bl/ddb

Decision No. 86507

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of any and all commodities statewide including, but not limited to, those rates which are provided in Minimum Rate Tariff 2 and the revisions or reissues thereof.	Case No. 5432 Petition for Modification No. 871 (Filed November 7, 1975; amended December 2, 1975, April 6 and 9, and May 14, 1976)
And Related Matters.	Case No. 5439 Petition for Modification No. 260 Case No. 5441 Petition for Modification No. 348 Case No. 7783 Petition for Modification No. 126 (Filed November 7, 1975; amended December 2, 1975, April 6 and 9, and May 14, 1976)

(Appearances are listed in Appendix A.)

SECOND INTERIM OPINION

Minimum Rate Tariffs (MRTs) 2, 1-B, 9-B, and 19, respectively, name minimum rates for the highway transportation of general commodities statewide, and within the East Bay, San Diego, and San Francisco Drayage areas. MRT 15 names alternative hourly, weekly, monthly, and yearly vehicle unit rates.

By these petitions California Trucking Association (CTA) seeks cost offset increases of 9 and 10 percent in the rates named

in MRTs 1-B, 2, 9-B, and 19 for truckload (TL) and less than truckload (LTL) shipments, respectively. With respect to MRT 15, a 10 percent increase is sought.

By Decision No. 85349 dated January 13, 1976, an interim increase of 1 percent was granted applicable to MRT 2. The order also established rates subject to minimum weights of 40,000 and 50,000 pounds at levels approximately 1-1/2 percent below the rates otherwise applicable to TL shipments.[1/] Additionally the Commission expressed its concern over the process of compounding offsets and announced that future offset petitions would require evidence which, among other things, would represent true minimum rates and allow scope for legitimate competition. The Commission further encouraged all parties to submit innovative proposals which might improve the efficiency of highway carriers and restore the original function of minimum rates.

Decision No. 85755 dated April 27, 1976, as amended by Decision No. 85822, granted an additional interim increase of 3 and 4-1/2 percent applicable to TL and LTL, respectively, for MRTs 1-B, 2, 9-B, and 19, and 5 percent for transportation subject to MRT 15. The Commission's statement of policy expressed in Decision No. 85349 was reiterated.

Public hearing was held before Examiner Tanner on May 19, June 29 and 30, and July 1, 1976 at San Francisco. These hearings were limited to the receipt of evidence relative to the final disposition of further interim cost offset increases.

Petitioner, through the director of its Division of Transportation Economics, presented evidence to show the impact of

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1/ The rates in MRTs 1-B and 19 were similarly adjusted by Decision No. 85351 and MRT 9-B by Decision No. 85350. No adjustment was made applicable to MRT 15 at that time.

increased wages and wage related costs. According to the director, such wage costs have increased 8.96 and 7.84 percent for shipments weighing less than 10,000 pounds and those weighing 10,000 pounds or over, respectively. Petitioner proposed (Exhibit 5) that Ordering Paragraphs1 and 2 of Decision No. 85755 be amended to read:

> 1. Minimum Rate Tariffs 1-B, 2, 9-B, and 19 are further amended effective _____, 1976, to provide that charges resulting thereunder (except C.O.D. charges and charges resulting from the use of railhead to railhead rates applied under alternative application of common carrier rates) on shipments subject to any quantity rates and rates subject to minimum weights of less than 10,000 pounds shall be increased by nine (9) percent and those 10,000 pounds and over by eight (8) percent.
>
> 2. Minimum Rate Tariff 15 is further amended effective _____, 1976, to provide that charges resulting thereunder (except the charges for excess trailing equipment) shall be increased by ten (10) percent in connection with the following:
>
> (a) Items 120 (hourly charges in paragraph (a) only), 130, 150(a), 452, 453, 454, 455, 456, 457, 460, 482, 483, 484, 485, 486, 487, 490, 520, 530, 540, and 550; and
>
> (b) Base rates in Items 200, 210, 300, 310, 400, and 410.

The proposed surcharge would replace the surcharge granted by Decision No. 85755 and would apply in addition to the one percent surcharge granted by Decision No. 85349 and companion orders.

The Transportation Division staff prepared studies of the impact of labor cost increases and offered recommended rate adjustments. While the staff studies were calculated employing the wage cost offset, wage offset, and direct wage offset methods,[2/] its recommendation is based on the direct wage offset calculations.

