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ORIGINAL

Decision 83 06 032 JUN 29 1983

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 OSH 67 (Filed April 12, 1977)

(For appearances see Appendix A.)

O P I N I O N

The captioned proceeding was initiated for the purpose of exploring whether the Commission should establish a regulatory program whereby carriers would establish rates and initiate changes in rate levels for livestock in Minimum Rate Tariff 3-A (MRT 3-A).

In related proceedings the Commission has embarked on a program of rate reregulation under which the minimum rate tariffs governing the transportation of general commodities have been canceled. Carriers formerly subject to those tariffs operate under a system of carrier-set rates, subject to a floor contained in transition tariffs which replaced the minimum rate tariffs. (See Decision (D.) 90354 (1 CPUC 2d 405) and D.91861 (3 CPUC 2d 752).)

The Commission staff prepared a report which contained its analyses and recommendations in response to Order Setting Hearing (OSH) 67 in Case (C.) 5433. The report recommended that MRT 3-A be canceled and that affected carriers be allowed to operate in an atmosphere of free-market competition. The staff report was served on known interested parties on December 1, 1982 with a request that comments be made to the staff on or before

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January 10, 1983. The transmittal letter stated that in the absence of protest, the staff would recommend that the matter be handled ex parte.

California Cattlemen's Association, by letter dated December 30, 1982, opposed the staff recommendations and requested a public hearing.

Public hearing was held before Administrative Law Judge Mallory in San Francisco on February 23 and 24, 1983, and the matter was submitted. Testimony was received from witnesses appearing for the staff of the Commission's Transportation Division (staff), Armour Food Company (Armour), California Cattlemen's Association (Cattlemen), and California Trucking Association (CTA). California Farm Bureau Federation (Farm Bureau) participated through examination of witnesses and presentation of oral argument. Oral argument before the Commission en banc was held on June 17, 1983.

Background

MRT 3-A, which contains the minimum rates for the transportation of livestock, is published by the Commission and is maintained and kept current by the Commission through staff cost and rate studies.

Motor carrier rates were unregulated following the development of motor trucks in the 1920s until the depression years of the 1930s. In that period there developed an intense competition between railroads and other regulated carriers on the one hand, and unregulated motor carriers on the other hand. Conditions in the transportation industry became intolerable, leading to changes in the state and federal laws mandating regulation of rates and right-of-entry by motor carriers.

Different forms of regulation developed at the federal and state levels with respect to motor carrier transportation of agricultural products, including livestock. At the federal level, specific exemptions from rate regulation and right-of-entry requirements were established for livestock and unmanufactured agricultural products. Interstate livestock carriers were, and are, free to enter and leave the business and to establish their own rates for livestock transportation.

The Highway Carriers' Act requires that livestock carriers obtain a permit from this Commission before commencing operation within California. Minimum rates were established in 1939 which govern the operations of livestock carriers. [D.31924 dated April 11, 1939 in C.4293 (41 CPUC 836).] Similarly, minimum rates were established about the same time for the transportation of most commodities by highway common and highway permit carriers.

Beginning in 1980, the Commission embarked on its program of rate reregulation. The Commission announced that it would no longer maintain the several minimum rate tariffs containing rates for general commodities. Those tariffs were canceled and reestablished as transition tariffs, with the understanding that the transition tariffs would be canceled after an undetermined transition period during which carriers are free to establish their own rates which are either cost-justified or no lower than the transition tariff rates. Minimum rate tariffs governing bulk petroleum products and other commodities in bulk in tank trucks were canceled, and carriers transporting those commodities are free to establish their own rates. Minimum rate tariffs governing movements of mobile homes, automobiles, and cement were canceled, and affected carriers establish and file rates with the Commission in accordance with applicable Commission General Orders.

Carriers transporting general commodities, mobile homes, automobiles, and cement operate as highway common carriers, highway contract carriers, heavy specialized carriers, or cement carriers. Common carriers of all commodities must publish tariffs naming their specific rates. Contract carriers similarly must file contracts with the Commission. Livestock carriers, on the other hand, are not subject to tariff or contract filing regulations.

In those decisions which canceled the minimum rate tariffs, the Commission determined that the minimum rate system had become outdated and unmanageable.[1/]

Among the findings in the decisions reregulating transportation of general commodities and petroleum products were:

1. Conditions now are different from those at the inception of minimum rates in the 1930s;
2. Adjustments to the minimum rates cannot be made with the necessary frequency to fully cover escalating costs;
3. There is no way to identify the "efficient" carriers to determine true minimum rates;
4. The minimum rates are only average rates of average carriers;
5. Varying shipper and carrier conditions and requirements cannot be fully considered when minimum rates are based on industry averages; and
6. Shippers and carriers have benefited from rate flexibility and responsiveness experienced in transportation exempt from minimum rates.

In response to requests from carriers and labor unions, the Commission established a system of prevailing wages to serve as a basis for testing carrier requests to assess rates below transition tariff rates or rates of competing carriers.

