, Oil Producers, San Joaquin Valley Hay Growers Association, and Adams Trucking, Incorporated (Adams).

Staff Study

The staff study and report prepared in response to OSH 159 was received as Exhibit 1. The report describes the types of transportation subject to MRT 14-A, sets forth a profile of shippers and carriers operating under the tariff, explains the positions of the carriers and shippers contacted in the course of the study, sets forth several possible regulatory programs and the staff evaluation of those programs, and contains the staff's conclusions and recommendations.

Commodities Involved

The staff study indicates that the principal commodities subject to MRT 14-A are bulk grain (wheat, barley, corn, milo), bulk rice, hay in bales, and cottonseed in bulk. According to the staff study, the characteristics of these commodities are as follows:

1. The commercial values of the agricultural products are 1/3 or less of manufactured articles such as canned goods, aluminum cans, or sheet steel.

2. Once transportation commences, MRT 14-A commodities can be handled with little risk of damage and with minimal manual labor. Changes in loading and unloading techniques, specially designed equipment and

modernization of facility locations have resulted in improvements in the overall transportation of these commodities.

3. Perishability is a factor in the transportation of MRT 14-A commodities but is less critical than for fresh fruits and vegetables.

4. Once the harvest commences, grain and rice need to be transported without undue delay to the various receiving locations. Grain is shipped either into the export markets, stored in various facilities throughout the state, or delivered to processing plants. Rice is first delivered to a drying facility and eventually to a milling location and/or export shipping location. Hay is the least perishable since it is baled on the farm and can be stored until consumed. Cottonseeds have the highest perishability factor since the oil content can be damaged if exposed to unfavorable weather conditions.

5. Several of the MRT 14-A commodities require multiple processing. Rice moves from the fields to dryers, from dryers to mills and finally to distribution facilities. Cotton moves first to the cotton gins for processing. The cottonseeds then move to the oil mills for further processing. These processing steps require several transportation movements in order for the commodities to reach their consumption centers.

Transportation Characteristics of Principal MRT 14-A Commodities

1. The equipment used in transporting these commodities--hoppers, side dumps, chain floor and walking floor trailers--while made for a specific purpose can be used in other areas of transportation. Diversification into other bulk commodity areas, such as fertilizers, fruits and vegetables, liquid commodities and dry bulk materials, is feasible and is being done by many carriers as a means of obtaining full utilization of their equipment. The flatbed trailers, used primarily in transporting the baled

commodities, can be used freely in other areas of transportation. Convertible hoppers are widely used in this segment of the industry to allow for greater flexibility in the utilization of equipment.

2. Equipment availability is an important aspect during the peak harvest periods. Growers often require that several sets of trailers be available in their fields at all times. Truckers need sufficient trailers to meet the needs of their shippers and producers while at the same time maintaining a level of equipment that promotes profitability and maximum equipment utilization on a year-round basis. The sequential harvest periods, which encompass a period from May to December, allow carriers to meet the needs of the shippers and to utilize equipment to the benefit of both. In the event of an overlap or an increased volume within one season, carriers routinely employ subhaulers to service their shipper's needs.

3. Capital investment for equipment can be relatively high in relation to the utilization of equipment. The harvest seasons require maximum equipment availability. During the winter months, carriers have to utilize their equipment either in off-season agricultural hauling (storage to storage, storage to mill, etc.), or in other transportation areas (fertilizer, cement, dump truck, general commodities, etc.).

4. Grain and rice transportation often requires off-road operations, i.e., field pickups, dirt roads, etc.

Commodity Flow

Grain and rice are transported initially from a field to a processing plant, storage area or shipping location. These field pickup points are generally close to the delivery points. The primary hauls are relatively short, usually under 100 miles.

California grown grain moves from a field pickup point to a storage area and/or export shipping location at the ports of

Stockton, Sacramento, and Long Beach. Similarly, rice moves from the fields to rice dryers and then to mills, with a large percentage going to the Sacramento area for export. These movements average 75 to 100 miles.

Cottonseed is a result of the cotton ginning process. Cottonseed moves between the cotton gins and oil mills or processing plants throughout the San Joaquin Valley. These movements average 50 to 100 miles.

The longest hauls involve feed, feed ingredients, and the baled hay. Feed and feed ingredients move from the San Joaquin Valley areas such as Fresno and Bakersfield to intrastate and interstate markets where they are processed and consumed. Baled hay moves primarily to dairy farmers. Both of these movements average 200 miles.

Carrier Profile

The total number of carriers reporting revenue under MRT 14-A in 1981 was 663. The staff interviewed 68 carriers, 43 of the highest revenue producing carriers and a random sample of the remaining carriers earning $50,000 or more.

The following is a profile of carriers based on 1981 revenue reports:

MRT 14-A Carrier Profile

Revenue Bracket ($)	No. of Carriers	% of Carriers	Total Revenues	% of Total Revenue
Less than 5,000	41	6.2	$ 61,030	0.1
5,000 - 9,999	20	3.0	134,740	0.1
10,000 - 24,999	60	9.0	972,372	1.0
25,000 - 49,999	156	23.5	5,470,576	5.4
50,000 - 99,999	167	25.2	11,935,724	11.8
100,000 - 199,999	100	15.1	14,206,704	14.0
200,000 - 499,999	76	11.5	22,486,697	22.3
500,000 - 999,999	30	4.5	22,352,273	22.1
1,000,000 or more	13	2.0	23,417,437	23.2
Total	663	100.0	$101,037,553	100.0

Some carriers involve themselves in other business interests (e.g., farming, commodity brokers, commodity dealers, etc.). Few carriers have union contracts with their drivers. Most drivers are paid on a percentage-of-revenue basis. Subhaulers also are paid on a percentage-of-revenue basis. Thirty-nine of the 68 carriers interviewed used subhaulers, either seasonally or year-round.

