

DECISION NO. 50961 CASE NO. 9120931 APP. NO. _____

ORIGINAL

Decision No. 86961

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investiga-)
tion for the purpose of consid-)
ering 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. 931
(Filed December 9, 1976)

OPINION AND ORDER

Minimum Rate Tariff 2 (MRT 2) names minimum rates and rules for the statewide transportation of general commodities. By this petition, Occidental Chemical Company, a corporation, seeks to exempt from the application of the rates named in Minimum Rate Tariff 2 (MRT 2) adhesive, adjuvants, spreaders or stickers; aluminum sulfate; common lime; plant growth inhibitor, modifier or regulator; and tree or weed killing compounds when such commodities are transported in mixed shipments with certain fertilizers and other exempt commodities named in MRT 2. Petitioner further proposes that the sought exemption apply only when such presently non-exempt commodities do not exceed thirty (30) percent of the weight of the entire shipment.

Petitioner states that the movement of commodities, regulated and unregulated, in the same shipment causes it to experience difficulty economically to accomplish its transportation. In determining the amount to be paid for movement of the exempt commodities, petitioner and its carriers endeavor to relate the rate to the cost of operating the equipment mile-for-mile. Petitioner alleges that the commodities constituting the mixed load, both exempt and non-exempt, are all destined to farms or farm storage points, many of which are off highway and all have, in general, the same transportation

characteristics. Petitioner declares that, mile-for-mile, the cost of transporting these commodities is the same but the commodities which are subject to minimum rates must be separately rated at a rate different from that agreed upon for application to the exempt commodities.

Petitioner avers that it is responsible for transportation charges and, since it sells its products on a delivered basis, it must properly cover them in the invoices which it submits to its purchaser or experience a loss. Petitioner contends that it must audit each bill for each shipment and such procedure is costly. Petitioner asserts that its proposal would eliminate the necessity for such complicated rate computations and costly auditing and result in a substantial cost saving to both shippers and carriers.

The petition was listed on the Commission's Daily Calendar of December 10, 1976. California Trucking Association (CTA) informed the Commission by letter that the matter concerning minimum rate exemptions is before the Supreme Court and it would be inappropriate to act on the instant petition given the imminency of potential resolution of the basic question. CTA further stated that, should the Commission determine that any favorable action on this request is appropriate, such exemption should be made subject to short-run expiration to enable review of the lawful status of this subject. CTA's latter statement will be considered in disposition of this matter.

In the circumstances, the Commission finds that petitioner's proposal is reasonable and justified to the extent hereinafter indicated. A public hearing is not necessary. The Commission concludes that Minimum Rate Tariff 2 should be amended accordingly by subjecting the authority to an expiration date of approximately one year. The Commission further concludes that the effective date

of this order should be the date hereof because there is an immediate need for this rate relief.

IT IS ORDERED that:

1. Minimum Rate Tariff 2 (Appendix D to Decision 31606, as amended) is further amended by incorporating therein to become effective February 26, 1977, Sixty-fifth Revised Page 14, Third Revised Page 14-A and Sixty-seventh Revised Page 15 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 to Decision 31606, as amended, are hereby authorized to establish in their tariffs the amendments necessary to conform with the further adjustments ordered herein.

3. Tariff publications authorized to be made by common carriers as a result of this order may be made effective not earlier than February 26, 1977, 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.

4. Common carriers, in establishing and maintaining the amendments authorized hereinabove, are hereby 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 amendments published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

5. In all other respects Decision 31606, as amended, shall remain in full force and effect.

C. 5432 (Pet. 931) - PNK/jmw*

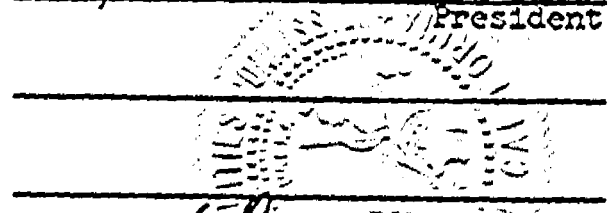
The effective date of this order is the date hereof.

Dated at San Francisco, California, this 15th day of February, 1977.

