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Decision 91-05-027 May 8, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Regulation of
General Freight Transportation by
Truck.

And Related Matters.

ORIGINAL

1-88-08-046

(Filed August 24, 1988)

Application 90-09-003
Application 90-09-005
Application 90-09-023
Application 90-09-028
Application 90-09-029
Application 90-09-030
Application 90-09-031
Application 90-09-033
Application 90-09-039

(For Appearances See Decision 90-11-059.)

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FOURTH INTERIM OPINION

Summary of Decision

This decision adopts a revised variable-cost floor rate (VCF) for common carriers of general freight.

The Commission concludes that the variable cost components adopted in Decision (D.) 90-02-021 (fuel, tires, maintenance, and insurance) should be retained.

The Commission also concludes that the driver wage component of VCF should be \$10.71 per hour and adopts VCFs of \$0.754/mile and \$0.932/mile for truckload and less-than-truckload operations, respectively. General Order (G.O.) 147-C is adopted to replace G.O. 147-B.

Background

On August 24, 1988, the Commission issued Order Instituting Investigation (I.) 88-08-046 into the regulation of general freight transportation by truck. The Commission issued D.89-10-039, in I.88-08-046, on rates, safety, and subhaul regulation for general freight transportation. Various parties filed applications for rehearing or petitions for modification of D.89-10-039. On February 7, 1990, the Commission issued D.90-02-021 which modified D.89-10-039 and, among other things, ordered further hearings to consider possible revisions to the adopted VCF for common carriers.

D.90-02-021 also granted a limited hearing to consider:

- (1) revenue sharing between prime carriers and subhaulers and
- (2) if Commission rules and regulations on leasing between carriers should be patterned more closely to those of the Interstate Commerce Commission.

These issues were considered in two separate phases. Phase I considered the issues of revenue sharing between subhaulers and prime carriers and possible amendment to Commission rules and regulations on leasing between carriers. Phase II considered

revisions to VCF for common carriers. In addition to the two main issues, parties in Phase I were allowed to raise other issues regarding subhauler protection.

The Commission in D.90-11-059 addressed Phase I issues. This decision addresses the Phase II issue of the VCF for common carriers.¹

Hearings

Prehearing conferences (PHC) in both phases were held on April 2, 1990 to determine the parties, positions of parties, issues, and a schedule of procedures. A new appearance list was developed at the PHC.

Hearings in Phase II were held in San Francisco before Administrative Law Judge (ALJ) Garde during the period of July 9, 1990 through September 26, 1990. Phase II was submitted on November 2, 1990 upon receipt of reply briefs.

Variable-Cost Floor Rate

By D.90-02-021, the Commission authorized common carriers to set rates individually, without further Commission approval, within a zone of reasonableness. The Commission allowed each carrier to set its own upper limit of the zone of reasonableness at a level no higher than 10% over the lowest rates in effect for the carrier during the previous 12 months.

For the lower limit of the zone of reasonableness, the Commission adopted an interim variable-cost floor rate (Interim

¹ While hearings were being held on Phase II issues, Iraq's invasion of Kuwait on August 2, 1990 and the resulting events caused fuel prices for trucking companies to increase. Various carriers filed applications seeking rate increases to offset the rising fuel costs. These applications were consolidated with I.88-08-046, and are, therefore, included in the caption of this decision. The Commission will issue a separate decision in the applications which will address fuel offset costs, and no discussion on the fuel offset request is included in this decision.

VCF). The Interim VCF was set at a level which would allow a carrier to recover its minimum level of variable costs or out-of-pocket expenses for driver labor, fuel, tires, maintenance, and insurance. In adopting the Interim VCF, the Commission outlined the following distinction between fixed and variable costs:

"In our judgment a lower limit of a minimum level of variable cost is consistent with prior cases which define the lower limit of the zone of reasonableness as "out-of-pocket" costs. That limit will also provide incidental protections against destructive pricing practices by common carriers. We realize that distinctions between fixed and variable costs depend on the time frame of the carrier. Economically, the very definition of the long term is when all costs become variable, which is an elegant way of saying that even long run fixed costs have to be paid sometime. For practical purposes a carrier's fixed costs are those assignable to capital investment and overheads. Variable costs are most closely related to day-to-day expenses such as driver labor, fuel, tires and maintenance. Thus a lower limit of a minimum level of variable costs will keep a carrier's revenues high enough to pay required wages, fuel and tire costs, maintenance, and insurance."
(D.90-02-021, Revised page 87.)

The Commission made the Interim VCF uniform for all carriers, distinguishing only between truckload (TL) or less-than-truckload (LTL) carriage.

Method of Computing the Interim VCF

In D.90-02-021, the Interim VCF was established using the following formula:

$$\begin{aligned} &\text{Interim VCF (\$/mile)} \\ &= (\text{minimum wage, \$/hour}) \\ &\quad \times (1 + \text{adjustment factor for wage adders}) \\ &\quad + (\text{fuel, tires, maintenance, and insurance costs; \$/mile}). \end{aligned}$$

The data used to calculate the Interim VCF was derived as follows:

Minimum wage of \$4.25/hour

Wage Adders:

Social Security (FICA)	7.65% up to \$50,400 annual gross
Federal Unemployment Insurance (FUI)	0.8% for the first \$7,000 gross
State Unemployment Insurance (SUI)	4.2%
Workers' Compensation	16.95%

The gross income of \$8,404.80 (at \$4.25/hour) was based on 1,977.6 average working hours per year for line-haul drivers of five or more axles reported in the 1989 prevailing wage data.

An average speed of 48 miles per hour (mph) was assumed for TL carriers and 30 mph for LTL carriers.

Based on the above number of working hours and average speeds, the driver labor cost per mile was calculated to be \$0.115 for TL carriers and \$0.183 for LTL carriers.

Other cost data were taken from the Truck Freight Cost Index (TFCI) established by D.86-12-102. These costs and total costs for TL and LTL carriage are shown in Table I below:

Table I

Cost Element	Industry Average, in \$/mile	
	Truckload	Less-Than-Truckload
Fuel	0.177	0.185
Tires	0.033	0.034
Maintenance	0.154	0.161
Insurance	0.102	0.092
Sub-Total		
Other Costs	0.466	0.472
Driver Labor & Wage Adders	0.115	0.183
Total Cost Per Mile	0.581	0.655

In D.90-02-021 the Commission adopted 12,000 pounds as a typical LTL aggregated load.

Further, in D.90-02-021, the Commission recognized the need for additional hearings to establish the final form of VCF (Final VCF) and a procedure for updating it. Accordingly, the Commission ordered a limited rehearing on the VCF issue.

As to the scope of the rehearing, the Commission stated the following:

"A limited rehearing is hereby granted to consider comments on the adopted variable-cost floor for common carriers, any alternative proposals for determining a variable-cost floor for common carriers, and how the figures used in calculating the variable-cost floor can be updated from time to time. Any alternative proposals concerning just what costs should be included within the variable-cost floor and how the variable-cost floor should be calculated will fall within the scope of this limited rehearing. However, alternatives proposing that something other than variable cost should be the basis of our common carrier floor price are outside the scope of this limited rehearing. Proposals to subject special contracts to the floor price are also outside the scope of this limited rehearing. "

(Ordering Paragraph 2, D.90-02-021.)

Following the rehearing, we now address the following issues:

1. Items of expense to be included in the Final VCF;
2. Level of each item of expense to be included in the Final VCF;
3. Proposals for updating the Final VCF; and
4. Alternative proposals for determining the Final VCF.

We will consider each issue separately.

Items of Expense to be Included in the Final VCF

D.90-02-021 confirmed that the Interim VCF includes costs associated with driver wages including wage adders, fuel, tires, maintenance, and insurance.

While some parties contend that the items of expense included in the Interim VCF should remain unchanged for purposes of formulating the Final VCF, others believe that the items of expense included in the Interim VCF are inadequate and unreasonable. The positions of the parties regarding the items to be included in the Final VCF are summarized below.

California Coalition for Trucking Deregulation (CCTD), the California Manufacturers Association (CMA), and the California League of Food Processors (CLFP) believe that the items of expense that make up the Interim VCF need not be changed.

Various other parties contend that the items of expense included in the Interim VCF do not reflect the out-of-pocket expenses of a shipment. The California Trucking Association (CTA) and National Motor Freight Traffic Association (NMFTA) provide an extensive list of items of expense which they believe should be included in the Final VCF. According to CTA and NMFTA, the Commission should include at least the following items of expense in the Final VCF:

1. Line-haul driver wages plus fringe benefits.
2. Pickup and delivery driver wages plus fringe benefits.
3. Platform handling wages plus fringe benefits.
4. Clerical wages plus fringe benefits.
5. Fuel expenses including taxes.
6. Tire wear expense.
7. Maintenance expenses including both outside and in-house labor and parts.
8. Insurance expense.
9. Equipment depreciation expense.
10. Regulatory expenses.

CTA and NMFTA contend that unless these items of expense are included in the Final VCF, the revenues generated by the VCF will not be adequate to cover the out-of-pocket expenses of performing the service. This will cause an undue burden on other traffic which will have to make up for that shortfall.