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Decision Nos.	Canceled
D.90354 (1 CPUC 2d 405), amended by D.91861 (3 CPUC 2d 752)	MRTs 6-B and 13, effective 7-31-80
D.90663 (2 CPUC 2d 249), amended by D.90816 (2 CPUC 2d 339)	MRTs 1-B, 2, 9-B, 11-A, 15, and 19, effective 4-30-80
D.82-02-133 (unreported)	MRT 18, effective 5-18-82
D.82-02-134 (unreported)	MRT 10, effective 4-1-82
D.82-04-108 (unreported)	MRT 12-A, effective 6-20-82

Characteristics of Livestock Transportation

As part of the staff study, carriers and shippers were contacted. Of the 165 active livestock carriers the staff contacted 38. Twenty-two shippers were interviewed, including auction yard operators, feed lot owners, ranchers, cattle dealers, and dairy cattle dealers.

The staff study developed the following information concerning characteristics of livestock transportation:

There are several types of movements in livestock transportation, particularly involving cattle and sheep. These animals are shipped from pasture-to-pasture, pasture to feed lot, pasture to auction yard, feed lot to auction yard, feed lot to slaughter, and auction yard to slaughter. The physical operations are generally the same. Good loading and unloading facilities exist in all but the pasture movements. In pasture movements, conditions can be difficult, with a potential for injury to drivers and damage to equipment and livestock. The main hazards are off-road operations and inadequate loading and unloading facilities.

Hog transportation does not have the varying conditions experienced with cattle and sheep hauling. Hogs are normally raised at one location and are shipped only once, from the production point to slaughter. With the exception of the pasture movements, the characteristics of hog transportation are similar to those of cattle and sheep transportation.

Mainly, livestock carriers are small in size and operations are headquartered at the owners' homes. With the exception of a few of the larger carriers, the carriers are unsophisticated when it comes to costing techniques and rate-making skills.

Most livestock carriers have both regular customers and infrequent customers. Some may serve a particular shipper only once a year or only once in a lifetime. Many carriers serve in excess of 100 different shippers during a year. Freight charges are paid by any of several parties, but generally by the shipper. Auction yards or slaughter houses pay the carrier and then charge the shipper's account for the amount of the freight.

There is virtually no subhauling in this industry. Livestock carriers appear to be unique in that they will take an order from a shipper even if they are unable to handle it themselves. They then give the loads or parts of shipments they are unable to handle to other carriers without a subhaul arrangement. The "assigned" carrier is responsible for the load and does its own billing. This practice is statewide and is accepted by shippers and carriers alike.

The typical livestock haul consists of a 200-mile movement with a payload in excess of 45,000 pounds. The equipment used is a truck-and-trailer or double-trailer unit with double decks for cattle and hogs and up to four decks for sheep.

Livestock is the only commodity that can be carried efficiently on livestock trailers. Livestock trailing equipment is highly specialized and very expensive compared to standard trailing equipment. Few carriers hauled another commodity in their livestock equipment.

The high degree of specialization of equipment effectively limits backhaul capabilities to only livestock shipments. Shipments in given time periods, particularly pasture movements, usually all move in one direction. When public grazing land is opened, all shipments to pasture go to those areas, with no return loads. Shipments to slaughter offer no return possibilities from the point of destination.

About two-thirds of the carriers interviewed engaged in interstate livestock transportation. For about one-third of those carriers, their interstate operations constitute the major part of their income. On the interstate scene, livestock is a rate-exempt commodity, so carriers negotiate rates with shippers.

The carriers that primarily perform pasture movements encounter slack periods of several weeks' duration during the late summer and winter. Feed lot and slaughter shipments, on the other hand, are generally year round.

Livestock truck drivers encounter conditions unlike those that drivers of other commodities experience. Loading and unloading is often hazardous; live animals are unpredictable and some times inflict injury to the driver. The driver must be familiar with handling live cargoes and must be prepared to handle a shifting load on any type of road and to get a collapsed animal up to prevent its injury or death at the hooves of the other animals.

It may be noted that the motor carrier movements of livestock described in the early proceeding (41 CPUC 836, at 841) are similar to those described above except for the size of equipment used, and the fact that the former rail and vessel movements no longer exist. When minimum rates were initially established for livestock movements, rail carriers performed a large part of the feeder cattle and sheep movement.

Staff Study

The purpose of the staff report was to determine whether the structure of the minimum rate regulation of livestock carriers should be changed.

In evaluating regulatory change, the staff considered the following questions:

1. Will a regulatory change be in the public interest?
2. Will the livestock industry be adversely affected by regulatory change?
3. Will the carrier industry be adversely affected by regulatory change?

Present Rate Practices

The staff study states that the minimum rates in MRT 3-A are not always the "going rates." Twenty-two of the carriers interviewed, or 58% of the sample, charge higher than minimum. Most of them do so on more than half of their shipments. Usually, the carriers go about 5-10% above, with a few exceeding the minimum by 20% or more in special cases. Carriers with regular hauls usually charge the minimum rates. Some small carriers also charge the minimum, assertedly as the only means of securing loads, except that small operators who perform specialized functions such as difficult pasture movements charge above the minimum rates. Freight bill samples show a wide range of charges above the minimum rates. The feed lot and dairy cattle movements generally were at or slightly above the minimum rates, while the pasture-to-pasture movements often exceeded the minimum rates.