I abstain -
William Squous, Jr.
Commissioner

Robert Batwaicel

President



[Signature]

[Signature]

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

MINIMUM RATE TARIFF 2

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--COMMODITIES (Continued) (Items 40, 41 and 42)</p> <p>Except as otherwise specifically provided in this tariff, rates named herein apply for the transportation of all commodities except as provided in Paragraphs 1, 2 or 3 below:</p> <p>1. Rates in this tariff will not apply to the transportation of commodities when subject to the rates provided in the following minimum rate tariffs (or successive issues thereof):</p> <ul style="list-style-type: none"> 3-A - Livestock 4-B - Used household goods, personal effects and office, store and institution furniture, fixtures and equipment 6-B - Petroleum and petroleum products, as described, when transported in bulk in tank trucks, tank trailers or tank semitrailers 7-A - Property, as described, when transported in dump truck equipment 8-A - Fresh fruits, fresh vegetables and specified empty containers 10 - Cement and other specified commodities 11-A - Uncrated new furniture 12-A - Motor vehicles, as described in secondary movement by truckaway service 13 - Commodities transported by vacuum-type and pump-type tank vehicles 14-A - Specified agricultural commodities, in bulk 15 - Yearly, monthly, weekly and hourly vehicle unit rates 17-A - Property, as described when transported in dump truck equipment - Southern California 18 - Trailer coaches and campers 20 - Rock, sand and gravel in dump truck equipment - Northern California <p>2. Rates in this tariff will not apply to shipments consisting of the following commodities:</p> <ul style="list-style-type: none"> Accessories, motion picture (E)*Adhesive, Adjuvants, Spreaders or Stickers (subject to Note 6) (E)*Aluminum Sulfate (subject to Note 6) Automobiles, set up (when rates are not otherwise provided in Minimum Rate Tariff 12-A) Baggage Bodies, automobile, flattened Buttermilk, liquid (subject to Note 1) Carriers (used packages), as described in Items 320 and 321 of the Exception Ratings Tariff, empty returning or forwarded for return loads (subject to Note 2) Cement Clinker (E)*Compounds, tree or weed killing (subject to Note 6) Concrete transported in motor vehicles equipped for mechanical mixing in transit Cottage Cheese (subject to Note 1) Cotton Cream (subject to Note 1) Directories, telephone Eggs, other than shelled, desiccated or frozen (subject to Note 1) Fertilizers, as described in Items 540, 560 and 580 of the Exception Ratings Tariff Film, motion picture Fruit, dried, unmanufactured and unprocessed (subject to Note 3) Fruit, fresh or green, including dates, fresh, not cold pack nor frozen (when rates are not otherwise provided in Minimum Rate Tariff 8-A) Fruit, which are placed in a preservative and are destined to a cannery for processing into a preserved or pickled fruit Fungicides, agricultural Furniture, household appliances and other home furnishings which have been sold at retail by a retail merchant, transported from retail stores or retail store warehouses, or transported from retail customers to retail stores or retail store warehouses (subject to Note 4) Furniture, uncrated, new, of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services Hops Houses which have been disengaged from their foundations, or sections thereof and integral parts or contents when the contents are transported within the houses Hulls, almond, not including shells and other waste from the hulling and shelling of almonds, not processed for use as animal or poultry feed <p style="text-align: center;">(Continued in Item 41)</p>	<p style="text-align: center;">640</p>
<p> * Change) * Addition) o Increase) o Reduction) </p> <p style="text-align: center;">Decision No 86961</p>	<p>oo(E) Expires with February 28, 1978.</p>
EFFECTIVE	
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.	

Correction

MINIMUM RATE TARIFF 2

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--COMMODITIES (Continued) (Items 40, 41 and 42)</p> <p>2. Rates in this tariff will not apply to shipments consisting of the following commodities (concluded): Ice Cream Mix, unflavored (subject to Note 6) Insecticides, agricultural Jewelry transported from or to wholesale houses in packages weighing 10 pounds or less (E) *Lime, common (subject to Note 6) Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles (the terms "tank trucks, tank trailers, tank semitrailers" include truck, trailer or semitrailer with carrier or shipper provided collapsible tank or bags, 20 feet or more in length, 2,000 gallons or more in capacity and 20,000 pounds or more weight carrying capacity) Livestock (when rates are not otherwise provided in Minimum Rate Tariff 3-A) Logs (wood) Milk, liquid (subject to Note 1) Newspapers, newspaper supplements, sections or inserts (not scrap or waste) Nuts, in the shell (when rates are not otherwise provided in Minimum Rate Tariff 8-A) Nuts, field shelled (when rates are not otherwise provided in Minimum Rate Tariff 8-A) Optical goods transported from or to wholesale houses in packages weighing 10 pounds or less Pits, fruit (E) *Plant Growth Inhibitor, Modifier or Regulator (subject to Note 6) Pot Cheese (subject to Note 1) Poultry, live Sea shells, crushed, ground, powdered or disintegrated (subject to Note 5) Seeds, as described under that heading in the Governing Classification, when shipped from point of growth to an accumulation station or point of initial processing, or from an accumulation station to point of initial processing; in bulk, or in containers with a capacity exceeding 40 cubic feet, or in packages weighing 50 pounds or more Shell Marl, crushed, ground or powdered (subject to Note 5) Shells, walnut Sulphur United States mail transported for the Post Office Department under contract Used property, as described in Minimum Rate Tariff 4-B, of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services Vans, sea, viz.: A container not owned or furnished by the motor carrier, into which merchandise may be loaded for transportation, of not less than 800 cubic feet inside dimensions, and having either origin or destination at a port within the State of California. This exemption also applies to: (1) the movement of such container from any point in California to any other point in California when the purpose of such movement is to position the container for an export load or to return the empty container from which an import shipment has been unloaded to a sea van pool facility and (2) the movement of shipper-furnished chassis when such movement is in connection with the exempt transportation of sea vans as described herein. Vegetables, fresh or green, including mushrooms, fresh, not cold pack nor frozen (when rates are not otherwise provided in Minimum Rate Tariff 8-A) Vegetables, which are placed in a preservative and are destined to a cannery for processing into a preserved or pickled vegetable Vegetables, dried, unmanufactured, viz.: Beans (except Mesquite), Lentils, Onions, Peas (except Cow Peas), Pepper Pods Voting Booths, Ballot Boxes, Election Tents and Election Supplies, when transported from or to polling places</p> <p style="text-align: center;">(Continued in Item 41)</p>	<p>641</p>
<p> * Change) * Addition) o Increase) o Reduction) </p>	<p>Decision No. 56961 (E) Expires with February 28, 1978.</p>
<p>EFFECTIVE</p>	
<p style="text-align: center;">ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.</p> <p>Correction</p>	