DRA, while supporting the items of expense included in D. 90-02-021 (Fuel, Maintenance, Tires, Insurance, and Driver wages), argues that the other items of expense suggested by CTA are outside of the definition of the Commission's VCF and, if included, would inflate the level of the VCF price.

Discussion

In D.90-02-021 the Commission established that the lower limit of the zone of reasonableness of the Interim VCF should be the out-of-pocket expenses associated with a shipment. D.90-02-021 emphasized that for practical purposes a carrier's fixed costs are those assignable to capital investment and overheads. We believe that for truck operations, the out-of-pocket expenses or variable

costs could best be described as the money spent on a freight shipment which would not otherwise be spent if the shipment had not occurred. The ALJ in his proposed decision in this proceeding recommended the inclusion of expenses for depreciation, platform handling, and certain overhead and regulatory costs in the Final VCF. We disagree with the ALJ and have chosen not to include these expenses which we believe fall under the categories of capital costs and overhead expenses. Inclusion of capital costs and overhead expenses in the VCF is prohibited by D.90-02-021. The Final VCF that we adopt will include items of expense defined by D. 90-02-021 which fall in the category of out-of-pocket expenses or variable costs defined above.

We believe that expenses covering pickup, line-haul and delivery of a freight shipment are reasonably associated with the out-of-pocket expense of that shipment and should be included in the Final VCF. Accordingly, we adopt a Final VCF which contains the following items of expense:

- a. Driver wages for pickup, delivery, and line-haul.
- b. Fuel expenses for pickup, delivery, and line-haul.
- c. Tire wear expenses for pickup, delivery, and line-haul.

While not specifically definable as variable costs associated with a shipment, D.90-02-021 included maintenance and insurance expenses in the Interim VCF with the following explanation:

"However, in response to possible public concerns, we will include insurance and maintenance as variable costs."
(D.90-02-021, Revised page 88.)

We see no reason to exclude these expenses from the Final VCF. They will be included.

Turning to the driver wage component, we believe that the Final VCF should include driver wages and the mandated wage adders i.e., SUI, FUI, FICA, and Worker's Compensation. While we include wage adders with driver wages, we will not include other fringe benefits such as health insurance premiums and vacation allowance. We believe that fringe benefits, unlike wage adders, are fixed overhead costs which do not vary with each shipment performed by a carrier.

Also, we note that the driver wage component in the Interim VCF was based on the average number of hours worked per year by statewide line-haul drivers reported in the prevailing wage data for 1989. We believe that the total working hours reported in the prevailing wage data would include driver labor for line-haul as well as pickup and delivery. While parties have taken issue with the driver wage level used in the Interim VCF, they have not objected to the procedure for computing the driver wage component. We will use the same procedure for computing the driver wage component of the Final VCF.

Level of Each Item of Expense

From the discussion in the previous section, it follows that we need to establish the level for the following items of expense:

1. Driver wage including wage adders
2. Fuel expense
3. Tire expense
4. Insurance expense
5. Maintenance expense

In addition to establishing a level for each item of expense, we also need to adopt average speeds for TL and LTL shipments as well as an appropriate weight for LTL shipments.

Following is a discussion of the level of each item of expense.

Driver Wages

The Commission used the minimum wage of \$4.25 per hour to compile the driver wage component in the Interim VCF. Use of the minimum wage was the most controversial issue in Phase II.

CCTD and CLFP support the use of the minimum wage to establish the driver wage component of the VCF. While CCTD and CLFP support total deregulation, they believe that the proposed Interim VCF based on the minimum wage is the most acceptable alternative to total deregulation.

CMA argues that the benefit of the use of the minimum wage is that its determination does not need any significant study or analysis. CMA contends that the use of the minimum wage allows the computed running cost to be low enough to meet the basic out-of-pocket expenses in most cases. In fact, CMA contends that in backhaul situations, the out-of-pocket expenses will be below the Interim VCF based on the minimum wage. According to CMA, the use of the minimum wage is the best compromise to reflect out-of-pocket expenses in all situations.

While the use of the minimum wage is supported by shippers, it was strongly opposed by various organizations representing carriers and the California Teamsters Public Affairs Council (Teamsters). CTA, NMFTA, and Pacific Motor Tariff Bureau (PMTB) oppose the use of the minimum wage.

These parties believe that the Interim VCF based on the minimum wage is inadequate and unreasonable. According to these parties, the wage level in the VCF should be no lower than the prevailing wage found in the Commission's own report.

While supporting the use of the prevailing wage to establish the VCF, Teamsters recommends, as an alternative, the use of wage data supplied by the U.S. Department of Labor, Bureau of Labor Statistics, through annual wage surveys of selected geographical areas in California. According to Teamsters, the

Commission could use the data to establish a weighted average wage rate based on population concentration throughout the state.

DRA did not make a specific recommendation for the wage level to be adopted, but conducted studies to develop alternatives to the \$14.29 per hour (Teamster wage), the \$10.71 per hour (weighted average of prevailing wage survey) and the \$4.25 per hour (minimum wage). Three of the studies based on prevailing wage surveys showed wages of \$4.91, \$8.36, and \$9.17 per hour.

In support of its position to use wage levels higher than the minimum wage, CTA provided a study attempting to link driver wages with at-fault accidents and citations. This study divided 952 carriers who responded to the 1988 prevailing wage survey into two groups: those who paid more and those who paid less than our 1988 prevailing wage determination of \$11.16 per hour for five-axle trucks. CTA merged the wage data from the prevailing wage survey with at-fault accident and citation data from the California Highway Patrol (CHP) MISTER data set. For the two groups, CTA calculated aggregate at-fault accident and citation rates per driver. For example, to find the at-fault accident rate for each group, CTA divided the total number of at-fault accidents in that group by the total number of drivers for that group. CTA found that the group paying hourly wages higher than the prevailing wage had aggregate at-fault accident and citation rates per driver that were lower than the aggregate rates for the group which paid drivers less than the prevailing wage.

CTA later filed an amended version of its study which deleted carriers with more than 10% purchased transportation, carriers which reported less than three drivers, and carriers which paid some of its drivers less than the prevailing wage and some which paid more than the prevailing wage. CTA also added carriers who indicated that wages were paid on a per-mile basis rather than on an hourly basis. This resulted in a database of 552 carriers.

CTA computed the same aggregate statistics and arrived at the same conclusions. From this study, CTA reached two conclusions:

(1) A VCF based on less than prevailing wage will have a direct and detrimental impact on carrier safety.

(2) Setting the variable-cost floor that will foster the hiring and retention of the competent, most qualified drivers and requiring all rates to reflect at least that wage level is one instance where a significant public benefit will result.

CMA submitted rebuttal testimony that questioned the validity of the CTA study. CMA claims that the CTA study failed to consider accident and citation exposure. CMA asserts that any reasonable consideration of accident and citation data must develop further data on how those compared were exposed to the risk of accident or citation. The CTA study looked at data on a "per driver" basis. This meant that the driver with low mileage was seen as no different from the one with high mileage. CMA claims that this almost certainly biases the data in relation to wage levels because many of the large carriers who pay the highest wages are LTL carriers. Compared to the TL operators who tend to have lower wages, they have fewer miles per driver because of their higher proportion of slower urban miles. CMA also asserts that the CHP MISTER data collection is by no means complete. Records of citations made, and accidents investigated by city police may not always reach the MISTER database, so a carrier with a high proportion of urban miles will tend to look better in the MISTER data record.

DRA submitted rebuttal testimony from two witnesses. DRA witness Hicks produced anecdotal evidence which questioned the validity of the data used by CTA in the first version of its study.

Mr. Hicks testified that after reviewing the CTA database, he contacted several carriers with the following results:

(1) The CTA database reported a carrier which employed one driver who was involved in two at-fault accidents and 86 citations. This carrier actually also employed 50 subhaulers which carried the carriers' identification. The carrier accepted responsibility for its subhauler accidents and citations. In addition, the carrier made only interstate hauls during the study period which were not under the rate jurisdiction of the CPUC.

(2) The CTA database reported another carrier with one driver involved in three at-fault accidents and 89 citations. This carrier also employed five subhaulers and seventeen drivers which were paid by the mile rather than by the hour and were not reported in the database. This carrier had passed safety inspections by both the United States Department of Transportation (DOT) and the California Highway Patrol (CHP).

(3) The CTA database reported a third carrier which had two drivers involved in four at-fault accidents and 324 citations. This carrier actually employed 542 drivers in 1988. The DOT recommends that other carriers pattern their safety programs after this carrier, due to its exemplary record.

DRA witness Litkouhi submitted rebuttal testimony which criticized the CTA study on a number of points:

(1) CTA did not provide any standard statistical test to validate or support its conclusions.

(2) The CTA study fails to account for the many factors that contribute to accidents and violations.

(3) By dividing the carriers into two groups according to prevailing wage, CTA implicitly assumes that no factor other than the weighted average wage for drivers of five axle trucks alone determines at-fault accidents, citations, and moving citations per driver. Contrary to CTA assumption, numerous other factors influence accident and citation rates.

(4) CTA compared the two groups without first establishing their compatibility. It did not check whether there were other factors besides drivers' weighted average wage rates which differentiate these two groups of carriers.

