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ORIGINAL

Decision No. 90354

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 petroleum and petroleum products in bulk, in tank truck equipment statewide as provided in Minimum Rate Tariff 6-B and the revisions or reissues thereof.	Case No. 5436 Order Setting Hearing No. 244
And Related Matters.	Case No. 5432 Order Setting Hearing No. 960 Case No. 6008 Order Setting Hearing No. 36

(See Appendix E for appearances.)

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FINAL OPINION

To properly set the stage for this decision, a history of the regulation of intrastate commodity transportation in California is necessary.[1/]

Early Regulation

Current regulation of commodity transportation within California was derived from legislative directives and constraints adopted in reflection of public interest concepts and needs that existed in 1935, with frequent amendments to meet expanding needs. Until 1935, regulation of the transportation industry was a constant battle between first, the railroads and the public and, later, the unregulated trucking industry and the public. This battle began over 80 years before 1973, in the 1850's.[2/] At that time California was experiencing tremendous growth in its agricultural industry, causing a significant effort to move farm products throughout the state and the nation. The only viable mode of commercial transportation, the railroads, quickly rose to its peak of growth, expansion, and power.

At this time, there was no regulatory body to oversee the railroads. The railroads were not obliged to operate under public interest concepts, nor did they fully consider these interests since they were privately owned and unregulated monopolies. The ratemaking policy consisted of charging "all the traffic will bear."[3/]

Constant public demand for effective laws to control railroads prompted the first legislative attempt to remedy the situation. In 1850 an Act Pertaining to Corporations was specifically directed

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1/ We are indebted to many early pioneers and currently active practitioners of California transportation for their many historical writings from which we have liberally borrowed for the material in this section.

2/ Appendix A contains a summary of the principal acts relating to the regulation of commodity transportation in California.

3/ Walker, Milton A., "Concepts of Public Interest in the Regulation of Transportation in California," (1975) p. 6.

at railroad corporations.[4] This act gave the Legislature the power to control the rates and profits of railroads. However, this first attempt did not halt the problems of high rates and discriminatory service. The public continued to complain. The Legislature responded by attempting to provide for maximum charges,[5] reasonable maximum charges,[6] the filing of tariffs, and the penalties for extortion and discrimination.[7] But the railroads either blatantly refused to comply with the new laws or complied only in part, such as filing tariffs with a scant number of rates.

At the Constitutional Convention of 1879, another attempt was made to respond to the still-abused public interest. The Railroad Commission was established by Article XII, Section 22, of the California Constitution. This body of law divided the State into three territorial districts of nearly equal population, each of which elected a Commissioner. The Commission was given the power and duty to establish and publish rates for the transportation of passengers and freight by railroads or other transportation companies. It had the authority to examine books and records, prescribe uniform records, hear and determine complaints, enforce decisions through the courts and fine nonconformers up to $20,000 for each offense.[8] However, Commission decisions were reviewable by the courts, and the Legislature could remove any Commissioner by a two-thirds vote.[9]

4/ Statutes of California, 1850, Chapter 128, p. 347.

5/ Railroad Incorporation Act of 1853, Stats. of Cal., 1853, Chapter LXXV, Section 33, p. 112.

6/ An Act Relating to the Incorporation of Railroad Companies and Related Matters, Stats. of Cal., 1861, Chapter DXXXII, Section 51, p. 625.

7/ An Act to Appoint Commissioners of Transportation, Fix Minimum Charges and Prevent Extortion and Discrimination, Stats. of Cal., 1876, Chapter DXV, pp. 784-790.

8/ Constitution of the State of California, Article XII, Sections 20-22.

9/ Ibid., Section 22.

The effect of ensuing court decisions soon negated the power of the Constitutional provisions. In 1880 and for the next ten years, "transportation companies" were defined by the courts as including only railroads, steamships, and steamboat companies, (Moran v Ross (1889) 79 Cal 159; Southern Pacific v Board of Railroad Commissioners (1896) 78 Fed 236). The Commission's power was whittled even more in Railroad Commission v Market Street Railway Company (1901) 132 Cal 677. In that case the meaning of "other transportation companies" was held not to include all types of railroad companies. It did not, for example, include street railroad companies. The court looked to words used, the context, the object in view, and the evils that were intended to be remedied. It decided that the long-haul railroad companies were the only subjects of this law, thereby limiting the jurisdiction of the Commission. The courts also declared that rates established by the Commission were established in violation of the due process guaranteed under the Fourteenth Amendment.[10/]

At the same time that the courts were restricting the exercise of the Commission's power, the railroads were busy gaining control of sufficient members of the Legislature. Commissioners who were adverse to railroad interests were removed from their positions on the board. By 1908 there was public recognition that the three Railroad Commissioners were unable to fulfill their constitutional duties: "...the Commission was in this unenviable position: That a Legislature that is controlled by the railroad company could always remove them from office."[11/]

By 1910, public indignation rose, bubbling into a heated gubernatorial campaign issue, with candidates promising to harness the power of the railroads. Hiram Johnson was elected Governor and

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10/ 78 Fed 257, supra.

11/ Walker, M., Op. Cit., p. 18, Interview with Commissioner J. W. Rea, San Francisco "Call", July 4, 1908.

fulfilled his campaign promises of reform by signing the Railroad Commission Act in 1911.[12] In that Act, Section 22 of the Article XII was slightly amended but there were significant changes in Section 23. All common carriers were designated public utilities under the jurisdiction of the Commission. But, the commission could regulate these utilities only after the Legislature conferred such power to the Commission. Thus, Commission authority was still not self-executing or direct. Gradually, from 1911 to 1945, the Legislature passed, in piecemeal fashion, enabling acts granting the Commission express powers.[13] Regulation of transportation in the public interest had, after over 50 years of struggle, become a reality.

The Emergence of the Trucking Industry

In the early 1920's the incubation of two technical achievements, improvement of roads and advancement in automobile engineering, began to produce results. Achievements in these fields, which made possible the enlargement and expansion of trucking operations, would take a heavy toll on the traditional railroad industry. No longer were truckers limited to local territories; expansion soon reached a point where trucking companies began to successfully compete with railroads. The flexibility of trucks allowed pickup and delivery service, thereby eliminating the distributor in most cases. In order to maintain accounts and customers, the railroads began a rate war, lowering rates below compensatory levels. However, by 1930, trucks had overtaken railroads as the major source of commercial transportation.

As the trucking industry developed, another battle began. In 1925 the United States Supreme Court decided a case relating to the problem of motor carrier transportation in California which was to become of national importance. (Frost v Railroad Commission (1926) 271 US 583.) A trucker named Frost, who was transporting oranges

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12/ Stats. of Cal., 1911, Chapter 20, p. 13.

13/ Public Utilities Act, 1911; Auto Stage and Truck Transportation Act, Chapter 213, Stats., 1917; amended 1919.

under a private contract without a permit or certificate, became the subject of a complaint filed with the Commission by a carrier who had authority to operate. The Commission ordered Frost to cease and desist his operations, and, upon appeal by Frost to the California Supreme Court, it was held that the Auto Stage and Truck Transportation Act of 1917, as amended in 1919, applied to private contract carriers as well as public utility common carriers. Frost appealed to the United States Supreme Court which found that Frost was a private carrier and did not need a permit to operate over the public highways in California. The Court held that California could not require a private carrier (contract carrier) to become a common carrier as a condition of using the public highways.[14/]

Thus, some truckers were under the jurisdiction of the Railroad Commission and others were not. Those truckers who were not regulated soon created havoc in the industry. The unregulated carriers and vessels performed essentially the same service as those who were regulated but were not obliged to meet any financial requirements, standards of service, or reasonable schedules and rates. Regulated carriers, on the other hand, were handicapped by reason of their inability to change rates at will like their unregulated counterparts. In order to compete, regulated truckers reduced thousands of rates, many below the reasonable and compensatory rate levels. Enormous freight losses resulted in decreased payrolls and lessened service.[15/]

Unregulated trucks conducted business at less than the cost of service. Their rates varied from day to day and were discriminatory. There were rebates, secret rates, and rate changes without notice. The excess competition created a safety and health hazard throughout the State through such practices as violation of speed laws and a

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14/ See also, re Ben Moore (1925) 27 CRC 388.

15/ Re Case No. 3154 (1932) 38 CRC 81.

general disregard of weight, height, length, and other safety provisions of the Motor Vehicle Act, unsafe overwork of drivers, and disregard of safety precautions for the shipment of explosives and dangerous articles. Extensive fraud was perpetrated upon farmers by the wholesale entry of financially irresponsible truckers into the industry.[16]

The transcontinental railroads, still very important to California, were in serious financial condition due to the competition from unregulated motor carriers. The crippling of these railroads or, on the other hand, an increase of rates on long-haul interstate traffic would prove disastrous to the $180 million agricultural industry and to the public at large. Unless farm products could be shipped fast and at reasonable rates, their value would be destroyed.[17]

Bearing in mind that this was the early 1930's there were, lastly, economic and State planning factors that contributed to the distress of the transportation industry. Within the State and throughout the nation there was a general business depression. No statewide study of transportation needs within the various industries was undertaken. No analysis of the fields which the railroads and/or trucks could economically serve was made. No control over transportation facilities or regulation of entry into the industry existed. The effect of all these factors upon the carriers, agriculture, industy, and business was devastating. These factors were documented after extensive and far-reaching public hearings before the Commission in 1932.[18] After these hearings, the Commission concluded:

> "The advent of new transportation agencies, and the shifting of transportation from the rail and water to the truck and the highway have brought about changed conditions which the law does not adequately cover. The very evils which regulation is intended to correct have returned in even more vicious form under a condition of the law where some of the transportation agencies are rigidly regulated, some are or may be partly regulated

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16/ Ibid.

17/ Ibid.

18/ Ibid.

> and some are not regulated at all. The public interest demands that regulation be extended alike over all or that it be withdrawn from all and the law of the jungle be given full and equal play."19/

The outcome of this investigation was the Highway Carriers' Act, Public Utilities Code Section 3501 et seq. Under the Highway Carriers' Act the Commission was asked to curb rate cutting, regulating the rates of permit carriers, establishing where necessary minimum rates and/or maximum rates. In Decision 31606, In Re Case No. 4246, 41 CRC 671 (1938), the Commission established minimum rate to accomplish this objective.

Minimum Rate Regulation

In Decision 31606, which has been consistently regarded as the blueprint for minimum rate regulation, the theoretical foundation for the program was laid. Minimum rates were to be predicated upon economic cost and rate studies. Costs were to be developed from a sample of carriers efficiently transporting the particular commodities in question. A sample of their traffic flow was then to be taken, and based upon this sample, the study group's cost of operation were to be allocated over the full range of the transportation subject to the tariff at issue. The Commission recognized at the time that this form of average cost ratemaking would be adequate only for the establishment of true minimum rates.

> The cost studies of record here contemplated 'average' operations of efficient carriers. The projection of such costs into class rates presupposed that the average carrier would receive over a period of time the same mixture of tonnage as was used in developing the formula by which the cost projection was made. As a matter of fact, however, certain carriers specialize in high classed traffic whereas others concentrate on the movement of low classed traffic. Some enjoy advantageous load factors whereas the load factors of others are below average. Some haul in territories where costs are high; other where costs are low...

19/ Ibid.

> If we are to assume that minimum rates were to become the going rates in every instance, it would be necessary to establish class rates at a level sufficiently high to be compensatory for high class, dependable and expensive common carrier service where transportation conditions were adverse. Numerous special point-to-point and special commodity rates would then have to be provided for less expensive hauls. In addition, separate bases would have to be provided for less expensive hauls. In addition, separate bases would have to be provided for carriers offering inferior services but having lower operating costs, and hence requiring a rate differential to compete effectively. The impracticability of such a plan is at once apparent. (41 CRC 671 at 685-686)

The Commission also recognized the importance of preserving the opportunity for individual carriers to exercise managerial discretion in the establishment of carrier rates. Different considerations enter into the establishment of actual or "going" rates than minimum rates. Many of these factors are best evaluated by each individual carrier on the basis of his own peculiar operating characteristics and the special needs of his shippers. Individual carriers can best analyze their particular traffic mix, load factor, cost and competitive position. In addition, the rate making concept of "what the traffic will bear" is best applied by individual carriers. This concept involves the balancing of rate and tonnage. The lower the rate, the greater the volume of freight which will be attracted, but the smaller will be the yield per ton. Hence, in ratemaking a balance is sought between rates and tonnage thereby yielding the carrier the greatest net return and society the most efficient allocation of resources.

> 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 the 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. (41 CRC 671 at 684)

Under the program adopted, the Commission sought to establish true minimum rates thereby leaving each individual carrier the freedom and responsibility to determine the precise amount over that level that each portion of their traffic should bear. In this manner the Commission concluded that managerial discretion in rate setting could be preserved and yet protection against destructive rate cutting assured.

> We limit ourselves to the task comtemplated by the Highway Carriers' Act, i.e., the fixation of a bottom level for rates so as to end destructive rate cutting practices, and where necessary, the fixation of a ceiling so as to prevent excessive rates, thus generally leaving to the carriers a bargaining zone within which they can adjust particular rates to meet their own transportation conditions, as well as the commercial needs of the shippers whom they serve. (41 CRC 671 at 686)

As a result of several unforseen problems, the minimum rate system in actual practice has been different than in theory. Since 1938 the industry has grown enormously and become far more complex. Carriers and equipment have become much more specialized. The number of commodities moving by truck has become more varied, and the number of minimum rate tariffs maintained by the Commission has increased to eighteen. Along with this growth and development, the economic cost and rate studies anticipated by the Commission in 1938 became increasingly complex and time consuming. Inevitably they

became less and less frequent. MRT 6-B, for example was last subject to a full scale study in 1974. (Decision 82350 unreported.) No new study is in sight. Records in our other minimum rate proceedings indicate that MRT 6-B is one of those most recently overhauled. MRT 2 has not been fully updated since the early 1960's.

With the advent of rapid inflation the difficulty of conducting these basic studies was compounded. Inflation increased the frequency with which such studies were necessary and at the same time outdated the results by the time the studies were completed.

Because of the difficulty involved in developing adequate studies as originally anticipated, the Commission found it necessary to resort to an abbreviated procedure to maintain rates between full scale studies. This abbreviated procedure called a "cost offset" restricts analysis solely to the percentage by which certain expenses such as fuel, labor, and taxes, have increased since the previous full study or cost offset. (See for example Decision 76353.) No attempt is made to evaluate productivity or carrier efficiency. No sample of traffic flow is studied. Neither the financial condition, nor operating results of carriers engaged in the transportation at issue are reviewed. The percentage cost increases at issue are simply translated by way of a formula established during the previous full scale study into a mandatory rate surcharge.

The minimum rate system in practice has differed more fundamentally however, from the theory underlying the program. The original intent was to establish rates at a true minimum level so as to end destructive rate cutting, thus leaving carriers a bargaining zone within which they could adjust their particular rates to reflect their own operating conditions as well as meet the needs of their shippers. It was anticipated that this objective could be obtained by studying only the costs of carriers efficiently transporting the particular commodities upon which rates were to be established. Rates predicated upon such costs would in theory of necessity be at a true minimum level.

> Assuming that the exact cost to efficient truck carriers of performing each individual haul were known and minimum rates for each 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 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. ...Ordinarily this will be traffic as to which proprietary operations are not practicable, or as to which the carrier renders more desirable service than is offered by competing carriers. (41 CRC 671, 685, 685n17.)

