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Decision No. 89499

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
Order Setting Hearing 965

Case No. 5439
Order Setting Hearing 311

Case No. 5441
Order Setting Hearing 393

AND RELATED MATTERS

ORDER DENYING REHEARING AND SUSPENSION

Pacific Regional Committee of Steamship Operators Intermodal Committee has filed a petition for rehearing and suspension of Decision No. 88895. The Commission has considered each and every allegation contained therein and is of the opinion that no good cause for granting the requested relief has been shown. Therefore,

IT IS ORDERED that rehearing and suspension of Decision No. 88895 are denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 3rd day of OCTOBER, 1978.

Robert Betman
President

*I would grant rehearing
William Lyons*

Robert L. Stegman
Richard W. Hinkle
Clair L. Smith
Commissioners

This decision will be printed for general distribution. The attached copy should be completed by inserting the decision number on the first page and on appendix and tariff pages, the effective date on tariff pages, and by inserting the place, date and names of signing Commissioners on the last page of the order. The insertion information is as follows:

Decision No. 88895 Case No. 5432, OSH 965, et al

Signed at San Francisco, California, May 31, 1978

Effective date for tariff pages July 9, 1978

Signed by:

ROBERT BATNOVICH
President

VERNON L. STURGEON

RICHARD D. GRAVELLE
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

I dissent.

William Symons, Jr., Commissioner

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Case No. 5432, OSH 965
(Filed April 26, 1977)

And Related Matters.

Case No. 5439, OSH 311
Case No. 5441, OSH 393
(Filed April 26, 1977)

(Appearances are listed in Appendix A.)

O P I N I O N

By Decisions Nos. 85584, 85585, 85586, and 85587 issued March 16, 1976 the Commission exempted the transportation of empty sea vans and flattened automobile bodies from the application of the minimum rates named in Minimum Rate Tariffs (MRTs) 2, 1-B, 9-B, and 19. By Decision No. 85789 dated May 4, 1976 the Commission denied a petition for rehearing of the above decisions filed by California Trucking Association (CTA). CTA's subsequent Petition to the California Supreme Court for a Writ of Review was granted in S.F. No. 23473. On March 24, 1977 the Supreme Court filed its decision in that matter annulling Decisions Nos. 85584, 85585, 85586, and 85587 on the ground that CTA should have the opportunity to be heard in a formal hearing.

On April 19, 1977 the Commission issued Decision No. 87236 restoring the application of minimum rates to the transportation of empty sea vans and flattened automobile bodies. The decision also ordered a consolidated hearing in these proceedings to consider whether the transportation of the involved commodities should be exempted from the minimum rates.

On June 10, 1977 at a prehearing conference the Administrative Law Judge scheduled one series of hearings in October 1977 for the receipt of evidence concerning the transportation of empty sea vans and another series of hearings in November 1977 for the receipt of evidence concerning the transportation of flattened automobile bodies. Each series of hearings was held at San Francisco, Los Angeles, and San Diego. The series of hearings concerning the transportation of empty sea vans was submitted on October 26, 1977. The series of hearings concerning the transportation of flattened automobile bodies was submitted on December 12, 1977 with the filing of late-filed exhibits and written closing statements.

Evidence Concerning Transportation of Sea Vans

The staff evidence concerning the transportation of empty sea vans is set forth in Exhibit 1. The exhibit describes the various types of transportation of empty sea vans by highway carriers in California as follows:

The most common type of highway transportation of empty containers in California is movement having an immediately prior or subsequent loaded movement between the same points but in the opposite direction. This type is usually performed on chassis furnished by the steamship company. An example of this movement is the case of import commodities moved from a steamship company terminal at a port to a consignee's facility for unloading, and the return of the empty container to the steamship company. Typically, for this type of transportation, the steamship company publishes an ocean rate which includes delivery at

its container yard. The consignee arranges for truck movement with a motor carrier. Unless the commodity is exempt from ICC regulation or the transportation is within the limits of a commercial zone, the carrier possesses ICC operating authority and is bound by filed rates governing the transportation.