(5) Unlike CTA, DRA computed correlation coefficients between driver wages and accidents/citations to determine whether a statistically significant degree of association exists between the variables. DRA found that these coefficients were effectively zero, implying that there is no relationship between weighted average wage and at-fault accidents, weighted average wage rates and citations, or weighted average wage and moving citations.

(6) Since CTA's database was the result of unscientific sampling, CTA's conclusions cannot be generalized to the entire general freight trucking industry.

(7) CTA did not test to determine whether the two carrier groups are from the same population. Using a t-test, DRA showed that a statistically significant difference exists between the size of the firms in the two carrier groups. The group which pays drivers wages higher than the prevailing wage is characterized by a larger number of drivers per carrier. Therefore, CTA may actually be comparing the safety experience of larger carriers versus smaller carriers rather than higher paid drivers versus lower paid drivers.

(8) The CHP MISTER database used in the CTA study cannot provide a high level of precision for recording and associating all accidents and carriers' records to the specific carriers. Furthermore, none of the data are verified, nor does the database give information about convictions.

(9) Both of CTA's studies contained aggregated data described as "moving citations" per driver. DRA produced a letter from Commander Robert C. Berg of the California Highway patrol (CHP) which stated that, "I am unable to provide a definition as to which violations could be called 'moving violations.' I am not

aware of any Vehicle Code section or other statutory provision that defines this term."

(10) Both of CTA's studies compare a calendar year (1988) of accidents and citations to a driver wage survey made at a specific point in time (March 1988). It is not likely that all driver wages would have remained constant over the calendar year (1988) of accident and citation records.

(11) CTA failed to include benefits other than base wages in comparing wage levels for drivers.

(12) The CTA study incorrectly assumes the same level of exposure in terms of miles driven for all drivers.

(13) CTA incorrectly arrives at the conclusion that the carriers which pay less than the prevailing wage have more at-fault accidents and citations. In fact, less than 30% of the carriers in the less than prevailing wage group report any at-fault accidents.

(14) CTA's conclusions do not hold at the extremes. The six highest paid carriers have aggregate accident and citation rates per driver which are higher than the aggregate levels for the six lowest wage carriers.

Discussion

In Decision D.90-02-021, we rejected the argument that the minimum rates have an impact on the safety of the trucking industry and the public. To put it simply, we see no credible evidence in this proceeding to change our findings. CTA's argument, in effect, depends on two links in a chain: first, that a higher VCF will lead to higher wages, and second, that higher wages will lead to safer driving. Neither the evidence in this proceeding nor economic theory supports the first link. CTA offers its study in support of the second link. But that study is invalid; indeed statistical analysis of the data suggests that wages and safety are not related. In short, other factors are much

more important in determining accident rates. The two links of CTA's argument remain unconvincing.

Our purpose is to choose a wage level consistent with our goal, which is to set "a lower limit of a minimum level of variable cost" which reflects a carrier's out-of-pocket expenses, in an industry where wage rates vary greatly. As we stated in D.90-02-021:

"We choose to make the floor prices uniform for all common carriers, distinguished only between truckload and less-than-truckload carriage. Although there are theoretical virtues to allowing individual carriers to use their own variable costs in the calculations, these benefits are outweighed by problems with allowing floor prices to vary among carriers."

No party to this proceeding made a credible challenge to that approach.

Further, we do not wish to establish a VCF which will frequently be approached in negotiations between parties. Such a system would erode the purpose of allowing maximum flexibility for the industry to structure itself in a manner which makes the most economic sense.

Parties have shown that a wide range of wage rates can be considered reasonable for the purposes of adopting a VCF. The lowest wage assumption, proposed by several parties, is the minimum wage of \$4.25/hr, which is clearly consistent with our desire to set a floor. DRA proposes intermediate assumptions of \$4.91, \$8.36, and \$9.17, based on various statistical approaches to the wage data. Other parties urge, at a minimum, the so-called "base wage" of \$10.71/hr, or the use of BLS wage statistics; they assert that skilled professionals make higher wages than that.

We adopt the \$10.71 prevailing wage figure proposed by the ALJ. This figure is reasonable for establishing the variable cost floor. However, we do not adopt the methodology of the Prevailing wage study. We believe that the prevailing study may

have an upward bias in determining wage rates. In part this could be caused by the nature of the firms which are most likely to respond to the survey. For example, firms paying higher wages may have more of an incentive to respond to the survey, and larger carriers with higher wages may find responding to the survey to be less burdensome than small carriers with low wages. On balance we find \$10.71 per hour reasonable for establishing the variable cost floor, even though we believe this wage may well overstate actual out-of-pocket costs. This is mitigated in large part by our decision not to adopt an update procedure.

We emphasize that trucking rates in general are likely to remain well above the floor that we adopt today because the trucking industry is workably competitive. In such a market, prices are regulated by competition, and reflect a carrier's long-run costs, including not only out-of-pocket expenses, but also enough to cover capital investment. Only in time of rapid and extreme contraction will demand fall so much that rates could approach the floor. Further, even in such times, well-run companies of any kind will avoid providing services where price fails to cover out-of-pocket costs. Thus, the need for companies in a competitive market to maximize their profits will provide a strong bar to prices lower than out-of-pocket expenses. The floor we adopt today, including a relatively high level for wage rates, makes such a result even less likely.

We next address the issue of wage adders. Wage adders depend on annual income, i.e. the average number of hours per year worked by drivers. The prevailing wage data show that line-haul drivers average 1,977.6 working hours per year, which at \$10.71 per hour would generate \$21,180 annually. Parties to the proceeding did not challenge the use of 1,977.6 annual working hours. The rates for wage adders are mandated. We will use the latest available data for developing wage adders.

We now turn to CTA's study, which claimed to demonstrate a link between driver wages and competence. Both DRA and CMA provided testimony clearly demonstrating that the CTA study is fatally deficient and fails to substantiate CTA's claims. The only value gleaned from CTA's data was derived by DRA, and that showed no correlation between wage rates and driver safety. This is quite the opposite of CTA's assertion in their testimony and further supports our position in D.90-02-021 that safety is best enforced directly. To this limited extent the CTA study served some useful purpose in this proceeding. As an observation, we expect carriers with better safety records would have lower insurance costs, and possibly lower operating costs.

Finally, we note that there is no mechanism in the VCF which guarantees that carriers must pay at least the prevailing wage to drivers. The fact that adopting the prevailing wage will have no impact on driver hiring, driver retention, and driver competency is clearly demonstrated by CTA's own data. Of the 952 carriers in the CTA study, 645 (67.8%) of those carriers pay less than the prevailing wage. Therefore, even if the discredited conclusions drawn by CTA in its study were true, the imposition of the prevailing wage in the calculation of the VCF will result in no change in the level of safety or driver competence experienced by the carriers we regulate under this program.

Fuel, Tires, Maintenance, and Insurance Expenses

The Interim VCF includes fuel, tire, maintenance, and insurance expenses. While D.90-02-021 does not provide calculations for these costs, it explains that the costs were based on the data set used to calculate the TFCI, modified to exclude those carriers that did not report vehicle miles in their annual report. D.90-02-021 provided the following description of the TFCI:

"The TFCI was designed as a system to track cost changes for motor carriers of truckload and less-than-truckload general freight. The

index, which is substantially as proposed by CMA and CTA in Application (A.) 83-11-049, was adopted in D.86-04-045 and went into effect July 1, 1987. Costs in the TFCI are aggregated into seven categories each with a surrogate to measure actual cost changes. With the exception of the labor and insurance categories various United States Department of Labor, Bureau of Labor Statistics producer price indexes (producer price indexes) are used as surrogates for all categories. The surrogate for labor is developed from the Commission's Highway Carriers Prevailing Wage Report (Prevailing Wage Report), and the surrogate for insurance is based on the California Automobile Assigned Risk Plan." (Revised pages 85 and 86.)

During the rehearing on the VCF issue, CTA requested that a detailed explanation and/or calculation of each cost item included in the Interim VCF be made available for the record.

While such calculations were unavailable, DRA's witness Litkouhi testified that the procedure for calculating the TFCI is described in "The Truck Freight Cost Index: Handbook for Calculation" (TFCI Handbook), which is Appendix E to D.86-12-102. According to Litkouhi, the TFCI Handbook identifies each category of expense by the uniform system of accounts specified in the Code of Federal Regulations (49 CFR 1207). Litkouhi recommended that fuel, tire, maintenance, and insurance expenses per mile for TL and LTL operations be calculated using the method described in the TFCI Handbook.

No other proposals for computing the non-labor cost components were made.

Discussion

In his proposed decision, the ALJ recommended adoption of the TFCI as the methodology to update the Final VCF. We believe that the TFCI method of calculating fuel, tire, maintenance, and insurance expenses is too complicated and time consuming.

Additional arguments against use of the TFCI methodology appear later in this decision.

During the limited rehearing on the VCF issue, none of the parties challenged the level of the non-labor components. Based on the lack of objections, which indicates their agreement, the non-labor components in the Final VCF will be established at the same level as those shown in the Interim VCF.