2/ See Decision No. 76353 (1969) 70 CPUC 277.

The staff estimates show increases in total costs per 100 pounds for various lengths of haul ranging from 5.83 to 7.29 percent for shipments of less than 10,000 pounds and from 5.6 to 6.99 percent for shipments weighing 10,000 pounds or more. The staff recommends that the surcharges granted by the two interim orders in these matters be canceled and in lieu thereof establish a surcharge of 8 percent applicable to shipments of less than 10,000 pounds and 7 percent for shipment of 10,000 pounds and over for MRT 2; and for shipments of all weights for MRTs 1-B, 9-B, and 19, a surcharge of 9, 8, and 9 percent, respectively. With respect to MRT 15 the staff recommends an upward adjustment of 6.6 percent to specific rates named in that tariff in lieu of the present 5 percent surcharge.

The level of the sought increases was generally opposed by shippers and shipper groups. All the shipper witnesses cited the recent increases permitted by the Interstate Commerce Commission for the Rocky Mountain Motor Tariff Bureau of 6 percent applicable to accessorial services and shipments subject to minimum weights of 2,000 pounds and 4 percent to all other rates and charges. Several instances of apparent lower interstate transportation were cited. It was the general consensus that while some relief may be in order, particularly for less-than-truckload traffic, it would not be appropriate to increase rates to the extent requested by petitioner. There was also general sentiment that adequate steps to improve productivity on the part of the highway carrier industry would contribute significantly to relieving the carriers' financial plight.

The California Manufacturers Association (CMA) was in general agreement with the shipper position, particularly the question of productivity.

Items 509, 509.5, 510, 520, 745, 746, and 775 are subject to the following restriction:

> The minimum weight applicable in connection with rates making references hereto applies to each unit of carrier's equipment utilized in transporting a shipment.

CMA argues that the rule in its present form is subject to misinterpretation, and that it does not give proper recognition to a variety of circumstances where more than one power unit might be effectively and properly used. CMA suggests the following be substituted:

> "The rates in this section are for use in conjunction with either a semi-trailer - tractor combination, a truck-trailer combination, or a tractor and two-trailer combination; and that the entire shipment, subject to the minimum weight, must be loaded upon such equipment units except when the carrier for his convenience only decides to provide more than one equipment unit for the shipment."

CMA agrees with the concept that the higher minimum weights justify the lower rates, but was of the opinion that restricting the application of these rates to a single unit of carrier equipment does not give adequate recognition to a variety of circumstances when more than one power unit could be used and which would be proper and within the spirit and purpose of the rule.

At the hearing of May 19, 1976 the examiner advised that the record should include evidence reflecting the financial status of carriers participating in transportation subject to the minimum rates in issue. This was expanded in a letter dated June 10, 1976 wherein participating parties were advised that they should also be prepared to present evidence demonstrating the existence or absence of rates at such levels that may sustain or induce predatory pricing as defined in relevant federal and state antitrust laws.

No evidence was forthcoming relating to predatory pricing or anticompetitive practices. The evidence offered by petitioner and the staff depicting carrier financial status was too general to be of any real value in assessing the financial position of the highway carrier industry or any group within that industry. There remains then only the basic cost data which might be used as a measure of the financial need of highway carriers.

There is total agreement that the basic cost data should be viewed with suspicion due to its age and that updating has been limited to a succession of offsets until the figures resemble a sort of mathematical Winchester Mystery House, completely disguising the original. In the circumstances we have no standard with which a determination of financial need may be dependably made.

Reluctantly we return then to the "offset" practice. The record is clear that some relief is necessary. The picture becomes somewhat obscure when one considers an appropriate distribution of relief between the various classes of carriers or transportation services involved. It is well established that shipments of less than 10,000 pounds are much more costly to handle than those of greater weight. It appears that a large portion of the high cost LTL traffic is handled by the larger common carriers who conduct such services on a regular basis from and between established terminals. Distance is also an important element in this particular class of traffic. LTL service on short distances are frequently handled by smaller carriers (both permitted and certificated) out of a single terminal.

TL traffic, which is less costly to transport, appears to be handled principally by permitted carriers, but again, not entirely so. Some of the largest so-called LTL carriers handle significant amounts of TL traffic.

