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ORIGINAL

Decision No. 87048

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 trans-  
portation 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.

And Related Matters.

Case No. 5432  
Petition for Modification  
No. 945  
(Filed January 31, 1977;  
amended February 4, 1977)

Case No. 5439  
Petition for Modification  
No. 301

Case No. 5441  
Petition for Modification  
No. 383

Case No. 7783  
Petition for Modification  
No. 151  
(Filed January 31, 1977;  
amended February 4, 1977)

INTERIM OPINION

Pursuant to Section 3662 of the Public Utilities Code the Commission has established minimum rates, rules, and regulations for the transportation of property by highway carriers over the public highways of this state. Such provisions for the movement of general freight are set forth in Minimum Rate Tariffs (MRTs) 1-B, 2, 9-B, 15, and 19. Rates and charges in these MRTs were last generally adjusted by Decisions Nos. 86507 (MRT 2), 86508 (MRT 9-B), 86509 (MRTs 1-B and 19), and 86510 (MRT 15).

By Petitions 945, 301, 383, and 151, respectively, in the cases captioned above, the California Trucking Association (CTA) seeks surcharge adjustments to these MRTs of approximately 16 percent. This would be accomplished by increasing the present surcharges of between 6 and 8 percent to between 22 and 24 percent. The requested adjustments are to offset increased costs for such items as fuel, maintenance and repair, insurance, and payroll taxes which have already taken effect and for increases in labor costs becoming effective on April 1, 1977 in accordance with terms of carrier/union labor agreements. The yearly increase in carrier revenues for nonlabor items is estimated by CTA to be \$47.0 million and for labor \$85.3 million for a total of \$132.3 million.

Hearings were held on this request before Examiner Albert C. Porter on March 1 and 2, 1977 in San Francisco and, pending further hearings, the petitions were submitted for possible interim decision. Evidence was presented by the Assistant Director, Division of Transportation Economics of CTA. A statement of counsel was read into the record by the Commission staff (staff) recommending what, in the staff's opinion, would be an appropriate increase on an interim basis.

#### CTA's Evidence

CTA presented seven exhibits to support its contention that the present level of rates and charges in the MRTs at issue does not reflect the current costs of carriers and is, therefore, unjust and unreasonable. These exhibits addressed two general areas of carrier expenses: (1) labor and labor-related items and (2) nonlabor expenses.

For its evidence on the increases in labor the CTA chose to compare the level of hourly costs as of July 1, 1975, April 1, 1976, and April 1, 1977. Using statewide averages for a local truck driver, as an example, the following table illustrates the hourly labor cost to carriers for union labor:

7-1-75	\$10.5628	
4-1-76	11.6684	1975-76 increase = \$1.1056 = 10.47%
4-1-77	12.9434	1976-77 increase = \$1.2750 = 10.93%
		1975-77 increase = \$2.3806 = 22.54%

(The purpose of showing the 1975-77 increase will become apparent later when we discuss the method CTA uses to determine the amount of increase necessary to bring rates in line with prevailing costs of operation.) CTA contends that much of the increase in labor cost is not related to base wages but is the result of fringe benefit increases and changes in payroll taxes. Using the detail for a local truck driver under Teamster Joint Council 42 provisions, the cost per hour to a carrier breaks down as follows:

Base pay	\$ 8.6550
Holiday fund	.4388
Premium	.7270
Vacation	.5431
Workers' Comp. Ins.	.8374
Payroll taxes	.5702
Health, welfare, and pension	<u>1.1735</u>
Total hourly cost	\$12.9450

CTA admitted on cross-examination that not all carriers are a party to union contracts nor pay union scale; in fact, those not unionized pay less than union scale. However, CTA contends that because of competitive pressures the relative increases in union scales are reflected in nonunion operations by like increases.

Turning to cost factors other than labor CTA presented summaries of consumer price index changes for a broad range of products, the most significant of which were for tires and motor vehicle parts. These indexes were brought forward through January 1977 and not projected into any future period. The indexes for tires

and parts comparing July 1975 to January 1977 showed increases of 17 percent and 18 percent, respectively. Running costs, i.e., maintenance of equipment, increased by 11 percent for the same period. Fuel cost increases measured from February 1975 to December 1976 amounted to 14 percent.

Taken collectively, the above increases were projected into adjustments in minimum rates of about 16 percent. Coupled with the present surcharges of 6 percent to 8 percent the new surcharges would range from 22 percent to 24 percent. We point out that CTA bases its estimate on the most liberal method for cost offsets, the wage (cost) offset method. (Re Minimum Rate Tariff No. 2 (1969) 70 CPUC 277.)