Another example of this first broad classification of empty container movements is the case of movement incidental to substituted truck service to ports where steamship companies provide service but where operating conditions and volume of traffic do not warrant placement of a vessel. This situation commonly occurs in connection with cargo moving on ocean bills of lading to the ports of San Diego and Stockton. The loaded container is off-loaded from the vessel at a port such as Long Beach or Oakland and trucked to the destination port. The steamship company makes direct arrangements for the truck transportation typically with an "in-house" carrier. The motor carrier will return the same empty container or one of the same size on the return trip.

The second broad classification of empty container moves are those which have neither an immediately prior nor subsequent loaded move, in other words, one-way movements. In general, the purpose of this type of move is to position the container at a storage facility or pool in anticipation of future traffic needs but where no specific load for a given container is available.

A large part of this type of movement is due to imbalance of containers between port facilities of steamship companies. In California, there are a number of movements of this type from the ports of Long Beach and Los Angeles to the ports of Oakland and San Francisco. This is due to the nature of ports-of-call patterns of steamship movements and the fact that the southern ports have predominantly import traffic while the northern ports have predominantly export traffic. Much of this port imbalance or repositioning traffic is performed by carriers using flatbed equipment, who transport lumber and other general commodities southbound. These carriers usually haul two or three containers at a time to make up 60 feet of length (one 40-foot container and one 20-foot container or three 20-foot containers). This repositioning traffic is subject

to large fluctuations. For instance, a steamship company may need to move dozens of containers in a short period of time and then not move any for two or three months. Based on the findings of the staff study, there appear to be several hundred container movements of this type per week on an average basis. Motor carriers sometimes transport intrastate freight within "empty" containers being repositioned.

Another prevalent type of move within the broad classification of one-way moves are those between facilities of container leasing companies and steamship companies, known as on-off lease moves. Due to traffic variations and growth, steamship companies, often need to augment their container and chassis fleets by short-term and long-term leased equipment. This type of hauling is usually done on motor carrier furnished flatbed or chassis equipment, and usually involves short hauls of five miles or less. It should be noted that on-off lease movements sometimes occur in connection with round trip movements involving a load.

Other types of empty container moves, which occur to a lesser extent, include those between steamship terminals and outside maintenance and repair facilities; delivery of new containers from manufacturer (although most containers are manufactured out-of-state or overseas); movement to and from railhead, usually incidental to a "bridge" movement; movements due to relocation of steamship or leasing company terminals; and transportation of old containers for salvage or other nontransportation use.

This listing of type of moves is not necessarily exhaustive. Also, there are many variations and combinations tending to blur the distinctions among types of movements.

The exhibit also states:

There exists substantial difference of opinion or misunderstanding among the parties involved in this transportation as to which government agency, if any, regulates the various types of moves. Several parties feel this proceeding is not necessary because assertedly no transportation of empty sea vans is subject to the

jurisdiction of the Public Utilities Commission. Some believe that any transportation within the commercial zone is exempt from economic regulation. Another view expressed is that any transportation performed on behalf of a steamship company is in interstate or foreign commerce.

The exhibit further states:

As the staff previously found and reported in the White Paper, the ICC in informal opinions has expressed the position that the movement of empty containers is in intrastate commerce. This position was reaffirmed by the ICC staff during the course of study. The container moved within California does not acquire an interstate nature until loaded with cargo in interstate or foreign commerce.

While agreeing with the reasoning used by the ICC and the result reached, it is believed that for the majority of moves another factor must be taken into consideration: the container is not "shipped". In other words, the transportation does not meet the test of for-hire carriage provided in the Public Utilities Code. When the empty container is brought from the steamship company to a shipper for loading or returned from unloading, the container is a part of the motor carrier's operating equipment. In fact, all motor carrier movement of containers is made under the provisions of interchange agreements and/or contracts. The steamship company allows the use of its equipment for the motor carrier's convenience in accomplishing pickup or delivery of cargo. Regulation of this type of move would have the same effect as the regulation of movements of empty motor carrier trailing equipment to and from shippers.

The staff recommends that the transportation of empty sea vans be exempted from the minimum rates.

Some of the appearances, while agreeing with the staff's assessment of the nature of the transportation of empty sea vans, are opposed to the staff recommendation. They argue that exemption is not needed since all of the transportation, with minor exceptions, is performed pursuant to interchange of equipment agreements and, thus, not transportation subject to minimum rate regulation. The

California Trucking Association further argues that if the transportation of empty sea vans is found to be transportation for compensation, highway common carriers would have to publish rates in their common carrier tariffs even if it were exempt from the minimum rate regulation.