In practice, this objective has eluded the Commission. The Commission has never been able to develop any adequate standards for productivity or efficiency. Rates have been predicated upon average costs of a simple sampling of carriers, rather than upon the costs of efficient carriers. As a consequence, rates originally intended as minimum rates have become actual, or going rates, and the important element of managerial discretion has been largely eliminated from ratemaking in California. Ratemaking considerations dependent on analysis of individual carrier operations and managerial discretion have been preserved only where lower than minimum rail rates are available to motor carriers under Public Utilities Code, Section 3663,[20/] and where individual carriers have taken the time, expense, and initiative to apply for Commission authority to deviate from the minimum rates under Section 3666 or 452.

20/ Hereinafter all references to code sections will be to the Public Utilities Code, unless otherwise noted.

The Commission's Reregulation Effort

Although the Commission had been cognizant of problems inherent both in our theory and implementation of minimum rate regulation for quite some time, remedial efforts began in earnest with a report of the Commission on California State Government Organization and Economy (Little Hoover Commission) in December 1974. The report recommended a number of changes in our method of motor carrier regulation including the following.

1) Consolidate general freight carriers into two classes: common carriers and contract carriers.

2) Eliminate minimum rates: all classes should either be subject to tariffs or operate as contract carriers.

3) Specifically exempt from regulation the transportation of unprocessed agricultural products and logs and the operations of dump trucks.

4) Eliminate the distinction between regular route and irregular route carriers.

5) Eliminate special classification of cement and petroleum contract carriers.

6) Modify entrance requirements. Substitute "public interest" for "public convenience and necessity" for highway common carriers. Make requirements less strict for common carriers, and more strict for contract carriers.

Shortly after the release of the Little Hoover Commission report the Public Utilities Commission abruptly instituted several of the changes in regulation recommended, leaving others for the Legislature. Decision 84539 (unreported) dated June 17, 1975 announced a new regulatory program by which minimum rates were to be frozen at then existing levels and all highway permit carriers were required to file tariffs within 150 days. On September 3, 1975 the Commission instituted Case 9963 to determine the nature

and scope of proposed changes which should be implemented pursuant to the new policy. Prehearing conferences were held October 1, 2, and 14, 1975. No prehearing conference order was issued. Reacting to strong industry pressure the presiding Administrative Law Judge with the consent of the Commission, on October 22, 1975 removed the Case from the Commission's calendar. Two years later Case 9963 was dismissed without having ever gone to hearing (Decision 87047, 81 CPUC 379).

While the new program proposed in Decision 84539 remained shelved with Case 9963, the Commission sought other means to return to the original intent and purpose of the minimum rate program. In Decision 85081 (unreported) issued October 31, 1975 we granted an interim rate increase in Case 5436 Pet. 194 subject to further hearings. In addition we established several conditions for granting permanent rate relief including receipt of adequate evidence of relevant MRT 6-B traffic flow, and evidence relative to such regulatory alternatives as:

a) Maintenance of MRT 6-B rates and charges at other than the "going rate level".

b) Exemption of transportation of bulk petroleum products from minimum rate regulation, and

c) Letting the level of rates for transporting bulk petroleum products to be determined solely by the uninhibited competitive force of the market place.

Shortly thereafter, in Decision 85349 (unreported) issued in Case 5432 Pet. 871 we imposed an affirmative burden upon the petitioner, California Trucking Association, to show that the cost data underlying their study was obtained from efficient carriers of the commodities in question. We also invited all parties to develop proposals for restoring the original function of minimum rates and stated that in deciding future offset petitions we would require evidence that:

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

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

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

On April 27, 1976 we granted additional interim relief in Case 5432 Pet 871 inspite of the parties failure to comply with our directives. Commissioners Batinovich and Ross, concurring, cited the potential for extreme hardship in the industry and the serious time bind in which the Commission had been placed by the failure of CTA to comply. (Decision 85755, 79 CPUC 807, 811.)

Interim offset increases were granted on essentially the same basis to both MRT 2 and MRT 6-B on October 13, 1976. Referring to the offset procedure as "a sort of mathematical Winchester Mystery House," the Commission tried another new approach in an attempt to return to the original notion expressed in Decision 31606 (41 CRC 671, supra). In order to encourage carriers to exercise managerial discretion by adjusting rate levels within a zone of reasonableness generally above the minimum rate level, common carriers which must assess the precise charges stated in their tariffs, were specifically authorized to increase their rates by more than the minimum rates were increased. (Decision 86507, 80 CPUC 563; Decision 86511, unreported.) In addition, we stated that no future increases in minimum rates would be granted unless and until it is shown that the rate level in issue is predatory as that term is defined by relevant federal and state antitrust law. (80 Cal PUC at 568)

None of these efforts at reform proved very successful. The California Trucking Association, which has for many years been the primary party initiating petitions for rate increases, either refused or was unable to produce evidence of the new varieties we indicated would be required. Carriers, wedded to forty years of past practice and security, continued to regard the Commission's minimum rates as going rates. We reluctantly returned to the

earlier offset procedure. (See e.g. Decision 87048). On March 9, 1977 the Commission dismissed Case 9963 with the understanding that all parties had agreed to and would benefit by a more systematic review of trucking reform in a series of cases begun in a new spirit.

> Just as there has been an interchange of ideas and thinking within the California trucking industry as a result of Case No. 9963 so also there has been an interchange of ideas and thinking within the Commission and between the Commission and the industry and the shippers and the public. Some of the ideas which were to have been explored in Case No. 9963 are presently being expored in such cases as Case No. 5438, OSH 111 (MRT 8 fresh fruits and vegetables), Case No. 5432, Pet 884 (general commodities), and Case No. 5436, Pet 194 (MRT 6-B petroleum and petroleum products in tank trucks). Because of the information gained in those cases and because of our experience with having statewide trucking matters considered in cases which include requests for increases in the minimum rates, we have concluded that the procedure set forth by CTA is reasonable.
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> By a separate order issued this date we have instituted an investigation (Case No. 10278) to examine requirements to be met by applicants for highway carrier authority. That investigation will explore the need and procedure to establish a reasonable and responsible limitation on entry into the for-hire industry. By orders setting hearing to be issued within the next few weeks in eight separate proceedings consolidating the cases as set forth in the CTA letter of March 2, we shall explore whether the Commission should establish a regulatory program whereby carriers would establish rates and initiate changes in rate levels. (Decision 87047)

Pursuant to Decision 87047 on April 12, 1977 Order Setting Hearing 244 was issued in Case 5436 initiating the present investigation into the reregulation of tank truck transportation subject to Minimum Rate Tariffs 2, 6-B and 13.

Case 5436 OSH 244, Tank Truck Reregulation

Hearings were held before Administrative Law Judge (ALJ) Albert C. Porter in 1978, commencing July 18 and terminating October 27, for a total of 14 days in San Francisco and Los Angeles. In addition, three prehearing conferences were held in August and November 1977 and May 1978 before Commissioner Richard D. Gravelle and/or ALJ Porter. At the November 1977 prehearing conference, California Trucking Association (CTA) brought up the question of the purpose of the proceeding; CTA maintained that the OSH indicated that the proceeding was instituted only to explore the profile of the petroleum carriage industry and regulatory alternatives that may be desirable and that only in some subsequent proceeding would regulatory changes be considered. So there would be no misunderstanding concerning the purpose of the proceedings, and no lost time as a result, the presiding ALJ requested that CTA file a motion requesting clarification by the Commission. CTA filed the motion on December 22, 1977. After responses to the CTA motion by other interested parties, the Commission issued Decision No. 88419 on January 24, 1978 an Interim Opinion Ruling on Request for Direction. It was clear from that order that the Commission intended to explore whether to change its existing regulatory program and was not holding hearings for the mere sake of inspecting and evaluating the existing minimum rate program and the nature of the tank truck industry in California. With that understanding a third prehearing conference was held on May 12, 1978 to clarify a ruling on hearing procedure issued April 18, 1978 by the ALJ and to establish hearing dates and dates for exchange of exhibits.

A prehearing conference order was issued on May 16, 1978 by Commissioner Gravelle. It ordered that all transportation of commodities in bulk by tank and vacuum tank vehicles would be considered in the proceedings. The order also established dates in June and July 1978 for notices of intent to participate and distribution of prepared testimony and exhibits.

The submission of this matter on October 27, 1978 was subject to concurrent opening briefs to be filed November 27, 1978 and closing briefs on December 11, 1978. At the request of CTA, the closing brief date was extended to December 18, 1978.

During the hearings 20 witnesses gave testimony and 30 exhibits were received. The major participants at the hearing were the Commission staff (staff), CTA, Western Conference of Teamsters and the California Teamsters Public Affairs Council (Teamsters), California Manufacturers Association (CMA), Wine Institute, Mobil Oil Corporation (Mobil), and Shell Oil Company (Shell).

Characteristics of Intrastate Tank Truck Transportation

In his prehearing conference order issued May 16, 1978, the assigned Commissioner for these cases ordered that the proceedings include consideration of all transportation of commodities involving tank or vacuum tank vehicles. In general, such transportation is subject to MRTs 2, 6-B, and 13. MRT 2 is a general freight tariff, MRT 6-B applies to minimum rates for transportation of petroleum and petroleum products in bulk, and MRT 13 covers minimum rates for transportation of property by vacuum-type tank and pump tank vehicles. All three tariffs are applicable statewide.

Appendix C is a series of reports from the record herein as well as publicly available publications of the Commission.[21/] In summary, about 880 carriers are licensed by the Commission in the State to operate tank truck equipment. The majority of these are permitted or were so prior to January 1, 1978 when SB 860 became effective. The revenues earned subject to the minimum rates in MRTs 6-B and 13 totaled about $109 million during 1977, $89 million for MRT 6-B, and $20 million for MRT 13. Another $151 million was

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21/ See Report 601-8, "Distribution of Revenue by Minimum Rate Tariff, Calendar Year 1977" and Report 630-8, Annual Statistical Report 1977, For-Hire Carriers of Property in California," published by our Transportation Division in July 1978 and May 1978, respectively.

earned by carriers with tank truck equipment on movements of truck-load exempt commodities under MRT 2. As of March 31, 1978 there were 101 petroleum irregular route carriers and 354 petroleum contract carriers (permit carriers). The remainder of the some 880 carriers with tank truck equipment were radial highway common carriers and highway contract carriers. Although carriers may possess more than one operating authority, the petroleum contract and petroleum irregular route carriers hold, almost exclusively, only one authority or the other, there being only seven carriers who hold both authorities.

Of the 200 carriers reporting revenue earned under MRT 6-B, 29 of them earned over $1 million each, accounting for more than 65 percent of the total revenue. Eighty-three of the 200 carriers grossed more than $200,000 for the year and collectively earned almost 91 percent of the $89 million total revenue under MRT 6-B. For MRT 13, 56 carriers earned under the tariff. Four earned over $1 million each, accounting for 41 percent of the toal $20 million in revenue. Twenty-three of the 56 carriers earned $200,000 or more and collectively accounted for almost 98 percent of the $20 million in revenue. For these two tariffs then, a minority of carriers, each earning a significant amount, account for a majority of the revenue. There was no way the staff could similarly break down the $151 million in MRT 2 truckload exempt traffic earned by carriers operating tank truck equipment.

A special survey by the staff indicated that the number of tank truck carriers subject to MRTs 6-B and 13 who are affiliated with shippers or other carriers is significant. For MRT 6-B, of the 175 carriers surveyed, 52 percent indicated a shipper affiliation, 8 percent a carrier affiliation, and 4 percent a shipper and carrier affiliation, leaving 36 percent with no affiliations. For MRT 13, 50 carriers were surveyed, 48 percent reported a shipper affiliation and 6 percent, a carrier affiliation. Forty-two percent reported no affiliations. The staff survey disclosed no major oil company affiliations. Case 10278 is the forum for further investigation of potential problems posed by the shipper-affiliated carrier.

There is a high degree of specialization in tank truck transportation. Of the 175 MRT 6-B carriers surveyed, 126 earned 50 percent or more of their 1977 taxable revenue from MRT 6-B, and 97 earned 100 percent under MRT 6-B. Of the 50 surveyed for MRT 13, 42 earned 50 percent under MRT 13 and 30 earned 100 percent under that tariff. Carriers subject to MRTs 6-B and 13 may also, if they are common carriers, be subject to common carrier tariffs filed with the Commission. There are six such common carrier tariffs on file, and the number of participants to each of the tariffs ranges from two to 94.

As of December 1976 the units of tank truck equipment operated in California for-hire service totaled 1,893 power vehicles, 2,818 semi-trailers, and 2,622 full trailers.

Of the commodities transported under MRT 6-B, gasoline was by far the largest in volume, accounting for 47 percent of the shipments and 25 percent of the revenue. It was followed by fuel oil, liquid asphalt, and crude oil. For MRT 13 the main commodity was water comprising 38 percent of the shipments and 26 percent of the revenue, followed by dump waste and other unspecified commodities.

A staff witness formulated some generalizations on tank truck operation in California based on information gathered from tank truck carriers by staff field representatives. It was found that subhaulers are not used to a large extent in the tank truck industry, and where they are used, it appears that continuous or long-term arrangements are common. Where subhaulers are used it is more in the transportation of gasoline than in any other area of tank truck transportation. Subhauling is rare in the case of vacuum truck transportation. For-hire tank truck carriers experience competition from proprietary carriers primarily in the transportation of gasoline and to a lesser degree, liquid asphalt and milk. This proprietary competition exists mainly in transportation of shipper-owned service stations and fuel depots. Volume tender rates (i.e., rates wherein a carrier dedicates a given level of service to a shipper on a daily, weekly, monthly, or yearly basis at low commodity unit rates) are used extensively in the transportation of gasoline. Volume tender rates allow carriers to pass on cost savings associated with large volume movements. Most of the exempt tank truck transportation is associated with agriculture, specifically in the transportation of milk, liquid fertilizers, molasses, and cottonseed oil. Carriers engaged in exempt commodity transportation are, for the most part, located in the two great interior valleys. For exempt commodity transportation by tank trucks which is covered by MRT 2,

staff surveys for 1977 indicate that commodities involved are primarily sulphuric acid, caustic soda, milk, fertilizing compounds, and wine.

Attorney General's Evidence

In Decision 85081, (unreported) we granted interim rate relief and indicated our intent to explore regulatory alternatives to the minimum rate system and "cost offset" procedure, prior to authorizing any further minimum rate increase in Case 5436. In response to this decision the Attorney General of the State of California entered an appearance indicating strong support for the Commission in this effort to explore alternatives. Extensive testimony by three economic experts was subsequently presented by the Attorney General and received into evidence in hearings on Petition 194.

Shortly after this testimony was concluded we issued Decision 87047 supra deferring review of regulatory alternatives to a series of orders setting hearing to be issued in each generic minimum rate tariff case. As a result of this change in procedure, in Decision 87173 (unreported) granting additional rate relief in Petition 194, we provided for the incorporation of the Attorney General's evidence in this present case, initiated pursuant to Decision 87047.

The Attorney General subsequently made a formal motion to incorporate into this proceeding the economic evidence previously offered in Petition 194. The motion was unnecessary in light of our prior ruling on this very issue in Decision 87173. The testimony offered by the Attorney General and previously received in Petition 194 of this case has been treated as incorporated into this OSH. This testimony summarized below was provided by Thomas Gale Moore, Economist, Senior Fellow, and Director of Domestic Studies, Hoover Institution, Stanford University; Michael Conant, Professor, School of Business Administration, University of California, Berkeley; and Peter Max, Senior Vice President, National Economic Research Associates, Inc.