Economic Analyses of the Livestock Industry

California leads the nation in gross cash receipts from farm products. In 1981 the State accounted for almost 10% of the national total with receipts totaling $13.9 billion. Of all agricultural commodities, cattle and calves and related products, milk and cream, held the top two places with respect to cash receipts, with milk and cream occupying the number one spot in 1981.

In that year, cattle and calves represented 9.2% of the State's total agricultural production, yielding a market value of over $1.2 billion.[2/] When hogs, pigs, sheep, and lambs are included, the livestock market value in 1981 was over $1.3 billion.[3/]

The livestock industry in California is on the decline. For the period 1971 through 1981, annual production of cattle and calves has steadily fallen. The number of feed lots in the State have decreased from 410 in 1970 to 103 in 1982, and the number of meat packing houses has also declined.[4/]

There appears to be a shift from production in this State to production in other states. Cheaper labor, closer and cheaper sources of feed, more efficient packing processes, and cheaper land outside of California all contribute to the deterioration of the market within the State.

Economic Analysis of the Livestock Transportation Industry

The staff study contemplates a continuous decline in the livestock transportation industry in California because demand for transportation service is a derived demand, and lower production costs in other states make it more economical to produce livestock outside California than within the State.

The staff study indicates that lower demand for their services will cause some livestock carriers to go out of business, whether or not minimum rates continue. Under a continuation of minimum rates, the actual charges of carriers will be held to near the actual costs of services.

2/ California Agriculture - 1981, California Department of Food and Agriculture.

3/ California Livestock Statistics 1981, California Crop and Livestock Reporting Service.

4/ California Livestock Review, California Department of Food and Agriculture.

The staff study envisions that two different possible courses may result if rates are deregulated at this time. Under the traditional viewpoint, carriers may cut rates in an attempt to attract a greater share of the dwindling market. Shippers may tend to use the services of cut-rate carriers, causing more carriers to meet or even cut the low rates in order to compete. At this point, carriers will be unable to generate enough revenue to cover the cost of operation. The immediate costs that must be covered, such as fuel and oil, will be paid, but other variable costs such as tires and maintenance will be deferred as long as possible, creating deteriorating vehicle conditions. Shippers will be inconvenienced as service quality suffers. The public generally will be endangered when unsafe vehicles are used on public highways.

On the other hand, the results of deregulation may be quite different from the traditional view just described. Carriers would realize the importance of charging enough to sustain operations in the long run. Shippers would appreciate the importance of dependability and stability of the for-hire carrier force. The two parties may attempt to stabilize their relative positions and enter into agreements for specific services at certain compensatory rates over a fixed period of time. This approach would mitigate the threat of cutthroat pricing and deteriorating conditions in the industry. Some carriers might forego livestock transportation operations, particularly the carriers who are diversified in other types of transportation.

The staff study indicates that support for the first deregulation scenario comes from experience in California prior to institution of minimum rate regulation. For the second deregulation scenario, support comes from the experience evident on the interstate scene since regulation of general freight transportation was relaxed in 1980.

Alternatives Considered by Staff

In order to consider a change from the present system of Commission established and maintained minimum rates to a carrier based pricing system for the transportation of livestock, the Commission staff considered several options for regulatory change. The proposals vary from retention of the present minimum rate system to a program of economic deregulation, viz.,

1. Retain the present minimum rate system.
2. Cancel MRT 3-A, institute a Transition Tariff 3-A as threshold tariff and require carriers to file written rate contracts for each shipper.
3. Cancel MRT 3-A, institute a Transition Tariff 3-A as a threshold tariff and require carriers to establish and file with the Commission a fixed schedule of rates.
4. Economically deregulate rates entirely and cancel MRT 3-A.

The first alternative was not favored by the staff because they did not believe there was any compelling reason to continue the minimum rate system although the study indicated that the system worked and that satisfaction was expressed with the present system by carriers and shippers.

The first alternative was discarded by the staff although the study indicated satisfaction with the present system by carriers and shippers.

The second alternative of fixed contracts was also discarded on the basis that to require livestock carriers and shippers to negotiate fixed contracts would violate long-standing industry practices and would cause insurmountable problems. Fixed rates would not be workable in an industry when transportation conditions vary so considerably among different hauls.

The third alternative of fixed tariff rates would cause the same problems as contract rates. There was no support by shippers or carriers for fixed tariff rates.

The staff study adopted the fourth alternative, economic deregulation. The staff study commented on this alternative as follows:

The staff's study and interviews with those primarily interested in regulatory change--carriers and shippers--showed divided opinion regarding economic deregulation. The majority of carriers held to the traditional viewpoint and preferred the continuance of the minimum rate program. Many of these pro-minimum rate carriers feared the oft-stated concern that deregulation would initiate predatory rate-cutting practices, leading to an unstable carrier economy, deterioration of service, and an abnormal turnover of carriers. The remaining carriers did not feel threatened by the concept of deregulation. They were of the opinion that they would be able to compete at rate levels which would be compensatory, based on the belief that shippers value dependable carrier service and are willing to agree to rate levels which are commensurate with good service.

