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ORIGINAL

Decision No. 89004 JUN 27 1978

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 these rates which are provided in Minimum Rate Tariff 2 and the revisions or reissues thereof.

And Related Matters.

Case No. 5432, OSH 922  
(Filed November 2, 1976)

Case No. 5439, OSH 290  
Case No. 5441, OSH 372  
(Filed November 2, 1976)

Gene Carmody, for E. H. Griffith; and  
Richard W. Smith, Attorney at Law,  
H. W. Hughes, and Paul Biancardi,  
Attorney at Law; for California  
Trucking Association; interested  
parties.  
John R. Laurie and Dan Callaghan, for  
the Commission staff.

OPINION AND ORDER ON REHEARING

Minimum Rate Tariff 2 (MRT 2) contains minimum rates and rules for the statewide transportation of general commodities by highway carriers. Over several years the Commission has granted special exemptions from the rates and rules in MRT 2 to about 35 carriers when such carriers are engaged in courier type transportation of the two classes of commodities generally referred to as business records and medical specimens. In order to exercise the exemption, the transportation has to be performed in vehicles typically used for courier service; for that reason the exemptions have specified that the transportation must be performed in vehicles

not exceeding a licensed weight<sup>1/</sup> of 4,000 pounds, and in some cases 4,500 pounds. The main purpose of the special exemptions is to relieve carriers of certain requirements of MRT 2 that are not practical of application to courier transportation.

From time to time the Commission has exempted commodities from minimum rates when it was not practical to apply minimum rates and rules to the transportation of such commodities. With this in mind the Commission, acting ex parte, issued Decision No. 86378 on September 14, 1976 adding business records and medical specimens to the list of exempt commodities in Items 41 and 42 of MRT 2. Similar orders were issued for Minimum Rate Tariffs 1-B, 9-B, and 19.<sup>2/</sup> The California Trucking Association (CTA) by a timely filed petition for rehearing stayed Decision No. 86378 et al. By Decision No. 86597 dated November 2, 1976, the Commission continued the stays and granted rehearing.

Hearings before Administrative Law Judge Albert C. Porter were held on August 8, 1977 and on September 19, 1977 when the matter was submitted. The staff and the CTA each sponsored a witness, the staff supporting Decision No. 86378 and the CTA opposing it.

#### Staff Presentation

In support of the general exemption, the staff witness offered one exhibit consisting of a statement and a tabulation by carrier of the 35 exemptions granted by the Commission.

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- 1/ Licensed Weight = curb weight of vehicle not including load.
  - 2/ 1-B and 19 cover general freight transportation in the San Francisco Bay area and 9-B covers general freight transportation in the San Diego area. Orders for these tariffs were contained in Decisions Nos. 86380 and 86379, respectively.

over the past few years. In its statement the staff makes the following points: The Commission has established a clear pattern of exemptions for carriers requesting the type of exemption proposed herein; it would be a needless waste of time and expense to continue to grant exemptions on an ad hoc basis; and the Commission has found in all cases when granting courier exemptions that the minimum rates, rules, and regulations are not appropriate for the type of service provided. The staff witness testified that there have been no enforcement problems with the present provision in MRT 2 similar to the one proposed herein. That provision exempts shipments weighing 10 pounds or less when transported by carriers who operate no vehicles exceeding 4,000 pounds and applies to transportation between points in the Los Angeles Basin Territory. The staff proposes no shipment size limitation for the exemption and would not limit a carrier to operating only vehicles of 4,500 pounds or less. This means that under the proposal a carrier could operate any size equipment in its fleet so long as the transportation of the exempted commodities took place in vehicles with a licensed weight of 4,500 pounds or less.

