ALJ/ACP/jt

Decision 89 12 026 DEC 6 1989

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 livestock and related items statewide as provided in Minimum Rate Tariff 3-A and the revisions or reissues thereof.	Case 5433 Petition for Modification 80 (Filed November 14, 1988)

Daniel J. Mc Carthy, Attorney at Law, for California Trucking Association, petitioner.
Richard Fuchslin, for Valley Livestock Transportation, and Steven Geringer, Attorney at Law, for California Farm Bureau Federation, interested parties.
Ira Kalinsky, Attorney at Law, Christine Walwyn, and Cynthia Walker, for the Transportation Section, Division of Ratepayer Advocates.

OPINION

California Trucking Association (CTA) petitions the Commission to increase the mileage rates in Minimum Rate Tariff (MRT) 3-A by 3.5% for the transportation of livestock above 160 miles. The petition is opposed by the Commission's Division of Ratepayer Advocates (DRA). A hearing was held on this matter on August 22 and 23, 1989 in San Francisco. The matter was submitted August 23 on filing of transcripts.

CTA's Evidence

Luke R. Sherwood, CTA's Manager of Regulatory Programs, gave testimony and sponsored three exhibits in support of CTA's petition. Sherwood testified that the rates and charges in MRT 3-A were last adjusted by Decision (D.) 87-10-012, dated October 16, 1987, in Case (C.) 5433, Petition 79. That decision authorized increases only for mileage blocks under 161 miles with no increases and some decreases for mileage blocks over 160 miles. Sherwood said that as a result of meetings and correspondence with the Cattlemen's Association over several months' time, CTA decided to ask for an adjustment for only mileage blocks of 160 miles and above to bring rates more in line with the net cost increases that have taken place over all mileage blocks in MRT 3-A over the past few years. Sherwood performed an analysis of the cost increases experienced by livestock carriers and found there have been increases in labor costs, vehicle fixed expenses, and vehicle running expenses since the last rate adjustment in late 1987. In general the increases measured by Sherwood were comparisons of January 1987 with January 1988. On the basis of full costs per trip at 100% operating ratio, Sherwood's results show increases ranging from 2.8% for 10 constructive miles upward to 3.6% for 500 constructive miles with a range of 3.5 to 3.6% for the mileage blocks where increases are requested.

Sherwood testified that he used the usual method adopted by the Commission for making offset studies for adjustment of minimum rate levels with one exception. He based his offset on the wage cost offset method which increases certain indirect expenses in the same proportion as the increase in direct costs whereas the Commission has adopted, and specifically in D.87-10-012, the direct wage offset method which holds indirect costs constant regardless of the increase in direct costs.[1] The direct wage offset method results in lesser increases than the wage cost offset method. Sherwood used the wage cost offset method because no adjustment had been made since 1982 to indirect expenses and he believes carriers have experienced increases in such costs. However, recognizing that the Commission has adopted the direct wage offset method,

1 See 70 CPUC 277 for an explanation of the different offset methods.

Sherwood recast his study to reflect that method and presented the results in Exhibit 4. Those results show that the increases for mileage blocks above 150 miles dropped from a range of 3.5 to 3.6% to 3.2 to 3.3%. However, Sherwood still believes that the full adjustment he proposes is justified because, to his knowledge, no adjustment has been made to indirect expenses since 1982.

Sherwood testified that the requested increase will yield about $340,000 additional yearly revenue to livestock carriers and that the value of the transportation of livestock is less than one-half percent of the value of the commodity. A total of about $9,600,000 was earned by livestock carriers under MRT 3-A in 1987.

<u>DRA's Evidence</u>

The Commission's DRA, Transportation Section, called two witnesses who sponsored four exhibits.

Cynthia Walker, a regulatory analyst, testified to and presented the results of a carrier survey she made for DRA to determine if carriers can and do legally price above the minimum rate levels. In general, Walker found that livestock carriers price above the minimum rate level; and the range above minimum varies considerably from carrier to carrier, some charging as little as one percent above minimum and some as much as forty percent. Since the Commission has set only minimum rates for the transportation of livestock, carriers may legally charge any rate they wish above the minimum.[2]

Robert C. Lane, also a regulatory analyst for the DRA, made the primary recommendations for DRA and sponsored three exhibits. Lane recommended that Petition 80 be denied because there is a risk of harm from such an increase, CTA has not shown

2 Section 3662 of the Public Utilities Code gives the Commission authority to establish "maximum or minimum or maximum and minimum rates" for the transportation of property by highway permit carriers.

there is a need for the increase, there is insufficient information on which to make a decision, and when his input values are used to measure the amount of change in the cost factors there is an insignificant change in the cost of transporting livestock.