The staff survey of livestock shippers found that approximately two-thirds favored deregulation, while the remaining shippers recommended a transitional approach to regulatory change rather than instant deregulation. Most shippers interviewed felt that service was the primary consideration in carrier selection. Some equated service with rates in their selection process. Very few felt the rate level outweighed service. Many of the shippers recognized or acknowledged that carriers had to be properly compensated for their efforts. Those shippers are willing to pay a premium to a carrier with a record of dependability. Shippers seem to retain the services of carriers they find to be dependable. The feeling of many shippers was that dependable carriers are known in the industry and deregulation would not affect those carriers.

Conclusions and Recommendations
In Staff Study

The staff study concluded that MRT 3-A should be canceled based on the following rationale:

1. In many cases shippers are paying higher than minimum rates. In essence, there is agreement between shippers and carriers as to an appropriate rate level, often above that set artificially by way of minimum rates.
2. Shippers value dependable carrier service and are willing to agree and negotiate rate levels commensurate with good service.
3. Strong support for the deregulation of minimum rates comes from the interstate experience which allows for negotiated rates.
4. Cancellation of MRT 3-A will continue the Commission's goal of a movement toward free market competition.

The staff study recommended that MRT 3-A be canceled immediately, leaving no rate regulation in place for livestock carriers.

Armour

Armour slaughters livestock and poultry and also purchases, processes, and sells meat and animal products. It also sells related farm products. Armour operates three major facilities in California at Dixon, San Francisco, and Turlock. Only Dixon involves slaughter of lambs and beef. Sixty percent of the animals slaughtered at Dixon are from California origins, and the balance are from interstate origins.

Armour supports the staff recommendation of total economic deregulation of rates for the transportation of livestock and the cancellation of MRT 3-A.

Armour believes that such rate deregulation would result in having more competitive services, a variety of prices and service options, and at the same time maintain the current reliability of transportation services for livestock. Armour states that there are sufficient number of carriers in the marketplace who provide responsible and reliable transportation services and who are effectively able to compete for the transportation services of a shipper such as Armour. Armour values dependable carriers and reliable transportation services. Accordingly, in contracting for transportation services for livestock, Armour not only considers the rates of a particular carrier but also the quality of a carrier's service offerings. In viewing a carrier's service, Armour is particularly concerned about a carrier's ability to pick up shipments on time and have the shipments delivered at destination on time.

Armour has experienced virtually no problems in obtaining reliable and competitive carrier services on an interstate basis at its various facilities. It has experienced no problems in obtaining transportation services at its Omaha, Nebraska and Madison, Wisconsin slaughtering plants, either on an interstate or intrastate basis. A number of carriers call the purchasing department of Armour at Omaha and Madison each day, advising Armour of the number and location of their equipment. Carriers also quote rates over the phone for the transportation.

<u>Cattlemen</u>

The oral testimony of Cattlemen was presented through four witnesses who engage in the raising of cattle and sheep for slaughter.

The policy of the association, as expressed by a vice president, is to retain minimum rates for livestock transportation. The witnesses principally require the services of livestock carriers for pasture-to-pasture and auction yard to pasture moves. In the springtime cattle and sheep are moved from winter pasture in lowlying areas of the State to summer pasture in the higher country (principally federal lands), and the reverse movement is made in the fall. The witnesses explained that these livestock carrier services are difficult to perform and require trained drivers and proper motor carrier equipment. The movements originate and terminate in outlying areas, which often entails a great deal of unpaid mileage between the points where the carriers' equipment is domiciled and the points where service commences and terminates. Livestock shippers requiring pasture-to-pasture service desire retention of minimum rates to ensure an adequate supply of motor carrier equipment when service is needed. The witnesses testified that they had difficulty in acquiring adequate and prompt service on interstate pasture-to-pasture or auction yard to pasture movements which are unregulated.

The witnesses stated that, as they are small livestock producers and require transportation services only periodically, they believe they would be at a disadvantage relative to large producers or regular shippers of livestock in terms of the rates assessed or ability to get equipment when needed if minimum rates are canceled.

One of the witnesses explained that the number of trucks available for pasture moves has been reduced 40% in recent years and he fears that in the absence of rate regulation a greater number will disappear, leaving livestock shippers without adequate available equipment.

The shipper witnesses asked if minimum rates are not continued, that a transition period not be established similar to general commodity transportation. They explained that it would be difficult for carriers and shippers alike to negotiate contract rates and to prepare and execute signed contracts prior to livestock movements. Most negotiations for transportation services are conducted on the telephone immediately prior to the livestock movement, and the rates reflect the transportation conditions expected on the day of movement. No two hauls are made under the same conditions. Shippers do not want to pay for delay or waiting time, so rates are high enough to cover delay or waiting time.