The problem then is to get the rate relief where it will be effective and cause the least burden on the ratepayer. We are not at all certain that allocating an amount to two or three broad classes of tariffs will achieve the desired objective.

Decision No. 31606 dated December 27, 1938 (41 CRC 671) established MRT 2. That decision has been consistently regarded as the blueprint for the California minimum rate program. A review of that decision while considering the present day minimum rate structure makes it abundantly clear that our blueprint has either been misunderstood or simply discarded. For example, at pages 684 and 685 we find:

> "In considering the merits of the exceptions taken to the volume of the proposed rates, it must be borne in mind that the legislation under which this proceeding was brought contemplates only that minimum and maximum rates will be established. The legislative intention that the carriers should retain the right and duty to exercise managerial discretion in adjusting rates within the intermediate zone is apparent both in the Highway Carriers' Act and in the coordinating provisions of the Public Utilities Act, the only exception being that such adjustments must be shown to be justified by transportation conditions when resulting in rates lower than the rates of competing carriers or the cost of other means of transportation. Manifestly, different elements enter into the fixation of minimum or maximum rates than are considered in arriving at "going" rates. In the first instance the cost of performing the service, value of the service and competitive conditions requiring a depression of rates below the cost level are the primary considerations. In the second instance the value of the commodities and the ability of different commodities and types of hauls to contribute toward the aggregate transportation burden become of considerable importance. In the third instance all of the foregoing, as well as the intensity of the competition

of other carriers and the desirability of one carrier's service above that of competing carriers, must be considered. In addition, the factor of 'what the traffic will bear' is entitled to great weight. This is a factor which can be applied most intelligently by the carriers themselves.

"Assuming that the exact cost to efficient truck carriers of performing each individual haul were predicated strictly upon such costs with the provision that truck carriers could assess the rail rates for the same transportation if lower charges resulted, all truck carriers who observed such a basis rigidly would manifestly not enjoy compensatory operations. If because of the competition of proprietary carriage or of more efficient types of carriers any large amount of traffic is carried below cost, some other traffic must make up the deficiency if the carrier hopes to realize his full costs. The danger to the carriers' revenues of adhering strictly to the minimum rates is emphasized when minimum rates are predicated upon averages of conditions encountered throughout wide territories or in connection with varied types of transportation, for the reason that such rates will not be compensatory for hauls in which transportation conditions are unusually adverse. If the minimum rates are observed without deviation, the carriers will lose whenever they go below cost to meet the rates of more economical forms of transport, and whenever they perform transportation the cost of which is above the average. This being true, it is evident that if compensatory operations are to be attained each carrier must analyze its particular operations with the view of determining what part of its traffic is able to bear the portion of overhead costs which that traffic being handled below full costs for competitive reasons, or to meet the needs of commerce, would normally bear. In addition, each carrier must be sure that traffic which is unusually expensive to handle is paying its proper share." (Emphasis added.)

At pages 687 and 688 we held:

> "Applying the foregoing conclusions to the problems of those carriers who have urged a substantial increase above the minimum rate level proposed, it seems clear that the principal objecting carriers offer relatively high class services with frequent schedules, for which the proposed rates would not be adequate in all instances. Nevertheless, the same fields of transportation are served by contract, radial highway common, and perhaps a few common carriers, who specialize as to commodities handled and types of hauls performed and who do not offer the same frequency of schedules and convenience of service. For the latter carriers, at least, the proposed rates appear adequate. In the same fields of transportation actual or potential proprietary operations are also present and rates higher than those proposed would undoubtedly further intensify the competition to for-hire carriers of this form of transport. Under these circumstances, the fixation of minimum rates of the general level set forth in the proposed tariff appears to be eminently justified. The assertedly disastrous effect which this action would have on the revenues of the objecting carriers need not follow <u>if such carriers meet the minimum rates only in connection with movements in which contract or proprietary operations are practical and hold the balance of their rates sufficiently above the minimum level to give recognition to the added desirability of their services</u>." (Emphasis added.)

The record in these proceedings reflects (as will the records of similar proceedings for many years back) that the minimum rates in issue are the "going" rates, and that the petitioner contends that these "minimum" (going) rates must be adjusted upward if the carriers are to continue providing adequate service to the public. We are inclined to agree with petitioner, but we do not believe, nor will the record support, the proposition that the carriers' financial distress is uniform in magnitude throughout the industry.