CTA Presentation

The witness for the CTA gave testimony against the proposal making the following points: in at least two of its past decisions, Decision No. 65794 dated July 30, 1963 and Decision No. 85703 dated April 20, 1976, both in Case No. 5432, the Commission recognized the potential for competitive advantages under a general exemption and held that service is the controlling factor and not necessarily the commodity or package size and, therefore, such exemptions should be unique to each carrier based on that carrier's needs; by limiting the present exemptions to individual carriers, the Commission has been able to make sure that only carriers engaged in bona fide courier service have the exemption; the staff

proposal would not cancel any of the 35 existing exemptions because the general exemption would not be broad enough to cover those now in effect; we would end up with a limited exemption in MRT-2 and the specific exemptions for several individual carriers thereby accomplishing very little; on the other hand, some of the proposed commodity descriptions are so broad they would destroy the historical concept that commodities handled in courier service usually have little intrinsic value; and, a general exemption would make it possible for carriers not engaged in courier service to transport free from regulation commodities now properly subject to minimum rates because there would be no limit on shipment size, only a limit on the vehicle used, and broad commodity descriptions.

Discussion

In Decision No. 85703 supra we discussed the Commission's view on the difference between courier service and ordinary transportation. Courier service must have an element of spontaneity; it cannot be distinguished by the commodity or package size. It is the kind of service that is controlling; it is characterized by quick response, speedy delivery, and usually involves on-call service. To attempt to distinguish it by only two factors, the type of commodity and the vehicle used, would so broaden the historical concept of courier service that it could become indistinguishable from ordinary transportation. It is true that in the individual exemptions granted for such services we have delineated commodities and vehicle size but, also, we have granted the exemption to only those carriers predominately or exclusively engaged in courier type service.<sup>2/</sup> The staff witness conceded that

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3/ Appendix A is an example of a recent individual exemption granted by the Commission.

under the staff proposal, for example, any carrier subject to MRT 2 could transport certain commodities completely free from minimum rates and rules so long as it did so in vehicles not exceeding a licensed weight of 4,500 pounds.

The staff witness agreed that even the broad commodity categories suggested for the proposed exemption would cover only 90 percent of the commodities in the 35 carrier exemptions now in effect. Thus some carriers would have to continue their present exemptions or settle for less than they have now. On the other hand, some carriers would have exemptions they did not apply for and do not have now.

The CTA witness pointed out that recently enacted Senate Bill 860 (SB 860) will change the regulation picture for courier transportation and make moot any blanket deviation which might be authorized in this proceeding. Under the provisions of SB 860, the permitted class of radial highway common carrier will cease to exist; all such carriers will have to convert their authorities to highway common carrier certificates and/or highway contract carrier permits. In the opinion of CTA, the majority of the radial carriers who are courier type carriers will opt for the certificates thereby making any exemption in MRT 2 inapplicable to them since such carriers must file tariffs covering all transportation in which they engage.

If we look only at the number of carriers who now have a similar exemption, it is clear that the exemption would be desirable in the tariff. The objections of CTA can be overcome by making the exemption applicable to carriers engaged in courier type service. We recognize there is always a difficulty in defining certain types of service and it can lead to enforcement problems, but those problems should be no more serious than we have now under the individual exemptions. Therefore, we will establish the exemption, but make it applicable to only courier service carriers as defined in the following findings.

Findings

1. There is a need for the proposed exemption because the present rates are not responsive to the transportation characteristics of courier service transportation of business records and medical specimens, and the public interest does not require the continuance of minimum rates for this service.

2. The exemption should be applicable to only those carriers engaged in courier service.

3. Courier service is defined as operations having the following characteristics:

a. A carrier vehicle fleet consisting of only vehicles having a licensed weight of 4,500 pounds or less.

b. Delivery shall be made within 24 hours after pickup.

We conclude that the supplemental tariff pages attached hereto should be adopted and Decisions Nos. 86378, 86379, and 86380 permanently rescinded.

For purposes of tariff distribution, the amendment to MRT 2 will be provided in this order, and the like tariff amendments to MRTs 1-B, 9-B, and 19 will be made by supplemental orders.

IT IS ORDERED that:

1. Decision No. 86378 is rescinded.
2. Minimum Rate Tariff 2 (Appendix D to Decision No. 31606, as amended) is further amended by incorporating therein, to become effective thirty-nine days after the date hereof, Supplement 135, Fifty-fourth Revised Page 11, and Twenty-sixth Revised Page 15-A attached hereto and by this reference made a part hereof.
3. In all other respects, Decision No. 31606, as amended, shall remain in full force and effect.
4. OSH 922 in Case No. 5432 is concluded.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 27<sup>th</sup> day of JUNE, 1978.