Similarly, fixed tariff rates would be inappropriate for pasture-to-pasture, and auction yard to pasture movements. Carriers expect to assess and shippers to pay varying rates for the same lengths of haul, depending upon loading and unloading conditions and the distance the livestock equipment must travel empty to and from pasture locations.

CTA

CTA presented evidence through the testimony of three carriers and the director of its Department of Research and Technical Services.

The witness appearing for Woolery Livestock Transportation, Inc. (Woolery), a livestock carrier located in Cottonwood, testified that the carrier operates primarily in California, Oregon, Washington, and Nevada. Woolery engages exclusively in the transportation of cattle and operates eight units of equipment. Woolery has three phases to its business. The most important is moving cattle from summer to winter pasture and from winter to summer pasture. The second is the movement of market cattle from ranches to auction yards, and the third is the interstate movements of cattle primarily between California and Oregon. Approximately half of Woolery's gross revenue is from interstate movements and half from California intrastate movements.

Woolery disagrees with the conclusions reached in the staff report. According to Woolery, the staff failed to interview shippers who require pasture-to-pasture transportation services; therefore, the seasonal pasture movement of cattle wasn't considered.

Secondly, Woolery disagreed with the staff's conclusion that interstate rates and the availability of equipment for interstate livestock movements are satisfactory and meet the needs of carriers and shippers. Woolery testified that there is a heavy turnover of interstate livestock carriers, and that competition has forced interstate rates below a compensatory level. The witness explained that on interstate pasture movements the rates generally assessed are 10 to 15% below the MRT 3-A level. Woolery charges MRT 3-A rates or above. Woolery's profit margin for 1982 was 4.84% of gross income. If Woolery had uniformly charged rates 10% below the MRT 3-A rates, it would have operated at a loss in 1982.

Thirdly, Woolery believed that the freight sample of 168 shipments relied upon by the staff was too small to provide a reasonable indication of the going rates for livestock transportation statewide. Woolery explained that its 8 trucks hauled 1,669 loads in 1982, averaging 209 loads per truck. According to Woolery, the staff's sample was less than the annual number of loads handled by one of Woolery's trucks.

Woolery also requested, if the minimum rate tariff is canceled, that no transition tariff or transition period be established, as carriers and shippers would be unable to operate under fixed contract or tariff rates for the reasons stated above.

Walker Livestock Transportation (Walker) is domiciled in southern California and operates 10 units of livestock equipment. The owner testified that Walker operates generally within southern California, but provides service in Arizona, New Mexico, Texas, Utah, and Nevada. About 90% of Walker's business is transportation of feeder cattle, that is, transportation of cattle from pasture-to-pasture, from pasture to feed lot, or from processing feed lot to pasture. Approximately 85% of Walker's business is wholly within California. Walker believes that cancellation of MRT 3-A as proposed by the staff would cause severe rate cutting by carriers to gain business. High daytime temperatures in southern California restrict the hours in which feeder cattle can be loaded and unloaded. According to the witness, livestock transportation is time-critical, requiring expertise in arranging and performing the transportation service.

Frank Echenique Livestock Transporation Company (Echenique) operates 12 livestock units and is domiciled in Bakersfield. About 70% of its business is wholly within California, and the balance is interstate. About 50% of its business is hauling cattle and about 50% is hauling sheep. Sheep are moved pasture-to-pasture, which is seasonal. The balance of its transportation service is movements of cattle from feed lots to slaughter houses.

Echenique opposes the staff proposal to cancel MRT 3-A. The witness for Echenique explained that the carrier experiences difficulty in collecting charges on interstate shipments, and that shippers often adjust charges to amounts lower than billed by the carrier. Echenique believes that similar practices would result for intrastate livestock transportation if the minimum rate tariff is canceled.

CTA's director of its Department of Research and Technical Services testified as follows: The freight bill sample developed by the staff witness was derived from the Commission's continuing freight bill sample. As this sample involves all highway carriers and all commodities, it is directed at transportation services which occur uniformly throughout the year. Livestock transportation is not uniform throughout the year; therefore, the sample does not adequately reflect livestock movements, particularly the pasture-to-pasture movements which occur in short periods in the spring and fall. Livestock carriers generally assess the charge for a full truckload, even though lesser quantities are transported, in order to recoup their operating expenses. This would indicate on the freight bill sample that higher than minimum rates were assessed. The unregulated interstate livestock transportation services, as indicated by testimony of shippers and carriers, do not meet the needs of the livestock industry. Contrary to the staff's conclusion, there are many livestock carriers leaving the interstate transportation industry because of business failures.

In the opinion of the witness, rate deregulation of livestock transportation would produce immediate potential benefits to livestock shippers. However, as indicated in the testimony of shipper witnesses, the shippers' concern is not lower rates (as with general commodities) but their ability to move their livestock during periods of summer and fall peak demand for livestock transportation services. The witness stated that shippers fear that unless livestock carriers can maintain adequate rates over an extended period of time, livestock equipment will be unavailable to move animals during the peak periods of livestock movement during which most pasture-to-pasture movements are made. Such movements are time-critical in that movements to summer pasture are made as soon as summer pasture is opened, and movements to winter pasture are made when weather conditions or land-use contracts make summer pasture unavailable. For these reasons, the Livestock Carriers' Conference (Conference) of CTA recommends that MRT 3-A not be canceled and that minimum rates be retained. Conference is ready and willing to assist the Commission in maintaining MRT 3-A.