Vehicle Speed and LTL Load

As mentioned earlier, in addition to selecting an appropriate driver wage, we need to adopt average driving speeds for TL and LTL operations. In D.90-02-021, the Commission used average speeds of 48 mph and 30 mph for TL operations and LTL operations, respectively. While certain parties consider this selection to be arbitrary, they have not provided any studies or proposals that would persuade us to select different speeds. We recognize that the actual speed at which trucks travel would depend on road and traffic conditions. However, we believe that it would be practically impossible to determine the precise average speed of all truck travel. Rather than adopting speeds for different conditions, a single reasonable speed for each TL and LTL operation would be simple and practical. We believe that for the purpose of establishing a VCF, 48 mph and 30 mph provide the best approximation of average speeds for TL and LTL operations, respectively. We will adopt them as average speeds for computing the driver wage component of the Final VCF.

Turning to the question of a typical LTL load, we note that the Commission used 12,000 pounds as the split between TL and LTL shipments in establishing the Interim VCF. Only a few recommendations to modify this weight were made. However, no party provided any convincing evidence to modify this level for the TL/LTL split. On the other hand, it is obvious that many, if not most LTL vehicles operate with a load well in excess of 12,000 pounds. An average aggregate load for the LTL industry would be

much closer to the maximum carrying capacity of a vehicle. We recognize that the average load on any one vehicle will vary with geography, competition, and the level of business activity overall. It would not be appropriate to set the typical load either too high or too low. We will therefore have the carrier certify to the typical aggregate LTL load of its system. This will be an added burden on the staff to monitor carrier certifications, but one well within their capabilities. We will continue to use 12,000 pounds as the split between TL and LTL shipments.

The Final VCF

The calculations for the Final VCF are shown in Appendix A. The level of the components for fuel, tires, maintenance, and insurance are retained at the same level as those in the Interim VCF. However, the driver wage component has been increased from \$4.25 to \$10.71 per hour. Also, the percentage allowance for workers compensation is increased from 16.95% of the base wage to 17.62%. The remaining wage adders are calculated at the same percent allowances as those in the Interim VCF. According to the calculations, VCFs for TL and LTL operations should be \$0.754/mile and \$0.932/mile, respectively.

Since some existing tariff and contract rates governed by the G.O. 147-B floor price are lower than the floor adopted in the Final VCF, we will grandfather those rates into the regulatory program as revised by this decision. To implement the revised program, we will issue G.O. 147-C replacing G.O. 147-B.

Updating of Items of Expense Included in the Final VCF

Most of the parties did not recommend detailed update methodologies. Several of the parties testified that the VCF should be updated to adjust for inflation. Three of the parties proposed all or part of a methodology.

DRA, CMA, CTA, and CLFP suggested annual updates. Teamsters suggested biannual updates for the fuel, tires, maintenance, and insurance components and annual updates for the

labor component. The other parties did not make a recommendation on updating.

DRA testified that a modified version of the Truck Freight Cost Index (TFCI) would be an appropriate methodology to update the VCF. The TFCI used annual report data to establish percentage weights for carrier cost components and then used cost component measures (Producers Price Index, prevailing wage and assigned risk insurance rates) to adjust carrier tariff rates. DRA would limit the TFCI cost components to the five adopted in D.90-02-021 and modify the measure for labor and insurance. Instead of using the prevailing wage survey to update the labor component, DRA recommended using carrier specific wage rates. For the insurance component, the TFCI used a survey of insurance company assigned risk rates and DRA proposed the use of U.S. Claims Cost Index published annually by Best's Review.

CMA recommended that the TFCI should be used to update the VCF, but did not suggest modifications to make it applicable to the VCF.

CTA recommended annual hearings to update the VCF.

CLFP did not recommend a methodology, but did recommend cancelling the prevailing wage survey and the TFCI.

Teamsters suggested an alternate measure for updating the labor component of the VCF. They recommended using the Bureau of Labor Statistics (BLS) Area Wage Surveys and Employer Cost for Employee Compensation Publications adjusted to include wage adders. They did not supply a specific methodology to use for the ten Area Wage Surveys, the employer cost data, and the wage adders.

Discussion

Except for the proposal of DRA, the testimony on updating the VCF was sparse at best. Only DRA's recommendation would produce an update without the need for further hearings.

We have reservations concerning the update procedure methodology proposed by DRA. DRA's methodology is a modification

of the TFCI program. We are aware that the TFCI methodology was heavily criticized in the past and those criticisms have not been adequately addressed in this record.

DRA's methodology would require an analysis of annual report cost and performance data from regulated highway carriers on a yearly basis. This data analysis is time consuming and costly. After the data is analyzed it would only be used to set weights and BLS data would be used to track the actual changes in cost. We question this part of the methodology. Some of our questions are:

- 1) If actual carrier cost data is used to calculate the weights, why is BLS data used to calculate the changes?
- 2) Why BLS data is superior to annual report data, especially when considering annual report data is specific to the California Common Carrier industry.
- 3) Assuming BLS data is superior, why is it necessary to use the annual report data?
- 4) Do the weights need to be adjusted every year given the fact that their recalculation is labor intensive?

We would need further evidence on the value of this procedure before we can consider adopting it.

The evidence on the record also was insufficient to compare labor component data sources. The record does not indicate a clear historical comparison between carrier filed wage data, the prevailing wage and the area wage survey. We would like more information on what market distortions could occur from using one or more of these methods over time.

In general rate cases, adopted rates are presumed reasonable until changed. Where we expect rates to change frequently, we have created procedures for reviewing them periodically. However, that should not be necessary with the VCF. The data upon which the VCF is based appears reasonable. It is our

intention to set the VCF low enough that we will not be bumping into it all the time. Neither shippers nor carriers, in their negotiations, should expect the VCF to become the going rate. Nor should we as regulators be reviewing these numbers annually, if they work as intended. Of course, in the event that circumstances change substantially, any party may initiate a proceeding to review the VCF.

We disagree with the ALJ's proposal to prescribe an update methodology and believe that sufficient evidence has not been presented to adopt an update methodology. We believe the adopted VCF will be sufficient in the foreseeable future without an updating procedure.

Alternative Proposals for Computing VCF

In granting rehearing on the VCF issue, the Commission allowed parties to make alternative proposals concerning which items of expense should be included in the Final VCF and how the Final VCF should be calculated.

CTA in its supplemental testimony recommends that the Commission set a different VCF for each carrier at a level no lower than 95% of its rates on file on March 14, 1990. According to CTA's proposal, no carrier will be allowed to reduce its rates below the 95% level without obtaining the Commission's approval through filing of a formal application.

CTA contends that setting the VCF at 95% of the tariff rates for each carrier would relieve the Commission of the task of periodically establishing new industry wide cost levels for the VCF. CTA maintains that its proposal would provide carriers greater discretion in managing their costs. According to CTA, its proposed VCF will allow carriers to recover the following out-of-pocket expenses:

- | | |
|--|--|
| o Officer and supervisory salaries | o Tire wear expenses |
| o Driver wages including fringes | o Insurance expenses |
| o Fuel, oil, and lubricant expenses | o Depreciation expenses |
| o Maintenance expenses | o Communication and Utilities expenses |
| o A portion of general supplies and expenses | |

In support of its proposal, CTA prepared an expense profile or breakdown of expenses by category for 29 carriers which, according to CTA, demonstrated a capacity for hiring and retaining competent drivers. The results of CTA's analysis of the expense breakdown is shown in Table 2.

TABLE 2
1988 SHARE OF EXPENSE

1. Officers & Supervisors	.1066
2. Wages & Fringes	.5051
3. Fuel & Oil	.0462
4. Maintenance	.0560
5. Tires	.0112
6. General Supplies - Variable	.0210
7. General Supplies - Non-Variable	.0210*
8. Op. Taxes	.0471
9. Insurance	.0370
10. Communications, Util.	.0223
11. Depreciation	.0427
12. Bldg., Equip. Rents	.0132*
13. Disp. of Assets	.0002*
14. Miscellaneous	.0103*

Non-Variable	.0447
Variable	.9553

*Non-Variable Expense

Since CTA's analysis shows that a carrier's variable costs (according to CTA's definition) are approximately 95% of the carrier's total cost, CTA recommends that the carrier's VCF should be set at 95% of the rates in the carrier's tariff.

While being opposed to CTA's proposal of adopting a different VCF for each carrier, DRA, in its rebuttal testimony, provided its analysis of the breakdown of variable and non-variable costs for the same 29 carriers used by CTA. DRA maintains that in making its analysis, it relied on the definition of variable cost used in D.90-02-021. DRA's analysis shows that variable costs are 35.3% of a carrier's total expenses.

Although DRA provided rebuttal to CTA's alternative proposal for a VCF, DRA maintains that CTA's proposal would pose administrative problems for both carriers and Commission staff for the following reasons:

- o New carriers establishing service will have no experience upon which to base variable cost prices.
- o Commission staff will be required to track all changes in rates and conditions applying to rates relative to those in effect on March 14, 1990. This task would become extremely burdensome over a long period of time.