We here are going to attempt to return to the notion expressed in Decision No. 31606, supra, that carriers should exercise managerial discretion by adjusting rate levels within a zone of reasonableness. For this purpose we will establish as minimum rate levels those rates generally suggested by the staff, and for common carriers maximum rates at the level requested by petitioner. Common carriers requiring rate levels above the minimum, but equal to or less than the maximum, will be permitted to file such rates, subject to the submission of such financial and/or other data supporting the higher rates as the Commission shall require. On competitive rates no data beyond that already submitted in this case shall be required. The staff will expeditiously review that data and either accept or reject the filing. Such tariff filing rejections will be accompanied by an explanation of deficiency.

Petitions for offset increases in the minimum rates here in issue will not be entertained in the future unless it can be shown (as was recited in Decision No. 85349) that:

(1) Carriage at the minimum rates then in effect is demonstrated by petitioners to constitute predatory pricing within the meaning of state and federal antitrust laws;

(2) The rates proposed represent true minimum rates and allow scope for legitimate competition;

(3) Rates for different classes and commodities reflect relevant cost differences; and

(4) Different rates are provided for alternative kinds of service which have different costs.

We will give expeditious attention to applications for increased rates filed by common carriers. Such applications may, if conditions warrant, be accompanied by concurrent filings in the appropriate minimum rate proceedings. We have granted minimum rate increases in this case even though the standards set out above have not been met. We recognize that some time is required to adjust to any changed

standard of ratemaking--although the change in this instance is the reaffirmation of the original purpose of minimum rates. We reiterate, however, that this historic purpose will be adhered to with increasing vigor in future minimum rate cases. In any subsequent filing the degree of proof presented here would not be accepted in lieu of the evidence described above.

We urge all parties to cooperate with our staff in this ongoing transition to the rate-competitive transportation system contemplated by California law.

As stated above the staff recommendation will be adopted insofar as such increases do not exceed 8 percent for shipments of less than 10,000 pounds and 7 percent for other rates and charges. The staff's recommendation did not include the rates and charges for pool shipments. As petitioner points out, this is one of the most labor intensive kinds of service provided; therefore, such rates and charges will be included in the authorized increases.

These minimum rate adjustments would enable the highway carrier industry to generate an estimated $23,400,000 in added revenue from the rates and charges named in the five minimum rate tariffs here in issue. This, added to the increases granted by the two prior interim orders in these proceedings, totals an estimated $64,900,000 annually.

The request by CMA to modify the rule pertaining to a single unit of carrier's equipment in connection with rates subject to minimum weights of 40,000 and 50,000 pounds is without merit and will be denied.

The rates subject to minimum weights of 40,000 pounds or greater will be increased 6 percent in order to retain the same relationship between such rates and those subject to lower minimum weights.

Findings

1. The existing level of rates named in MRTs 1-B, 2, 9-B, 15, and 19 was established pursuant to Decision No. 85349 dated January 13, 1976 and Decision No. 85755 dated April 27, 1976, as amended by Decision No. 85822 dated May 11, 1976 (Petition 871 et al.)

2. Highway carriers operating under the several minimum rate tariffs involved have incurred, as of April 1, 1976, increases in wages and wage related expenses. Such increases are not reflected in the current level of minimum rates.

3. Petitioner seeks increases in the form of surcharges of 9 percent applicable to shipments of less than 10,000 pounds and 8 percent for shipments of 10,000 pounds and over in the rates named in MRTs 1-B, 2, 9-B, and 19, and 10 percent in MRT 15, in lieu of the surcharges named in Decision No. 85755, as amended.

4. The Commission's Transportation Division staff recommends increases of 6.6 percent in the rates and charges of MRT 15; 7 percent in the charges for shipments of 10,000 pounds and over and 8 percent for shipments of less than 10,000 pounds for MRT 2; and 9, 8, and 9 percent in the charges for all shipments subject to MRTs 1-B, 9-B, and 19, respectively, in lieu of the surcharges named in Decisions Nos. 85349 and 85755.