William Lyons Jr. President  
Vernon L. Strydom  
Robert P. Howell  
Paul J. Debnick Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A

Ordering Paragraph 1 from Decision No. 86909 dated February 2, 1977 in Case 5432, Petition 930 of Continental Courier Service, Inc.:

IT IS ORDERED that:

1. Continental Courier Service, Inc., a corporation, is exempted from the otherwise governing provisions of Minimum Rate Tariffs 1-B, 2, 9-B, and 19 when engaged in the "courier type" transportation of:

- a. Checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, printed or reproduced documents or data, and exposed, developed and printed film; and
- b. Human and animal specimens, contained in glass or plastic tubes or vials, of whole blood and blood serum for medical laboratory examination; individual units of whole blood; glass slides for microscopic tissue examination; urine and stool specimens; sputum, wound, and other similar cultures; tissue samples for pathological examination; X-ray photographs; medical transmittal documents, and documents reporting results of laboratory examination; and specimen envelopes, laboratory test forms and transmittal containers furnished by medical laboratories to their clients;

when transported in vehicles not exceeding a licensed weight of 4,500 pounds.



SUPPLEMENT 135

(Cancels Supplement 125)

(Supplements 73, 75, 77, 87, 124, 127, 131,  
134 and 135 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

AGRICULTURAL CARRIERS

CEMENT CONTRACT CARRIERS

DUMP TRUCK CARRIERS

AND

HOUSEHOLD GOODS CARRIERS

Decision No.