Shipper Characteristics

There are three main types of shippers: (1) the broker/dealer, (2) the grower cooperative, and (3) the individual grower. The shippers vary in size from international organizations to independent producers.

The large shippers (cooperatives, brokers, and large producers) are knowledgeable in matters of traffic management and costs. Many of these shippers have a staff to determine and monitor their shipping and transportation costs. The small shippers (small farmers and independent brokers) do not have this advantage. However, small shippers have several transportation options which they employ: (1) they own their own equipment,. (2) they contract with other shippers who have their own equipment, (3) they participate in a grower cooperative that collectively handles their transportation needs, or (4) they have long-standing relationships with for-hire carriers. Regardless of the method of transportation service, all shippers concern themselves with the availability of adequate, reliable transportation at the lowest possible cost.

Opinion Survey

As part of its field interviews, the staff conducted an opinion survey as to whether the Commission should establish a regulatory program under which carriers would establish rates and initiate changes in rate levels. The survey interviewed eight associations, 14 shippers, 68 carriers, and two other entities.

Carriers were divided in their views regarding the regulation of transportation of MRT 14-A commodities. Three main positions expressed were: (1) to maintain a minimum rate system which is actively enforced, (2) to cancel minimum rates without a transition period, and (3) to take a "no preference position" providing that the result does not adversely affect their business.

Carriers were unanimously opposed to any type of regulatory program that would require filing tariffs with the Commission. Reasons for this opposition were: (1) too costly, (2) the need for additional staff to handle the increased workload, (3) too time-consuming, and (4) too easy for competition to find out their rates.

The consensus among the large shippers as distinguished from small growers was that economic deregulation in this commodity area was a viable approach that could benefit them, as well as the truckers, as the ability to negotiate rates based on costs and service needs is a major ingredient for any successful business operation. Shippers also expressed the opinion that deregulation in the transportation service area would afford California markets an equality with other competing out-of-state markets which would benefit the California economy.

There was no consensus about the regulation of MRT 14-A commodities from the associations. A few expressed no opinion, a few supported maintaining a minimum rate system, and a few supported total economic deregulation of these commodities.

In summary, the viewpoints of the carriers, shippers, and associations expressed to our staff are shown below:

Deregulation Poll

	For	Against	No Preference
Carriers	34%	51%	15%
Shippers	71%	7%	22%
Associations/ Interested Parties	20%	40%	40%
Total	38%	44%	18%

Staff Evaluation of Regulatory Programs

The staff considered three different programs in pursuing a possible reregulation alternative for MRT 14-A transportation. These regulatory programs are:

1. Retain the current minimum rate system.
2. Institute a transition tariff system.
3. Institute total economic deregulation.

Alternative 1 - Current System

This program was endorsed by a majority of the carriers and some of the associations. However, they suggested that more frequent cost and rate studies be conducted to keep rate levels more in line with an inflationary economy. They felt the minimum rates supported a dependable and consistent level of service by providing the carriers with sufficient revenue during peak harvest times to facilitate the maintenance of their equipment fleets during the off season; in addition, the minimum rates provide the agricultural industry with a degree of price and service stability.

Alternative 2 - Transition Tariff

This system would cancel MRT 14-A and replace it with a transition tariff similar to that for general commodities. The transition tariff would be in effect for a period not to exceed two years giving shippers and carriers time to adjust to the ratemaking process. At the end of the transition period, the transition tariff would be canceled and the carriers would then file their own contracts, rates or tariffs, with the Commission.

This alternative was universally rejected by all parties. For the reasons expressed earlier, the carriers wanted no part of tariff filings or similar requirements. The shippers and associations felt this system would be more confusing and restrictive for both carriers and shippers.

Alternative 3 - Economic Deregulation

This plan would provide carriers and shippers the freedom to negotiate their own rates. Most of the shippers, a few of the associations, and a number of carriers, favored this plan.

If this alternative is adopted, the staff predicts some or all of the following would occur:

1. Initially, rates would experience a great deal of fluctuations. Service needs of the various shippers would be evaluated and priced accordingly. Carriers and shippers would adjust to each other's needs and the supply and demand principles of economics would come into play with prices and service demand reaching a point of equilibrium.

2. After this adjustment period, stabilization would occur allowing efficient carriers to offer their services depending on their shipper's needs for a price that responds to costs and produces a fair profit.

3. The carrier population would become responsive to shipper's needs with some carriers going out of business or others diverting their services elsewhere during low shipper volume and new carriers entering the market during high shipper volume.

4. The lack of entry restrictions increases the likelihood of new carriers entering the market in times of high service demands. Established carriers will be forced to become as efficient and innovative as possible. These two events would provide the agricultural industry with a stable, viable, and strong carrier industry to serve their needs.