Taking first the cost factor inputs, Lane testified that the method employed by CTA to calculate the cost of equipment is flawed because the amount of equipment purchased over the past few years is so small that the correlation techniques used do not provide reliable results. Therefore, Lane used the simple average cost of equipment purchased over the last ten years for power equipment and the last twelve years for trailing equipment. Lane claims the regression technique used by CTA's Sherwood, which trends the cost of equipment, fails to pass the test of statistical significance because of a paucity of data and, therefore, should be rejected. Other areas of difference Lane had with CTA's study involved driver time versus equipment time for line haul operations, depreciation of equipment, and changes in indirect costs.

When Lane applied all of his inputs against the datum plane found reasonable in Petition 79, D.87-10-012, the increase for 150 miles is 0.9%, for 350 miles 0.9%, and for 500 miles 0.5%. This compares to CTA's figures as revised to reflect the direct wage offset method of 3.2 to 3.3%.

Lane believes offsets to minimum rates should be conservative because of the potential harm to efficient carriers, shippers, the California livestock industry and consumers. He claims that the harm to the efficient carrier who is pricing at the existing MRT 3-A levels comes about because that carrier now loses the price advantage it has worked so hard to achieve over the less efficient carrier who charges above minimum rates to survive. Carriers might also suffer because the increase in rates could decrease the demand for service or attract additional competition from interstate carriers and proprietary operations. Shippers, the livestock industry, and consumers could be harmed because of higher shipping costs being passed through to consumers in the form of higher product prices. In turn, this could cause lower demand and thus a decrease in the overall livestock business in California. Lane sees the potential benefits from an increase in rates as small and uncertain while the potential harm is large and relatively more certain.

Discussion

It is conceded by all participants in this proceeding that CTA has used the traditional and long-established method to determine the cost offsets to livestock transportation as originally determined in a cost study developed by the Commission's Transportation Division staff. That study has been updated several times, the most recent being in Petition 79 where a new datum plane was adopted by D.87-10-012. On the other hand, DRA contends that there is statistical evidence which indicates that changes to the data inputs for updating purposes are in order. The most important of these is the cost of equipment, a cost element that flows through several expense variables in the overall cost equation or model. The following table compares the equipment costs found reasonable in D.87-10-012 as of January 1, 1987 with those for January 1, 1988 developed by CTA by the method adopted in D.87-10-012 and previous offset decisions, and with those recommended by DRA.

	3-Axle Diesel Truck	2-Axle Full Trailer
D.87-10-012	$68,042	$19,683
CTA	71,328	19,842
DRA	64,426	18,397
% Change 87-88:		
CTA	+4.8	+0.1
DRA	-5.3	-1.5

It seems clear that the DRA method results in estimates which do not correspond with what one might expect; that is, there should be some increase in the cost of equipment on a year-to-year basis. The answer lies in the application by DRA of a method that does not correspond to that previously used to measure changes in costs. On the contrary, DRA establishes a value by use of a calculation that has no relationship to the previous method of calculation and then proceeds to compare the two. To use an old saw, it is apples versus oranges. We will adopt CTA's method because it correctly carries forward against the original cost study the offset procedures we have adopted and used in the past and provides the continuity necessary to properly adjust rates until a new full-scale study is made.

DRA also challenges CTA's calculation of indirect costs which has previously been discussed in the section on CTA's evidence. CTA made a corrected calculation which we will accept.

DRA made some other adjustments which we will reject because again they do not provide the continuity necessary to properly measure changes in costs from offset to offset or, more seriously, may distort the relationships of cost factors developed and found reasonable in the original cost study. For example, DRA rejects the method for calculating depreciation which was used in the basing cost study, stating that "CTA picks and chooses between having trucks depreciate over time...or through use...so as to inflate the fixed costs." The witness for DRA fails to recognize that the different method for depreciating short-haul equipment versus long-haul equipment runs through many of the Transportation Division staff's cost studies of commodity transportation because of the differences in service required of the two kinds of equipment and hence a difference in wear and tear and obsolescence.