MINIMUM RATE TARIFF 2

SECTION 1--RULES OF GENERAL APPLICATION (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--COMMODITIES (Continued) (Items 40, 41 and 42)</p> <p>NOTE 1.--(a) Except as provided in paragraph (b), exemption applies only in connection with straight or mixed shipments of commodities making reference hereto and only when shipped in quantities of not less than 20,000 pounds.</p> <p style="padding-left: 40px;">(b) The provisions of paragraph (a) of this note do not apply in connection with:</p> <p style="padding-left: 80px;">(1) The transportation of eggs moving in straight shipments from point of production.</p> <p style="padding-left: 80px;">(2) Shipments moving in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles or in milk shipping cans from point of production.</p> <p>NOTE 2.--Includes only used empty carriers which are returning from an outbound paying load of traffic for which rates are not provided in this tariff, or which are being forwarded for a return paying load of traffic for which rates are not provided in this tariff (subject to Item 80 of the Exception Ratings Tariff).</p> <p>NOTE 3.--Exemption applies only as to dried fruit in the natural state and which has not been cleaned, washed, stemmed or otherwise prepared or partially prepared for human consumption.</p> <p>NOTE 4.--Exemption applies only when the distance between point of origin and destination does not exceed 35 miles, computed in accordance with the provisions of Item 100.</p> <p>NOTE 5.--Exemption applies only when shipper certifies on the shipping document covering the transportation that the shells or shell marl are being shipped for use as a fertilizer.</p> <p>*NOTE 6.--Exemption applies only when the commodity moves in mixed shipments with other commodities named in Items 540, 560 and 580 of Exception Ratings Tariff 1 and Items 40 and 41 of this tariff and the commodities making reference to this note do not exceed 30 percent of the weight of the entire shipment.</p> <p>3. Rates in this tariff will not apply to the transportation of the following:</p> <p style="padding-left: 20px;">Commodities of abnormal size or weight which because of such size or weight require the use of and are transported on low bed trailers</p> <p style="padding-left: 20px;">Commodities when transported in an armored car operated under permit from the Commissioner of the California Highway Patrol</p> <p style="padding-left: 20px;">Commodities which consist of or contain materials essential to National Defense and which have been donated to and are transported for the United States Government, governmental agencies, or nonprofit organizations acting for or in behalf of said government in the collection, assembly or transportation of said commodities in connection with the recovery of said essential materials from the commodities transported</p> <p style="padding-left: 20px;">Commodities which have been sold at retail by a retail merchant, and transported from a retail store or retail store warehouse to residences of retail customers, or transported from residences of retail customers to retail stores or retail store warehouses, and such transportation is performed in vehicles in the exclusive use of the retailer and providing no shipment exceeds 2,000 pounds in weight; further, that the merchandise is for the use or consumption of retail customers and is not for use in the furtherance of an industrial or commercial enterprise; and provided that the retailer shall certify on the shipping document for each delivery that the merchandise was sold at retail to a retail customer</p> <p style="text-align: center;">(Continued in Item 42)</p>	<p style="text-align: center;">#41 (Con- cluded)</p>
<p>(1) Sixty-sixth Revised Page 15 was suspended by Supplement 125.</p> <p>of Change) • Addition) Decision No. 56961</p>	
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