We concur that the movement of empty sea vans is not subject to minimum rate regulation when highway carriers enter into interchange of equipment agreements and actually use the empty sea vans to transport cargo. However, if a highway carrier moves an empty sea van from place to place without utilizing it to transport cargo even though an interchange of equipment agreement is entered into the transportation is subject to minimum rate regulation.

Based on the evidence adduced we concur with the staff recommendation that the transportation of empty sea vans should be exempted from minimum rate regulation.

Evidence Concerning Transportation of Flattened Automobile Bodies

The staff evidence concerning the transportation of flattened automobile bodies is set forth in Exhibit 7. The exhibit discloses that flattened automobile bodies are transported in truckload shipments on flatbed truck equipment. Most carriers use units of equipment consisting of either three-axle diesel tractors in conjunction with 40- or 45-foot semitrailers or two-axle diesel tractors with a double set of trailers. In some cases, trailers are furnished by shippers. The trailers are equipped with cables and winches to tie down loads. While the equipment is well-suited for the transportation, it is not specialized or specifically designed for this transportation. In fact, most carriers transport other commodities in connection with their overall operations.

Flattened automobile bodies are generally transported in straight truckload shipments with no split pickup, split delivery, or other specialized accessorial services required. Consignors and consignees furnish equipment and operators for efficient power loading and unloading at their expense. The driver's responsibilities are limited to positioning of truck equipment, supervision of loading to insure compliance with weight and height laws, and tying down stacks. In most cases, consignors and consignees have truck scales, and gross and tare weights are obtained at both origin and at destination. Average payloads range in weight from 20 to 25 tons.

To a lesser extent, flattened automobile bodies are transported in mixed shipments with other types of scrap metal. This transportation is usually performed in trailers with sides to contain loose scrap. One or two flattened automobiles or bundles of flattened automobiles are placed on top of the load to compress the scrap and hold it in place during transit.

The value of scrap iron and steel is determined by domestic and international scrap markets, which in turn are related to changing levels of steel production. The value of flattened automobile bodies, in turn, is closely related to scrap prices, and is subject to large fluctuations. During the period the staff study was in progress, the price of flattened automobiles delivered to shredders ranged from under \$30 to nearly \$40 per ton. In the past several years, the price has ranged from under \$10 to over \$60 per ton. These fluctuations lead to fluctuations in the volume of traffic. Because of relatively low market prices faced by scrap processors at the time of the study, most shippers were shipping only about one-half (and some even less) the volume of traffic shipped at peak periods in the past several years, particularly during 1973-1974. With the downturn in business, proprietary carriage has become a larger percentage of overall shipping.

There is another type of variation in traffic which is related to the price of flattened automobile bodies. A processor which anticipates a change in market prices may attempt to stockpile in advance of changes in the purchase price. Thus a shipper may tender little or no traffic for several months and then tender hundreds or even thousands of tons in a relatively short period. Also, traffic volume is often curtailed due to a breakdown or maintenance-related shutdown at a shredder facility.

Minimum rates applicable to transportation of flattened automobile bodies are general commodity class rates. The National Motor Freight Classification (NMFC 100-D, Item 106610) provides a truckload rating of Class 35, subject to a minimum weight of 50,000 pounds, for the following commodity description: iron and steel scrap, NOI, not copper clad, loose. By the rule of analogy and because there is no more specific classification, flattened automobile bodies are subject to this classification item. In the opinion of the staff, this classification item was established to reflect the transportation of loose scrap, which is transported in specialized trailing equipment. It does not reflect the circumstances such as loading and unloading, type of equipment, and load factors involved in transportation of flattened automobile bodies in straight truckload shipments on flatbed equipment.

Flattened automobile bodies do not generally move at Class 35 rates at the present time. Most of the traffic moves under alternative rail rates, MRT 15 vehicle unit rates, deviation authority, interstate rates, or proprietary carriage. It is apparent that the charges resulting from a Class 35 rating applied under the class rates are excessive for truckload transportation of flattened automobile bodies. The parties contacted in the course of the staff study confirmed this view by their statements.