5. Equipment availability would not be adversely affected by deregulation. A shift in the supply of equipment would occur depending on the agricultural industry volume needs. For example, during a low volume harvest season, carriers would shift their equipment into other areas of transportation to maintain efficient equipment utilization. During a high volume harvest season, carriers would call upon the services of subhaulers to meet the increased needs of their shippers. These situations have occurred in this segment of the trucking industry, especially in the past 3-4 years when there have been erratic changes in volume levels.

6. The number of small carriers in relation to large carriers may change. The ultimate test of survival for any carrier, large or small, is knowing his operation and costs, being efficient, and having the ability to supply a service that is responsive to demand.

7. Carriers should price their service at a level that will cover their expenses and provide a reasonable profit. Efficiency should become the goal of every carrier. Carriers who price their service below their costs will eventually go out of business.

8. Carriers and shippers will have the opportunity to negotiate rate levels based on supply and demand. Situations vary from shipper to shipper, from carrier to carrier and the freedom to negotiate rate packages based on the needs of shipper and carriers would enhance the efficiency and profitability of all parties.

Staff Recommendations

Staff proposes that the minimum rates in MRT 14-A be canceled. The staff believes that deregulation would provide:

1. Greater rate flexibility.
2. Increased carrier responsiveness to the needs of the agricultural industry.
3. Increased carrier competition to promote better service and rates reflective of actual carrier costs.
4. A business environment for carriers and shippers in which managerial decisions can more adequately serve the industries involved.
5. An environment that allows for better equipment utilization thus promoting greater carrier efficiency.
6. A business environment that can better reflect the conditions existing in a free market economy.

Grain and Feed Association

The association supports the staff recommendation to cancel MRT 14-A. In its view association members are ready and able to negotiate rates with carriers. The association expects that rates for its members will be lower if MRT 14-A is canceled. The association represents the larger growers and broker-dealers, as well as marketing cooperatives. Testifying on behalf of the Grain and Feed Association were the association's executive vice president and representatives of Amaral Trucking (Amaral), California Association of Wheat Growers (CAWG), League of California Milk Producers (Milk Producers), and Farmers' Rice Cooperative.

The association vice president testified that 75% of its members support deregulation of MRT 14-A. The members' present concerns are as follows:

1. Lack of enforcement of the tariff which results in an inequitable situation for both carriers and shippers.
2. The tariff exemption for grains destined for export has created a situation in which domestic users of grains are competing on an unequal basis with exporters for the purchase of such commodities, as export grain moves at less than tariff rates.

The witness cited examples of circumvention of tariff rates such as bogus buy-and-sell operations by carriers. The vice president testified that export-bound alfalfa pellets, beet pulp cubes, hay cubes, and rice bran, which are subject to MRT 14-A should be exempted as they are traded in a similar manner as export grain which is exempt. It is the witness' view that the foregoing commodities produced in California cannot effectively compete with similar commodities produced for export in adjoining states because truck rates are lower for out-of-state products transported through California ports. The witness stated that repealing the minimum rates for MRT 14-A commodities is a reasonable extension of actions recently taken by the federal government and this Commission and will remedy some of the inequities of past actions.

Amaral's representative testified that the carrier is prepared to negotiate rates for rice hauling and favors cancellation of MRT 14-A.

The witness for the CAWG testified that CAWG's board of directors voted unanimously to support cancellation of MRT 14-A. CAWG believes forces of the market place should govern the rates for movement of wheat. The witness stated that CAWG's board is not convinced that regulation under MRT 14-A will ever be capable of determining a rate that is fair to all parties, because conditions are so diverse in the various grain producing regions of California.

The executive vice president of the Milk Producers testified that the league is composed of local dairy producers' associations and cooperatives, representing 11,000 dairymen. Fluid milk transportation is not subject to minimum rates, and the milk producers believe no rate regulation should apply to dairy feeds. Milk producing costs are high in relationship to price, and deregulation of feed transportation should lower costs to the dairymen.

The manager of field services for Farmers' Rice Cooperative testified that the cooperative is owned by its 800 members who are rice farmers. The cooperative markets approximately 25% of the California rice crop. The association's board of directors (all farmers) voted to support deregulation of MRT 14-A. All rice movements, except for export, are subject to MRT 14-A. The trucking services rendered to the cooperative and its members are transportation of rice (1) from ranch origins to country warehouses, (2) from country warehouses to country warehouses, (3) from country origins to the mill for milling or to export as rough rice, and

(4) from mills to export points. A single large carrier together with cooperative members provide most of the trucking services for the cooperative and its members. The cooperative's annual trucking bill is in excess of $3 million. As a major shipper, the cooperative desires the opportunity to negotiate competitive rates for movement of rice. Any net savings in transportation costs redound to the cooperative's members.

Ports

The traffic manager of the Port of Sacramento testified on behalf of Ports in support of the staff proposal.

Movement of grain to the Ports for export is not subject to MRT 14-A. Ports have opposed the application of MRT 14-A rates to export movements of alfalfa pellets and cubes, beet pulp cubes and hay cubes, because regulation of motor carrier rates on export cargoes within California would create an unequal pricing situation where California shippers and producers would compete in the export market at fixed rates with shippers and producers in other states where export rates are negotiated. In the view of the witness, in an era of transportation rate deregulation by both states and federal government agencies, it is only reasonable that this Commission continue to extend its repeal of the minimum rate program.