Thomas Gale Moore

Testifying on the basis of his extensive studies of motor transportation both in this country and abroad, Moore noted that in all studies of regulated versus unregulated carriage, regulated rates were found considerably higher than unregulated rates. A series of court decisions in the 1950s exempting fresh-dressed poultry, frozen poultry, and frozen fruits and vegetables from ICC rate regulation provided an opportunity to determine the effects of price competition upon motor carrier rates. Subsequent studies indicated that rates for fresh-dressed poultry fell an average of 33 percent, frozen poultry fell 26 percent, and rates for frozen fruits and vegetables declined 19 percent. In a separate study conducted by the National Broiler Council rates for transportation of ICC regulated cooked poultry were compared with those for ICC exempt fresh poultry. Rates were found to be 33 percent lower on the unregulated fresh poultry.

Although rates declined, service was found to have improved under rate deregulation. Service options were expanded, in-transit time was reduced, and schedules and routes were better adapted to meet the needs of shippers.

Moore also noted that trucking has flourished without rate regulation in a variety of industrialized nations including Great Britain. He found Britain to be of particular note. When rates fell in Britain as a result of liberalized regulation, profits were not adversely affected. The resulting competition led to increased carrier efficiency allowing rates to decline without affecting industry profits.

The elimination of minimum rate regulation would in Moore's opinion produce the same effect in California. The unavailability of price competition under the minimum rate system has produced excess service competition inflating carrier's costs and reducing their profits. The elimination of this excess service competition would in Moore's opinion be the natural result of increased price competition.

Primarily upon the basis of the evidence we have summarized Moore concluded that competition in the trucking industry can provide

substantial benefits to the public, without harming the industry.

Peter Max

Peter Max undertook an extensive investigation of the economics of the liquid asphalt segment of the petroleum industry in California and other western states in connection with recent asphalt related litigation. As a result of that investigation he concluded that minimum rate regulation in California has assisted petroleum companies in avoiding price competition in the sale of liquid asphalt. The minimum rate system may have a similar effect on the sale of other commodities. Max found that in industries characterized by a few large sellers, as is the case for asphalt in California, one often finds an absence of vigorous competition. When the product of such an industry is sold predominantly on a delivered price basis, the delivered price is the price seen by customers, and generally the price upon which a supplier is selected. To the extent that suppliers know each other's freight component and f.o.b. plant prices, the fact of known freight rates reduces substantially the likelihood that price competition will exist.

Michael Conant

Although Professor Conant has had only limited experience with motor transportation regulation, he provided a general critique of motor carrier regulation upon the basis of general economic theory, a survey of relevant academic literature, and his experience with other modes of regulated transportation. In his opinion there is no structural justification for regulating trucking as a monopoly. The industry is not a natural monopoly. It is inherently a competitive industry. There are no significant economies of scale, the variable costs are high relative to most industries, and entry into the business requires very little capital. The only significant barriers to entry are political rather than structural. These are attendant to the permit requirements imposed by law and by regulatory agencies such as the Commission. Moreover, unlike other industries, the principal capital goods of the industry are on wheels and can be easily moved from one geographic area to another to adjust to shifts in market demand.

Conant took issue with Commission decisions which indicate that the purpose of minimum rate regulation is to prevent predatory pricing. He argued that the underlying assumption that without such regulation predatory pricing would exist in the industry, is not supportable upon economic analysis. Predatory pricing is pricing below cost for a sufficient period of time in order to drive rivals out of a market and subsequently raise prices to monopoly levels. This practice is quite rare primarily because it is so costly. The predator must incur a substantial present loss for future gains that will necessarily be deferred, and very likely will be of limited duration. In industries with low entry costs such as unregulated trucking, as soon as prices reach monopoly levels, new entrants are attracted and the benefit of any prior predatory activity is quickly dissipated. Consequently, in Conant's opinion, since predatory pricing could not be profitable in unregulated trucking, it theoretically should not occur for any sustained period. He suggested that the arguments of motor carriers who profit from the present system are only self-serving attempts to preserve their protection against free market economics. They use the terms "destructive competition" and "ruinous competition" to describe what others simply call competition. Under effective competition, prices in other industries tend toward levels which cover average cost and in addition a market return on investment. There is no reason in Conant's opinion to believe they would not also do so in the trucking industry.

Neither does he feel minimum rate regulation is necessary to maintain adequate service. Conceding that such regulation has attracted excess capacity, he pointed out that idle equipment does not mean better service. Perhaps most important in this regard, effective competition preserves an incentive for service competition as well as price competition.

Conant views minimum rate regulation as a form of government enforced private cartel pricing which has increased transportation rates and consumer product prices. Transport costs are part of the necessary delivered cost of both production inputs and finished products. Since costs are the primary basis of price under our

capitalist economic system, transportation costs must ultimately be shifted to consumers.

Excessive rates have not however produced excessive carrier profits in California. According to Conant, high rates and relatively easy entry have attracted and continue to attract new entrants into the trucking business. The illusion that security against price competition will assure profits has contributed. Over time this has diluted available traffic and produced underutilized capacity. Excess capacity has increased industry costs sufficiently to dissipate a substantial percentage of the potential monopoly profits theoretically available under the present rate system.

Conant has concluded that the elimination of minimum rate regulation and return to a price competitive system is the only policy consistent with the public interest.

The Staff Reregulation Proposal

The staff was the only party to the proceeding that made a complete reregulation proposal. It characterizes its proposal, i.e., requiring permitted carriers to file tariffs, as a method for introducing price competition into the tank truck industry with requisite regulatory controls and review for reasonableness of rates. Although the staff gave no firm date for the adoption of its proposal, it is expected it could take place about July 1, 1979.

The staff's proposed program was presented and supported by three witnesses. The Principal, Freight Economics Branch presented an opening statement of the staff policy on reregulation. The statement contained a summary of the history of the regulation of truck rates and particularly the establishment of MRT 6-B. The staff believes that the minimum rate program in its present form was devised to meet the economic emergency of the 1930's, a condition which no longer exists. Minimum rates today are going rates and in some instances rates are too high and in others too low. The cost studies required to support the judgments and considerations which go into rate tariffs reflect no more than average costs of average carriers. Moreover, such studies have been few and far between,

and the updating of tariffs has been done by cost offsets without the benefit of measuring true transportation characteristics in depth on a regular basis. By canceling minimum rates and having permit carriers file tariffs, the burden of establishing rates and initiating changes in rate levels would shift to the carriers. The program would have the following advantages:

> "Individual carriers could establish rates tailored to their own operations, responsive to demands for their services and to the quality of services for which shippers would be willing to pay. Carriers could respond more quickly to changes in economic conditions, traffic patterns and shipping practices, and to compete more effectively with proprietary operations. The program would allow greater flexibility in the rate structure, encourage innovative rate making and provide incentives for improving carrier efficiency and productivity. In effect, the program would define a minimum rate as the lowest just and reasonable 'going' rate for specific transportation circumstances."22/

A second witness, an Associate Transportation Rate Expert, presented seven exhibits detailing the proposed program. These include: a complete explanation of the plan; proposed amendments to General Order No. 113-A which covers petitions for suspension and investigation of carrier tariffs; a proposed new general order covering rules and regulations governing transportation by tank vehicles including provisions of a transition period, dual operations of common and contract carriers, justification of contract carrier rates, and content of tariffs; factors involved in determining the reasonableness of rates filed by contract carriers; recommended revisions in various minimum rate tariffs and the distance table; and proposed amendments to the Commission's Rules of Practice and Procedure. The third witness, an Associate Transportation Engineer, presented guidelines for developing costs to substantiate the reasonableness of filed rates and an example of how prevailing wages might be

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22/ Exhibit 244-1, p. 13, Witness Whitehead.

determined, should the Commission adopt that concept in lieu of the staff proposal to set minimum wages as the absolute floor in cost studies of justify rates.

Establishment of the new procedures would provide for a transition period of six months after which MRTs 6-B and 13 would be canceled. During the transition period, carriers subject to the program would be required to file their initial tariffs[23/] with the Commission. Filings during that time would be at rates no lower in volume and effect than those produced by application of the minimum rate tariffs in effect at the time of the filing. Any filings resulting in rates lower than those reference points would have to be accompanied by a justification.

After the transition period all filings to adjust old or establish new tariffs would have to be accompanied by a statement or justification setting forth all the factors necessary for a showing that the proposal results in just, reasonable and nondiscriminatory rates.

The justification would be based on the actual costs and circumstances of the carrier filing the tariff. Actual costs for labor would be defined as the actual wages and benefits expense for those carriers who use employees. For those carriers who engage owner-operators and do not have a distinguishable wage element in their expense statement, an imputed wage no lower than the minimum wage would be included in the expenses shown. Even in the case where an actual wage was shown, the carrier's justification and filing would be rejected without further analysis if the wage did not meet or exceed the minimum wage. Costs other than labor would be those actually or prospectively incurred by the filing carrier or its subhaulers.

23/ The staff used the term "rate schedules" in lieu of tariffs but agreed that the two are synonymous. We will use the term tariff for purposes of discussion since it is the more common and generally understood by everyone in the industry.

As is the policy now, with the exception of certain requirements in carrier deviations under Section 3666, the division of revenues between prime carriers and subhaulers would be unregulated.[24/] The usual regulatory restraints concerning carriers with dual authorities (certificated and permitted) and shipper affiliations would be used to prevent unjust discrimination.

Those rules and regulations contained in the minimum rate tariffs which would be applicable to all carriers and are for the purpose of uniform regulation would be carried forward and maintained by the Commission. Examples of these are the Commission Distance Table, the National Motor Freight Classification, and rules covering charges for COD, issuance of shipping documents, etc.

All permit carriers would be required to file tariffs describing the services offered and the rates to be charged for all commodities handled between all points served. The exception to this would be transportation of those commodities which traditionally and presently are exempt from minimum rate regulation. Carriers who only haul exempt commodities or operate as subhaulers exclusively would not be required to file schedules.

A tariff under the program would become effective 30 days after filing in the absence of an appropriate petition for suspension and investigation or a suspension on the Commission's own motion. Absent these, the filed tariff would be deemed just, reasonable, and nondiscriminatory and would be automatically approved.

If the Commission staff, after a review of the filed tariff and statement of justification, finds that a petition for suspension and investigation has merit, it would recommend suspension to the Commission. In that event the burden of proof to sustain the filing would shift to the applicant. The final Commission decision would follow within 120 days with the usual possibilities of an extension of the suspension.

24/ The question of whether the Commission should regulate the division of revenue between prime carriers and subhaulers is now before us in Case No. 10278.

Public notice of the filings would be by a weekly announcement for the Commission containing a list of new tariff filings as well as those which have been suspended or rejected and those on which suspensions have been lifted. In the usual manner, any affected party may later file a complaint concerning any filed rates. If a hearing is held, the burden of proof would be on the tariff filer.

In its brief filed with the Commission, the Commission's Legal Division recommended an alternative to the above program. Under that alternative, the filed rate tariffs would reflect minimum rates rather than precise rates. However, if the Commission decided to establish or approve precise rates for permit carriers, the Legal Division suggests the filing of contracts in lieu of tariffs. Its position is that it would reduce the administrative burden on both the Commission and the carriers to use the contracts for purposes of review thereby limiting such review to actual transportation performed or intended to be performed.

The Teamsters Evidence

Teamsters presented four witnesses in support of a rebuttal presentation to the staff proposal. Teamsters oppose reregulation in any form. However, if the Commission were to approve permit carrier-filed rates, Teamsters urge that any rate structure in order to be considered "reasonable" must provide that the wage component of the supporting costs should equal or exceed the prevailing wage, inclusive of fringe benefits, in order for the rate proposed to meet the requirements of just, reasonable and non-discriminatory rates as required by Section 3662. The primary Teamsters witness referred to several statutues, which apply the concept of prevailing wages to state and federal public works projects. He argued that those laws establish national policy which should be applied to all Commission rate setting. Teamsters view the staff proposal to employ the minimum wage as an absolute floor for labor expense in cost justifications as a "union-busting" proposal contrary to national policy. The Teamsters proposed that if the Commission establishes a program of carrier-filed rates in lieu of the present

minimum rate program, then where non-union or owner-operator (subhauler) labor is used, the rate charged should be predicated upon the rate of wages plus fringe benefits prevailing in their locality as determined by the California Department of Industrial Relations, according to California Labor Code Sections 1720, et seq. The cost data covering fixed and operating equipment costs other than labor should not be less than the cost determined as reasonable by the Commission from time to time, subject to substantiation of lower fixed and operating equipment cost by the carrier filing the tariff or contract. The rate for transportation should include a profit in addition to the owner-operator's wages and return on equipment investment. Further, Teamsters propose that all carrier-filed rates should be reviewed by the Commission staff.

Several Teamsters witnesses testified that, adoption of the staff proposal, would be disastrous to the tank truck industry in the State and to the Teamsters membership working in the industry. In their opinion, every trucker, would be forced into nonunion operation in order to survive. They also expressed concern with safety.

In their estimation cutthroat competition would put legitimate tank truck operators in the untenable position of competing with individual owners and "fly-by-night" operators that have unsafe equipment and violate operating hour limitations and other regulations. They stated it would be foolish to allow almost anyone to go into the tank truck business since it is the most hazardous of all highway carrier operations.

Presentation of Other Participants

In addition to the staff, Teamsters, CTA and State Attorney General, ten other presentations were made by parties representing shippers and carriers presented testimony.

Robert Hildreth appeared on behalf of ACME Transportation, Inc. (ACME). ACME is a tank truck carrier and has been in business in California over 40 years with yearly revenues of about $5 million. Witness Hildreth pointed out that tank truck transportation is a highway specialized business requiring special equipment and special

training in order to meet the restrictive safety standards required. He stated that shippers have individual requirements that vary widely. ACME is primarily a carrier transporting products exempt from Commission minimum rate regulation. He testified that shippers and carriers have benefited from the economy, flexibility, and responsiveness of the system based on exempt commodities.25/ There is ample competition in this type of transportation, and the carriers involved have been stable and sound. The transportation of petroleum, on the other hand, has been subject to Commission minimum rates and the results are unfortunate. Regulatory lag in offsetting cost increases has severely damaged carrier profits and inflexible tariffs have caused shippers to ship most of their products by proprietary operation. ACME's main concern was with the effect of SB 860 and the possibility that ACME, as an exempt commodity carrier, would be forced into common carriage thereby requiring the filing of tariffs.

Witness Cook made a statement on behalf of Wine Institute. Mr. Cook is the Director of the Transportation Division of the Wine Institute which was established in 1934 and is a trade association financed by California wineries. It is nonprofit and is composed of 370 companies operating 382 bonded wineries. The membership of the Wine Institute accounts for approximately 71 percent of all wine produced in California. Wine Institute members ship 175 million gallons of wine, brandy, wine spirits, and grape concentrate each year in bulk between California points by for-hire carriers. That figure does not include the tonnage hauled by proprietary carriage. This for-hire transportation is presently exempted from minimum rate regulation by Item 41 in MRT 2. Wine Institute's primary concern in these proceedings is to make sure that this transportation continues exempt from minimum rates. Wine Institute members have found that there is no substantial disparity between the rates offered different shippers, and the rate levels which have emerged in this relatively

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25/ We note that the same advantages should result if we adopt a regulatory program which, overall, allows carriers to initiate the establishment of their own rate levels and other tariff modifications.

free market are acceptable to both Wine Institute members and the public carriers. Most of the carriers used have been in business a substantial period of time and continue to seek out wine traffic because they find the business profitable. Wine Institute's position is that wine is generally considered to be an agricultural commodity and the present exemption is entirely consistent with the legislative mandate embodied in Section 3661 of the Code which directs the Commission to adopt rate policies which will promote the freedom of movement of agricultural products. To the knowledge of this witness, all the parties involved in the transportation of bulk wine, be they shippers or carriers, are entirely satisfied with the present minimum rate exemption and transportation conditions.