CTA used the period July 1975 to April 1977 for cost comparisons; this method results in adjusting rates for all of the cost increases estimated by CTA to have occurred since the rate levels ordered by Decision No. 84539 dated June 17, 1975 in Case No. 5432, Petition 833. At the request of the examiner CTA put in an exhibit to show the effect of what has been requested in the past, what has been granted by the Commission, and how the present request relates thereto. A summary of that exhibit follows:

<u>Petition</u>	<u>Decision No.</u>	<u>Date</u>		<u>Sought</u>	<u>Index: D.84539 = 100</u>		<u>Staff Recommendations<sup>1/</sup></u>
					<u>MRT Granted</u>	<u>Common Carriers</u>	
871 (+ 1st Amend.)	85349	1-13-76		104	101	101	
871 (2nd & 3rd Amend.)	85755	4-27-76	LTL	110	106	106	
			TL	109	104	104	
"	86507	10-13-76	LTL	110	108	110	
			TL				
			Less than 40M	109	107	109	
			40M and over	109	106	109	
945 (+ 1st Amend.)			LTL	124			115
			TL				
			Less than 40M	123			114
			40M and over	122			113

<sup>1/</sup> See discussion following.

Staff Recommendation

Through a statement of counsel, the staff recommended increases less than those sought by CTA for the purpose of an interim order. The recommendations were for an additional 7 percentage points on the present surcharge of MRTs 2 and 9-B and 8 percentage points on MRTs 1-B and 19. For MRT 15, the recommendation goes to increases for power equipment only and would amount to \$210 per month for yearly and monthly rates, \$52 per week for weekly rates, \$1.25 per hour for hourly rates, and 1 cent per mile for mileage rates. Estimated yearly increases in carrier revenues under this proposal would be:

MRT 1-B	\$ 363,196
2	63,517,157
9-B	434,942
19	409,916
15	<u>4,619,060</u>
Total	\$69,344,271

Findings

1. The existing level of rates named in MRTs 1-B, 2, 9-B, 15, and 19 was established by Decision No. 86507 dated October 13, 1976 in Case No. 5432, Petition 871.

2. Highway carriers operating under the MRTs involved herein have incurred and will incur on April 1, 1977 increases in almost all categories of operating expenses. These increases are not totally reflected in the current level of minimum rates.

3. CTA seeks a general increase of about 16 percent in the MRT's involved herein.

4. The procedures used by CTA to arrive at its recommendation represent the method resulting in the largest increase of the several methods we have recognized in the past for measuring cost increases.

5. The Commission's staff recommends a much lower adjustment for interim purposes than that recommended by CTA; we shall adopt the staff recommendation for interim purposes.

6. We are not sympathetic to offset procedures as we have stated in several recent decisions in these cases; however, we cannot fail to recognize that carriers are faced with increased costs of doing business. Accordingly and reluctantly, we will adjust the minimum rates pending the possible adoption and implementation of a plan for reregulation of the trucking industry.

7. Pending the receipt of additional evidence in the further hearings scheduled in this matter and a decision thereon, the rates and charges established by the ensuing order are just, reasonable, and nondiscriminatory minimum rates for the transportation governed thereby.

8. 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.

9. Since the carriers are faced on April 1, 1977 with the majority of the cost increases to be offset by the rate increases authorized herein, we will make this order effective on the date signed.

10. The interim relief found justified herein will provide carriers the opportunity to earn approximately \$69.3 million in additional revenue on a yearly basis.

Conclusions

1. Petitions 945, 301, 383, and 151 in Cases Nos. 5432, 5439, 5441, and 7783, respectively, should be granted to the extent provided in the order herein.

2. Public hearings are scheduled for the receipt of evidence concerning final resolution of this proceeding.

3. For purposes of 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 orders.

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 April 1, 1977, Supplement 129, 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 maintaining rates not otherwise specifically referred to in other ordering paragraphs of this decision are authorized to increase such rates by 7 percent.

8. Tariff publications 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 the fifth day after the effective date of this order,

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 April 1, 1977; and as to tariff publications which are authorized but not required, the authority shall expire unless exercised within sixty days after the effective date of this order.

9. 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.

10. 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.

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

C.5432, Pet. 945 et al. km

12. To the extent not granted herein, Petition 945, as amended, in Case No. 5432 is continued pending further hearing.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day of MARCH, 1977.

*I am attaching a  
concurring  
opinion  
Horn*

*Robert Belmont*  
\_\_\_\_\_  
President

*William L. Symons*  
\_\_\_\_\_  
Commissioner

*Leonard Horn*  
\_\_\_\_\_  
Commissioner

*Richard D. Howell*  
\_\_\_\_\_  
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

SPECIAL INCREASE SUPPLEMENT

SUPPLEMENT 129

(Cancels Supplement 128)

(Supplements 73, 75, 77, 87, 98, 124, 125, 127  
and 129 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)

Decision No.