Discussion

CTA's proposal to base the VCF at 95% of tariff rates differs from the Interim VCF. CTA claims it will provide carriers an incentive to keep their rates low in a competitive environment. However, for reasons cited by DRA, we agree that it would be difficult to administer. The Commission recognized this and in D.90-02-021 provided the following reason for not adopting a carrier-specific VCF:

"We choose to make the floor prices uniform for all common carriers, distinguished only between truckload and less-than-truckload carriage. Although there are theoretical virtues to allowing individual carriers to use their own variable costs in the calculations, these benefits are outweighed by problems with allowing floor prices to vary among carriers. Individually set variable costs could cause problems for owner-operators and subhaulers,

and could raise claims of discrimination from carriers with high labor rates." (D.90-02-021, Rev. Page 88-89.)

We still hold the same opinion regarding a carrier-specific VCF. We will not adopt CTA's proposal.

While we have not adopted the concept of a carrier-specific VCF, we have, for reasons discussed earlier, established the non-labor components in the Final VCF at the same level as those shown in the Interim VCF. In arriving at the level of the driver wage component to be established in the Final VCF, we relied on DRA's proposals and set it at the higher range of proposed assumptions of \$10.71 per hour with appropriate percent allowances for wage adders. Also, as discussed, we have not adopted or prescribed an update methodology and no additional items of expense are adopted into the Final VCF.

Comments on ALJ's Proposed Decision

The ALJ's proposed decision was filed and mailed to the parties on January 31, 1991. Ad Hoc Carriers Committee, CTA, CCTD, DRA, Filipovich, NMFTA, and the Teamsters filed comments on the proposed decision. CTA and NMFTA also filed reply comments. After reviewing the comments, we have corrected certain errors and omissions. Other than correcting errors and omissions we believe the following modifications to the decision should be made.

Revisions to GO 147-B

GO 147-B, which was adopted by D.90-02-021, includes "Rules Governing Tariff Filings by Common Carriers and Contract Filings by Contract Carriers." Since this decision revises the rules governing tariff filings for common carriers, GO 147-B will have to be revised to reflect the revisions being adopted. Accordingly, we will issue GO 147-C to replace GO 147-B. The revisions included in GO 147-C are:

- a. In GO 147-B the variable-cost floor rate (VCF) is referred to as "floor price." All references to "floor price" in GO 147-B are modified to "VCF" in GO 147-C.

- b. Revised Page 16 of GO 147-B includes a "FLOOR PRICE CERTIFICATION" form. GO 147-B requires that every common carrier tariff include a Floor Price Certification form declaring that the rate per mile in a common carrier's tariff is not lower than the "floor price." GO 147-C refers to the "Floor Price Certification" form as the VCF Certification form.
- c. Since some existing tariff and contract rates governed by GO 147-C are lower than the rate adopted in the VCF, we will grandfather those rates into the regulatory program adopted in GO 147-C.

Subhauler Issues

The Transportation Division (TD) issued its report on subhauler protections on August 6, 1990, D.90-11-059 authorized parties to file comments on the report no later than January 20, 1991. D.90-11-059 also directed the ALJ to issue a ruling setting further hearings. The ALJ was also required to delineate the scope of modifications to GO 102-H and identify any other issues to be considered during the hearings.

U.S. Transport Services (USTS) filed comments on TD's report on December 17, 1990.

On January 18, 1991, DRA filed a motion requesting that the Commission decide the unresolved subhauler issues based on the evidentiary record introduced in Phase I. CTA filed a response in opposition to DRA's motion on January 24, 1991.

In addition, CTA, on January 15, 1991, filed an amendment to its earlier application (A.87-05-037) seeking modifications to the rules governing subhauler payments and bonding requirements. In its amendment, CTA seeks to fully revise the modifications sought in the original application. The amendment also seeks to consolidate A.87-05-037 with I.88-08-046.

On March 6, 1991, Highway Carriers Association (HCA) filed a protest to CTA's amendment and declared its support of TD's August 6, 1991 subhauler report.

We have reviewed the pleadings filed by DRA and CTA, as well as the comments filed by USTS and HCA's protest. After careful review of these pleadings and comments, we believe that subhauler protections provided by GO 102-H are adequate and that no modifications to GO 102-H are necessary. Accordingly, we will hold no further hearings on this issue. However, we will grant CTA's request to consolidate A.87-05-037 with I.88-08-046.

Closing Proceedings in A.90-09-003 et al.

Since all outstanding subhauler protection issues raised in I.88-08-046 and A.87-05-037 have been resolved in D.90-11-059 or this decision, the proceedings will be closed.

We will add certain findings of fact, conclusions of law and ordering paragraphs to reflect the modification to the proposed decision. We will also include GO 147-C in Appendix B to the decision.

Hearings in Proceeding A.90-09-003 et al.

The ALJ's proposed decision providing rate relief for fuel cost increases due to the Middle East crisis was filed and mailed to the parties on January 31, 1991. The proposed decision, which was the Third Interim Opinion in these proceedings, has been withdrawn from consideration from the Commission's agenda. While we believe that the Middle East crisis has ended, we want to provide parties an opportunity to show if the 10% increase in the upper zone of reasonableness authorized in D.90-09-086 should continue. Accordingly, we will hold a hearing on June 19, 1991 to address the issue of the 10% increase in the upper zone of reasonableness. Parties should mail their prepared testimony no later than June 7, 1991.

Findings of Fact

1. On August 24, 1988, the Commission instituted an investigation, I.88-08-046, into the regulation of general freight transportation by truck.

2. The Commission issued D.89-10-039 in I.88-08-046.

3. On February 7, 1990, the Commission issued D.90-02-021 which modified D.89-10-039 and, among other things, granted a limited rehearing to consider possible revisions to the Interim VCF for common carriers.

4. D.90-02-021 also ordered further hearings to consider:
(1) revenue sharing between prime carriers and subhaulers and
(2) amending Commission rules and regulations on leasing between carriers to determine if the rules and regulations should be patterned more closely to those of the ICC.

5. The above issues were considered in two separate phases.

6. Phase I considered the issues of revenue sharing between subhaulers and prime carriers and possible amendment to Commission rules and regulations on leasing between carriers.

7. Phase II considered revisions to the Interim VCF.

8. The Commission issued D.90-11-059 in Phase I.

9. TD staff issued a report on subhaul bonding issues on August 6, 1990 and D.90-11-059 ordered further hearings on subhauler protections. Parties filed comments on the TD staff report.

10. Subhauler protections are adequate under GO 102-H.

11. This decision discusses Phase II and subhauler protection issues.

12. The Final VCF could best be described as the out-of-pocket expenses associated with a freight shipment.

13. For truck operations, the out-of-pocket expenses or variable costs are defined as the money spent on a freight shipment which would not otherwise be spent if the shipment had not occurred.

14. Driver wages and mandated wage adders (SUI, FUI, FICA, and Workers' Compensation) for pickup, line haul, and delivery are out-of-pocket expenses associated with a freight shipment.

15. Fuel and tire wear expenses are out-of-pocket expenses.

16. Concerns for public safety require the inclusion of insurance and maintenance expenses in the Final VCF.

17. The Commission's stated goal for setting the Interim VCF very low was to remove any incentive for carriers to index their own rates at the lower end of the zone of reasonableness and to create an incentive for carriers to set cost-based rates.

18. For the period 1981-89, TD staff issued reports on prevailing wage surveys (Prevailing Wage Reports) for general freight and certain other highway carriers on an annual basis.

19. Prevailing Wage Reports established the prevailing wage for truck drivers for the year based upon responses received from the industry.

20. CTA's safety study served little value in this proceeding.

21. The driver wage component of the Interim VCF is based on average speeds of 48 and 30 mph for TL and LTL operations, respectively.

22. Actual speeds at which trucks travel depend on road conditions.

23. It would be impossible to determine the precise average speed of truck travel.

24. For the purpose of establishing the Final VCF, 48 mph and 30 mph provide the best approximation of average speeds for TL and LTL operations, respectively.

25. The Commission used 12,000 pounds as a typical LTL load in establishing the Interim VCF.

26. No party provided convincing evidence to modify the 12,000 pound split between TL and LTL shipments.

27. Most LTL vehicles operate with an average load in excess of 12,000 pounds.

28. The TFCI Handbook provides a procedure for computing the level of expenses for fuel, tires, maintenance, and insurance.

29. It would take considerable time and effort to calculate the level of fuel, tire, maintenance, and insurance expenses in accordance with the procedure described in the TFCI Handbook.

30. The TFCI Handbook uses various PPIs published by BLS to update fuel, tire, and vehicle parts (surrogate for maintenance) costs.

31. No party provided sufficient evidence to support inclusion of additional items of expense into the Final VCF.

32. CTA proposes the Commission set a different VCF for each carrier at a level no lower than 95% of its rates on file on March 14, 1990.

33. GO 147-B includes "Rules Governing Tariff Filings by Common Carriers and Contract Filing by Contract Carriers."

34. Since this decision revises the rules governing tariff filings by common carriers, GO 147-B will have to be revised and replaced by GO 147-C to reflect the revisions being adopted.

35. All references to "floor price" in GO 147-B need to be changed to variable-cost floor rate.

36. Since some existing tariff and contract rates governed by GO 147-C are lower than the VCF being adopted, those rates have to be grandfathered into the regulatory program being adopted in GO 147-C.