A witness appeared for Cherokee Freight Lines (Cherokee) which operates as a radial highway common carrier and as a highway contract carrier throughout the State. Cherokee specializes in the transportation of bulk commodities both liquid and dry. Approximately 88 percent of Cherokee's income is earned from the transportation of exempt bulk liquid commodities. A substantial portion of this is earned from the transportation of bulk wine and winery products. Cherokee is the largest hauler of bulk wine products in California. Cherokee's position in these proceedings, which parallels that of Wine Institute, is that those commodities are now exempt from minimum rate regulation should remain exempt under any reregulation plan.

Mr. Cleo Evans, president of Evans Tank Lines, Inc. (Evans), testified on behalf of that company. The company has been in operation since 1932. Evans is a highway carrier operating statewide under a petroleum irregular route certificate in both intrastate and interstate service. It also holds a radial highway common carrier and a highway contract carrier permit. All of the operations of Evans are performed in tank vehicles, and its business is almost exclusively in the transportation of petroleum and petroleum products. It transports exempt commodities rarely. Evans is a participant in tariffs on file with the Commission by Western Motor Tariff Bureau, Inc. whose rates are substantially the same as those prescribed in MRT 6-B. Its gross revenues exceed $2 million annually. Evans is a union carrier and

virtually all of its employees are under union contract. Witness Evans stated that, in his opinion, no carrier who is unionized, as his company is, could continue to operate without effective rate regulation by the Commission. He stated that if rate regulation as it now exists is suddenly withdrawn, the effect would be to almost immediately shift the traffic to carriers with lower labor costs. These would be nonunion carriers or carriers utilizing owner-operators. The effect of the staff proposal would be to force Evans either to liquidate its fleet or to convert its for-hire operation to an equipment leasing business. In Evans' opinion the staff's proposal would work only if the existing tank truck carriers were placed in a position to exercise some reasonable degree of control over their direct labor costs. This would be almost impossible to accomplish unless the present labor contracts were rescinded. There is a further difficulty with trying to do this since the master contracts preclude management from discharging or laying off union drivers for purposes of engaging the services of owner-operators. Evans would support the staff proposal to let carriers fix their own rate levels if the Commission were in a position to resolve the controlling labor factor. Also, in order for such a system to be effective, he believes there must be a limitation on the number of carriers authorized to provide service, i.e., entry controls. With a limited number of carriers in business, those carriers are provided with a more effective means of evaluating proposed individual rate decreases with the concurrent remedy of filing a complaint petition for suspension. Therefore, in his opinion, the staff proposal, in order to be viable, must include some method of reducing the number of carriers in California by controlling the entry of new carriers.

Mr. Roland Ernst, president of Oilfields Trucking Company, (Oilfields), testified on behalf of his company. Oilfields operates pursuant to a California intrastate petroleum irregular route certificate and a radial highway common carrier permit and also under interstate and foreign commerce subject to certificates from the Interstate Commerce Commission. It claims to have the largest California intrastate tank truck revenues of any petroleum carrier

in California. It transports various types of petroleum products in California, Arizona, and Utah. All service is performed in tank vehicles and 90 percent of the gross revenues are from California intrastate operations. This transportation is generally under a tariff filed by Western Motor Tariff Bureau, Inc. and at rates substantially the same as MRT 6-B. About 9 percent of Oilfield's transportation is performed under its radial highway common carrier permit and consists of transportation of bulk commodities exempt from Commission minimum rates. Oilfields expects to continue this exempt transportation under a highway contract carrier permit granted pursuant to SB 860. Like Evans, Oilfields is a union carrier and is unable under its present contracts to achieve any flexibility in its labor costs. Oilfields' position is that if the Commission undertakes to abandon rate regulation as proposed by the staff, Oilfields will have no alternative but to suspend the renewal of its volume tender agreements which represent approximately two-thirds of its traffic. It claims this would result in layoffs of personnel. The result, according to Oilfields, would be the purchase of equipment from union carriers by one-truck operators who would then undertake and perform one-truck service or lease their equipment to nonunion carriers.

Mr. Arvel G. Batchelor, president, appeared for Allyn Transportation Company (Allyn). Allyn is primarily a California carrier operating pursuant to a petroleum irregular route certificate and radial highway common carrier and contract carrier permits. In 1977 its gross revenue was $5,800,000, 89 percent of which was intrastate California. It operates a diversified truck fleet consisting of tank vehicles of all varieties, high cube bulk hoppers, and flatbeds. With the exception of all management employees, all employees are covered by union contracts. Eleven percent of its revenues come from interstate service and Nevada intrastate, 20 percent of its revenues are from petroleum tank truck operations, and 30 percent from California exempt tank truck operations. The remainder represents hopper and flatbed transportation. Allyn is a specialized carrier providing specialized services to its many shippers. It prides itself on its driver training and safety programs as well as

hazardous materials handling. Allyn supports the Commission staff's proposal for carrier-made rates on petroleum products, and the continuation of rate exemptions on currently exempt commodities. It does, however, have four concerns about such a program. These are: (1) expense of the carriers for individually developing costs and rates traditionally covered by minimum rates; (2) the cost of preparing and publishing the individual tariffs and revisions thereof; (3) the ability of the Commission staff to determine if the carrier-filed rate is reasonable since potential protesting carriers will not, except at prohibitive expense, have the ability to monitor new filings; and (4) the ability of the Commission staff to determine those carriers legitimately engaged in contract carriage. Allyn is concerned that if presently rate exempt commodities transportation becomes rate regulated due to the fact that it cannot be defended as contract carriage, the required common carrier tariff filings would be rigid and unresponsive to shipper and carrier needs. This could result in a diversion of present traffic to proprietary carriage because the high degree of equipment utilization and operational flexibility would be lost. In summary, Allyn is in favor of the status quo for rate exempt liquid commodities transportation and supports the Commission staff proposal for carrier-made rates on petroleum products on the basis of a gradual phaseout of minimum rates.

Mr. Edward Olmo appeared on behalf of Shell, a company which is a well-known manufacturer and marketer of petroleum and chemical products throughout the United States with significant involvement in California. Shell supports continued transportation safety regulation but does not support continued rate regulation. Shell believes that the easing of economic control over motor carrier transportation with eventual decontrol would assist both shippers and carriers in providing safe and efficient transportation service, with prices reflecting true cost and providing sufficient return on investment to attract new capital. Shell believes that the present system of minimum rate regulation in California is complex, inefficient,

anticompetitive, and in many instances, results in rates which are too high. The present minimum rate system denies carriers the right to establish rates based on their own costs reflecting their operating efficiencies. Based on Shell's experience in shipping throughout the country, the most efficient rate systems are those incorporating a minimum of regulation and providing for negotiation between carriers and shippers. Shell proposes that the California intrastate rate regulation be patterned initially after the Interstate Commerce Commission system in order to bring California's transportation policy more closely in line with that of other states. It would provide an organized policy for encouraging industry-established rates within California and serve as a preliminary step toward complete economic decontrol.

Michael Harvath appeared for Hunt-Wesson Foods, Inc. (Hunt-Wesson). Witness Harvath is Traffic Manager--Motor Carriers for Hunt-Wesson. Hunt-Wesson is a major purchaser, manufacturer, and refiner of vegetable oils. It also manufactures vinegar and ships oils and vinegar in bulk by for-hire carriers. Other commodities they ship in bulk are caustic soda and tomato paste. All four of these commodities are exempt from minimum rate regulation. Hunt-Wesson urges the Commission to accept the staff proposal concerning the continuation of all presently rate exempt commodities.

Richard N. Bona, Regional Traffic Manager for Mobil, testified on behalf of CMA and for Mobil. CMA is a nonprofit corporation composed of persons, firms and corporations engaged in the manufacturing, processing, and fabrication of materials in the State of California. Witness Bona presented the policy position of CMA, as adopted and approved by its transportation and distribution committee of which he is vice chairman. Mobil is a well-known manufacturer and marketer of petroleum and petroleum products in California. It uses the services of tank truck carriers to ship its products. The position of Mobil and CMA is that petroleum irregular route carriers and common carriers of petroleum products in bulk in tank trucks should continue to be allowed to establish, publish, and file tariffs with the Commission setting forth rates

and charges for traffic of bulk petroleum products in tank trucks. Petroleum contract carriers should be authorized to establish, publish, and file with the Commission copies of their rate schedules including rates and accessorial services for shippers of petroleum in bulk in tank trucks. These rates would be the maximum and minimum rates for the named shipper. They believe once such provisions are authorized and established by the Commission, minimum rate tariffs should be phased out over a reasonable period of time. Witness Bona pointed out that MRT 13[26/] presents a problem to the industry because the commodities named in MRT 13 when transported in the same equipment by the same carrier for nonpetroleum industries are considered exempt transportation and not subject to minimum rates. CMA and Mobil, in addition to recommending the phaseout of MRT 13, support the staff position of the continuation of rate exempt commodities.

Mr. Sam Miles (Miles) presented some rebuttal testimony on behalf of 17 carriers that transport bulk liquids in tank vehicles. These 17 carriers include two highway common carriers of petroleum products, eight petroleum contract carriers, four carriers of milk and related dairy products, two transporters of liquid fertilizer solutions, and one carrier of fruit juices in bulk. In 1977 their combined revenues totaled over $27 million, mostly from the operations described above. Miles contended that the staff proposals, which he believes are designed to provide more opportunites for truckers to have control over the rate structure and the Commission to have less control, may have just the opposite effect. He believes that will come about because the Commission will have the power to investigate and suspend the rates of an increased number of common carriers, (i.e., the new common carriers resulting from options under SB 860) and all contract carriers transporting commodities that are not exempt. Heretofore, those carriers, radial highway common carriers and contract carriers, were only required to abide by minimum rates.

[26/] MRT 13 names rates, rules, and regulations for the transportation by vacuum tank vehicles and pump-type tank vehicles of commodities in semiplastic form, commodities in suspension in liquid, and liquids when such transportation is incidental to the construction, operation, or maintenance of oil for gas wells, oil pipelines, or oil storage facilities.

He stated that under the present program all parties know what the rates are, or at least what the floor is, because of the minimum rate tariffs; but under the staff proposals, the Commission in an investigation and suspension proceeding will eventually set the exact rate by which one carrier alone must abide. Miles stated that the staff's position that a rate is reasonable if it is not lower than the carrier's cost of performing the service and not higher than the value of service to the shipper, is not a valid concept for truckload transportation because the "value of service" theory is inappropriate for the setting of truckload rates. The concept may have been valid during the days of monopoly railroads but now shippers will not pay exorbitant rates, even though the value of the service might exist, because they can buy and operate their own equipment. He believes there is only one method for determining the reasonableness of a truckload rate, and that is to compute a particular carrier's actual costs for performing a service and add a reasonable amount for profit. If one tries to add any other factors to the process, Miles thinks an artificial rate level is produced that may be too low for the carrier to make a decent profit or, just as bad, one that allows too much profit. Shippers with an adequate volume of freight will buy their own trucks and do their own hauling before they will let the trucker make an exorbitant profit. Miles points out that in the past, rates have been bottomed on minimum rate tariffs, whereas, under the staff's proposal, the day would come when the transition period has ended and each carrier tariff would be based on individual requirements. Miles said that the investigation and suspension procedure might be requested of the Commission every time a carrier believes that a competitor is about to publish a rate that may hurt the complaining carrier's operation, and it is possible that the staff workload, compared to present, would be increased since they might have to review many complaints and determine, not just a minimum rate, but what is a just and reasonable rate.

The CTA Presentation

CTA made a presentation during the last two days of the proceedings, which was, ostensibly, in rebuttal to the staff proposal. However, it was, in fact, a proposal uniquely different from any other proposal or rebuttal evidence presented during the hearings. There was ample notice and opportunity for CTA to make a direct presentation. These matters were discussed during prehearing conferences and dates for service of evidence set, of which all parties were aware. CTA chose to come in at the last minute with some suggestions about what must be accomplished before reregulation can proceed. Motions by several parties to strike part of this testimony were granted by the presiding ALJ over the objection of CTA. The following digests CTA's rebuttal to the staff proposal.

CTA's position is that the current regulatory system provides for high levels of service competition as evidenced by virtually nonexistent service complaints. Similarly, price competition, particularly with proprietary carriage, has had a substantial impact on for-hire operations and has acted to ensure maintenance of low rate structures. CTA submits that innovative ratemaking is commonplace and, in fact, the Commission has ordered publication of many special rate structures (commodity and volume rates) to meet particular shipper and carrier requirements. CTA noted that numerous Commission decisions have addressed the matter of proprietary competition, and the Commission has established provisions enabling for-hire carriers to effectively engage in active price competition with private carriers. Decisions Nos. 81817 and 89029 are cited as examples. CTA states that the present system should not be changed merely to relieve the Commission staff of the difficulties experienced in administering the minimum rate program. It believes that under the staff proposal, the common carriers would be disadvantaged; they would be left with an express legal requirement compelling them to provide nondiscriminatory public utility service to all in competition with contract carriers who may serve only shippers they choose subject to rules and conditions which are slanted in their favor. Examples of the alleged discriminations by CTA are:

common carriers must maintain tariffs meeting precise technical requirements set forth in general orders of the Commission, whereas, contract carrier schedules are not subject to specific technical rules; common carriers must name rates on all commodities they transport but contract carriers must name rates for only some of the commodities they transport and not for others (e.g., rate exempt commodities); a common carrier must strictly observe the rates and charges named in its tariffs, whereas a contract carrier need observe only the rates which it is required to specify in its schedule; common carriers may alter rates and charges in their tariffs only on 30 days' notice to the public and although contract carriers must also provide 30 days' notice of tariff changes, it only applies on commodities for which they name rates, and on all other commodities (bulk liquids, other than petroleum) they may change rates on a moment's notice; and, lastly, a common carrier may file a complaint that a contract carrier's rate or rule is unreasonable (therefore unlawful) only if it is directly affected, but contract carriers have no such constraints on their ability to complain of common carrier rates.

CTA maintains that one practical effect of such distinctions would be to eliminate common carriers from participating in the movement of rate exempt commodities because their contract carrier competition need not file or observe specific rates upon such transportation. For this reason, CTA believes the staff proposal would minimize or destroy competition on a substantial amount of traffic. It reasons that the argument that this is no different from the present system is not valid because common carriers participating in rate exempt traffic have been able to do so without the competitive disadvantage now proposed by the staff. This is because they could transport such traffic with a radial highway common carrier permit and did not have to be a highway contract

carrier. Common carriers could hold, under the Commission's policy of dual authority licensing, a radial permit and haul the exempt commodities under that permit as long as they did not do so on a regular basis between fixed points or overlap authorities.[27] Thus, they were able to operate under certain conditions without the need to publish rates in a tariff; now, however, under the impact of SB 860, the radial carrier authority is eliminated and that carrier must become either a common carrier or a contract carrier. CTA concludes that the competition between contract carriers and common carriers, that once existed as a practical matter between contract and radial carriers, is eliminated. In accordance with requirements of the new law, those permitted radial highway common carriers who heretofore functioned as common carriers will, in order to lawfully continue their operations, have to perform such service as certified highway common carriers with the burden of publishing exact rates in their tariffs. CTA believes that unless the common carrier can lawfully operate as a contract carrier, it is virtually eliminated from the exempt commodity transportation field even though carriers may lawfully hold dual authorities.