A number of applications seeking less than minimum rate authority to transport flattened automobile bodies have been filed by permitted carriers, and most were granted by the Commission. In decisions granting these applications, the Commission has found that there were favorable circumstances attendant to the transportation not generally prevalent in the usual or ordinary transportation services performed by highway carriers under the provisions of MRT 2.

The staff recommends that the transportation of flattened automobile bodies when shipped in quantities of 30,000 pounds or more be exempted from minimum rates for a period of approximately two years.

All parties to the proceeding agree that the general commodity class rates are not appropriate. The shipper interests participating in the hearing process support the staff recommendation. The transportation industry interests request that commodity rates be established for the transportation of flattened automobile bodies.

At the conclusion of the hearing the Administrative Law Judge suggested the filing of late-filed exhibits by the parties setting forth recommended interim rates should the Commission desire to set same rather than continue the existing rates or exempt the transportation of flattened automobile bodies from minimum rates. The exhibits which were filed are received in evidence as follows:^{1/}

<u>Appearance</u>	<u>Exhibit No.</u>
California Trucking Association	13
Larry P. Boland	14
Robert Lewon	15
Schnitzer Steel Products, Inc.	16
Vincent Ganduglia Trucking	17

The staff has chosen not to file a late-filed exhibit. In its closing statement the staff states the record contains insufficient evidence, particularly cost evidence, upon which commodity rates or an exception rating can be established. On December 22, 1977 the staff filed a petition to set aside submission

^{1/} The recommendations are not based on the usual full scale cost-productivity studies underlying our minimum rates.

and reopen the proceedings in order to hear testimony from witnesses sponsoring minimum rate proposals and to provide all parties an opportunity for cross-examination of witnesses sponsoring said proposals.

The evidence of record is uncontroverted that the existing class rates for the transportation of flattened automobile bodies are too high and that these high rates tend to inhibit the movement of this recyclable commodity.

The State Legislature has expressed concern about the problem of solid wastes in California. In Assembly Concurrent Resolution No. 48 dated August 16, 1977, the Legislature stated that it was in the public interest to foster and encourage the productive recycling and reuse of materials found in solid waste.

We agree with the staff that this proceeding was not for the purpose of receiving cost and rate evidence, and the record does not disclose sufficient information to determine a proper minimum rate for this commodity.

We believe that exempting this commodity from minimum rates at this time will promote the movement of the flattened automobile bodies and thus be in the best interest of the public.

If any party wishes to propose a realistic exception rating or commodity rates for this item, it may file a petition in Case No. 5432 et al. with full cost justification for our consideration.

Findings

1. Basically there are three types of highway transportation of empty sea vans as follows in descending order of predominance:
 - a. Movement from a storage facility to a shipper for loading and movement from a consignee after unloading to a storage facility.
 - b. Movement from one port to another in anticipation of future traffic. This type of movement is generally from ports at Los Angeles and Long Beach to ports at Oakland and San Francisco because the southern ports traffic is predominantly import and the northern ports traffic is predominantly export.

- c. Movement between container leasing companies and steamship companies.
- d. Miscellaneous, including movements of newly constructed sea vans from producers and movements to and from repair facilities.

2. All highway transportation of empty sea vans with the possible exception of the type of movements set forth in Finding 1.d, above, are accomplished under the provisions of interchange agreements and/or contracts.

3. The movement of empty sea vans by highway carriers is not transportation for compensation and thus not subject to minimum rate regulation when an interchange agreement is entered into and the empty sea van is actually utilized by a highway carrier to augment its equipment.

4. The movement of empty sea vans by highway carriers is transportation for compensation and subject to minimum rate regulation even though an interchange agreement is entered into if the sea van is not used by the highway carrier for the transportation of other property.

5. Flattened automobile bodies are transported in truckload shipments on flatbed equipment.

6. Flattened automobile bodies are generally transported in straight truckload shipments with no split pickup or split delivery involved.

7. Average loads of flattened automobile bodies range in weight from 20 to 25 tons.

8. The value of flattened automobile bodies is determined by the price of scrap metal and is subject to large fluctuations.