5. Except as noted in Supplement 123, increases of 6 percent in the charges for shipments weighing 40,000 pounds and over, 7 percent in the charges for shipments of 10,000 pounds but less than 40,000 pounds, and 8 percent in the charges for shipments of less than 10,000 pounds and all other charges for transportation subject to MRTs 1-B, 2, 9-B, and 19 have been justified and should be granted in lieu of the surcharges named in Decisions Nos. 85349 and 85755.

6. An increase of 6.6 percent in the rates and charges named in MRT 15 has been justified and should be granted in lieu of the surcharge named in Decision No. 85755.

7. Increases in the rates and charges for pool shipments named in MRTs 1-B, 2, 9-B, and 19 have been justified and should be granted to the same extent recommended in Finding 5.

8. Increases of 10 percent for shipments subject to minimum weights of less than 10,000 pounds and 9 percent for shipments subject to minimum weights of 10,000 pounds and over in the rates or charges of MRTs 1-B, 2, 9-B, and 19, and 10 percent in the rates and charges of MRT 15 have been justified as maximum for rates that may be filed by common carriers subject to the submission of such financial and/or other data supporting the higher rates as the Commission shall require. On competitive rates no data beyond that already submitted in this case shall be required.

9. There remains no justification for future increases in the minimum rates here in issue, unless and until it can be shown that the rate level is such that it is predatory as that term is defined by relevant federal and state antitrust law.

10. To the extent that the provisions of MRTs 1-B, 2, 9-B, 15, and 19 heretofore have been found to constitute reasonable minimum rates and rules for common carriers as defined in the Public Utilities Code, said provisions, as hereinafter adjusted, are, and will be, reasonable minimum rate provisions for said common carriers. To the extent that the existing rates and charges of said common carriers for the transportation involved are less in volume or effect than the minimum rates and charges designated herein as reasonable for said carriers, to that same extent the rates and charges of said carriers are, and for the future will be, unreasonable, insufficient, and not justified by the actual competitive rates of competing carriers or by the cost of other means of transportation.

11. The interim relief found justified herein will afford the carriers an opportunity to earn approximately $21,800,000 in additional cost offset revenues.

Conclusions

1. Petitions 871, 260, 348, and 126 in Cases Nos. 5432, 5439, 5441, and 7783, respectively, should be granted to the extent provided in the order herein.

2. Public hearing will be scheduled for the receipt of evidence concerning final resolution of the issues presented in these proceedings.

3. To facilitate tariff distribution, the amendments to MRT 2 will be provided in the ensuing order and the like tariff

amendments to MRTs 1-B, 9-B, 15, and 19 will be made by supplemental order.

4. The increase granted here should be incorporated into the rates; however, due to the time required, the increases will be in the form of surcharges (except for MRT 15) as suggested by the staff. Supplemental orders will be subsequently issued making appropriate adjustments to the rates and canceling the surcharge.

The record is convincing that the relief sought is urgently required; therefore, the order that follows will be made effective on this day.

SECOND INTERIM ORDER

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision No. 31606, as amended) is further amended by incorporating therein, to become effective October 30, 1976, Supplement 123, attached hereto and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject also to Decision No. 31606, as amended, are directed to establish in their tariffs the increases necessary to conform with the further adjustments ordered by this decision.

3. Common carriers maintaining rates on a level other than the minimum rates for transportation for which rates are prescribed in Minimum Rate Tariff 2 are authorized to increase such rates by the same amounts authorized by this decision for Minimum Rate Tariff 2 rates.

4. Common carriers maintaining rates on the same level as Minimum Rate Tariff 2 rates for the transportation of commodities and/or for transportation not subject to Minimum Rate Tariff 2 are authorized to increase such rates by the same amounts authorized by this decision for Minimum Rate Tariff 2 rates.

5. Common carriers maintaining rates at levels other than the minimum rates for the transportation of commodities and/or for transportation not subject to Minimum Rate Tariff 2 are authorized to increase such rates by the same amounts authorized by this decision for Minimum Rate Tariff 2 rates.

6. Any provisions currently maintained in common carrier tariffs which are more restrictive than, or which produce charges greater than, those contained in Minimum Rate Tariff 2, are authorized to be maintained in connection with the increased rates and charges directed to be established by Ordering Paragraph 2 hereof.

7. Common carriers are authorized to establish in their tariffs increases not exceeding 10 percent in rates or charges subject to minimum weights of less than 10,000 pounds and 9 percent in rates or charges subject to minimum weights of 10,000 pounds or greater, subject to the submission of such financial and/or other data supporting the higher rates as the Commission shall require. On competitive rates no data beyond that already submitted in this case shall be required.