Discussion

It is apparent that the segment of the California livestock producers that ship cattle and sheep from pasture-to-pasture and the California livestock carriers that perform this transportation service do not agree with the rationale advanced by the staff for cancellation of MRT 3-A, and these shippers and carriers desire the retention of the minimum rates to ensure that adequate transportation facilities will continue to be available to perform pasture-to-pasture and related livestock movements during summer and fall peak periods. The record shows that adequate service has not been received for interstate pasture-to-pasture movements by unregulated interstate livestock carriers.

MRT 3-A covers other movements, such as movements of cattle, sheep, and hogs between feed lots and slaughter houses, and the movement of dairy cattle to and from dairies. Shippers and carriers of hogs and dairy cattle were not represented at the hearing. Their failure to participate indicates lack of opposition with the staff recommendation for cancellation of minimum rates for hogs and dairy cattle. The staff rate analyses indicate that minimum rates often are not observed on dairy cattle movements.

Armour, a large packer, supports cancellation of minimum rates on feed lot to slaughter house movements. Armour has received adequate service from unregulated interstate livestock carriers and unregulated carriers in other states on packing house movements, and Armour expects to receive adequate service if the California intrastate minimum rates are canceled. Other shipper and carrier testimony tended to show that smaller shippers did not receive the same quality of service on interstate shipments that has been received by Armour.

In its closing arguments, Farm Bureau supported the retention of minimum rates for feeder cattle and sheep movements, but indicated that some of its members desire cancellation or revision of minimum rates for hogs, dairy cattle, and slaughter cattle. Farm Bureau and Cattlemen also indicated the need for revision in minimum rate levels for feeder cattle and sheep.

It is the consensus of the livestock growers and livestock carriers that MRT 3-A should be retained. Packers, other than Armour, dairy cattlemen, and hog producers were not represented at the hearing and did not comment on the staff study prior to hearing. The record does not accurately disclose the relative number of pasture-to-pasture, pasture to feed lot, and producer feed lot to pasture movements of cattle and sheep, relative to slaughter cattle and sheep, hogs, and dairy cattle movements.

In answering the three questions considered by the staff in its evaluation of regulatory change, we must conclude on this record that:

1. A regulatory change with respect to livestock transportation rates is not in the public interest.

2. A substantial portion of the livestock industry, that is, the producers and marketers of feeder cattle and sheep would be adversely affected by cancellation of MRT 3-A.

3. A substantial portion of the livestock carrier industry in California would be adversely affected by cancellation of MRT 3-A.

For the above reasons, it would not be appropriate at this time to cancel MRT 3-A, thus permitting livestock shippers and carriers to negotiate rates free from regulation, as proposed by our staff.

Findings of Fact

1. In response to OSH 67 in C.5433, the staff proposed that MRT 3-A be canceled and that livestock carriers and shippers be free to negotiate rates in a manner similar to interstate livestock transportation which is unregulated.

2. A substantial portion of the shippers requiring livestock transportation service in California oppose the staff recommendation and request that minimum rates be retained.

3. Those shippers engage in the raising and processing of feeder cattle and sheep which are moved from pasture-to-pasture during peak livestock transportation periods in the spring and fall.

4. Those shippers desire retention of minimum rates to ensure adequate availability of livestock equipment when pasture-to-pasture, pasture to feed lot, and feed lot to pasture movements take place to ensure the financial health of the California intrastate livestock carriers as a group.

5. Livestock carriers engaged in the transportation described in the preceding findings also desire retention of the minimum rate tariffs to ensure adequate earnings.

6. Shippers and carriers are dissatisfied with services accorded shippers and rates obtained by carriers on unregulated interstate livestock hauls compared with intrastate livestock transportation services and rates in MRT 3-A.

7. A substantial portion of the livestock industry in California, that is, the producers and marketers of feeder cattle and sheep, would be adversely affected by cancellation of MRT 3-A.

8. A substantial portion of the livestock carrier industry in California would be adversely affected by cancellation of MRT 3-A.

9. It would not be in the public interest to cancel MRT 3-A at this time, nor is any other proposed regulatory change with respect to livestock rates in the public interest at this time.

10. Because of the limited commodities subject to MRT 3-A and the relatively small group of carriers and shippers subject to the minimum rates in MRT 3-A, maintenance of MRT 3-A on a current basis will pose no unreasonable difficulties upon the Commission or its staff.

Conclusions of Law

1. MRT 3-A should be retained, and no reregulation plan should be adopted at this time.

2. The Commission's Transportation Division should immediately institute the staff studies necessary to bring the rates and governing provisions of MRT 3-A up to date.

3. OSH 67 in Case 5433 should be terminated.

O R D E R

IT IS ORDERED that:

1. The proceeding in Order Setting Hearing 67 in Case 5433 is terminated.

2. The Commission's Transportation Division staff shall immediately institute the studies necessary to bring the rates and governing provisions of MRT 3-A up to date.