CTA questions the lawfulness of the staff plan to continue to have certain commodities and carriers excluded from rate schedule filing. It maintains that the present exemptions from minimum rates exist only because of the minimum rate regulation and program and that there exists no real basis for complete exemptions from regulation, and that once minimum rates are canceled no such exemptions should exist.

CTA is opposed to the staff plan concerning different justification standards for common carriers and contract carriers.

27/ "3542. No person or corporation shall engage or be permitted by the commission to engage in the transportation of property on any public highway, both as a highway common carrier and as a highway contract carrier or as a highway common carrier and a petroleum contract carrier of the same commodities between the same points, except as provided in Section 1066.2"

Common carriers seeking to increase rates must make a showing adequate for the Commission to make a specific finding that the increase is justified. In case of reductions, the common carrier must demonstrate that if the rate is lower than a maximum reasonable rate, the needs of commerce or the public interest require it. And, if it is a case of meeting competition, it must be rate justified by transportation conditions. On the other hand, the contract carrier makes its rate changes accompanied only by a statement to show that the proposed rate is just, reasonable, and nondiscriminatory. Under the staff program, unless a protest is filed, the statement will not be reviewed.

CTA takes issue with how complaints may be filed against rates of common carriers and contract carriers. The staff plan would limit the right of persons to complain about contract carrier rates compelling each complainant to be directly affected, whereas, "any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation"[28/] may complain about a public utility common carrier rate.

CTA contends that there is an unreasonable disparity in the information which will be available to test the showings accompanying proposed rate changes by common carriers and contract carriers, since all common carriers are required to furnish financial information to the Commission but not all contract carriers are under the same requirement.

CTA maintains that under the staff plan there will not be enough time for complainants to come before the Commission when they wish to protest the filings of a contract carrier's rate. It points

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28/ See Public Utilities Code Section 1702.

out that it may take as many as 19 days from the time that schedule change is filed before the petition for suspension of the rate reaches the Commssion, giving little time for the Commission to act within the 30-day limit.

CTA claims that the existence of shipper controlled or shipper affiliated carriers presents special problems for the true for-hire carrier under the regulatory environment suggested by the staff. Even though affiliations existed in the past, CTA believes they take on new meaning under the staff proposal. By allowing shippers to control for-hire carriers under the staff plan, the Commission will, for the first time according to CTA, be placing carrier ratemaking ability in the hands of shippers who are affiliated with and own or control for-hire carriers. CTA alleges the discriminatory and prejudicial potential in such a circumstance could have an adverse impact upon the viability of for-hire carrier businesses. As an example, CTA points to the effect of the alternative application provisions provided in Code Section 3663. Under that section, CTA believes the railroads determine the rates for many truck movements. CTA thinks that the most important adverse feature of shipper-controlled rates which would come about through carrier/shipper affiliations, would be the situation wherein shippers have the ability to control headhaul and backhaul movements, thereby assuring maximum equipment and labor utilization for the affiliates. This comes about from their ability to selectively choose which traffic will be handled by the shipper-controlled carrier affiliate, and which will be farmed out to nonaffiliated for-hire carriers. CTA sees it as obvious that the more profitable hauls would be handled by the shipper-controlled affiliate, and the less profitable by the true for-hire carrier who, practically and lawfully, cannot refuse traffic tendered.

CTA takes the position that because of the hazardous nature of commodities transported by the tank truck industry, the adoption of a system of regulation should be avoided which could degrade the specialized industry training programs and precautions taken to avoid

environmental damage and loss of life and property. Lengthy and detailed federal and state safety rules govern the transportation of tank truck commodities because accidents during such transportation have an extra potential to kill and injure. This Commission has required maintenance of insurance liability limits which are double the amount set for other regular freight. CTA states that the staff program concerning the wage level to be used as a floor for justification in rate proposals will have the result of intensifying the use of nonunion labor through the increased engagement of subhaulers and owner-operators, and this program will move carriers toward use of less skilled and less qualified personnel in the operation of tank truck equipment. Therefore, CTA believes the Commission should use a prevailing wage standard as the labor expense component when evaluating whether a rate is compensatory. CTA notes this is realistic in view of the testimony and the offer of the Director of the Department of Industrial Relations and would ensure impartiality in the establishment of wage rates for ratemaking purposes. Additionally, CTA believes it will help to retain the skilled labor force necessary to the safe and efficient movement of products in tank trucks.

CTA states that the record in these proceedings indicates the use of subhaulers and owner-operators in the tank truck industry is relatively limited. The most likely reason, according to CTA, is that in this highly specialized industry involving the movement of hazardous materials, a high degree of expertise and control is essential. Since subhaulers typically function as independent contractors, over whom the prime carrier has little or no control, except as to the result to be achieved, it is obvious that prime carrier control over nonemployees is less compared to the control the prime carrier has over its own employees. If the safe transportation of commodities in tank trucks is to be perpetuated, CTA believes it is essential to encourage performance of such transportation by carriers engaging employees whom they can control, not only as to the end result but as to the details and means by which such results are accomplished. This can be done, according to CTA, only if carriers engage employees over whom they have total control.

In summary, CTA sees the staff plan as openly prejudicial to dedicated public utility common carriers in a manner contrary to historical and statutory purpose because it limits the right of all types of carriers to compete with each other on equal terms by establishing preferential rules and regulations which accord a substantial competitive advantage to contract carriers over common carriers.

The Need for Regulatory Change

Both the evidence introduced in this proceeding, and our past experience with the administration of the minimum rate program amply demonstrate the need for regulatory reform. General economic conditions and the motor transportation industry have changed considerably over the past 40 years. The complex nature of the industry and rapid inflation have combined to preclude development of the detailed cost and rate studies anticipated when the minimum rate program was adopted in 1938.

The resort to cost offset methodologies was a convenient and innovative approach to maintaining the viability of the system, but was never intended to replace, and has never been a satisfactory alternative to full scale studies. Absent such studies we have been unable to establish rates with any real assurance that our ratemaking has reflected the actual characteristics of the industry.

A more critical flaw in our implementation of the minimum rate program has been our inability to establish adequate efficiency standards for selecting study carriers. Our original objective in establishing minimum rates was only to end destructive rate cutting thereby leaving carriers the responsibility and freedom to determine their precise rates on the basis of their own individual operations. It was anticipated that this goal could be achieved by predicating minimum rates upon the costs of carriers most efficiently transporting the particular commodities in question. All other carriers would then be compelled to price the majority of their services somewhat higher than the established minimum, as their own operations

and the service requirements of their shippers warranted. In theory, healthy price and service competition would occur above minimum levels. The theory underlying the program may have been sound, but our inability to develop an adequate means to identify the efficient carriers critical to the implementation of the program has distorted its entire effect. Rates intended as minimum have become in actuality going rates. Although the system was intended to interpose regulation only to end destructive rate competition it has in practice eliminated nearly all such competition.

Individual variations in costs, operating conditions, traffic flow and productivity are lost in the averaging process by which minimum rates are developed. If the minimum rates were at true minimum levels, the opportunity would exist for carriers to reflect their actual operating conditions in their individual rates. The generally high level of the minimum rates has however restricted the opportunity for such carrier sensitive ratemaking. Carriers may still freely assess charges in excess of the minimum where circumstances warrant, but the high level of the minimums has greatly reduced the need for upward adjustments and greatly increased the need for rate reductions. In order to reduce rates to reflect favorable operating conditions carriers must expend considerable time and money to apply for specific Commission authority under Section 3666 or 452. Most carriers do not find this procedure to be cost effective and consequently rarely apply. As a result, important ratemaking factors requiring the exercise of managerial discretion rarely receive consideration. The system, intended to be dynamic and responsive has become rigid and outmoded.

Due to a combination of these factors the minimum rate levels have become excessive. The mere fact that they are going rates in most instances, confirms the fact that they are excessive. We have recognized them as going rates in practice, and have regularly increased them to reflect increased costs without any analysis of

whether such costs could be recovered by way of independent carrier rate adjustments above the minimum. This practice has compounded the problem. Excessive rates not only mean higher costs to shippers, but also added costs to consumers who ultimately purchase the products transported.

The generally high level of the minimum rates has been a problem of continuing concern to the Commission. We have long been aware that fairly substantial volumes of freight move at less than minimum rail alternative rates under Section 3663, and by owner-operator subhaulers who generally receive substantially less than minimum rates from prime carriers and transportation brokers. At the same time, innovative carriers with lower costs and higher productivity have been deterred from offering lower rates by the expensive and time consuming procedures required to obtain the authority necessary to deviate from minimum rates. Neither the fortuitous presence of a rail spur, nor the interposition of a broker between shipper and carrier has any direct relation to the costs of performing the service, yet these are the factors which have been most influential in the receipt of less than minimum charges by carriers under present regulation. Ironically, the high level of minimum rates has increased the opportunities for rate discrimination and carrier exploitation while discouraging the establishment of legitimate cost justified rate differentials.

Economic analysis introduced into this proceeding suggests that the minimum rate program has produced excess service competition and contributed to the excess of trucking capacity in the state. While we have no specific evidence to confirm this analysis, the theory appears well founded.

Since carriers cannot legally charge rates below the minimum, and since the minimum rates have become the going rates in most instances, price competition in the industry has been severely restricted. Since minimum rate enforcement prevents carriers from attracting new business by offering reduced rates, carriers have

competed by offering better service. If the higher costs of offering such service were passed on only to those shippers desiring the added service no problem would exist. The evidence indicates however that rates charged for motor transportation service in California are not service sensitive. With few exceptions shippers are charged the minimum rate regardless of the level of service required or received. Thus, the burdens of this form of competition are borne by all shippers in the form of generally higher rates.

High rates and relatively easy entry standards into the trucking business in California have probably contributed to the excess trucking capacity in the state. Relatively high rates in relation to carrier costs attract new entrants with the illusion of assured profits. Each new entrant contributes further to the existing excess capacity and further dilutes the available traffic, reducing load factors, increasing costs, intensifying expensive service competition, and lowering profit margins for the industry as a whole.

It is our conclusion, based upon the extensive evidentiary record in this proceeding that minimum rate regulation is no longer in the public interest and should be abolished. It is our belief that carriers, as businessmen, could better serve the overall public interest if they could negotiate with shippers and submit their rates for our approval. In this manner cost justified rate differentials and rate innovations such as peakload pricing and directional rates would be encouraged instead of discouraged. Efficiency and productivity would also be encouraged through the opportunity to compete on a price basis as well as on the basis of service. Experience with rate competitive motor transportation both in this country and abroad appears favorable. There is no reason to believe California tank truck carriers would not continue to prosper under such a liberalized system of regulation.

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Reregulation Objectives

The Commission's objectives in the reregulation of intrastate motor freight transportation in California are to:

1. Provide a framework within which shippers and carriers may explore and implement mutually agreeable transportation conditions and rates subject to a minimum of Commission regulation that will protect the public interest.

2. Allow for increased rate competition among all carrier classes and between carriers in the same class.

3. Provide carriers with operational flexibility within their sphere, under varying conditions and rate levels.

4. Provide carriers the opportunity to tailor their operations so that equipment usage and profits are maximized and consumer costs for transportation reduced.

5. Give shippers a real choice between competitive for-hire and/or proprietary transportation to move their goods.

We believe the findings, conclusions, and order herein meet those objectives.

The Program Adopted

The only comprehensive regulatory alternative to the present system presented in this proceeding was that proposed by the Commission staff. Although we agree with the staff's conclusion that a system of carrier-filed rates should be established in lieu of the minimum rate program, we are not persuaded that their plan would best accomplish our objectives. Requiring carriers to justify all rates filed would impose an unreasonable administrative burden upon carriers. Furthermore, it would be impossible for the Commission to review the vast number of justification statements such a system would produce. Absent review of the statements, requiring them to be filed would appear to be a rather idle exercise without which all parties would

be better off. Requiring contract carriers to file tariffs would also appear to be counterproductive. In Decision 89575, implementing S.B. 860 (Chapter 840, Statute 1977), we required all highway contract carriers to begin filing written contracts for the transportation they perform with the Commission. This requirement is to be implemented January 1, 1980. It would reduce the administrative burden on all involved if the Commission simply used these contracts for purposes of rate review. Paperwork and governmental interference in the flow of commerce would be minimized, and the filings with the Commission would more closely reflect the business actually conducted by each carrier. Staff review could then be limited to rates in actual use. We feel the program we have adopted described below will better meet our objectives.

In order to provide for an orderly transition and to prevent the disruption of existing transportation patterns, the new program will be implemented gradually. Minimum Rate Tariffs 6-B and 13 will be cancelled January 1, 1980. In lieu thereof the Commission will publish two transition tariffs which will remain in effect an adequate length of time to facilitate the transition to competitive carrier set rates.

The transition tariffs will serve two independent purposes. First, they will be available for common carriers,[29] that so desire, to adopt in whole or in part as their own tariff. In Decision 89575, implementing S.B. 860 we provided a mechanism for common carriers, particularly new carriers converting under Section 1063.5, to satisfy statutory tariff requirements by adopting one or more Commission minimum rate tariffs as their own. Through the transition tariffs we will preserve this convenient method for common carrier tariff publication notwithstanding cancellation of Minimum Rate Tariffs 6-B and 13. Secondly, the transition tariffs will

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29/ All references to common carriers herein include highway common carriers and petroleum irregular route carriers.

facilitate transition from minimum rates to carrier-filed rates by serving as a threshold for rate justification. Contract rates below the applicable transition tariff rate, filed during the transition period, must be accompanied by justification of the rate level. In this manner we will be able to control the degree of price competition within acceptable and healthy bounds during which in all probability will be a difficult period of transition.

The transition tariffs will contain rates equivalent to MRTs 6-B and 13, respectively, and in addition, any Section 452 and 3666 rate deviations in effect on January 1, 1980. Rate levels in MRTs 6-B and 13 will not be further adjusted by the Commission prior to their cancellation and the establishment of the transition tariffs, except in the event that exceptional need arises. The transition tariff rates will not be adjusted by the Commission in any event.

Alternative rail rates currently available to carriers under Section 3663 will no longer be available under that section. Since all minimum rates will be cancelled, Section 3663 will have no application under the new program. Rail rates will however be available in a more restricted manner for a period of time the duration of which will be governed by shipper-carrier negotiation. Rail rates will continue to be available pursuant to contracts filed on or before the date minimum rates are cancelled, January 1, 1980. Any contract rate lawful when filed will be grandfathered and may continue to be utilized without justification after minimum rates are cancelled. In addition, rail rates contained in motor common carrier tariffs on January 1, 1980 will be similarly grandfathered. Our provision for competitive rate filing, discussed more fully below, will preserve the general availability of most rail rates until they are eliminated from both filed contracts and motor common carrier tariffs.

The rates of contract carriers[30/] will be established by each individual carrier and approved by the Commission under Section

30/ All references to contract carriers herein include highway contract carriers and petroleum contract carriers.

3663. All such rates will be approved on the basis of individual carrier costs (except labor costs in certain cases) and individual carrier operating conditions considered in light of the needs of commerce and the public interest. No rate approved will involve more than one type or class of carrier within the meaning of Section 726. Contract rates approved will only be those contained in actual carrier contracts, and thus will be both minimum and maximum rates for the specific transportation involved.