Oil Producers

Oil Producers propose, in their separate petition, to cancel the minimum rates on cottonseed from cotton gins to oil producers, irrespective of the actions taken by the Commission in OSH 159.

Staff and Oil Producers stipulated to the following as a summary of the staff interviews conducted with carriers and shippers concerning oilseed transportation. Of the 68 carriers interviewed in the staff investigation, 20 indicated some participation in cottonseed transportation under MRT 14-A. Of those 20, seven were involved in transportation of cottonseed from gin to mill (the subject of Pet. 174), and the remaining 13 transport cottonseed by-products from the mills to dairy lots and similar locations.[1] Of the seven carriers directly involved with transportation of cottonseed from gin to mill, two desire retention of minimum rates and five either prefer deregulation or believe that deregulation will have no effect on them. Of the 14 shippers interviewed by the staff, four are cotton oil producing mills. The four mills are petitioners in Pet. 174, and each supports deregulation of cottonseed transportation from gin to mill.

According to the staff study, the cotton oil producing mills arrange the transportation and pay the freight charges for the gin to mill transportation of cottonseed. For this transportation, shippers negotiate rates usually above the minimum rates and appear to have long-standing and equitable relationships with the carriers.

The staff study indicates that a major problem in the present MRT 14-A as it relates to cottonseed movement is the 48,000-lb. minimum weight. Some carriers operate equipment which does not allow the loading of 48,000 lbs. Even without this problem, the mills have no control over the loading which is performed by the carrier at the gin location. The mills believe 48,000 lbs. per truckload to be an unfair and unrealistic weight minimum.

Oil Producers presented evidence through the testimony of a traffic consultant and by a vice president of Ranchers Cotton Oil. The traffic consultant stated that his firm has furnished consultation on rates to the major cotton oil producers for 20 years. The witness testified that during the 1982 harvest, 1,280,000 tons of cottonseed were produced in California; petitioners in

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[1] Oil Producers do not seek the cancellation of minimum rates on cottonseed transported to destinations other than processing plants. They recognize that different transportation conditions exist for the movements of cottonseed used for animal feed.

Pet. 174 processed 1,001,282 tons, or 78% of the total production. Petitioners contract directly with carriers for the movement of cottonseed. The contracts are negotiated in advance of the cotton harvest season. During the 1982 season, all of the cottonseed received by petitioners moved at rates in excess of the applicable minimum rates. Exhibit 9 contains comparisons of contract rates paid by petitioners with minimum rates for distances up to 140 miles. The rates actually paid exceeded the minimum rates by 11% to 56%, and appear to average 25% above the corresponding minimum rate.[2]

The vice president of Ranchers Cotton Oil testified that it is the belief of petitioners that minimum rates are no longer necessary for transportation of cottonseed from cotton gins to cotton oil mills or mill storage sites for the following reasons: Almost the entire movement takes place during the cotton harvest season, generally beginning the first week of October and continuing through mid-December. The space for cottonseed storage at gins is very limited, and seed must be removed before the storage capacity is exceeded for the gin to remain in continuous and uninterrupted operation. Cottonseed is, therefore, transported and received 24 hours a day during the harvest season, and close coordination is required between gin personnel and carriers to maintain the proper balance between gin operations and seed movements. Normally, a single carrier provides all transportation service from a given gin to a given mill, pursuant to a contract entered into between the oil producer and the carrier before the harvest season begins. In order to assure movement of the large quantities of cottonseed involved in

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[2] MRT 14-A rates on cottonseed have not been adjusted since 1979. We found that changes in union wage scales for agricultural movements were an inappropriate basis for adjusting cottonseed rates as carriers engaged in that transportation paid their drivers on a percentage-of-revenue basis.

the relatively short period of time available, and to obtain the level of carrier responsiveness necessary for efficient gin operation, oil producers have, in recent years, negotiated rates in excess of established minimum rates.

Farm Bureau

Farm Bureau opposes the cancellation of MRT 14-A and it desires the retention of minimum rates. At Farm Bureau's request hearings were held in Bakersfield and Willows for receipt of testimony from farmers, brokers, and carriers in the San Joaquin and Sacramento Valleys. Farm Bureau presented 17 witnesses at Bakersfield and eight witnesses at Willows in support of its position. The witnesses included truckers, broker/dealers, and farmers. Some of the witnesses engaged both in trucking and farming or trucking and brokerage. The witnesses represent relatively small operations in farming, brokerage and trucking of grain (wheat, barley, corn, milo), animal feed (almond and cottonseed hulls, cottonseed), hay, and safflower seed and cottonseed (for oil).