This order becomes effective 30 days from today.

Dated June 29, 1983, at San Francisco, California.

PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I will file a written dissent.

/s/ LEONARD M. GRIMES, JR.
Commissioner

I will file a written dissent.

/s/ VICTOR CALVO
Commissioner

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

Joseph E. Bodovitz

Joseph E. Bodovitz, Executive Director

APPENDIX A

LIST OF APPEARANCES

Respondents: Lowell Baker, Attorney at Law, for Westside Trucking, Inc.; Curt Freeze, for Forrest Freeze Trucking, Inc.; R. Fuchslin, for Valley Livestock Transportation; Vic Woolery, Jr., and Dan Woolery, for Woolery Livestock Transportation, Inc.; John Hultgren, for Hultgren Trucking, Inc.; David J. Soeth, for J. E. Soeth & Sons; Frank Echenique, for Frank Echenique Livestock Transportation; Allan Freitas, for C&F Livestock Transportation; Richard Walker, for Walker Livestock Transportation; Edward A. Rocha, for Ed Rocha Livestock Transportation, Inc. and Livestock Express; and David E. Rankin, Bob Boehm, Bob Bailey, Steven J. Perry, and Loren F. Vinson, for themselves.

Interested Parties: Gordon Stensrud, for Armour Food Company; Arden Riess, for West Coast Freight Tariff Bureau, Inc.; Allen R. Crown, Attorney at Law, for California Farm Bureau Federation; Richard W. Smith, Attorney at Law, for California Trucking Association; Leo L. Johnson, for California Cattlemen's Association; and James R. Foote, for Associated Independent Owner-Operators, Inc.

Commission Staff: James E. Scarff, Attorney at Law, and William Tait.

(END OF APPENDIX A)

C.5433 OSH 67
D.83-06-082

COMMISSION PRESIDENT, LEONARD M. GRIMES, and
COMMISSIONER VICTOR CALVO, we dissent.

We believe that minimum rate regulation over livestock transportation is no longer in the public interest. Based on the facts presented in this proceeding, we would have adopted the following rationale:

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

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

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

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

Based on these and other findings, we have cancelled MRTs 1-B, 6-B, 9-B, 11-A, 12-A, 13, 15, 18 and 19. In another decision issued today, we are cancelling MRT 8-A relating to the transportation of fresh fruits and vegetables. None of these decisions were arrived at casually. Nor do we approach our determination here with respect to MRT 3-A in a casual manner. In making these decisions, we have been guided by our responsibility to assure the public reliable transportation service at the lowest reasonable rate.

Upon considering the evidence and arguments presented in this proceeding, we conclude that MRT 3-A should be cancelled. The testimony of shippers, carriers, and the Commission staff clearly establishes that minimum rate regulation is not needed to assure reliable transportation of livestock in California. Furthermore, it is apparent that a valid minimum rate tariff cannot be developed for this transportation.

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

As a result of the need to secure dependable, effective transportation service, shippers have developed long-standing relationships with reliable carriers. As the Farm Bureau pointed out, carriers are captives of shippers just as much as shippers are captives of carriers since each depends on the other to sustain its livelihood.

Statements from Cattlemen and Armour support the view that service outweighs price considerations in livestock transportation.

Cattlemen indicated that shippers have paid and currently pay more than the minimum rate because of their keen interest in securing reliable service. Armour indicated that it maintains close, long-standing relationships with very few carriers to assure itself good service. In addition, Woolery, a livestock carrier, stated that he charges more than the minimum rate on certain hauls and that his shippers are willing to pay these higher rates for his service. Woolery further pointed out that carriers and shippers are experienced in negotiating rates which meet the needs of both. These statements indicate to us that carriers and shippers are fully capable of negotiating reasonable rates for reliable service without the intervention of a minimum rate tariff.

Notwithstanding their recognition that reliable service is vital to the industry, some shippers and carriers have opposed elimination of MRT 3-A. The shippers fear that under economic deregulation shippers will seek out carriers charging the lowest rates regardless of service, reliable carriers will be driven out of business, service will deteriorate, and eventually, their own businesses will be jeopardized. The carriers fear that cancellation of the minimum rate tariff will lead to predatory pricing which will force carriers charging higher rates out of business.

We do not believe that this will occur. The fact that only one deviation from MRT 3-A has been filed in the last four years and the fact that many shippers pay above the minimum rate indicate that shippers have not sought out the lowest possible rates at the expense of service under economic regulation. Nor have we any reason to believe that they will do so under economic deregulation. Instead, the evidence indicates that upon cancellation of MRT 3-A shippers will continue to place primary importance on reliable service and, thus, will continue their long-standing relationships with dependable carriers. Shippers and carriers will continue to establish their rates through a process of negotiation.

The presentations of Armour and the staff support the view that economic deregulation is desireable. Armour stated that its experience under economic deregulation, both interstate and intrastate, has been favorable and that service continues to outweigh price considerations. In the staff's study, approximately two-thirds of the shippers interviewed favored immediate deregulation, while the remaining shippers favored a transitional approach toward regulatory change. Based on these presentations, it appears that the fears expressed by shippers in our proceeding are not shared throughout the industry.