37. Carrier-specific VCFs would be difficult to administer.

38. Carrier-specific VCFs could cause problems for owner-operators and subhaulers and could raise claims of discrimination from carriers with higher labor rates.

Conclusions of Law

1. The Final VCF should include the following items of expenses:

- a. Driver wage including wage adders
- b. Fuel expense
- c. Tire expense
- d. Maintenance expense
- e. Insurance expense

2. The driver wage component of the Final VCF should be \$10.71 per hour.

3. The level of expenses to be included in the Final VCF for fuel, tires, maintenance, and insurance should be established at the same level as contained in the Interim VCF.

4. LTL carriers should certify to the typical aggregate load of their system.

5. CTA's proposal to adopt carrier-specific VCFs should not be adopted.

6. GO 147-B should be revised and replaced by GO 147-C to reflect the new regulatory program being adopted in this decision.

7. Existing tariff and contract rates which are lower than the adopted VCF should be grandfathered into the regulatory program being adopted in GO 147-C.

8. GO 102-H should not be modified, and no further hearings are required.

9. A hearing to address the issue of the 10% increase in the zone of reasonableness shall be held at 9:30 a.m. on June 19, 1991, in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California. Prepared testimony on the issue should be mailed on or before June 7, 1991.

10. Proceedings in A.90-09-003, A.90-09-005, A90-09-023, A.90-09-028, A.90-09-029, A.90-09-030, A.90-09-031, A.90-09-033, and A.90-09-039 shall remain open to address the issue of the 10% increase in the zone of reasonableness authorized in D.90-09-086.

FOURTH INTERIM ORDER

IT IS ORDERED that:

1. The procedure for establishing the variable-cost floor rate (VCF) for common carriers of general freight transportation set forth in the body and appendices of this decision is adopted.
2. The Final VCF set forth in Appendix A is adopted.
3. General Order (G.O.) 147-C which implements adoption of the Final VCF and is attached as Appendix B to this decision, shall replace G.O. 147-B. The new general order shall become effective on June 7, 1991.
4. All rates and contracts governed by G.O. 147-B and in effect immediately prior to the effective date of G.O. 147-C shall be grandfathered into the regulatory program as revised by G.O. 147-C. General freight contracts containing or based on common carrier rates in effect prior to May 8, 1991 may remain in effect until their expiration dates.
5. Ordering Paragraph 3 of D.90-11-059, which ordered further hearings on subhauler protection issues, is rescinded.
6. The consolidated proceedings in A.87-05-037 and A.90-07-003 are closed.
7. The Executive Director shall serve a copy of this order, with attachments, on all highway common Carriers and appearances in

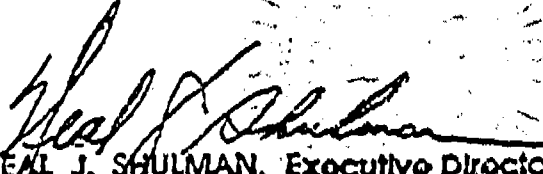
this investigation. The Executive Director will serve a copy of GO 147-C on all carriers subject to it.

This order becomes effective 30 days from today.

Dated May 8, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
PB

APPENDIX A

Line No.	Items of expense	Truckload in \$/mile	Less-than-truckload in \$/mile
1	Fuel	0.177	0.185
2	Tires	0.033	0.034
3	Maintenance	0.154	0.161
4	Insurance	0.102	0.092
5	Subtotal	0.466	0.472
6	Driver wage component+wage adders	0.288	0.460
7	Total VCF \$/mile	0.754	0.932

Calculation of Driver Wage Component of the VCF

Yearly base wage for 1977.6 hours x \$10.71/Hr.	\$21,180.10
FICA 7.65% x base wage	1,620.28
FUI 0.80% x \$7,000.00	56.00
SUI 3.40% x base wage	720.12
Workers' Comp. Ins. 17.62% (eff. 1/1/91)	3,731.93
Total labor cost/year	27,308.43
Total cost/hour divide by 1977.6 hours/year	13.81
TL driver labor component of VCF divide by 48 MPH	\$0.288
LTL labor component of VCF divide by 30 MPH	\$0.460

Note: TL - Indicates truckload
LTL - Indicates less truckload

(END OF APPENDIX A)

GENERAL ORDER NO. 147-C
(Supersedes General Order No. 147-B)

APPENDIX B
GENERAL ORDER 147-C
Page 1

PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA

RULES GOVERNING TARIFF FILINGS BY COMMON CARRIERS AND CONTRACT
FILINGS BY CONTRACT CARRIERS

Adopted May 8, 1991 . Effective June 7, 1991 .

Decision 91-05-027 in I-88-08-046 et al.

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RULE 1 - APPLICATION AND EXCEPTIONS

- 1.1 Tariffs, contracts, and contract rate schedules, supplements, amendments, or revised pages filed to become effective on or after the effective date of this General Order shall conform with the rules herein established.
- 1.2 When provisions of this General Order are in conflict with the Commission's Rules of Practice and Procedure, the provisions of this General Order shall apply.
- 1.3 Except as otherwise provided, the carriers listed below are subject to this General Order:
 - (a) Highway common carriers as defined in Public Utilities Code (Code) Section 213;
 - (b) Highway contract carriers as defined in Code Section 3517.
- 1.4 The provisions of this General Order do not apply to transportation by independent contractor subhaulers when such transportation is performed for other carriers. However, when there is a unity of ownership, management, or control between the principal carrier and the consignor, consignee or debtor, subhaulers engaged by a principal carrier shall be paid 100% of the rate of the prime carrier.
- 1.5 The provisions of this General Order do not apply to rate exempt transportation by highway common carriers or highway contract carriers, nor do they apply to transportation performed by individual carriers which have been specifically exempted by Commission order.
- 1.6 The provisions of this General Order do not apply to transportation governed by General Orders 149 Series, 150 Series, or 151 Series.

RULE 2 - DEPARTURES

Departure from the provisions of this General Order may be granted upon formal application to the Commission and after the Commission finds that such departure is reasonable and necessary.

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RULE 3 - DEFINITIONS

For the purpose of this General Order and when used in tariffs, contracts, or contract rate schedules filed under this General Order, the definitions for the following terms shall apply:

- 3.1 "Base Rate" means the lowest rate legally on file within the last 12 months, unless that rate was effective for less than 30 days. Refer to Rule 7 for requirements on changes to base rate.
- 3.2 "Carrier's Equipment" means any motor truck, tractor or other highway vehicle, trailer, semitrailer, or any combination of such highway vehicles, operated by the carrier or its subhauler.
- 3.3 "Commission" means the Public Utilities Commission of the State of California.
- 3.4 "Common Carrier" means every highway common carrier described in Rule 1.3(a). Pursuant to Commission Order, common carriers subject to this General Order shall serve at least one day per week each point for which they have filed a tariff, if service is requested.
- 3.5 "Common Carrier Contract" means a contract for common carrier service filed by a contract carrier that also holds common carrier authority. A common carrier contract must be designed to yield rates equivalent to the carrier's tariff rates in effect at the time the contract is filed.
- 3.6 "Contract" means a bilateral agreement in writing which binds both contract carrier and the consignor, consignee, or other party to good faith performance. Contract duration shall be limited to one year. For terms of contract, see Rule 6.
- 3.7 "Contract Carrier" means every highway contract carrier described in Rule 1.3(b)
- 3.8 "Contract Rate Schedule" means a publication containing the rates and charges of contract carrier(s), including rules, regulations, and provisions governing the service(s) of the carrier(s). This includes supplements, amendments, revised pages, or reissues of the publication filed by contract carriers.

APPENDIX B

Page 4

- 3.9 "Equivalent Rate" means a common carrier contract rate which, when filed, produces the same charge as does the common carrier's tariff rate applied to the same shipment or shipments.
- 3.10 "Governing Publication(s)" means those publications which govern the application of a common or contract carrier rate. Examples of such publication are:
- Distance Table 8 and/or the Optional All Points to All Points Table for Distance Table 8 issued by the Commission, and amendments or reissues thereto;
- Hazardous Materials Tariff ATA, 111-J (Cal. PUC 20 of American Trucking Association, Inc., Agent) including supplements and reissues; and
- National Motor Freight Classification NMF 100-Q (Cal. PUC 32 of National Motor Freight Traffic Association, Inc., Agent), including supplements and reissues (also referred to as the "Governing Classification").
- 3.11 "Independent Contractor/Subhauler" means any carrier who renders service for a principal carrier, for a specified recompense, for a specified result as to the work only and not as to the means by which such result is accomplished. This term includes sub-subhaulers when such carriers are engaged by other subhaulers.
- 3.12 "Less-than-truckload rate" means any rate not subject to the "truckload rate" minimum weight.
- 3.13 "Point" means a particular city, town, community, extended area, metropolitan zone, or other area which is described or named in a tariff or contract rate schedule for the application of rates.
- 3.14 "Rate" means the figure stated in cents, dollars and cents, or their fractions, including the charge, and also, the minimum weight or volume and rules or conditions governing the application of the rate, and any accessorial charges to be used in computing the charge on the property transported.