The Farm Bureau witnesses all opposed cancellation of MRT 14-A. Farmers believe that cancellation of the minimum rates would cause large shippers to control the operations and rates of local truckers through market domination, leaving small farmers without adequate carrier services during their peak harvest operations, and causing smaller shippers to pay higher rates than the large shippers. Brokers felt that it would be difficult to compete unless transportation rates paid by other brokers were known. Prices paid locally by brokers for grain, feed, and hay, are the market prices at destination less transportation charges and brokerage fees. When transportation rates are unknown, prices paid at origin would vary considerably based on quantities transported and availability of carriers. Carriers desire retention of minimum rates because they are not prepared to negotiate rates with shippers, they feel a floor is required to ensure profitability, and because transportation conditions do not permit negotiated rates to be set in advance of transportation on harvest hauls, particularly of grain. Grain generally moves from fields to inspection stations, where the grain is graded; the destination of the harvested grain is different for various grades. Thus, the destination is not known when the grain leaves the field. Carriers also pointed out that small harvest movements require relatively more time and equipment per ton than large grain harvests. Thus, smaller harvest would be less attractive to truckers than larger harvest, resulting in less trucking equipment being available for smaller harvest movements if minimum rates are canceled.

Farm Bureau asserts that grain and rice growers do not have the ability to pass on transportation costs to the buyers of rice and grain, but must absorb such costs as part of their costs of production. On the other hand, Farm Bureau contends that brokers and other sellers may pass on their transportation costs to ultimate consumers. Farm Bureau supports a rate floor which stops predatory practices, and which would assure the availability of adequate transportation services during peak harvest periods for grain and rice.

Individual Carriers

Four representatives of carriers testified in opposition to the cancellation of MRT 14-A. Generally, their testimony was that the minimum rates primarily are required for initial hauls of grain and rice during the harvest season, when demand for service is greatest, to ensure adequate service for shippers and to ensure that carriers receive adequate compensation for the excess equipment required for harvest hauls. Hay haulers also pointed out that special equipment is required for hay hauls, and they requested that minimum rates be retained so that the hay haulers would receive adequate compensation for furnishing such equipment.

Two representatives of Adams, a carrier engaged primarily in the movement of bulk grain, testified in support of cancellation of the tariff. One witness appearing for Adams stated that exempt movements of bulk grain to the ports presented no problems to the carrier, and that if other grain movements were exempted from MRT 14-A, no new problems would be created from its standpoint. Another witness for Adams attacked the rate-setting methodology used for adjustments in MRT 14-A rates. In his view such methodology, which uses union contracts as a basis for labor costs, is inaccurate and inappropriate because most agricultural carriers do not employ union drivers. Fringe benefits provided in union contracts are not paid by agricultural carriers, and carriers pay their drivers on a percentage-of-revenue basis rather than an hourly basis.

California Trucking Association

It is the position of CTA's Agricultural Carriers Conference in this proceeding that CTA "shall strive to maintain regulation under MRT 14-A in its present form, providing there is adequate enforcement."

CTA presented evidence in opposition to the cancellation of MRT 14-A through the testimony of seven highway carriers, the conference coordinator of CTA's Agricultural Carrier Conference, and a CTA vice president.

The president of Certified Transport, a carrier engaged in the transportation of fresh fruits and vegetables formerly subject to MRT 8-A, explained the changes in carrier operations since MRT 8-A was canceled by the Commission by D.83-06-083, effective July 29, 1983.[3] According to the witness, large shippers and receivers of fresh produce, such as chain stores, advise carriers the rates which they will pay. Those rates are not subject to negotiation. The chain stores currently are paying rates 25% or more below the former level of truckload rates in MRT 8-A. According to the witness such rates are noncompensatory and carriers operating exclusively for chain stores are beginning to fail. On the other hand, rates for less-than-truck movements have risen to partially offset the lower truckload rates, and some services for small shippers and for some agricultural areas have been withdrawn. It is the view of the witness that many carriers will be unable to effectively compete in a deregulated atmosphere; therefore, necessary trucking services for small shippers will disappear or will be furnished only at a substantially higher cost if MRT 14-A is canceled.

The CTA vice president presented in graphic form (Exhibit 11) an explanation of the economic forces that would tend to force rates upward or would cause carriers to withdraw services in the instances, such as here, where the need for the carriers' services varies considerably between harvest season and other times. According to the witness, more trucks will be made available at times of peak movement under a fixed (minimum) rate structure than under conditions where carriers do not know the rates which will be received. Thus, equilibrium between supply and demand would be achieved at a lower rate level when carriers perceive that they will adequately be recompensed for their services.

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[3] D.83-06-083 directed the staff to review the rate levels resulting from deregulation of transportation formerly subject to MRT 8-A. Such staff assessments have not been prepared.

In its closing arguments, CTA stated that the association recognized the unique transportation characteristics of cottonseed moved from cotton gins to oil producers, and alfalfa cubes and pellets and hay cubes moved to the ports. CTA indicated that the association had no objection to the cancellation of minimum rates for gin-to-oil producer movements of cottonseed or to the complete exemption from minimum rates of agricultural commodities moved to California ports. CTA continues to oppose exemption of movements of cottonseed destined to dairies and other locations for use as animal feed.

San Joaquin Valley Hay Growers Association

This organization presented argument in support of retention of minimum rates on hay. Deliveries of hay from its members are made to dairy farms, cattle feed lots, feed stores, and stables. The association generally employs truckers who own and operate a special forklift truck called a "squeeze" or other special equipment for loading and unloading hay, in preference to carriers who do not have such equipment. The association members find that carriers using special loading and unloading equipment provide more efficient service than carriers not having such equipment. The hay carriers judged to be more efficient are paid in excess of the minimum rates. The association believes that if minimum rates are canceled that truckers who do not offer the costly loading and unloading equipment will negotiate rates so low that the more efficient truckers will be driven out of business.