8. The base rates, on which the increases authorized by Ordering Paragraph 7 are to be applied, are the rates which were in effect prior to the increases authorized by Decisions Nos. 85349 and 85755. In no circumstance is the authority conferred by Ordering Paragraph 7 to be construed as authorizing that increase in addition to the increases ordered and/or authorized by Ordering Paragraphs 1 through 6.

9. Tariff publications resulting in increases in minimum rates required or authorized to be made by common carriers as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than October 30, 1976 on not less than five days' notice to the Commission and to the public; such tariff publications as are required shall be made effective not later than October 30, 1976; as to increases in minimum rates which are authorized but not required, the authority

shall expire unless exercised within sixty days after the effective date of this order; and tariff publications resulting in reductions may be made effective not earlier than the fifth day after the effective date of this order, and may be made effective on not less than five days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff pages incorporated in this order.

10. Tariff publications resulting in increases authorized by Ordering Paragraph 7 shall not be filed earlier than the effective date of this order and may be made effective not earlier than October 30, 1976 on not less than thirty days' notice to the Commission and to the public. This authority shall expire unless exercised within ninety days after the effective date of this order.

11. Common carriers, in establishing and maintaining the rates authorized by this order, are authorized to depart from the provisions of Section 461.5 of the Public Utilities Code to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are hereby modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

12. Common carriers are authorized to depart from the Commission's tariff circular requirements only to the extent necessary in establishing the surcharge supplement authorized by this order.

13. In all other respects, Decision No. 31606, as amended, shall remain in full force and effect.

14. To the extent not granted herein, Petitions 871 and 126, as amended, in Cases Nos. 5432 and 7783 are denied.

15. Public hearing shall be scheduled in the captioned proceedings for the receipt of evidence relative to the final disposition thereof.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 13th of OCTOBER, 1976.

I will file a written dissent.
William Symons Jr.
Commissioner

President

Leonard Ross

Robert F. Barnett
Commissioners

I dissent.
Vernon L. Sturgeon
Commissioner

APPENDIX A

LIST OF APPEARANCES

Petitioners: Richard W. Smith, Attorney at Law, and H. W. Hughes, for the California Trucking Association.

Respondents: Eric Anderson and Lee Pfister, for Willig Freight Lines; Harold F. Culy, for Bayview Trucking, Incorporated; Ron Davis, for Associated Freight Lines; Frank Dunn, for G. I. Trucking Company; Thomas R. Dwyer and Tom F. Herman, for Delta California Industries; Ronald F. Forbes, for Marso's Messenger Service; C. E. Goacher and C. J. Lawlor, for Di Salvo Trucking Company; S. M. Haslett, III, for Haslett Company; Bruce H. Howe, John McSweeney, and A. D. Smith, for Delta Lines; Desmond C. Hughes and Jim Adams III, for DeAnza Delivery Systems, Inc.; Armand Karp, for Rogers Motor Express; Harold T. Laws, for S & H Truck Lines, Inc.; Joseph MacDonald and Wayne Varozza, for California Motor Express; Ray J. Mitchell and Allan N. Robison, for System 99; John Odoxta, for Shippers Imperial, Inc.; Charles E. Phillips, for Precision Transport Co., Inc.; and Harriet H. Adams, for A&B Garment Delivery.

Protestants: Patrick F. Murphree, for Johnson & Johnson; and Daniel J. Sweeney, Attorney at Law, for Drug and Toilet Preparation Traffic Conf., Gift Wrapping and Tyings Association, and National Small Shipments Traffic Conference.