APPENDIX B

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- 3.15 "Rate Bureau" means each conference, bureau, committee, or other organization established or continued under any agreement approved by the Commission under the provisions of PU Code Section 496.
- 3.16 "Rate Exempt Transportation" means transportation of commodities or transportation within the geographic areas described in the most recent Commission publication, including any revisions, entitled "Commodities and Geographic Areas Exempt From Rate Regulation".
- 3.17 "Special Contract" means a contract for service or under conditions which meet either of the terms (a) or (b) below:
- (a) The contract provides services over a period of not less than 30 days and includes more than a single shipment, and meets either of the terms (1) or (2) below:
 - (1) The carrier earns a minimum of \$ 1,000 per month for delivered transportation services, or
 - (2) The contract calls for substantial shipper obligations not normally provided under common carrier tariff rates by any carrier.
 - (b) The contract provides services not normally provided under common carrier tariff rates by any carrier.
- 3.18 "Tariff" means a publication containing the rates and charges of common carrier(s) including operating rights (scope of operations), rules, regulations, and provisions governing the service(s) of the carrier(s) including supplements, amendments, or revised pages or reissues. Refer to General Order 80 Series for rules governing construction and filing of tariffs.
- 3.19 "Truckload rate" means any rate which requires a minimum weight of 12,000 pounds or greater.
- 3.20 "VARIABLE COST FLOOR" means the lower bound of the zone of reasonableness. The VCF is established by the Commission and is based on variable costs. There are separate VCFs for truckload and less than-truckload carriage.

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- 3.21 "Zone of Reasonableness" means a zone within which common carriers may individually set rates without further Commission approval. The upper end of the zone is cumulative rate increases not greater than 10% over a 12-month period. (Refer to Rule 7.2.) The lower bound of the zone is the VCF, which is based on variable costs set by the Commission. (Refer to Rule 7.4.)

RULE 4 - FILING PROCEDURES

- 4.1 Two copies of tariff, contract, and contract rate schedule filings, including any supplements or amendments, shall be delivered or mailed to:

California Public Utilities Commission
Tariff File Room - 2nd Floor
505 Van Ness Avenue
San Francisco, CA 94102

4.2 Rate Filing Transmittal and Date Filed

- (a) All tariff, contract, and contract rate schedule filings shall be accompanied by the Rate Filing Transmittal form, attached to this General Order, which shall provide: (1) the carrier's name as it appears on the carrier's operating authority; (2) the carrier's T-number; (3) the tariff and item number(s), the contract number, or the contract rate schedule number of the tariff, contract or contract rate schedule filing; and (4) the shipper's name as it appears on the contract.
- (b) If a receipt for the filings is desired, the transmittal shall be sent in duplicate with a self-addressed stamped envelope. One copy will be stamped and returned as a receipt.
- (c) The date stamped "received" will reflect the date the document is filed with the Truck Tariff Section in San Francisco. Once stamped received, such rate filings shall be listed on the Commission's Daily Transportation Calendar within 3 working days after the date filed. Tariffs, contracts, contract rate schedules, and supporting documents shall be filed in a single package which shall also include the transmittal required to accompany the filing.

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- 4.3 All contracts and tariffs filed will be available for public inspection at the Commission's office in San Francisco.

RULE 5 - TARIFF FILINGS BY COMMON CARRIERS

- 5.1 Common carriers shall file tariffs in accordance with the requirements of Division 1 of the Code and General Order 80 Series.
- 5.2 Nothing in this rule shall prohibit carriers from publishing their own tariffs, or from joining in tariffs issued by rate bureaus or tariff publishing agents.
- 5.3 Common carrier tariffs shall not be designed to be shipper specific.
- 5.4 All common carrier tariffs shall describe accurately and fully the services offered to the public, provide the specific rate or the basis for calculating charges for the performance of those services, and show all related classifications, rules, and practices. Tariffs should be filed and maintained in a way that allows all users to determine the exact charges for any given shipment, including all available discounts. Discounts shall be identified in the tariffs, along with the qualifying criteria. Freight bill information is covered by General Order 155 Series.
- 5.5 Common carrier tariffs may become effective as provided in Rule 8.1.
- 5.6 Every common carrier shall maintain and keep open for public inspection a copy of its tariffs, and any revisions or supplements in accordance with General Order 122 Series.

RULE 6 - CONTRACT FILINGS BY CONTRACT CARRIERS

- 6.1 No contract carrier shall perform any transportation or accessorial service until it has on file and in effect with the Commission two copies of an executed binding contract for such service.
- 6.2 Contract carriers shall strictly observe, as their exact rates, the rates and provisions of their contracts.

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- 6.3 Contracts shall contain a specific termination date. Contract service shall not be made effective for more than one year. All contracts may be renewed by filing an amendment with the Commission.
- 6.4 Every contract carrier shall keep and maintain for the Commission's inspection all contracts for a period of three years after the termination date of each contract.
- 6.5 Every contract carrier shall maintain and keep open for public inspection a copy of its contracts and contract rate schedules, and any revisions, amendments, or supplements in accordance with General Order 80 Series and 122 Series.
- 6.6 Every contract shall contain:
- (a) The name, address, signature, and "T" file number of the carrier.
 - (b) The name, address, and signature of the shipper.
 - (c) The date the contract was executed, the effective date, and the duration of the contract.
 - (d) The geographic area involved in performance, such as the route(s) and/or points.
 - (e) A description of all services to be provided, the commodities involved, and the projected tonnage (or other appropriate unit of measurement) to be transported.
 - (f) The compensation to be paid and received. Rates shall be stated in their entirety as part of the contract, unless reference is made to rates in the tariff provisions which govern the carrier's highway common carrier operating authority, in the carrier's contract rate schedule, or any governing publication filed with the Commission by that carrier.
(Exception: A contract carrier may refer to official publications of the Commission without filing those documents.)

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- (g) A provision specifically acknowledging the tariff and item number, contract rate schedule or governing publication containing the rates to apply in the contract and the date of the rates to apply by reference, including a statement that the rate will not change unless an amendment to the contract is filed, or a statement clearly indicating the circumstances under which the rates to apply by reference will change without further amendment to the contract.
 - (h) The conditions, if any, under which changes in compensation or other terms of the contract may be made by the parties.
 - (i) Such explanatory statements as are necessary to remove all reasonable doubt as to its proper application.
- 6.7 Contracts shall be plainly typed, or prepared by other similar durable process, on letter-size (not less than 8 x 10-1/2 inches nor larger than 8-1/2 x 11 inches) paper of good quality and shall be clear and legible.
- 6.8 Each carrier shall issue contracts under the "T" file number assigned to it by the Commission with a suffix number beginning with the number 1. Subsequent contracts shall bear consecutive suffix numbers. The contract number shall appear on every page in the following manner:
- "CONTRACT NUMBER
CAL T-000-1"
- 6.9 A contract or an amendment which is required or authorized to be filed by a Commission decision shall refer to that decision in connection with the item or supplement which incorporates the change resulting from the decision, or shall refer to the appropriate provision of this general order permitting or requiring the change.
- Contracts may be amended by filing a supplement or by filing new pages on which changes are made. Revised pages shall be identified as consecutively numbered revisions of the previous page, e.g., "First Revised Page 2 Cancels Original Page 2."
- 6.10 A contract supplement or amendment to a contract shall contain:

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- (a) Those requirements set forth in Rule 6 necessary to clearly and effectively identify and amend the original contract.
- (b) Reference to the item number, page number, and/or previous supplement number which it amends.
- (c) The signatures of both the shipper and the carrier.
- (d) The effective date of the amendment or supplement.

6.11 When a carrier changes its name as shown in the Commission's records, without transfer of control from one company to another; or when a shipper with which the carrier has a contract changes its name, whether or not control is transferred from one company to another, the carrier shall immediately amend all affected contracts it has issued to reflect the change. The required amendment to each contract in effect may be accomplished by filing a supplement containing a provision that "whenever the name (enter the old name) appears it shall be construed as meaning (enter the new name)."

6.12 The Commission shall be notified in writing when a contract is cancelled prior to the expiration date contained in the contract. Unless an amendment is filed with the Commission extending the duration of the contract, it shall be considered cancelled on the expiration date.

6.13 Common carrier contracts may only be filed by contract carriers which also hold common carrier authority. Common carrier contracts must initially provide service at rates equal or equivalent to the common carrier's tariff rates in effect at the time the contract is filed. Common carrier contracts may become effective as provided in Rule 8.1. Common carrier contracts may lock in rates over the term of the contract, or rate changes over the term of the contract may be based on the common carrier's filed tariff rates or economic factors identified in the contract. However, rates may not be lower than the common carrier's tariff rates in effect at the time the contract is filed. Common carrier contracts may be effective for up to one year, and may be renewed by amendment, subject to the terms of Rule 7.

Common carrier contracts shall require the carrier to be liable for loss and damage to the same extent it is liable under common carrier tariffs.

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- 6.14 Special contracts are for service or under conditions defined in Rule 3.17. Special contracts may be filed by contract carriers whether or not they also are common carriers. Contract carriers that do not also have common carrier authority may only file special contracts. Special contracts may be effective for one year, may be renewed by amendment, and must specify an expiration date.