During the transition period, contract rates below the applicable transition tariff rate must be accompanied by rate justification. Rate justification may consist either of (1) a statement that the rate is filed to meet the charges of a motor carrier competitor, accompanied by a reference to the competitor's tariff or contract charge being met, or (2) operational and cost data (including imputation of prevailing wage levels, as explained infra) which demonstrate that the rate proposed will contribute to carrier profitability. Rates justified on a competitive basis may be at or above the competitor's level, but must apply to the same commodities between the same general geographic points. Operational and cost justification will be more liberally interpreted under our new program than under prior Commission Section 3666 deviation procedures. Innovative pricing will be encouraged, but must be reasonable in light of existing carrier costs and transportation characteristics. In no event will rates which do not contribute to carrier profitability be approved on an operational basis.

Contract rates at or above the transition tariff, or filed to meet the charges of a competing carrier, will be effective on the date filed with the Commission, or such later date as may be provided by the terms of the

contract. Rates filed during the transition period below both the transition tariff and the charges of competing carriers will become effective 30 days after the date filed, absent protest. In the event of protest, all such rates will be temporarily suspended for a period of time not to exceed an additional 30 days during which time the Commission must either reject the

protest and allow the rate to become effective, or suspend the rate pending hearing.

After cancellation of the transition tariffs, all contract filings will be effective on the date filed with the Commission or such later date as may be provided by the terms of the contract. Rates negotiated by shippers and carriers and evidenced by binding contracts will be presumed reasonable. Rate review will be initiated only by the filing of a complaint with the Commission.

We are fully cognizant of the impacts our elimination of minimum rates will have on common carriers. Under our prior minimum rate regulation, Sections 3663 and 726 combined to subject common carriers, as well as permitted carriers, to our minimum rate orders. Neither Section 3663 nor 726 will apply to our new system of individual carrier set rates. Thus, the approved rates of permit carriers will not be directly applicable to common carriers.

Common carrier rates will be governed by Section 454 for rate increases and Sections 455 and 452 for rate decreases. Under Section 455, a public utility may reduce a rate without authority from the Commission on 30-days' notice or such shorter notice as the Commission may prescribe. The impact of Section 455 is limited with respect to motor common carriers by Section 452. Section 452 specifically authorizes rate reductions when the needs of commerce or the public interest require, subject to Commission discretion to require justification. Any rate that is reduced to meet the rate of a motor carrier competitor is in the public interest and may be filed and effective under our new program on the same day service is to be initiated. Such filings must be accompanied by a reference to the competitor's tariff or contract charge being met. Common carrier tariff rate reductions below the charges of motor carrier competitors must, however, be accompanied by a statement of cost or operational justification. This procedure is consistent with Section 452, and will equalize the competitive opportunity of common and contract carriers. An abbreviated outline of the program adopted follows.

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Program Outline

1. MRT 6-B and MRT 13 will be cancelled January 31, 1980.

2. Bulk liquids exempt from MRT 2 will continue to be rate exempt and exempt from the provisions of this program.

3. Transition Tariffs 6-B and 13 will be published in lieu of MRTs 6-B and 13 and will be effective with the cancellation of the minimum rate tariffs.

4. Transition Tariffs 6-B and 13 will consist of the lowest rates contained in MRTs 6-B and 13 and any Section 3666 or 452 deviations in effect on January 31, 1980.

5. The transition tariffs will not be adjusted by the Commission during their life, and will be cancelled at the end of the transition period.

6. The duration of the transition period will be determined by experience under our new program, but is not expected to exceed a year or two.

7. Transition Tariffs 6-B and 13 will not function as minimum rate tariffs. They will serve as a guide for the initial establishment of tariffs by new 1063.5 common carriers, and as a threshold for purposes of contract carrier rate justification requirements.

8. Upon cancellation of MRTs 6-B and 13, contract carriers may operate only pursuant to contracts on file with the Commission. Contracts may be filed on or before January 31, 1980 and thereafter as negotiated. All contracts will be available for public inspection.

9. Any rate filed by a contract carrier below the transition tariff during the transition period must be accompanied by a statement of justification. Such justification may consist either of (a) reference to a motor carrier competitor's rate, or (b) operational and cost data showing that the proposed rate will contribute to carrier profitability.

10. Contract rates at or above the transition tariff, or filed to meet the charges of a competing carrier, will be effective on the date filed or such later date as may be provided by the terms of the contract. Such rates may be subject to review upon the filing of a complaint.

11. Rates filed during the transition period below both the transition tariff and the charges of competing carriers will become effective 30 days after the date filed, absent protest.

12. After the transition period, rates may be filed at any level without initial justification and will be effective on the date of filing or such later date as may be provided. After the transition period, rate levels will be subject to review only upon the filing of a complaint.

13. Any interested person will be entitled to file a complaint against the filed rate for any transportation service in accordance with Public Utilities Code Sections 1702 and 3662. The cost data upon which carrier profitability will be assessed upon complaint will include a prevailing wage standard for labor costs as discussed more fully infra.

14. The rates of highway common carriers and petroleum irregular route carriers will be governed by Sections 452, 454, and 455. Common carrier rate filings below the transition tariff (during the transition period) must be accompanied by a statement of justification. Such justification may consist either of (a) reference to a motor carrier competitor's rate, or (b) operational and cost data showing that the proposed rate will contribute to carrier profitability.

Issues Involved with
The Reregulation Plan

We believe the following issues are raised for discussion and resolution by adoption of the above plan:

A. Were the rulings of the ALJ on motions to exclude certain evidence presented by CTA in Exhibit 244-29 correct?

B. Should certain collateral matters be decided by the Commission prior to consideration of and decisions affecting reregulation? These matters involve entry, subhauling, collective ratemaking, and implementation of SB 860.

C. Can the Commission eliminate minimum rates or is it mandated to establish or approve them in some form under Sections 726 and/or 3662?

D. Can contracts filed by permit carriers be considered as documents containing rates which may be approved by the Commission under Section 3662?

E. Should the rates filed through contracts under Section 3662 be exact rates or minimum rates?

F. What should the criteria be for wage costs for purposes of rate justification?

G. Should the Commission adopt a program to enhance the financial information available for permit carriers either as individuals or groups?

H. How can the Commission continue the exemption from rate regulation of selected commodities after minimum rate tariffs are eliminated?

I. Will the reregulation program adopted involve any federal or state antitrust problems?

J. Will the reregulation program create any unfair competitive advantages for certain carrier classes?

K. Will there be any unfair advantages created or special problems for carrier/shipper or carrier/carrier affiliates?

L. Will the possibility of greater use of subhauling and owner-operator arrangements create safety problems?

M. Does the reregulation plan satisfy Section 3502? ("...It is the purpose of this chapter to...secure full and unrestricted flow of traffic by motor carriers...by providing for the regulation of rates of all transportation agencies...")

Discussion and Resolution of Issues

A. Were the rulings of the ALJ on motions to exclude certain evidence presented by CTA in Exhibit 244-29 correct?

We have reviewed those motions and adopt as our own the ALJ's rulings. We note in particular, in Exhibit 244-29 (by CTA witness Broberg on page 2), the following statement:

> "This statement is presented as a rebuttal response to various conceptual, technical, and procedural aspects of the Commission's staff proposals and recommendations. Additionally, however, it speaks to the underlying philosophical thrust of such proposals and suggests various alternative approaches which are believed to be not inconsistent with the principal purpose of such recommendations, but which will minimize adverse economic consequences certain to flow from adoption and implementation of the staff's suggested regulatory program. ..." (Emphasis added.)

We believe the reference to "alternative approaches" supports the ALJ's rulings to not allow CTA to present positive suggestions at the last moment when it was known early in the proceedings, well before hearings started, that all parties were to make their positive proposals in written form by a date certain. CTA did not do this.

B. Should certain collateral matters be decided by the Commission prior to consideration of and decisions affecting reregulation? These matters involve entry, subhauling, collective ratemaking, and implementation of SB 860.

As our prior discussion indicates, excess industry capacity has been produced by a combination of liberal entry standards and high minimum rates. Entry is clearly related in a fundamental way to the issues under consideration in this proceeding. We have however already addressed the issue in Decision 88967 issued June 13, 1978 in Case 10278 which increased standards for financial responsibility.

SB 860 has made important changes related to carrier authority. In Decision 89575 we established a program for the implementation of SB 860 and resolved many of the ambiguities in the legislation. Issues involved in the implementation of SB 860 are entirely separable from those before us in this proceeding. We find no justification for deferring rate reregulation pending the full implementation of SB 860.

In Case 10368 we are currently investigating all issues involved in collective ratemaking. Any decision we reach in that case will certainly be made in light of the changes in rate regulation we have made today. The issues presented in that proceeding can better be determined in light of the action we have taken rather than in advance of it.

C. Can the Commission eliminate minimum rates or is it mandated to establish or approve them in some form under Sections 726 and/or 3662?

Section 3662 provides, among other things, that:

"The commission shall...establish or approve... maximum or minimum or maximum and minimum rates to be charged by any highway permit carrier for the transportation of property..."

Section 726 provides, among other things:

"In any rate proceeding where more than one type or class of carrier, as defined in this part or in the Highway Carriers' Act, is involved, the commission shall consider all such types or classes of carriers, and...fix as minimum rates applicable to all such types or classes of carriers the lowest of the lawful rates so determined for any such type or class of carrier."

At first impression from reading Section 3662 it may appear that the Commission is obligated to either establish or approve rates for highway permit carriers. The most recent court case involving whether or not the Commission is required to set minimum rates was the "flattened automobile bodies" and "empty sea vans" case before the California Supreme Court (California Trucking Association v Public Utilities Commission (1977) 19 C 3d 240). The Court concluded in that case that:

> "...the Commission, under existing statutes, is not required to set minimum rates for the transportation of flattened automobile bodies or empty sea vans. However, the Commission erroneously denied California Trucking an opportunity to be heard as required by law."

In coming to its decision, the Court considered the argument of CTA that the Commission must maintain minimum rates in effect under the provisions of Section 726. In response to the CTA petition, the Commission urged before the Court that Section 726 merely sets forth the test to be applied when minimum rates are set, rather than requiring the Commission to set such rates. The Court accepted this contention, saying:

> "In our view of the Commission's construction of Section 726 is correct. The provision that the Commission shall fix 'as' the minimum rate the lowest of the lawful rates implies the standard by which minimum rates are to be determined rather than the requirements that such rates be set."

In the same decision the Court addressed whether Section 3662 requires the Commission to establish minimum rates. It stated:

> "California Trucking appears to concede that under the provisions of Section 3662, the Commission is vested with discretion to determine whether or not to establish minimum rates to be charged by highway permit carriers. Since the section provides that the Commission may set either maximum or minimum rates it cannot be said that it mandates the Commission to set minimum rates under all circumstances."

It is clear from this case that the determination of whether to establish or approve maximum rates or minimum rates or maximum and minimum rates or no rates at all, is left entirely to the Commission's discretion.

D. Can contracts filed by permit carriers be considered as documents containing rates which may be approved by the Commission under Section 3662?

E. Should the rates filed through contracts under Section 3662 be exact rates or minimum rates?

In Decision No. 89575, supra, on the implementation of SB 860, petroleum contract carriers were specifically excluded from the requirements established for filing of contracts and the Commission policy on the scope of contract operations (Appendix G to Decision No. 89575). However, in the reregulation plan adopted herein, contracts become a crucial part of rate level establishment as well as any concomitant rate enforcement. Therefore, this decision will require that all petroleum contract carriers must file contracts with the Commission and, in addition, will be required to abide by the policy on contract operations that we adopted in Decision No. 89575. A copy of that appendix, appropriately amended, is attached hereto for reference as Appendix D.

Addressing directly Issues D and E, we can find nothing in Section 3662 which requires the traditional approach that the rates referred to in that section must be contained in a tariff. A perusal of the requirements for a positive determination of contract carriage as set out in Appendix D reveals that all of the usual factors that one would find in a tariff are required for contracts acceptable to the Commission. We see no problem, therefore, with accepting contracts as rate filings under Section 3662. Since the rates are contract rates and, hence, exact, they become minimum and maximum rates. The one problem remaining is complying with the provisions

of Section 3737[31] which requires carriers to maintain copies of tariffs, decisions, or orders applicable to the transportation covered by their permit and requires the Commission to arrange to furnish such. We will satisfy those requirements by serving this order and the transition tariffs established by our program on applicable carriers.

31/ "Upon the issuance by the commission of any decision or order made applicable to a particular class or group of carriers, or to particular commodities transported or areas served, the commission shall only be required to serve a copy of the decision or order without charge upon each party appearing in the case or proceeding resulting in such decision or order. Upon the issuance of a permit to operate as a highway carrier, the carrier shall obtain copies of each tariff, decision or order previously issued that is then applicable to the class or classes of transportation service authorized by the permit. Thereafter, the carrier shall maintain copies of all tariffs, decisions or orders subsequently issued that are currently applicable to the class or classes of transportation service authorized by the permit, and shall observe any tariff, decision, or order applicable to it.

"The commission shall arrange to furnish copies of any tariff, decision or order previously issued that is currently applicable to the class or classes of transportation service each highway carrier is authorized to perform. For such service the commission shall establish a reasonable schedule of charges, not to exceed cost, for individual tariffs, decisions and orders as well as annual charges for tariffs, decisions and orders applicable to each class of transportation service.

"The commission shall, after thirty (30) days written notice, revoke the permit of any carrier failing to obtain and maintain currently applicable tariffs, decisions and orders."

F. What should the criteria for wage cost be for purposes of rate justification?

A key issue in this proceeding is what criteria should be employed to determine labor costs for the purposes of rate justification. The staff proposal was that only actual costs be considered, with imputation of the statutory minimum wage where there is no actual wage, as in the case of owner-operators. An alternative is that union scale labor costs be employed. Wages set at or near union scale have generally been the basis for the labor compound of minimum rates set by the Commission. In the case of certain areas of trucking such as that conducted by owner-operators and that undertaken pursuant to subcontract, actual wage costs cannot be determined.

We have decided to adopt a prevailing wage formula for determining the wage cost element in all rate justifications. We do not have sufficient material in the record at this point to precisely define that prevailing

wage formula and will leave that task for subsequent decision. As part of that effort, we will designate specific classes of transportation services within specific geographic zones in California for the determination of prevailing wage levels.

The prevailing rate of wages and other benefits shall be used in computing labor costs for all rate justifications. Complaints alleging predatory pricing may be based on allegations that the prevailing rate was not used in determining labor costs. In all tariff filings and accompanying all contract filings the rate of wages and other benefits used in computing labor costs shall be clearly specified.

G. Should the Commission adopt a program to enhance the financial information available for permit carriers either as individuals or groups?

The Commission requires varying types and depths of financial information from carriers depending on type of authority held and amount of business done. Common carriers are under the most stringent

requirements; they must file annual reports of their operations with the Commission regardless of how much business they do, although the smaller the business, the less complete the report. Only the larger of the permit carriers (gross revenues of $300,000 per year or more) are required to file annual reports. The reregulation here involved is pointed more toward the permit carrier and will require information on an individual carrier's operations if that carrier comes before the Commission with a rate proposal to change the reference rates.