Interested Parties: Asa Button, for Amstar Corporation, Spreckels Sugar Division; James Orear, for C & H Sugar Company; William D. Mayer, for Del Monte Corporation; Donald Geddes, for National Can Corporation; Dave Mendonca, for J. Hungerford Smith Company; Tad Muraoka, for IBM Corporation; Dale Johnson, for Tillie Lewis Foods; Harvey E. Hamilton, for Certain-Teed Products Corporation; Gordon G. Gale, for The Clorox Company; Robert A. Kormel, for Pacific Gas and Electric Company; Leon R. Peikin, for RCA Corporation; R. A. Dand, for Norris Industries; Thomas E. Carlton, for Morton Salt Company; Thomas J. Brockmiller, for Sears Roebuck and Company; M. J. Nicolaus, for Western Motor Tariff Bureau, Inc.; William G. Lankford and Richard Austin, for Kaiser Cement & Gypsum; David A. Rodriguez, for Leslie Salt Co.; Richard I. Siudzinski, for Kraft Foods; Kenneth C. Delaney, for Los Angeles Area Chamber of Commerce; Joseph Garcia, Attorney at Law, for T. Takei, Director, California Department of Consumer Affairs; Gerald J. Lavelle, for

De Soto, Inc.; J. T. Schreiber, for Canners League of California; Calhoun E. Jacobson, for Traffic Managers Conference of California; R. C. Fels, for California Furniture Manufacturers Association; Thomas Hays, for California Moving and Storage Association; Don B. Shields, for Highway Carriers Association; and Jess J. Butcher, for California Manufacturers Association.

Commission Staff: James Squeri, Ira R. Alderson, Jr., and William J. Jennings, Attorneys at Law, George Morrison, and John Specht.

SPECIAL INCREASE SUPPLEMENT

SUPPLEMENT 123

(Cancels Supplement 117, 119 and Interim Surcharge Supplement and Order to this tariff in Decision No. 85755 and Supplemental Interim Surcharge Supplement and Order to this tariff in Decision No. 85822)

(Supplements 73, 75, 87, 98, 120, (1)121, (1)122 and 123 Contain All Changes)

TO

MINIMUM RATE TARIFF 2

NAMING

MINIMUM RATES AND RULES

FOR THE

TRANSPORTATION OF PROPERTY OVER THE

PUBLIC HIGHWAYS WITHIN THE

STATE OF CALIFORNIA

BY

RADIAL HIGHWAY COMMON CARRIERS

HIGHWAY CONTRACT CARRIERS

CEMENT CONTRACT CARRIERS

DUMP TRUCK CARRIERS

AND

HOUSEHOLD GOODS CARRIERS

APPLICATION OF SURCHARGE
(See Page 2 of this Supplement)

(1) Supplements 121 and 122 suspended the effective dates of certain pages and were mailed only to parties of record to the proceeding and will not be mailed to all subscribers.

Decision No. 86507

EFFECTIVE

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

◊APPLICATION OF SURCHARGE

Except as otherwise provided, compute the amount of charges in accordance with the rates and rules in the tariff (including any surcharges otherwise applicable) and increase the amount so computed as follows:

1. By six percent (6%) on charges computed upon rates subject to minimum weights of 40,000 pounds and over.
2. By seven percent (7%) on charges computed upon rates subject to minimum weights of 10,000 pounds but less than 40,000 pounds.
3. By eight percent (8%) on all other rates and charges.

For purposes of disposing of fractions under provisions hereof, fractions of less than one-half cent shall be dropped and fractions of one-half cent or greater shall be increased to the next higher whole cent.

EXCEPTIONS: The surcharge provided in this supplement shall not be applied to those charges determined under provisions of this tariff specified below:

1. Supplement 75.
2. Item 110, Application of Rates--Deductions.
3. Item 124, Charges for Escort Service.
4. Item 141, Failure to Accomplish Delivery.
5. Item 143, Delays to Equipment on Whole Grain.
6. Item 145, Charges For Accessorial Services or Delays, subparagraph (b) only.
7. Item 147, Advertising on Equipment.
8. Item 182, Collect on Delivery (C.O.D.) Shipments.
9. Items 185-1 through 187-3, Temperature Control Service.
10. Items 200 through 230, Alternative Application of Common Carrier Rates (railhead to railhead portion only).
11. Item 260, Forklift Service Rates column 2 rate only.
12. Item 265, Parcel Rates-Metropolitan Los Angeles Area.

THE END

◊ Increase, Decision No. 86507

C. 5432, #871)
C. 5439, #260) - D. 86507
C. 5441, #348)
C. 7783, #126)

COMMISSIONER WILLIAM SYMONS, JR., Dissenting

In these cases, rate relief even below staff's recommendations can look good to the trucking industry: carriers have been paying boosted teamster wages since April 1, 1976 while their relief petition for wage costs has dragged on at the Commission. But in the pudding being dished up for the trucking industry by today's majority there are some slivers of glass.