9. The volume of movement of flattened automobile bodies is also subject to large fluctuations.

10. The current minimum rates applicable to the transportation of flattened automobile bodies is Class 35 subject to a minimum weight of 50,000 pounds.

11. Flattened automobile bodies do not move at the Class 35 rate which is excessive.

12. This proceeding was not the proper forum for presentation of full cost and rate studies, and the record does not disclose sufficient information to establish a reasonable minimum rate.

13. It is in the public interest to exempt flattened automobile bodies from the existing minimum rates which are excessive and which tend to inhibit the movement of this recyclable commodity.

Conclusions

1. The transportation of empty sea vans should be exempted from the minimum rates named in MRTs 2, 1-B, 9-B, and 19.

2. The transportation of flattened automobile bodies should be exempted from the minimum rates named in MRTs 2, 1-B, 9-B, and 19.

3. The petition of the Commission staff filed December 22, 1977 should be denied.

4. To facilitate tariff distribution the amendment of MRT 2 will be provided in the ensuing order and the like tariff amendments to MRTs 1-B, 9-B, and 19 will be made by supplemental order.

O R D E R

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 thirty-nine days after the date hereof, Sixty-eighth Revised Page 14 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 No. 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 shall be filed not earlier than the effective date of this order and may be made effective not

earlier than the ninth day after the effective date of this order, and may be made effective on not less than five days' notice to the Commission and 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 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.

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

6. The petition to set aside submission and reopen the proceedings filed by the staff on December 22, 1977 is denied.

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

Dated at _____, California, this _____ day of _____, 1978.

APPENDIX A

LIST OF APPEARANCES

Respondents: Robert E. Rugg and Clifford W. Bailey, for California Cartage Company, Inc.; Loughran & Hegarty, by Thomas M. Loughran, Attorney at Law, for Vincent Ganduglia Trucking; Larry P. Boland, for Statewide Transport Service; and Gordon W. Tamplin, for himself.

Interested Parties: John T. Reed, for Steamship Operators Intermodal Committee (Pacific Regional Committee); Richard W. Smith, Attorney at Law, and H. W. Hughes, for California Trucking Association; William D. Grindrod and Frank Wagner, Attorney at Law, for Port of Los Angeles; C. R. Nickerson, for himself and various steamship lines; Jerry Kerns, for Western Motor Tariff Bureau; Leon R. Peikin, for RCA Corporation; William R. Daly, for Traffic Managers Conference of California; David E. Porter, for San Diego Chamber of Commerce and San Diego Association of Customs Brokers/Freight Forwarders; Robert A. Mercer, for Port of San Diego; Harold B. Ramsden, for Harbor Distribution Services, Inc.; Philip W. Tuckerman, for American President Lines; Stanley Claster, for Levian Metals Corp.; Robert Lewon, for Fresno Iron & Metals and C & C Metals; Silver, Rosen, Fischer & Stecher, by James S. Clapp, Attorney at Law, for Schnitzer Steel Products, Inc.; Richard Neu, for Hugo Neu, Proler Company, and the Institute of Scrap Iron and Steel; and Joseph S. Schapiro, for Clean Steel, Inc.

Commission Staff: James Scueri, Attorney at Law, and John F. Specht.

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 Adhesive, Adjuvants, Spreaders or Stickers (subject to Note 6) 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 Compounds, tree or weed killing (subject to Note 6) Concrete transported in motor vehicles equipped for mechanical mixing in transit *Containers, intermodal cargo, viz.: rigid, reusable vans, platforms, or other devices; without wheels; into which property may be loaded for carriage; not less than eighteen feet in length; having corner castings or other hardware which facilitate lifting, stacking, and mounting; furnished or approved by ocean carriers for transportation of property aboard their vessels. This exemption also applies to: (1) the movement of shipper furnished semitrailer chassis when such movement is in connection with the exempt transportation of intermodal cargo containers and (2) movement of electrical generating units when such movement is in connection with the exempt transportation of mechanically refrigerated intermodal cargo containers 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 <p style="text-align: center;">(Continued in Item 41)</p>	#40
<p>(1) Certain provisions formerly shown on this page transferred to Sixth Revised Page 14-A.</p> <p>∅ Change) Decision No. * Addition)</p>	
EFFECTIVE	
ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA.	

Correction