RULE 7 - REQUIREMENTS FOR RATE CHANGES AND RATE ESTABLISHMENT

7.1 Establishing Rates

- (a) Common carriers shall establish rates in their tariffs by filing the appropriate tariffs accompanied by the VCF Certification form required by Rule 7.4, attached to this General Order.
- (b) Contract carriers shall establish rates in common carrier contracts by filing rates at or equivalent to the carrier's own common carrier tariff rates in effect at the time the contract is filed. Common carrier contracts must cite the source of the carrier's equivalent tariff rates by tariff and item number(s).

Contract carriers may provide for an automatic adjustment to the rates in a common carrier contract, and must specify the method by which and at what points in time the rate adjustment(s) will occur.

Rates in common carrier contracts may be published by reference to the carrier's own tariff, and must comply with Rules 6.6(f) and 6.13.

- (c) Contract carriers shall establish the rates in special contracts by filing such contracts with the Commission in accordance with the terms of this General Order. No VCF Certification is required.

7.2 Common Carrier Rate Changes Within Zone of Reasonableness

- (a) Except as provided in Rule 7.3(c) and 7.3(g), common carriers may increase rates in their tariffs in compliance with Rule 4, provided that the increased rate is not more than ten percent above the carrier's base rate. Common carrier rate filings which increase rates within the zone of reasonableness shall cite as a footnote on the tariff page the

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tariff page, item number, and the effective date of the base rate. (Refer to Rules 3.1 and 3.21 for definitions.)

- (b) Common carriers may decrease rates in their tariffs in compliance with Rules 4 and 7.1(a). Rates below the lower end of the zone of reasonableness require a formal application to the Commission.

7.3 Rate Changes

- (a) Common carrier rate changes outside the zone of reasonableness (i.e. increases greater than ten percent or cumulatively greater than ten percent over base rates for the last 12 months, or for rates lower than the VCF), and common carrier rates collectively set under Code Section 496 require a formal application to the Commission.
- (b) Except as provided in Rule 7.3(a), rates filed under this rule may be filed by a common carrier or a tariff publishing agent through independent action only.
- (c) If a common carrier cancels or amends any rate within 30 days of the effective date, then that rate shall not become a base rate for the purpose of defining the upper end of the zone of reasonableness.
- (d) Contract carriers may increase rates in special contracts already in effect by filing an amendment. Amendments need not be filed for automatic adjustment of contract rates provided for in the original contract.
- (e) Contract carriers may decrease rates in special contracts already in effect by filing an amendment.
- (f) Common carrier contracts may be amended or renewed by amendment according to Rule 6.10, except that the amended contract rates at the time the amendment becomes effective must equal or be equivalent to the carrier's own common carrier tariff rates in effect at the time the amendment is filed.

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- (g) Common carriers may, in lieu of formal rate application, cancel obsolete tariff rates by filing the cancellation in accordance with Rule 8.1. The rate filings canceling obsolete rates shall be accompanied by: (1) a statement that the cancelled rates have not moved traffic for at least one year, and (2) a certification under penalty of perjury that the foregoing statement is true and correct to the best of the carrier's knowledge.

7.4 VARIABLE COST FLOOR

Common carrier rates established or decreased pursuant to Rules 7.1(a) or 7.2(b) shall be accompanied by the VCF Certification form attached to this General Order as attachment (1). The carrier shall state, under penalty of perjury, that: (1) each of the truckload rates filed is no lower than the VCF established by the Commission, and/or (2) that each less-than-truckload rate for shipments of less than 12,000 pounds is no lower than the VCF when the rate is prorated upward to the carrier's typical aggregate load stated on the Floor Price Certification form filed with the rate(s). The typical aggregate load must be based on the carrier's operating experience, or anticipated typical aggregate load if the carrier does not have operating experience.

RULE 8 - TARIFF AND CONTRACT FILINGS - PUBLIC NOTICE - EFFECTIVE DATES

- 8.1 Common carrier tariff and common carrier contract rates filed pursuant to Rules 6.13, 7.1(a), 7.1(b), 7.2(a), 7.2(b), 7.3(c), 7.3(f) and 7.3(g) may be effective not earlier than 10 days after listing on the Commission's Daily Transportation Calendar.
- 8.2 Special contract rates filed pursuant to Rules 6.14, 7.3(d) and 7.3(e) may be effective not earlier than 20 days after listing on the Commission's Daily Transportation Calendar.

RULE 9 - PROTESTS AND SUSPENSION OF RATES

- 9.1 Protests shall be filed in accordance with the Commission's Rules of Practice and Procedure.

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- 9.2 If a protest is filed or for other good cause, the Executive Director may, prior to the effective date of a rate filing, temporarily suspend the rate filing or any of its provisions for a period not to exceed 30 days after the requested effective date.

The Commission may: (1) deny the protest, (2) deny the requested rate filing, (3) permit the suspension to lapse, which would allow the rate filing to become effective, or (4) further suspend the rate filing and set the matter for hearing.

If the Commission further suspends the effective date of the rate filing or any of its provisions, and sets the matter for hearing, the period of suspension shall not extend more than 120 days beyond the date the rate filing would otherwise go into effect, unless the Commission extends the period of suspension for a further period not exceeding six months.

If the Commission does not act on the protest or take any further action on a rate filing suspended by the Executive Director, the rate filing will become effective the day after the suspension ends, and any protest shall be deemed denied.

- 9.3 Notice of any rate suspension shall be provided in the Commission's Daily Transportation Calendar.
- 9.4 If the Commission suspends the effective date of a filing or any of its provisions, and sets the matter for hearing, the burden of proof rests with the proponent of the filing.

RULE 10 - COMPLAINTS

Commission review of any tariff or contract rate which is in effect may be initiated by filing a formal complaint in accordance with the Commission's Rules of Practice and Procedure. The burden of proof in the complaint shall be upon the complainant.

RULE 11 - UNIFORM RULES

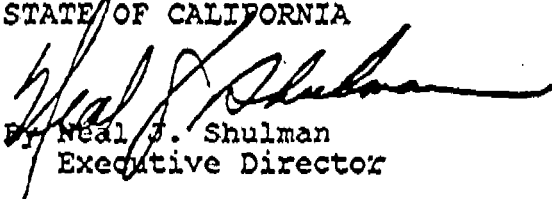
- 11.1 Common carrier tariffs shall contain a specific provision acknowledging that the handling of claims for loss or damage of property is governed by General Order 139 Series.

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- 11.2 Common carrier tariffs shall contain a specific provision acknowledging that the processing, investigation, and disposition of claims for overcharge or duplicate payment are governed by General Order 148 Series.
- 11.3 Carriers shall expressly state in their tariffs and contracts or contract rate schedules whether collect-on-delivery (C.O.D.) services as defined in General Order 84 Series will be provided and, if C.O.D. services are provided, the tariff, contract, or contract rate schedule shall contain a complete description of and an acknowledgement that General Order 84 Series governs the C.O.D. service to be provided.
- 11.4 Carriers shall provide in their tariffs and contracts or contract rate schedules: (1) a complete description of any services which apply to transportation involving more than one commodity or transportation between more than two points (e.g., mixed shipments, split pickup and/or delivery, and stop-in-transit); and (2) a description of the method by which distance shall be computed (if distance is part of the calculation of the transportation charge).
- 11.5 Carriers shall rate shipments separately, unless otherwise provided in their tariffs, contracts, or contract rate schedules.
- 11.6 Carriers shall not accept for transportation hazardous materials as described in and subject to the Hazardous Materials Tariff of the American Trucking Association, unless at the time of or prior to the transportation the carrier has complied with the requirements of the Hazardous Materials Tariff, and state and federal regulations that apply to the transportation of hazardous materials.

Approved and dated May 8, 1991 to become effective June 7, 1991
 , at San Francisco, California.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA


By Neal J. Shulman
Executive Director

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California Public Utilities Commission
RATE FILING TRANSMITTAL

Date _____

Carrier _____ T- _____

Address _____ Telephone _____
_____ () _____

.....

Enclosed are the following rate filings:
(Check all that apply)

- [] Common Carrier Tariff
Tariff Number(s) _____
Item Number(s) _____
- [] Common Carrier Contract
Contract Number _____
Shipper Name _____
- [] Special Contract
Contract Number _____
Shipper Name _____
-

Date Received

Date Calendared

(For CPUC use only)

(END OF APPENDIX B)

ATTACHMENT 1

California Public Utilities Commission
VARIABLE COST FLOOR CERTIFICATION

Carrier _____ T- _____
Address _____ Telephone _____
_____ () _____

.....
This form must be filed with every common carrier tariff filing. It does not apply to common carrier contracts or special contracts.

Tariff Number(s) _____

Item Number(s) _____

Check all that apply, and sign the certifications:

[] Truckload Certification: The revenue per mile for each truckload rate submitted in this filing is not lower than 75.4 cents per mile. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Signature _____ Date _____

[] Less-Than-Truckload Certification: The revenue per mile for each less-than-truckload rate in this filing for shipments of less than 12,000 lb. is not lower than 93.2 cents per mile when the rate is prorated upward to _____. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Signature _____ Date _____

.....

(For CPUC use only)