With respect to carriers' concerns about predatory pricing, the evidence indicates that attempts at such pricing are unlikely to succeed because of the service requirements demanded by livestock shippers. Woolery, for example, stated to the Commission that a number of carriers with which he competed in the exempt interstate market have gone out of business because they set their rates below their costs. The fact that Woolery survived even though he continued to charge higher rates than his competitors suggests that firms which provide reliable service will continue to retain business despite the rate-cutting practices of others.

Woolery's experience also lends evidentiary support to the studies which show that predatory pricing cannot be sustained in a competitive environment. Michael Conart, an economist retained by the California Attorney General in C. 5436, Petition 194, indicated in his study that there are few confirmed instances of predatory pricing even by dominant firms because it is so costly. The predator incurs a present and substantial loss for gains that are not only deferred but are likely to be temporary.

An argument which was raised against economic deregulation is that the staff study on livestock transportation does not support the elimination of minimum rates. In Woolery's and CTA's view, the staff study is faulty in three respects. First, they claim that the selected freight bill sample was not representative. The sample was used, in part, to confirm that carriers charged about the minimum rate in many of their movements. Although relatively small, the sample was based on a random selection of 117 freight bills in 1980 and 163 freight bills in 1981 which were submitted to the Commission. This sample confirms that carriers are routinely charging above minimum rates for various types of movements.

Secondly, it is claimed that the carriers and shippers were not fully represented in the study. Specifically, it is alleged that staff did not study pasture-to-pasture movements. This is contrary to the staff's testimony that it not only interviewed ranchers who transport pasture-to-pasture but also determined what rates they were charging under the minimum rate tariff. The sampling was also analyzed by distances and weight loads to consider various type of transportation movements.

Lastly, it is argued that the interstate study of rate-exempt livestock transportation relied on by staff is not pertinent to California. We disagree. In our view the study is relevant in demonstrating that good service is provided at reasonable rates without serious disruption to the industry. We conclude that the staff study is adequate in providing a factual foundation for evaluating livestock transportation under minimum rate regulation.

In summary, there is no factual basis to support the feared scenario expressed by those opposed to economic deregulation. Indeed, the evidence supports the more likely scenario that service will continue to be good, but at rates which more accurately reflect actual costs.

Finally, we point out that it is impossible to establish a valid minimum rate system for livestock transportation. As Woolery indicated in his argument to the Commission, the transportation of livestock in California takes place under such varying conditions that no tariff can accurately represent how service is provided. Even if a valid tariff could be formulated, it would be impossible to make the adjustments needed to keep up with changing costs. The last cost study for livestock transportation was conducted 20 years ago and since that time there have been 25 increases to the minimum rate tariff. Despite these adjustments, even the proponents of minimum rate regulation agree that the tariff fails to reflect actual costs of operations.

Rather than imposing ourselves into the rate-setting process, we believe that the characteristics and practices of the livestock transportation industry lend themselves to a system of freely negotiated rates. We are convinced that the overall public interest would be better served if carriers are permitted to negotiate rates with shippers unrestricted by a minimum rate tariff. Our decision today will permit this to occur.

LEONARD M. GRIMES, President

VICTOR CALVO, Commissioner

June 29, 1983
San Francisco, CA

January 10, 1983. The transmittal letter stated that in the absence of protest, the staff would recommend that the matter be handled ex parte.

California Cattlemen's Association, by letter dated December 30, 1982, opposed the staff recommendations and requested a public hearing.

Public hearing was held before Administrative Law Judge Mallory in San Francisco on February 23 and 24, 1983, and the matter was submitted. Testimony was received from witnesses appearing for the staff of the Commission's Transportation Division (staff), Armour Food Company (Armour), California Cattlemen's Association (Cattlemen), and California Trucking Association (CTA). California Farm Bureau Federation (Farm Bureau) participated through examination of witnesses and presentation of oral argument.

Background

MRT 3-A, which contains the minimum rates for the transportation of livestock, is published by the Commission and is maintained and kept current by the Commission through staff cost and rate studies.

Motor carrier rates were unregulated following the development of motor trucks in the 1920s until the depression years of the 1930s. In that period there developed an intense competition between railroads and other regulated carriers on the one hand, and unregulated motor carriers on the other hand. Conditions in the transportation industry became intolerable, leading to changes in the state and federal laws mandating regulation of rates and right-of-entry by motor carriers.

Different forms of regulation developed at the federal and state levels with respect to motor carrier transportation of agricultural products, including livestock. At the federal level, specific exemptions from rate regulation and right-of-entry requirements

O R D E R

IT IS ORDERED that the proceeding in Order Setting Hearing 67 in Case 5433 is terminated.

This order is effective in 30 days.

Dated JUN 29 1983, at San Francisco, California.

PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I will file a written dissent.

LEONARD M. GRIMES, JR.
Commissioner

I will file a written dissent.

VICTOR CALVO
Commissioner