**89004**

EFFECTIVE

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

SECTION 1--RULES OF GENERAL APPLICATION	ITEM
<p style="text-align: center;"><b>DEFINITION OF TECHNICAL TERMS</b>                      (Items 10, 11 and 12)</p> <p><b>AIR-MILE</b> means a statute mile measured in a straight line without regard to terrain features or differences in elevation.</p> <p><b>ARMORED CAR</b> means any motor truck and/or other highway vehicle which has been armored with bullet resistant metal and/or bullet proof glass, and which is manned by an armed crew.</p> <p><b>CARRIER</b> means a radial highway common carrier, a highway contract carrier, (E) an agricultural carrier, a cement contract carrier or a dump truck carrier as defined in the Highway Carriers' Act, or a household goods carrier as defined in the Household Goods Carriers Act.</p> <p><b>CARRIER'S EQUIPMENT</b> means any motor truck or other self-propelled highway vehicle, trailer, semitrailer, or any combination of such highway vehicles, operated by the carrier.</p> <p><b>COMMISSION</b> means the Public Utilities Commission of the State of California.</p> <p><b>COMMON CARRIER RATE</b> means any intrastate rate or rates of any common carrier or common carriers, as defined in the Public Utilities Act, lawfully on file with the Commission and in effect at time of shipment.</p> <p><b>COMPONENT PART</b> means any part of a shipment received by the carrier whether or not such part is separately delivered by the carrier; and any part of a shipment separately delivered by the carrier whether or not such part is separately received by the carrier.</p> <p><b>CONSIGNOR</b> means the person, firm or corporation shown on the bill of lading as the shipper of the property received by the carrier for transportation.</p> <p><b>*COURIER SERVICE</b> is defined as operations having the following characteristics:                      (a) A carrier vehicle fleet consisting of only vehicles having a licensed weight of 4,500 pounds or less; (b) Delivery shall be made within 24 hours after pickup.</p> <p><b>DANGEROUS ARTICLES</b> means articles named in the Hazardous Materials Tariff.</p> <p><b>DEBTOR</b> means the person obligated to pay freight charges to the carrier, whether consignor, consignee or other party.</p> <p><b>DISTANCE TABLE</b> means Distance Table 8 issued by the Commission.</p> <p><b>ESCORT SERVICE</b> means the furnishing of pilot cars or vehicles by a carrier as may be required by any governmental agency to accompany a shipment for highway safety.</p> <p><b>ESTABLISHED DEPOT</b> means a freight terminal owned or leased and maintained by a carrier for the receipt and delivery of shipments.</p> <p><b>EXCEPTION RATINGS TARIFF</b> means Exception Ratings Tariff 1 issued by the Commission.</p> <p><b>GOVERNING CLASSIFICATION</b> means National Motor Freight Classification NMT 100-E, including supplements thereto or reissues thereof when the provisions of such supplements or reissues have been approved by the Commission.</p> <p><b>HAZARDOUS MATERIALS</b> means articles or materials described in the Hazardous Materials Tariff.</p> <p><b>HAZARDOUS MATERIALS TARIFF</b> means Hazardous Materials Tariff ATA 111-C, Cal PUC 13, of American Trucking Associations, Inc., Agent.</p> <p><b>HOLIDAYS</b> means New Year's Day (January 1), Washington's Birthday (the third Monday in February), Memorial Day (the last Monday in May), Fourth of July, Labor Day (the first Monday in September), Thanksgiving Day, the day after Thanksgiving, December 24 and Christmas Day (December 25). When a holiday falls on Sunday, the following Monday shall be considered as a holiday.</p> <p><b>INDEPENDENT-CONTRACTOR SUBHAULER</b> means any carrier who renders service for a principal carrier, for a specified recompense, for a specified result, under the control of the principal as to result of the work only and not as to the means by which such result is accomplished.</p> <p style="text-align: right;">(Continued in Item 11)</p>	<p style="text-align: center;">611</p>
<p>(E) Expires with January 31, 1979.                      * Change )                      * Addition ) Decision No. <b>89004</b></p>	
<b>EFFECTIVE</b>	
<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 (Concluded)            (Items 40, 41 and 42)</p> <p>Disaster Supplies, i.e., those commodities which are allocated to provide relief during a state of extreme emergency or state of disaster; and those commodities which are transported for a civil defense or disaster organization established and functioning in accordance with the California Disaster Act to ultimate point of storage or use prior to or during a state of disaster or state of extreme emergency</p> <p>Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services</p> <p>Property shipped to or from producers of motion pictures or television shows when transported subject to the rates and rules provided in Decision No. 33226, in Cases Nos. 4246 and 4434, as amended</p> <p>Property transported for a displaced person when the cost thereof is borne by a public entity as provided in Section 7262 of the Government Code</p> <p>Property transported to a United States Post Office for mailing and United States mail transported from a post office to the addressee thereof (subject to Note 1)</p> <p>*Shipments of the following commodities, when transported by carriers engaged in courier service as defined in Item No. 10 of this tariff: (1) Business Records, viz., checks, drafts, money orders, securities, transit items, sales audit media, tabulation cards, data processing materials, legal documents, printed or reproduced documents or data and related items, video tapes, films and printed news stories; (2) Medical specimens, viz., Human and animal specimens, contained in glass or plastic tubes or vials, or whole blood serum for medical laboratory examination; individual units of whole blood; glass slides for microscopic tissue examination; urine and stool specimens; sputum, wound and other similar cultures; tissue samples for pathological examination; X-ray photographs; medical transmittal documents, and documents reporting results of laboratory examination, and specimen envelopes, laboratory test forms and transmittal containers furnished by medical laboratories to their clients.</p> <p>Shipments weighing 100 pounds or less when delivered from retail stores or retail store warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement (subject to Note 2)</p> <p>Shipments weighing 10 pounds or less when transported by carriers which operate no vehicles exceeding a licensed weight of 4,000 pounds (subject to Note 3)</p> <p>NOTE 1.--Exemption applies only to transportation between points within a radius of 25 miles of the intersection of 1st and Main Streets, Los Angeles, said mileage to be computed in accordance with the provisions of Item 100.</p> <p>NOTE 2.--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 3.--Exemption applies only to transportation between points located within the Los Angeles Basin Territory as described in Item 270.</p>	<p style="text-align: center;">#42 (Con- clud- ed)</p>
<p>(1) Twenty-fifth Revised Page 15-A was suspended by Supplement 125.</p> <p>Change )            Addition ) Decision No. <b>89004</b></p>	
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ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.	

Correction