Discussion

We believe that minimum rate regulation over MRT 14-A transportation is no longer in the public interest.

Before addressing the issues raised in this proceeding, we note that this is not the first time we are considering the subject of minimum rate regulation. Over the past several years, we have conducted numerous proceedings to determine whether minimum rate tariffs should be abolished in favor of a more competitive system of carrier-set rates. In most of these earlier proceedings, we concluded that the public would be better served if minimum rate tariffs were eliminated.

Specifically, we found that minimum rate regulation was outdated. General economic conditions and the motor transportation industry had changed significantly since the 1930's when minimum rates were first established. Despite these changes, minimum rate regulation remained basically the same.

We also found that minimum rate regulation was unworkable. The problems were numerous and profound. We were unable to develop adequate productivity or efficiency standards for selecting appropriate carriers for the purpose of developing valid cost studies. Shippers and carriers operated under such widely varying conditions and requirements that minimum rate tariffs could not fully reflect actual operations. Adjustments to minimum rates could not be made with the frequency necessary to cover escalating costs.

We further found that where transportation was exempt from minimum rate regulation both shippers and carriers benefited from greater flexibility and responsiveness in the rate-setting process. We found no evidence of predatory pricing, excessive business failures, or unreliable service in these segments of the trucking industry.

Based on these and other findings, we have canceled MRTs 1-B, 2, 6-B, 9-B, 11-A, 12-A, 13, 15, 18, and 19. In Decision (D.) 83-06-083 issued June 29, 1983 in Case (C.) 5438, OSH 116, we canceled MRT 8-A relating to the transportation of fresh fruits and vegetables. Only for MRT 3-A (livestock) and MRT 4-B (used household goods) have we retained the minimum rate tariffs. (D.83-06-082 dated June 29, 1983 in C.5433, OSH 67, and D.83-05-033 dated May 4, 1983 in

C.5330 and C.5432.) None of these decisions was arrived at casually. Nor do we approach our determination here with respect to MRT 14-A in a casual manner. In making these decisions, we have been guided by our responsibility to assure the public reliable transportation service at the lowest reasonable rate.

Upon considering the evidence and arguments presented in this proceeding, we conclude that MRT 14-A should be canceled. The testimony of shippers, carriers, and the Commission staff clearly establishes that minimum rate regulation is not needed to assure reliable transportation of grain, rice, feed, hay, and cottonseed in California. Furthermore, it is apparent that a valid minimum rate tariff cannot be developed for this transportation.

Throughout this proceeding, both shippers and carriers have emphasized that service is of paramount importance. Shippers are extremely dependent upon carriers and upon maintaining a good working relationship because of critical and unique time and handling requirements. Although shippers expressed some concern about the level of transportation rates, they indicated that reliable service is essential and outweighs that concern.

As a result of the need to secure dependable, effective transportation service, shippers have developed long-standing relationships with reliable carriers. Carriers and shippers depend on each other to sustain their livelihoods.

Although somewhat similar, the situation of initial movements of grain and rice from the fields can be differentiated from the circumstances which led us to retain the minimum rates on livestock in MRT 3-A. In the livestock proceeding, the consensus of livestock growers and carriers was that minimum rates should be retained, and we concluded that a substantial portion of the livestock industry, that is, the producers and marketers of feeder sheep and cattle, would be adversely affected by cancellation of the tariff. We cannot reach such a conclusion with respect to initial movements of grain and rice from the fields as the larger growers and grower cooperatives, and some of the carriers serving such shippers, actually seek cancellation of MRT 14-A, and would not be adversely affected thereby.

Those actively opposing the cancellation of MRT 14-A are the smaller growers of grain and rice, the shippers of hay, and the carriers serving those shippers. The shippers fear that under economic deregulation shippers will seek out carriers charging the lowest rates regardless of service, reliable carriers will be driven out of business, service will deteriorate, and eventually, their own businesses will be jeopardized. The carriers fear that cancellation of the minimum rate tariff will lead to predatory pricing which will force carriers charging higher rates out of business.

We do not believe that this will occur. In our view equilibrium will be reached where sufficient carrier equipment will be available to meet the peak needs of shippers, although harvest rates may be higher than rates for off-season hauling. The record indicates that economic factors other than transportation costs, such as the harvest size, the financial condition of growers, weather conditions, and crop prices strongly influence availability of equipment at harvest times. Our experience in other tariff areas shows that predatory pricing cannot be sustained in a competitive environment. We do not share the view of the hay growers and hay truckers that carriers who do not supply expensive mechanical loading/unloading devices will charge rates sufficiently low to drive out the carriers who furnish that equipment. The record shows that a premium rate is paid to carriers furnishing mechanical loading/unloading devices for hay transportation, as shippers consider such carriers to be more efficient and more reliable than the carriers who do not furnish such equipment. It would seem reasonable to conclude that premium rates would continue to be accorded to the more reliable and efficient carriers under rate deregulation. The evidence indicates that upon cancellation of MRT 14-A shippers will continue to place primary importance on reliable service and, thus, will continue their long-standing relationships with dependable carriers. Shippers and carriers will continue to establish their rates through a process of negotiation.