**87048**

EFFECTIVE APRIL 1, 1977

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 thirteen percent (13%) on charges computed upon rates subject to minimum weights of 40,000 pounds and over.
2. By fourteen percent (14%) on charges computed upon rates subject to minimum weights of 10,000 pounds but less than 40,000 pounds.
3. By fifteen percent (15%) 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.

EXCEPTION 1.--The surcharges herein shall not apply to:

1. Supplement 75;
2. Deductions in Item 110;
3. The charges in Item 124;
4. Storage and reloading charges in Item 141;
5. Demurrage charge in Item 143;
6. Accessorial charges in subparagraph (b) of Item 145;
7. Advertising on equipment charge in Item 147;
8. C.O.D. charges in Item 182;
9. Temperature control service charges in Items 185-1 through 187-3;
10. Railhead-to-railhead charges used under provisions of Items 200 through 230;
11. Column 2 forklift charge in Item 260;
12. Parcel delivery charges in Item 265.

EXCEPTION 2.--When shipments are transported under provisions of:

- Item 292 - Volume Incentive Service;
- Item 293 and 293.1 - Special Volume Incentive Service;
- Item 293.2 - Premium Volume Incentive Service;
- Item 293.3 - Multiple Utilization of Equipment;
- Item 293.4 - Truckload Efficiency Service;

compute the amount of charges in accordance with appropriate rates and rules in this tariff and increase the amount so computed by seven percent (7%).

THE END

CONCURRING OPINION OF COMMISSIONER LEONARD ROSS:

This order suggests a procedure which meets the approval of many of the major private parties involved in trucking regulation and which allows a prompt, orderly reexamination of the system of minimum rate regulation. In undertaking this reexamination, I think that the Commission and reviewing courts should bear in mind several guiding principles:

(1) A system of minimum rates, set high enough to constitute going rates, amounts to price-fixing under color of state law. It contravenes the principles of state and federal antitrust laws, and if properly tested in the courts might well be found to violate the letter of the statute as well.

(2) The economic effect of a system of high, uniform minimum rates is unlikely to be favorable for any segment of the industry or public. If entry were tightly restricted, carriers might make monopoly profits at the expense of the shipping public. But entry is easy. The result is that the possible monopoly profits from high rates are dissipated through excess capacity. Actual profits are low; expenses are needlessly high; energy and capital are wasted; carriers, labor, and the public are worse off.

(3) At present, there are essentially no entry requirements for permitted carriers, while entry into certificated carriage generally takes place when a carrier has, in the opinion of the staff, violated the ambiguous and unintelligible law which defines the differences between "irregular route" carriers and common carriers. A uniform requirement of financial responsibility for all carriers might well improve the stability of the industry without leading to monopoly profits or restricted service. The acid test is whether FUC operating rights can be sold for substantial sums of money. Entry restrictions under the ICC system, for example, are so severe that ICC operating

rights can be sold for hundreds of thousands or millions of dollars. Legal prohibitions against the sale of operating rights, such as those in our Code and under federal statutes, are hypocritical. If entry is severely limited, any arms-length sale of a business will include allowance for operating rights, however disguised to meet legal niceties.

(4) Under the Interstate Commerce Commission system, rate bureaus function as legalized cartels with the practical power to coerce rate filings by threatening expensive legal proceedings. Neither the substance nor the legality of California's system of rate regulation would be changed if we interpreted "carrier set" rates to mean rates set by one or a few rate bureaus and then ratified (or even modified) by the Commission. Obviously, it is impractical for thousands of carriers to make up complex rate books on their own. But I am confident that the Commission staff can perform the function of aiding carriers to set their own rates. Legitimate functions might remain for tariff agents, such as those functions permitted under our current system of warehouse regulation. But these functions must be carefully defined to avoid conflict with state and federal antitrust laws and with the objective of non-predatory competition which underlies them.

(5) Changing from the current minimum rate system to one compatible with antitrust laws and principles will and should take time. The hearing process is well advanced in the case of some aspects of the industry, and has yet to begin in others. In granting offset relief today, the Commission once again is making a necessary practical compromise between the goals it has set forth and the realities of cost increases for the industry. I am convinced that the new procedural method suggested in this decision will allow the Commission to proceed with a transition to responsible, competitive ratemaking.

*Leonard Ross*

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Leonard Ross  
Commissioner

San Francisco, California

March 9, 1977