CTA claims that without minimum rates, potential protestants to rate proposals of permit carriers would be hampered because not all permit carriers would have financial statements on file with the Commission. CTA sees the lack of publicly available financial data, such as that required of common carriers, as a hindrance to the ability of a potential protestant to make an immediate evaluation of whether the proposed rates would provide a profitable operation. It believes access to such information could reduce the number of formal protests and provide competing carriers with important clues as to the reasonableness of proposed rates.

The staff does not propose that the Commission expand the current financial information requirements of carriers. Its position is that as carriers become familiar with what is needed to support their rate proposals, they will keep better and more complete records. These records would then become available to test proposals.

If the carriers do not maintain what is required to support their proposals, it follows that they run the risk of rejection by the Commission. It would seem odd that a carrier wishing to make an evaluation of a competing carrier's rate filing would not have some sort of comparative data if that were its competitive area of transportation. Likewise, associations such as CTA have access to data from their carrier members with which to make comparisons. Shippers, it would seem, could not care less because they will be on the receiving end of the lower rate. Lastly, any additional requirements we might put on would fall almost entirely on the shoulders of the smaller carriers. No additions to our current financial information requirements will be made in this proceeding.

H. How can the Commission continue the exemption from rate regulation of selected commodities after minimum rate tariffs are eliminated?

Traditionally there have been selected commodities declared exempt from minimum rate regulation because of the inherent difficulties of determining proper minimum rates for them. Other have been exempted because of the legislative requirement of Section 3661 that the freedom of movement of the products of agriculture, including livestock, should be promoted. These exemptions from rate regulation have been almost exclusively provided for in Commission minimum rate tariffs (e.g., Decision No. 80134 dated June 7, 1972 in Case No. 5432). The exemptions have been applicable to permit carriers only, however, since common carriers pursuant to Section 486, et seq. must maintain tariffs of all rates charged.

CTA contends that the current exemptions are from the application of minimum rates, and not from regulation, and that there can be no exemptions, therefore, if there are no minimum rates. The logic of this escapes us, since under the present program, even with minimum rates, there is no regulation of any kind for permit carriers of exempt commodities, or, in other words, total rate exemption. Under the adopted program this situation will merely be continued. It seems obvious to us that the reason exemptions are listed in minimum rate tariffs is because of the convenience.

In California Trucking Association v Public Utilities Commission (1977), supra, the court said, and very clearly, that the Commission need not set any rates at all under Section 3662.

> "California Trucking appears to concede that under the provisions of Section 3662, the commission is vested with the discretion to determine whether or not to establish minimum rates to be charged by highway permit carriers. Since the section provides that the commission may set either maximum or minimum rates, it cannot be said that it mandates the commission to set minimum rates under all circumstances.10/

10/ Nor can it be argued that the provision requires the setting of maximum rates where minimum rates are inappropriate. The thrust of the section is to allow the Commission to set either type of rate, or no rate at all."

It follows that if the Commission has reason to approve rates for some types of transportation and not others, it may do so.

We cannot expect individual permit carriers to do what our experienced and knowledgeable staff has been unable to do. They can only be expected to set rates for specific services and specific shippers as required by their contract operations. Since there are no minimum rates now for exempt commodities, under the program we will adopt, permit carriers may continue to execute contracts at any rate they wish. Under Decisions Nos. 89575, et al. (SB 860), and Appendix D adopted herein, contracts involving exempt commodities need not be filed with the Commission and, hence, no approvals are implied or required.

I. Will the reregulation program adopted involve any federal or state antitrust problems?

The Commission has been mandated by the California Supreme Court to consider the antitrust implications of its regulatory activities. (Northern California Power Agency v PUC (1971) 5 C 3d 370.)

The program we are adopting has most of the elements of the staff program except that the permitted carriers will not be required to file tariffs for all of the transportation they perform. CTA maintains that the staff program raises serious federal antitrust questions and proceeds to argue its case based almost entirely on common carrier ratemaking. CTA concludes that if the Commission adopts a reregulation program which encompasses carrier-made rates, carriers may face peril under the federal antitrust laws if they attempt to engage in group ratemaking.

Under the minimum rate system both permitted and common carriers enjoyed antitrust protection provided by the state action exemption found in Parker v. Brown (1943) 317 U.S. 341. Although the extent of that protection may be debated in light of more recent decisions, Cantor v. Detroit Edison Co. (1976) 428 U.S. 579; Goldfarb v. Virginia State Bar (1975) 421 U.S. 773; Rice v. Alcoholic Beverage Control Appeals Board, (1978) 21 C. 3d 431, there is little question that individual carrier rate filing in lieu of uniform minimum rate regulation will increase the potential for carrier liability. Although we recognize this effect, we do not consider it any reason to retain minimum rate regulation. Our responsibility is to consider the potential anticompetitive effects of regulatory programs and actions. It is pursuant to that responsibility that we initiated this proceeding and have reached the decision we have made today. The purpose of our antitrust laws is to preserve and promote competition.

> "The Sherman Act was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing environment conducive to the preservation of our democratic political and social institutions. But even were that premise open to question..." Northern Pacific Railway Co. v. United States, (1958) 356 U.S. 1, 4-5.

The action we have taken will enhance competition, and thus is entirely consistent with the principles and purposes of antitrust law.

We have not however embraced competition without reservation. The plan we have adopted is a program of reregulation not deregulation. We recognize the for hire motor transportation industry as a regulated industry under California law and acknowledge our responsibility to regulate rates. We have given consideration to antitrust issues in this proceeding and will give full consideration to the related issues currently before the Commission in Case 10368, our generic investigation into collective ratemaking.

J. Will the reregulation program create any unfair competitive advantages for certain carrier classes?

CTA expressed vital concern with this issue in the proceedings. It sees the fundamental aim of highway carrier regulation as a fostering and maintenance of reliable transportation for the shipping public at reasonable rates, without discrimination. It views the present program of the Commission as effectively controlling the rates of all common carriers thereby affording protection against destructive competition; and it believes the regulation of contract carriers is essential to protect common carriers from cutthroat competition by contract carriers even though that regulation has been incidental to the regulation of common carriers. Finally, CTA argues that the staff proposal will create a competitive advantage for contract carriers that common carriers will not be able to overcome.

We have tried hard to understand the concern of CTA with this issue and each time it revolves back to the issue of rate exempt commodity transportation. There are some other competitive considerations, like ease of rate changes and ability to lodge complaints against rates, but these prove to be minor when considered as competitive advantages or disadvantages. The real problem is the combination of SB 860, with its elimination of the radial highway common carrier, and the continuation of rate exempt commodities absent minimum rates. As we discussed earlier under the issue of exempt commodities, contract carriers, by the provisions of Decision 89575, will not have to file contracts with the Commission for the transportation of exempt commodities. As a result of that decision, any potential differences in the treatment of exempt commodity transportation by different types of carriers probably have become moot because exempt commodities will, most likely, be hauled only under permit authority.32/

32/ Public utility common carriers will not be precluded from participating since they may hold contract authority in addition to certificated authority although limited in duality of operation by Section 3542.

CORRECTION

THIS DOCUMENT

HAS BEEN REPHOTOGRAPHED

TO ASSURE LEGIBILITY

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K. Will there be any unfair advantages created or special problems with carrier/shipper and/or carrier/carrier affiliations?

As noted earlier, a survey of a sample of carriers operating under MRT 6-B indicated that only 36 percent had no affiliation with shippers or other carriers; for carriers operating under MRT 13, the percentage was 42 percent. Although there is nothing in the record to compare those statistics with similar statistics for other tariffs, it appears that for the transportation of petroleum it is important to consider whether the reregulation plan, coupled with the high degree of affiliations, will cause any undue problems. CTA is adamant that it will because the adoption of the staff proposal, or one similar to it, would place ratemaking in the hands of shippers who are affiliated with or own and control for-hire carriers.

The potential abuses pointed out by CTA are available today under the minimum rate program. They can be accomplished under Sections 452 and 3666 deviations. The safeguards are, of course, that anyone may complain and be heard on any filing under those sections. That, also, will be the case under the reregulation plan adopted herein. There will be no substantial change in the Commission policy requiring that a shipper controlled carrier, when transporting its own products and utilizing subhaulers, must pay the subhauler 100 percent of the approved rate.

L. Will the possibility of greater use of subhauling and owner-operator arrangements create safety problems?

If we were to accept the argument of Teamsters and CTA on this issue, it would require the Commission to condemn owner-operators and subhaulers as inferior carriers. We cannot do that. The contention that hazardous conditions will arise when carriers lose control over drivers because they are owner-operators cannot be sustained.

The safe operation of carriers engaged in tank truck transportation is not a function of this Commission but is the responsibility of the California Highway Patrol, the State Fire Marshal, and, in the case of common interstate-intrastate operations, the Interstate Commerce Commission and the United States Department of Transportation. We cannot conceive of those agencies allowing unsafe

operations to exist any more than we can believe the carriers involved do not recognize the extra potential for disaster that exists in the transportation of the highly volatile products of petroleum. Safety will continue to be enforced in the future as it has in the past.

M. Does the reregulation plan satisfy Section 3502? ("...It is the purpose of this chapter to...secure full and unrestricted flow of traffic by motor carriers...by providing for the regulation of rates of all transportation agencies...")

A major point to be kept in mind in this proceeding and others which parallel it is that the Commission is here deciding to reregulate the trucking industry not deregulate it. The Commission cannot deregulate; it has a constitutional and statutory responsibility to regulate the trucking industry. But the Constitution and the statutes give the Commission wide latitude on precisely what kind of regulatory system it will impose. Since the enactment of the Highway Carriers' Act in 1935, the Commission has done all the things possible under Section 3662, including setting no rates at all on some commodities and even exempting certain carriers from rate regulation under Division 2 of the Code. (Re Case No. 4246 (1938) 41 CRC 671, 724.) Although the terms "minimum rate", "maximum rate", and "minimum and maximum rates" are used in Section 3662, nowhere did the Legislature provide a definition for such terms, leaving considerable discretion to the Commission and its expertise. Finally, the determination of whether the Commission is required to set rates of any kind under Division 2 is left entirely to the Commission. (CTA v PUC (1977), supra.)

The program adopted changes the form of regulation, not the fact of regulation. Our aim is to provide more competitive conditions with Commission control to prevent abuses.

Environmental Considerations

In enacting the California Environmental Quality Act of 1970 (CEQA), Public Resources Code Section (Pub. Res. C. Sec.) 21000 et seq., the Legislature established a state policy requiring consideration of environmental as well as economic and technical factors in evaluating regulatory actions and programs. This policy is clearly declared in Pub. Res. C. Secs. 21000 and 21001 and broadly expressed in paragraph (g) of both sections:

> "It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage." (Pub. Res. C. Sec. 21000(g).)
>
> "The Legislature further finds and declares that it is the policy of the state to: ...Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment." (Pub. Res. C. Sec. 21001(g).)

In some instances CEQA requires that this policy be implemented through preparation and consideration of an environmental impact report (EIR) prior to agency decision making. (See Pub. Res. C. Secs. 21061 and 21100.) However, EIRs are required to be prepared by state agencies, boards, or commissions only "on any project they propose to carry out or approve which may have a significant effect on the environment." (Pub. Res. C. Sec. 21100, emphasis added.)

Although the policy provisions of CEQA (Pub. Res. C. Secs. 21061 and 211001, supra) apply to this proceeding, the EIR provisions (Pub. Res. C. Secs. 21100 et seq.) do not. (Re environmental Impact Reports (1973) 75 CPUC 133, 142 and 243, 246, writ denied, SF No. 23034, January 16, 1974.) The key term "project" is defined in Pub. Res. C. Sec. 21065 to include only the following agency actions:

> (a) Activities directly undertaken by any public agency.

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(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

It is clear that neither (b) nor (c) apply since issues in this proceeding involve neither financial assistance nor licensing. Although in this decision we are directly undertaking a significant change in the method of tank truck rate regulation, neither does this appear to be the type of activity contemplated by paragraph (a). In California Administrative Code Section 15037 promulgated to implement CEQA, paragraph (a) of Pub. Res. C. Sec. 21065 has been interpreted to refer to activities involving or related to construction activities.

> "Project means...: (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities, clearing or grading of land, improvements to existing public structures, enactment and amendment of zoning ordinances, and the adoption of local General Plans or elements thereof pursuant to Government Code Sections 65100 through 65700." (California Administrative Code Section 15037 (1).)

This proceeding is essentially a rulemaking proceeding involving the means by which rates will be set in the tank truck industry. It is totally unrelated to construction activities.

Even though the EIR provisions of CEQA do not apply to this proceeding, and no EIR or negative declaration is required, the Commission is still under a statutory duty to recognize and implement the policy stated in Pub. Res. C. Secs. 21000 and 21001. In reaching this decision, we have discharged this duty by considering environmental factors as well as the significant economic, technical, and procedural factors raised in this proceeding.

Upon analysis of the evidence before us, we find that establishing the regulatory system adopted herein will have a beneficial effect on the environment. We expect increased price competition to produce increased operational as well as financial efficiency. Equipment utilization should be maximized, thereby reducing empty miles, excessive use of the highways, and unnecessary fuel consumption.

Findings

1. OSHs 244, 960, and 36 in Cases 5436, 5432 and 6008, respectively, were issued for the purpose of considering proposals for the reregulation of transportation of commodities in bulk by tank and vacuum tank vehicles covered by MRTs 2, 6-B, and 13.

2. The staff was the only party to the proceeding to present a complete reregulation proposal.

3. The general economic conditions that existed in the 1930s, and which spawned the present minimum rate program, do not exist today.

4. MRTs 6-B and 13 do not meet the needs of carriers and shippers for the transportation of commodities in bulk by tank and vacuum tank vehicles.

5. With few exceptions the minimum rates in MRTs 6-B and 13 for the transportation of commodities in bulk by tank and vacuum tank vehicles are the going rates for the industry.

6. The cost studies which support the development of rates in MRTs 6-B and 13 for the transportation of commodities here at issue have not been and cannot be updated with the necessary frequency.

7. The Commission has been unable to establish adequate efficiency standards for selecting study carriers.

8. The cost studies which support the development of rates in MRTs 6-B and 13 for the transportation of commodities here at issue reflect no more than the average costs of average carriers.

9. The minimum rates have become in general too high, although some are too low.

10. The minimum rates are not reflective of actual carrier operating conditions and have discouraged cost-justified rate differentials.

11. Excessive minimum rates have increased transportation charges to shippers, and increased costs to consumers who ultimately purchase the products transported.

12. Economic analysis suggests that high minimum rates have produced excess service competition and contributed to the excess trucking capacity in the industry.

13. The current methodology of and approach to ratemaking necessarily cannot give consideration to the operating conditions and efficiencies of individual carriers as they exercise their managerial, marketing, and general business acumen.

14. Different shippers and carriers operate under widely varying conditions and have individual, unique requirements which cannot be fully considered when minimum rates are established based on industry averages.

15. Shippers and carriers have benefited from the flexibility and responsiveness with respect to ratesetting now allowed in the area of transportation exempt from minimum rates. A similar result could be expected if rate flexibility is introduced into present tank truck transportation currently subject to minimum rates.

16. The needs of commerce and the public interest require that carriers be allowed to meet the charges of competing motor carriers.

17. In order to equalize competitive opportunity, common carrier rate reductions filed to meet the charges of competing motor carriers may be filed and effective on the same day service is to be initiated.

18. The cost criteria for justification of rates under the reregulation plan adopted herein should be as follows:

a. Labor costs will be calculated on the basis of a prevailing wage formula applied to comparable

transportation service in the relevant geographic zone.

b. All other cost elements will be based upon the individual carrier's actual costs.