A major portion of the involved shipper organizations support cancellation of the rates on grain, feed and rice. Those organizations want the freedom to negotiate rates which will be more responsive to their needs, and the needs of the marketplace. Carriers and shippers should be able to readily adjust to a nonregulated environment wherein rates are determined by negotiation. There is evidence which indicates that exempt movements of grain and rice to the ports are transported under negotiated rates that are satisfactory to shippers and carriers. Ports and Grain and Feed Association pointed out the similarity of the movements of hay and alfalfa cubes and pellets and similar feed items destined to the ports. CTA had no objection to the exemption of those commodities when moving to ports.

The evidence concerning cottonseed movements indicates that all movements from gins to oil producers move at negotiated rates above the minimum rate levels, which are generally satisfactory to carriers, as well as shippers.

The record indicates that MRT 14-A has not been effectively enforced in the past. When this evidence was introduced in an early phase of this proceeding, greater enforcement action was undertaken by our staff. When asked in the course of oral argument whether effective enforcement of MRT 14-A could be maintained, our staff indicated that it responded to informal and "hot-line" complaints (but is unable to adequately staff a continuous enforcement program).

Our staff and other parties pointed out that MRT 14-A has not been adjusted for some time, and does not reflect current economic conditions. We recognize the difficulties in maintaining the tariff on a current basis, and in arriving at an appropriate data base from which tariff adjustments can be made. A major problem is the determination of reasonable labor costs, because there is no reliable yardstick to measure such costs. The continued use of an agricultural carrier labor contract is inappropriate as the preponderance of the carriers engaged in transportation subject to MRT 14-A are not subject to union agreements, but pay their drivers on a percentage-of-revenue basis. We recognize that should the tariff be retained it would present difficult, if not unsurmountable, problems in maintaining reasonable and nondiscriminatory levels of minimum rates. While this is not a sufficient reason alone to cancel the tariff, it provides added support to the other factors cited above.

Findings of Fact

1. In response to OSH 159 in C.7857, the staff proposed that MRT 14-A be canceled and that agricultural carriers and shippers be free to negotiate rates in a manner similar to interstate and foreign movements of agricultural products, which are unregulated.

2. In Pet. 174 C.7857, Oil Producers seek cancellation of the minimum rates on cottonseed transported from cotton gins to cotton oil producers, irrespective of the action taken by the Commission in OSH 159.

3. A substantial portion of the larger growers and grower cooperatives requiring transportation of grain, feed, and rice, and some of the carriers serving such shippers support the staff proposal, and are prepared to negotiate rates in a nonregulated competitive environment.

4. Smaller growers and shippers of grain and rice oppose the cancellation of the tariff on the basis that carriers would be dominated by larger shippers in an unregulated environment and the smaller growers would be unable to obtain adequate services at reasonable rates.

5. Carriers and shippers operate satisfactorily in the environment surrounding the movement of grain and rice to the ports, which is unregulated.

6. The record does not substantiate that small shippers of grain and rice will receive inadequate service or experience exorbitant rates in the event minimum rates are canceled.

7. Hay shippers and carriers believe that cancellation of minimum rates may drive out carriers that now furnish expensive mechanical equipment to load and unload hay shipments.

8. Hay carriers furnishing mechanical loading/unloading equipment now receive compensation in excess of the minimum rates, and there is no reason to believe shippers will not be prepared to pay premium rates for the furnishing of such equipment if minimum rates are canceled.

9. Carriers and shippers should be able to readily adjust to a nonregulated environment wherein rates are determined by negotiation between shippers and carriers.

10. Maintenance of minimum rates on hay and alfalfa cubes and pellets and similar feed commodities destined to California ports for export, when grain and rice is exempted and when interstate port movements are exempted, places California shippers of feed commodites at a competitive disadvantage to shippers who may negotiate rates for their port movements.

11. Given present budgetary constraints this Commission is unable for the future to establish, maintain, and enforce just, reasonable, and nondiscriminatory rates for the movements of commodities subject to MRT 14-A.

12. Shippers value dependable carrier service and are willing to negotiate rate levels with carriers which are commensurate with good service.

13. The agricultural and carrier industries would be better served if competitive forces were allowed to freely determine a rate structure.

14. A majority of the commodities under consideration are shipped from California in the export and interstate markets and are already exempt from rate regulation, and it is inconsistent regulatory policy to regulate the remaining portion of the traffic which is currently subject to minimum rates without compelling reasons to do so.

15. Shippers and carriers have a close working relationship that will not be jeopardized by a deregulated environment.

16. Cancellation of MRT 14-A will continue the Commission goals of a movement toward free market competition as demonstrated by the cancellation of minimum rate tariffs governing fresh fruits and vegetables (MRT 8-A), cement (MRT 10) and new automobiles (MRT 12-A).

17. For the future, the requirements of Public Utility (PU) Code §§ 726 and 3661 can best be met by the cancellation of MRT 14-A.

18. There is no need to establish a transition tariff covering the transportation of agricultural commodities subject to MRT 14-A prior to the complete deregulation of these rates for permitted carriers.

19. The staff, by monitoring rate levels and industry performance after the cancellation of MRT 14-A, will remain knowledgeable about conditions in this industry and be able to identify any problems and recommend modification to the rate deregulation program should the need arise.