Finally, the DRA argues that the increase requested should be denied because of the potential harm to efficient carriers, shippers, the California livestock industry and, ultimately consumers. There is always the possibility of disruptions when the price of transporting a commodity is raised, particularly if that price rise finds its way into the price the consumer pays for the product. On the other hand, it is necessary to keep rates at a level that will maintain adequate transportation service. When we established the current minimum rate structure for livestock transportation, and indeed we must agree it may be somewhat out of date but is the only rate structure we have to deal with, we said in Finding 3, "The rates...are the lowest lawful rates for the transportation of livestock compatible with the maintenance of adequate transportation service." (D.66072, C.5433, Pet. Mod. 18, 61 CPUC 450 (1963).) The record shows that the value of the transportation compared to the market value of the commodity carried in this tariff is less than one-half of one percent. Put another way, that is one cent for every two dollars of market value. Considering the increase in that one cent which is requested, the overall effect on the value of the commodity at the consumer level would be negligible. Hence we see no real concern for the possibility of market disruptions. We also note the absence of any opposition to the proposed increase from the livestock industry.

We will grant the increase requested but limit it to the revised overall change in costs shown in CTA's Exhibit 4, which amended the original showing to account for use of the Commission's adopted method for calculating indirects.

<u>Other Issues</u>

CTA and DRA filed several motions concerning the right of DRA to participate in this proceeding, dismissal of the petition, and whether sanctions should be ordered against CTA for not properly responding to DRA data requests. We have reviewed the rulings of the administrative law judge on these matters and they are affirmed.

We find no reason to impose sanctions or penalties on CTA at this time. However, in view of the tactics resorted to by CTA (through its counsel) in this proceeding, we find it necessary to make explicit our views about DRA's standing in transportation matters.

Briefly, CTA's counsel has announced on the record his intention to challenge DRA's participation in future cases. The rulings in this proceeding have already sustained DRA's standing to participate in this particular transportation matter. To forestall frivolous litigation over DRA's standing, we now make it clear that DRA's mission--to advocate the interests of consumers--makes it eminently suited to participate in transportation matters, just as it participates in proceedings involving other industries regulated by this Commission. CTA's challenge has no basis in law or policy. With the issue of DRA's standing resolved, no further elaboration of DRA's right to discovery is necessary herein. That issue has been explored elsewhere.

Comments to Proposed Decision

Comments were received from the DRA, which argued that the Proposed Decision should be modified regarding DRA's standing, discovery, misconduct by CTA and the increase in minimum rates. We have revised the decision to emphasize our conclusions on the issue of standing. On the other issues we make no changes.

Findings of Fact

1. Petitioner requests increases in the mileage rates for MRT 3-A by 3.5% for mileage blocks above 160 miles.

2. The last rate adjustment made to MRT 3-A by D.87-10-012 adjusted mileage block rates only for mileages under 161 miles.

3. CTA presented studies which show that cost increases between January 1987 and January 1988 amount to 3.2 to 3.3% for mileage blocks above 150 miles.

4. CTA's cost studies which produced the cost changes noted in Finding 3 follow the procedures adopted by previous Commission decisions in C.5433.

5. The value of the transportation of livestock is less than one-half percent of the value of the commodities transported.

6. Some livestock carriers charge above the minimum rates now in effect in MRT 3-A.

7. DRA witnesses recommend that the petition be denied because the CTA study of cost changes is based on faulty data and there is the potential for economic harm to efficient carriers, shippers, the California livestock industry, and consumers.

8. The method used by the witness for DRA to determine cost changes from the datum plane found reasonable in D.87-10-012 does not follow the procedures adopted by D.87-10-012 and previous offset decisions in C.5433.

9. The cost offset study presented by the witness for CTA correctly carries forward against the original cost study used to set rates in MRT 3-A the offset procedures the Commission has adopted and used in past proceedings and provides the continuity necessary to properly adjust rates.

10. Because the increases requested will not affect the market price of the commodities transported under MRT 3-A to any appreciable extent, market disruptions will be of no real concern if the rate increase of 3.2 to 3.3% on mileage blocks over 161 miles is granted.

11. DRA is the only party protesting the petition.

12. Rates set forth in Appendix A to this decision are reasonable.

13. The present MRT 3-A rates insofar as they differ with the rates set out in Appendix A are for the future unjust and unreasonable.

14. DRA, at Commission direction, represents consumer interests in Commission proceedings.

Conclusions of Law

1. MRT 3-A should be amended to conform to the tariff pages set out in Appendix A.

2. DRA, as Commission staff, has standing in all proceedings before the Commission.

ORDER

IT IS ORDERED that:

1. Minimum Rate Tariff (MRT) 3-A (Appendix A to Decision (D.) 55587, as amended) is further amended by incorporating, effective 25 days after the effective date of this order, the revised pages included in Appendix A.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to D.55587, as amended, are directed to establish in their tariffs the changes necessary to conform with the further adjustments ordered by this decision.