Changed Standards for Ratemaking

Is an offset case a proper vehicle for radically restructuring the regulation of California's trucking industry? Of course not -- but that is what is occurring here. The decision heralds "... changed standards of ratemaking ..." (p. 10) which introduces "predatory pricing" (p. 10) as the new standard to be satisfied before any increases in minimum rates occur.

What happened to the generic case investigation into regulatory restructuring, Case No. 9963? In that case, launched with great fanfare in the summer of 1975, at least there was broad notice to all affected parties. Further, Case No. 9963 was an Order Instituting Investigation which can be structured and timed to afford adequate opportunity for evidentiary development. It is not a posture where the economic viability of the industry is being held hostage.

But, today's opinion would indicate that study is moot. While people focused on Case No. 9963, language was deftly slipped into other decisions on a piecemeal basis and behold: a new regulatory standard was born. In a consummate act of bootstrapping, it cites as authority, Decision No. 85349: our January 13, 1976 order in this case, issued without hearing.

Though today's decision dresses itself up with some 1938 language, the enunciation of the "changed standard of ratemaking" is a profound departure. It pivots on the phrase "predatory pricing". This is a word of art, not from the California Public Utilities Code, but from uncited "relevant federal and state antitrust laws" (p. 5). While it is properly the duty of this Commission to weigh antitrust considerations in reaching its decisions, this does not mean antitrust notions are the sole consideration, nor do they surplant the statutory framework and directives set forth in the Public Utilities Code. On this question our own California Supreme Court has cited for our attention the comments of the Court of Appeals of the District of Columbia,

> "... 'Although the Commission /FPC/ is not bound by the dictates of the antitrust laws, it is clear that antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy.'
>
> . . .
>
> "... 'This is not to suggest, however, that regulatory agencies have jurisdiction to determine violations of the antitrust laws /Citations./ Nor are the agencies strictly bound by the dictates of these laws, for they can and do approve actions which violate antitrust policies where other economic, social and political considerations are found to be of overriding importance. In short, the antitrust laws are merely another tool which a regulatory agency employs to a greater or lesser degree to give 'understandable content to the broad statutory concept of the "public interest"'.' ..." Northern California Power Agency v Public Utilities Commission, 5 C.3d 370, p. 377 (1971)

I am severely critical of the insufficient process used to launch this predatory pricing "rule". We have not even had public staff legal briefs presented on this point. The sole document which has come to my attention on "Predatory Practices" has been a one-and-a-half page memo of August 10, 1976 by a third year law student intern to the Commission. Its subject

is the "Meaning of Predatory Practices", and the inquiry is apt since the Commission is using the term as a controlling concept without ever having defined it in a prior decision. Her conclusion is that "... no direct definition has been given ..." in the California Public Utilities Code, other California State statutes or Federal statutes. A legal opinion on its meaning, derived from its usage in the language of court decisions is offered. This deficiency is glaringly noticeable in today's decision which does not have a single specific statutory citation for this "changed standard of ratemaking".

The dog that is expected to jump through the hoop will have a special appreciation for how high it is being held -- and whether he will be able to make the leap. This change of standards therefore is not of small concern. Under the traditional minimum rate setting standard of the "reasonably efficient carrier" the fact-gathering and analytical resources of the Public Utilities Commission Transportation Division, in conducting comprehensive and impartial studies of California transportation costs and conditions, are critical to the regulation of the industry.

Under the new standard a potentially crushing burden falls on the applicant. As contemplated, it is not the State's resources investigating and prosecuting antitrust, but rather the applicant concerned with inadequate rates for a particular move who is cast in the role of hiring detectives and antitrust lawyers. Which is more likely: That we will see multiple privately-instituted antitrust actions that are successfully and quickly resolved before the Commission, or numerous carriers slowly bled to death by uneconomic rates because the burden of relief has been made so heavy?

C. 5432, #871)
C. 5439, #26[redacted] - D. 86507
C. 5441, #348)
C. 7783, #126)

I think this state's vital transportation industry deserves more consideration than the slap-dash, rule-or-ruin treatment it is receiving at the hands of this Commission's majority.

San Francisco, California
October 13, 1976

William Symons, Jr.
WILLIAM SYMONS, JR.
Commissioner