20. Commission regulation of agricultural carriers in areas other than rates should not impede carriers and shippers in their free exercise of coming to an agreement over rates.

21. Because the harvest season of rice and other agricultural commodities is at hand the effective date of this order should be the date on which the Commission signs the order.

22. The following order complies with the guidelines in the Commission's energy efficiency plan.

23. It can be seen with certainty that there is no possibility that the regulatory system adopted may have a significant effect on the environment.

Conclusions of Law

1. The Commission is not required to establish minimum rate tariffs under Division 2 of the PU Code.

2. Continuation of MRT 14-A will not further the State policy enunciated in PU Code §§ 726 and 3661 respecting the movement of agricultural commodities.

3. Establishment of a transition tariff to replace MRT 14-A will not further the State policy enunciated in PU Code §§ 726 and 3661 respecting the movement of agricultural commodities.

4. Cancellation of MRT 14-A will further the State policy enunciated in PU Code §§ 726 and 3661 respecting the movement of agricultural commodities.

5. MRT 14-A should be canceled August 15, 1984.

6. The rates of any highway common carrier that has adopted MRT 14-A as its common carrier tariff will remain in effect after cancellation of MRT 14-A.

7. Future common carrier rate changes will be governed by PU Code §§ 452, 453, 454, and 455.

8. The Commission staff should be ordered to set up a program to monitor the rate levels and industry performance after the cancellation of MRT 14-A with a view to identifying any problems and recommending modification to this part of the rate deregulation program should the need arise.

9. As Petition 174 in C.7857 is constructively granted by the cancellation of MRT 14-A and the adoption of the reregulation plan described above, Petition 174 should be dismissed.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff (MRT) 14-A is canceled August 15, 1984, by Supplement 33 to MRT 14-A attached to this order and made a part hereof.

2. The Commission's Transportation Division staff shall set up a program to monitor rate levels and industry performance after the cancellation of MRT 14-A with a view of remaining knowledgeable about conditions in this industry and being able to identify any problems and recommend modifications to this rate deregulation program should the need arise. A new proceeding shall issue for receipt of information resulting from the staff's monitoring program.

3. Copies of this order shall be served on all subscribers to MRT 14-A by the Executive Director.

4. Petition 174 in Case 7857 is dismissed without prejudice.

5. Order Setting Hearing 159 is concluded upon the effective date of this order.

This order is effective today.

Dated JUL 5 1984, at San Francisco, California.

I dissent.
DONALD VIAL, Commissioner

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
Commissioners

I concur, but would maintain the tariff for the initial off-farm movement of the subject commodities.

WILLIAM T. BAGLEY
Commissioner

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director

TB-5

Bagley

I concur, but would maintain the Tariff for the initial off-farm movement of the subject commodities.

TB-5

Bagley concurrence should be typed on face of decision.

S.S.

APPENDIX A

LIST OF APPEARANCES

Respondents: Earl F. Anders, for Shifflet Bros., Inc.; Robert Brass, for Adams Trucking and Adams Grain; Lorenzo E. Giannetti, for Clark Trucking Service, Inc.; Robert K. Davidson, for Roy E. Lay Trucking; Ronald D. Pierce, for R&R Transportation Co.; Leland McCorkle, for McCorkle Farms; Dean Grissom, for Grissom Trucking; Michael Lindeman, for Adams Trucking; E .N. Miles, for Billy Gladden and 10 other highway carriers; Richard Cunha, for Clark Trucking Service, Inc.; William Houghton, Jr., for Laton Transportation and Houghton Farming; and Bernard A. Wever and Dick Huizenga, for themselves.

Protestant: Richard W. Smith, Attorney at Law, and J. D. Anderson, for California Trucking Association.

Interested Parties: Steven A. Geringer and Gerald J. La Fave, Attorneys at Law, for California Farm Bureau Federation; Allen Crown, Attorney at Law, for California Feed and Grain Association; Jack C. Phillips, for Phillips Grain Co. and California Farm Bureau Federation; John C. Craig, for California Association of Port Authorities; and James D. Martens, for California Dump Truck Owners Association.

Petitioners in Petition 174 and Interested Parties in OSH 159: Hegarty, Pougiales, Loughran and Gulseth, by Edward J. Hegarty, Attorney at Law, for Ranchers Cotton Oil, Kingsburg Cotton Oil Co., Producers Cotton Oil Co., J. G. Boswell Company, and Anderson Clayton & Co.

Commission Staff: Patricia Bennett, Attorney at Law, and William J. Tait.

CANCELLATION SUPPLEMENT

SUPPLEMENT 33

TO

MINIMUM RATE TARIFF 14-A

NAMING

MINIMUM RATES AND RULES

FOR THE

TRANSPORTATION, IN BULK OF

AGRICULTURAL COMMODITIES AND

RELATED ARTICLES

NAMED HEREIN

OVER THE PUBLIC HIGHWAYS WITHIN THE

STATE OF CALIFORNIA

BY

HIGHWAY CONTRACT CARRIERS

AND

AGRICULTURAL CARRIERS

CANCELLATION NOTICE

MINIMUM RATE TARIFF 14-A IS CANCELLED

Decision No. EFFECTIVE AUGUST 15, 1984

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

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