3. Tariff publications required 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 made effective not earlier than 25 days after the date of this order, on not less than 5 days' notice to the Commission and to the public.

4. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of Public Utilities Code § 461.5 to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are modified only to the extent necessary to comply with the 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.

5. In all other respects, D.55587, as amended, shall remain in full force and effect.

6. The Executive Director shall serve a copy of this decision on every common carrier, or such carriers' authorized tariff publishing agents, performing transportation services subject to MRT 3-A.

7. The Executive Director shall serve a copy of this decision on each subscriber to MRT 3-A.

8. Because this petition was filed over a year ago and rates in Appendix A are based on costs effective in January 1988, this order should be effective on the date signed.

This order is effective today.

Dated DEC 6 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

PB

SECTION 2--DISTANCE COMMODITY RATES (Continued)
In Cents per 100 Pounds

ITEM ◇ 270

CATTLE, viz.: Bulls, Calves, Cattle, Cows, Dairy Cattle, Heifers, Oxen and Steers.

HOGS, viz.: Barrows, Boars, Butcher Hogs, Feeder Pigs, Gilts, Hogs, Pigs, Sows, Stags and Swine.

MILES		RATES			
		Minimum Weight in Pounds			
Over	But Not Over	Any Quantity	10,000	30,000 (See Note 1 Item 275)	(1) 40,000 (See Note 2 Item 275)
0	3	46	31	25	19
3	5	49	34	28	22
5	10	51	36	29	25
10	15	58	38	31	27
15	20	64	40	34	29
20	25	71	42	36	30
25	30	77	45	40	32
30	35	81	49	42	33
35	40	85	53	44	35
40	45	90	56	45	37
45	50	94	60	47	40
50	60	103	67	51	43
60	70	111	73	56	45
70	80	120	84	60	49
80	90	133	95	67	56
90	100	139	102	71	59
100	110	146	110	75	63
110	120	152	117	79	67
120	130	157	124	83	71
130	140	164	132	89	74
140	150	170	139	93	79
150	160	177	146	97	83
160	170	186	156	104	87
170	180	193	163	108	93
180	190	198	170	112	96
190	200	207	179	119	100
200	220	222	193	127	107
220	240	234	207	137	115
240	260	248	222	148	123
260	280	260	234	157	129
280	300	273	250	166	136
300	325	289	267	178	146
325	350	307	285	191	157
350	375	321	303	202	166
375	400	338	320	217	177

(Continued)

◇ Increase, Decision 89 12 026

EFFECTIVE 12-31-89

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

Correction

SECTION 2--DISTANCE COMMODITY RATES (Continued)
In Cents per 100 Pounds

ITEM

CATTLE, viz.: Bulls, Calves, Cattle, Cows, Dairy Cattle, Heifers, Oxen and Steers.

HOGS, viz.: Barrows, Boars, Butcher Hogs, Feeder Pigs, Gilts, Hogs, Pigs, Sows, Stags and Swine.

MILES		RATES			
		Minimum Weight In Pounds			
Over	But Not Over	Any Quantity	10,000	30,000 (See Note 1 Item 275)	(1) 40,000 (See Note 2 Item 275)
400	425	352	338	228	186
425	450	367	354	240	196
450	475	380	372	253	207
475	500	396	388	264	218
500	525	412	407	277	228
525	550	428	424	289	239
550	575	442	439	302	249
575	600	458	457	313	258
For distances over 600 miles add for each 25 miles or fraction thereof in excess of 600 miles		13	13	11	10

◇ 270 (Concluded)

(1) Rates subject to minimum weight of 40,000 pounds are also subject to the provisions of Item 295 (Livestock Volume Tender Rates).

(Continued in Item 275)

◇ Increase, Decision 89 12 026

EFFECTIVE 12-31-89

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

Correction

SECTION 2--DISTANCE COMMODITY RATES (Continued)
In Cents per 100 Pounds

ITEM: ◇ 272

CATTLE, viz.: Bulls, Calves, Cattle, Cows, Dairy Cattle, Oxen and Steers.

Over	But Not Over	(1)(2)(3)(4) 44,000 (See Note 3 Item 275)	Over	But Not Over	(1)(2)(3)(4) 44,000 (See Note 3 Item 275)
0	3	18	190	200	83
3	5	19	200	220	91
5	10	20	220	240	98
10	15	21	240	260	104
15	20	23	260	280	110
20	25	25	280	300	118
25	30	27	300	325	126
30	35	29	325	350	135
35	40	31	350	375	146
40	45	33	375	400	155
45	50	37	400	425	164
50	60	39	425	450	174
60	70	41	450	475	184
70	80	45	475	500	192
80	90	50	500	525	202
90	100	51	525	550	213
100	110	54	550	575	222
110	120	57	575	600	231
120	130	60			
130	140	61	For distances over 600 miles add for each 25 miles or fraction thereof in excess of 600 miles		8
140	150	64			
150	160	67			
160	170	72			
170	180	75			
180	190	78			

(1) Rates apply only:
(a) To the transportation of cattle to packing houses or slaughter houses for slaughter, subject to the varying minimum weights per shipment as set forth in Note 3 of Item 275; and
(b) When actual weight of the shipment is confirmed by a public weighmaster's certificate.

(2) Rates are not subject to the provisions of:
(a) Item 130 (2), shipments of livestock for which the carrier may, but is not required to, obtain a public weighmaster's certificate;
(b) Item 140 (2), Determination of weights and charges;
(c) Item 150, Provided weights per animal;
(d) Item 190, Mixed shipments;
and do not apply to the transportation of cattle in mixed shipments with other livestock.

(Continued on next page)

◇ Increase, Decision 89 12 026

EFFECTIVE 12-31-89

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

Correction

SECTION 2--DISTANCE COMMODITY RATES (Continued)
In Cents per 100 Pounds

ITEM ◇ 280

SHEEP, viz.: Ewes, Goats, Kids, Lambs, Rams (Bucks), Sheep, Sheep Camp Outfits and Wethers.

MILES		RATES			
		Minimum Weight in Pounds			
Over	But Not Over	Any Quantity	10,000	30,000 (See Note 1 Item 285)	(1) 40,000 (See Note 2 Item 285)
0	3	46	40	36	32
3	5	49	41	38	36
5	10	51	43	42	38
10	15	57	47	43	40
15	20	64	50	46	42
20	25	69	54	47	44
25	30	75	57	48	45
30	35	79	61	50	46
35	40	85	64	53	48
40	45	89	68	54	49
45	50	94	72	57	52
50	60	101	80	61	56
60	70	109	89	66	58
70	80	116	94	69	61
80	90	129	106	79	68
90	100	136	114	83	73
100	110	143	121	89	78
110	120	147	131	95	83
120	130	153	138	100	89
130	140	159	147	104	93
140	150	164	154	110	97
150	160	170	161	116	102
160	170	180	170	122	107
170	180	187	176	127	111
180	190	193	184	132	116
190	200	200	191	137	122
200	220	215	204	148	130
220	240	227	220	159	139
240	260	240	233	170	148
260	280	251	244	179	157
280	300	264	258	189	166
300	325	281	277	202	176
325	350	296	294	217	188
350	375	313	310	229	199
375	400	327	324	243	210

(Continued)

◇ Increase, Decision 89 12 026

EFFECTIVE DEC 6 1989 12-31-89

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
SAN FRANCISCO, CALIFORNIA.

Correction

SECTION 2--DISTANCE COMMODITY RATES (Continued)
In Cents per 100 Pounds

ITEM

SHEEP, viz.: Ewes, Goats, Kids, Lambs, Rams (Bucks), Sheep, Sheep Camp Outfits and Wethers.

MILES		RATES				ITEM
		Minimum Weight in Pounds				
Over	But Not Over	Any Quantity	10,000	30,000 (See Note 1 Item 285)	(1) 400,000 (See Note 2 Item 285)	
400	425	345	342	256	222	◇ 280 (Concluded)
425	450	361	357	269	232	
450	475	375	372	282	244	
475	500	389	387	295	254	
500	525	407	405	309	265	
525	550	421	419	321	277	
550	575	438	435	336	288	
575	600	453	449	349	299	
For distances over 600 miles add for each 25 miles or fraction thereof in excess of 600 miles		13	13	11	8	

(1) Rates subject to minimum weight of 40,000 pounds are also subject to the provisions of Item 295 (Livestock Volume Tender Rates).

(Continued in Item 285)

◇ Increase, Decision 89 12 026

EFFECTIVE 12-31-89

ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.

Correction

 (END OF APPENDIX A)