19. The commodity transportation at issue herein is especially hazardous and, therefore, is governed by lengthy and detailed federal and state safety rules as well as Commission-required insurance liability limits which are double the amount set for regular freight transportation. Safety will continue to be enforced in the future as it has in the past.

20. In conjunction with the reregulation plan adopted herein, no additional financial reporting requirements of highway carriers are required.

21. It is not necessary to delay the adoption of this reregulation plan pending the implementation of SB 860 or any decisions of the Commission on collateral matters detailed in this decision.

22. Under the reregulation plan adopted in this decision, commodities transported in bulk by tank and vacuum tank vehicles presently exempt from rate regulation by provisions of MRTs 2, 6-B and 13 should remain exempt.

23. The regulatory system adopted herein will produce increased operational efficiency of highway carriers, thereby reducing empty miles, excessive use of the highways, and unnecessary fuel consumption.

24. The regulatory system adopted herein will have a beneficial effect on the environment.

Conclusions

1. The rulings of the assigned ALJ on motions to exclude certain evidence presented by CTA in Exhibit 244-29 were proper and we adopt them as our own.

2. It is not necessary for the Commission to come to decisions on the collateral matters listed and discussed under Issue B prior to consideration of and decisions affecting reregulation.

3. The Commission is not required to establish minimum rates under Division 2 of the Code and may cancel at any time those it has already established.

4. A regulatory system of competitive individual carrier-filed rates should be established in lieu of the present minimum rate system.

5. The rates contained in contracts filed by contract carriers will be approved by the Commission under Section 3662.

6. The rates contained in contracts filed by contract carriers and approved by the Commission under Section 3662 are, at one and the same time, minimum and maximum rates.

7. Since we are adopting a system of individual carrier-filed rates and cancelling minimum rates, neither Section 726 nor Section 3663 will apply.

8. To avoid disruption of existing transportation patterns, rail rates should be grandfathered in the manner discussed herein.

9. Common carrier rate changes will be governed by Sections 452, 454, and 455.

10. The Commission may exempt selected commodity transportation from rate regulation under Division 2 of the Code.

11. The reregulation program adopted is consistent with state and federal antitrust law.

12. The reregulation program adopted will not create any unfair competitive advantages for any particular class of carrier.

13. The reregulation program adopted will not result in any unfair competitive advantages for carriers or shippers who have carrier/carrier or carrier/shipper affiliations over those who do not.

14. The safe operation of carriers engaged in tank truck transportation is not a function of this Commission but is the responsibility of the California Highway Patrol, the California State Fire Marshal, the United States Department of Transportation, and the Interstate Commerce Commission.

15. The transportation diversities and wide range of shipper requirements in today's economic market are not properly served by present Commission regulatory procedures and administration.

16. There is a need to establish improved regulatory procedures to administer the transportation covered in this proceeding, so that the overall public interest will be better served.

17. The five Commission objectives for reregulation as stated in the body of the opinion will be met by the reregulation plan adopted herein.

18. The reregulation program adopted satisfies the requirements of Section 3502.

19. Although the policy provisions of CEQA, Pub. Res. C. Secs. 21000 and 21001, apply to this proceeding, the EIR provisions, Pub. Res. C. Secs. 21100 et seq., do not.

20. The reregulation plan described in the body of this opinion should be adopted by the Commission.

FINAL ORDER

IT IS ORDERED that:

1. The motion of California Trucking Association to reopen these proceedings for further hearings to consider the impact of reregulation proposals on energy is denied.

2. The reregulation plan detailed in the opinion of this decision is adopted and shall be effective January 31, 1980.

3. Minimum Rate Tariffs 6-B and 13 are cancelled effective January 31, 1980.

4. The Commission's Transportation Division shall do the following:

   a. Prepare a program for presentation to the Commission within one hundred twenty days after the effective date of this order which will monitor retrospectively and prospectively the effects of this reregulation on the tank truck transportation industry. In formulating this program, the staff is directed to solicit suggestions from any parties to these proceedings who may be interested.

   b. Prepare for Commission resolution, the necessary rules, and new and revised general orders to implement the adopted reregulation program.

   c. Prepare the transition tariffs for distribution by December 1, 1979.

   d. Prepare an order instituting an investigation into the definition, criteria, and procedure for determining prevailing wage levels for purposes consistent with this opinion.

5. All deviations authorized under Section 3666 applicable to transportation covered by these proceedings shall expire on December 31, 1979.

6. The Executive Director shall serve a copy of this decision on all highway carriers.

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

Dated at San Francisco, California, this 22nd day of MAY, 1979.

John E Cryer
President

I will file a written dissent
Vernon L. Sturgeon

Vernon L. Sturgeon

Richard D. Gravelle

Claire T. Dedrick

Concur - by Attached Statement

Commissioners

I concur but would have utilized actual wages for non-union carriers as the wage standard in rate showings rather than the prevailing wage concept which does nothing more than enrich non-union employers without any benefit to labor, or to the public. Richard D. Gravelle

Chronology and Summary of the Principal Acts Relating to the Regulation of Commodity Transportation in California

1853 - An act was passed prescribing maximum rates for railroads at 20 cents per passenger mile and 60 cents per ton of freight per mile. In 1861 this was reduced to 10 cents per passenger per mile and 15 cents per ton mile for freight.

1876 - April 3, 1876: The Legislature passed an act providing for three commissioners of transportation who were to have supervision over the railroads, but with limited powers as to rates.

1878 - April 1, 1879: The Legislature repealed the act of 1876 and provided for one commissioner of transportation to have supervision over the railroads with merely a supervisory power as to rates.

1879 - The Constitution was revised and Art. XII, Section 22, created a Railroad Commission consisting of three commissioners who were to have some regulatory powers over rates, but apparently no control over the service of the railroads. April 5, 1886, the Legislature defined the powers of the railroad commissioners, and to the term "transportation companies", which prior to that time had included only railroads, there was added the term "vessels."

1909 - March 19, 1909: The Legislature added to the concept of transportation companies the terms "express companies" and "car" companies", and the Commission's jurisdiction over rates was limited to authority to fix maximum rates.

1911 - February 9, 1911: The so-called Stetson-Eshleman Act was passed which repealed the acts of 1878, 1880, and 1909. It placed all transportation companies under the jurisdiction of the Commission and granted it authority to fix rates as well as to ascertain the value of the property of utilities in connection with rate-fixing.

1911 - October 10, 1911: The Constitution was amended, creating a Railroad Commission of five commissioners with the power to regulate utilities, to award reparations to shippers, and to control commutation and excursion tickets. Utilities were defined to include railroads (commercial, inter-urban, and street), canals, pipe lines, telephone and telegraph companies, heat, light, water and power companies, storage and wharfage companies.

1911 - December 23, 1911: The present Public Utilities Act became law, and with subsequent amendments remains the basic act relating to utility regulation in California.

1917, 1919 - The Auto Stage and Truck Transportation Act of 1917 defined transportation companies among others as auto truck companies operating for compensation over any public highway between fixed termini and over a regular route. The Commission was vested with extensive powers to regulate such companies. In 1919 the act was amended in an attempt to bring contract carriers under Commission control.

1935 - The Legislature enacted the Highway Carriers' Act and the City Carriers' Act to bring under regulation three new types of carriers, the radial highway common carrier, the highway contract carrier, and the city carrier. It also provided for the establishment or approval by the Commission of minimum, maximum, or minimum and maximum rates for such carriers.

1949 - The Public Utilities Act was amended to create the petroleum irregular route carrier and the Highway Carriers' Act was amended to create the petroleum contract carrier.

* * *

APPENDIX B

Case No. 5436 OSH 244, et al.
Tank Truck Reregulation

Antecedents and Summary of Events

July 31, 1973 -	Decision No. 81672 in Case No. 6008, Petition 20, provided that an alternative regulatory approach of canceling MRT 13, requiring all common carriers to publish and file tariffs, and requiring contract carrier rates, should be explored.
December 1974 -	Report of Commission on California State Government Organization and Economy (Little Hoover Commission) on study of CPUC. A comprehensive set of recommendations, including elimination of the minimum rate system, maintaining requirements for filed tariffs by common carriers, and requiring filed written contracts by contract carriers.
June 17, 1975 -	Decision No. 84539 in Case No. 5432, Petition 833, a wage offset decision, announced a "New Regulatory Program" to be implemented within 150 days to require filed tariffs by all permit carriers.
July 8, 1975 -	Decision No. 84654 in Case No. 5436, Petition 184 announced a "New Regulatory Program" similar to the above but affecting MRT 6-B.
August 26, 1975 -	Decision No. 84840 in Application No. 55488 (Accurate Cartage and Warehousing, Inc. and 46 other warehousemen to increase rates) announced that the Commission would no longer consider "group filings of a single rate for warehousing services where no individual justification has been made by the members of the group ..."
September 3, 1975 -	Case No. 9963 - An investigation to establish rules under which all carriers shall file tariffs or contracts and to cancel rate increases previously ordered in Decision No. 84539 and supplemental order.
September 30, 1975 -	Decision No. 84955 in Case No. 9963 revoked previous cancellations of rate increases.
October 7, 1975 -	Decision No. 84962 dismissed a joint application of warehousemen for a rate increase.
October 31, 1975 -	Decision No. 85081 in Case No. 5436, Petition 194 - Interim rate increase in MRT 6-B granted, subject to hearings for full justification. Conditions for permanent increase enunciated, such as CTA evidence on MRT 6-B traffic flow, alternatives to Petition 194, etc.

December 10, 1975 - Application No. 56119 of Highway Carriers Association to file tariffs for mobile homes, etc. transportation on behalf of participating carriers, in lieu of MRT 18. Filing made pursuant to the new regulatory policy announced in Case No. 9963.

March 17, 1976 - Petition 884 in Case No. 5432 and related cases. Request of California Manufacturers Association to require carriers to publish and file tariffs containing rates for truckload traffic of general commodities in lieu of the Commission's minimum rates.

June 22, 1976 - Order Setting Hearing 111 in Case No. 5438 - Proceeding established to receive evidence from parties opposing exception of fresh fruits and vegetables from minimum rates.

August 31, 1976 - Decision No. 86345 in Case No. 5438 OSH 111 - CTA motion to discontinue proceeding denied. Announced that the burden of proof that minimum rates should not be canceled should be placed on those parties advocating their retention.

October 13, 1976 - Decision No. 86507 in Case No. 5432, Petition 871 announced that future offset proceedings would require consideration of "predatory pricing."

October 1976 - Policy Element of Draft of the State Transportation Plan (State Transportation Board - California Transportation Plan Task Force) advocated legislation to eliminate minimum rates.

March 9, 1977 - Decision No. 87047 dismissed Case No. 9963 with announcement that reregulation issues would be pursued in eight separate orders setting hearing. This separation of proceedings was in accordance with a suggestion of CTA in a letter to Commissioner Batinovich on 3/2/78. The suggestion was supported by other major parties such as Teamsters, CMA, Farm Bureau, AIOO, Highway Carriers Assoc., C.D.T.O.A., and the C.M.S.A. CTA in that letter stated that, among other things, it wanted to accomplish a regulatory program of carrier-established rates and carrier-initiated rate changes. Case No. 10278, an OII to consider entry requirements, was established the same day.

March 24, 1977 - Order of California Supreme Court in C.T.A. v. P.U.C. - S.F. 23473. Contained dictum that the Commission is not required to establish or maintain minimum rates.

March 1977 -	State Transportation Board, California Transportation Plan Task Force, recommended review of intrastate trucking price controls.
April 12, 1977 -	Order Setting Hearing 244 in Case No. 5436 and related cases issued along with seven other orders setting hearing.
April 15, 1977 -	Proposed Report of Administrative Law Judge William S. Pilling in Case No. 8808, OSH 38 and Application No. 56119 proposed establishment of "experimental" regulatory program involving filed rates by permit carriers in lieu of MRT 18 (mobile homes etc.).
July 6, 1977 -	Case No. 10368, OII into rate bureaus operating under Section 496 established.
August 18, 1977 -	First prehearing conference, Case No. 5436, OSH 244.
August 30, 1977 -	OSH 111 in Case No. 5438 (fresh fruits and vegetables, etc.) discontinued by Decision No. 87794.
October 25, 1977 -	Petition 194 in Case No. 5436 concluded by Decision No. 88036.
November 22, 1977 -	Second prehearing conference, Case No. 5436, OSH 244. CTA questions purpose of proceeding. ALJ requests motion from CTA requesting direction from the Commission.
January 1, 1978 -	SB 860 became effective.
January 24, 1978 -	Decision No. 88419 in Case No. 5436, OSH 244, etc. Ruling on request for direction by CTA filed December 22, 1977 (see November 22, 1977, above) provided that a complete reevaluation of regulation is in order and that "the staff is free ... to present the evidence and recommendations it thinks appropriate."
April 18, 1978 -	Ruling by ALJ on hearing procedures for Case No. 5436, OSH 244.
May 12, 1978 -	Third and final prehearing conference, Case No. 5436, OSH 244.

May 16. 1978 -	Prehearing conference order by Commissioner Gravelle. Among other things it was ordered that: (a) the proceedings will include consideration of all transportation of commodities in bulk by tank or vacuum tank vehicles, (b) by June 16, 1978. interested parties must give notice of intent to present direct evidence, (c) by July 7, 1978 prepared testimony and exhibits must be distributed, and (d) direct or rebuttal testimony shall be in written form.
July 18, 1978 -	First day of hearing, Case No. 5436 OSH 244.
August 29, 1978 -	CTA motion in Case No. 5436 OSH 244 proceeding to delay further hearings and receipt of evidence pending issuance of a policy decision concerning the labor cost component criteria to be used in the determination of reasonable rates. Teamsters joined in the motion and Wine Institute urged that it be denied.
September 18, 1978 -	CTA motion of August 29, 1978 denied by an ALJ ruling.
September 26, 1978 -	CTA motion to full Commission for reconsideration of ALJ ruling of September 18, 1978.
October 6, 1978 -	Letter to all appearances from ALJ stating that the Commission had considered the motion of September 26, 1978 and will consider the motion for reconsideration and the related issue of the use of prevailing wages in rate determinations upon submission of the proceeding and will dispose of it in the final decision in the proceeding.
October 27, 1978 -	Case No. 5436 OSH 244, et al. submitted subject to opening briefs on November 27, 1978 and closing briefs on December 11, 1978.
October 30, 1978 -	Renewal by CTA of motion of September 26, 1978 for reconsideration of ALJ ruling.
October 31, 1978 -	Decision No. 89575 in Case No. 5432 OSH 957, et al. (Case No. 5436 OSH 244 included) issued on the Commission policy for the implementation of SB 860.
November 13, 1978 -	Motion by CTA to defer filing of briefs until the Commission's final order on the implementation of SB 860 is issued.

November 16, 1978 - Letter to all appearances from ALJ stating that at the Commission Conference of November 9, 1978 the Commission again considered the motion of August 29, 1979 and decided to take no action until after the filing of final briefs on December 11, 1978.

November 16, 1978 - Ruling by ALJ denying CTA motion of November 13, 1978.

December 8, 1978 - At request of CTA, ALJ granted one-week extension to December 18, 1978 for filing of final briefs.

From: Transportation Division Report 630-8, p. 6

TABLE 8.1

GROSS OPERATING REVENUE, CALIFORNIA OPERATIONS, REPORTED FOR TRANSPORTATION OF PROPERTY

CALENDAR YEARS 1968 THROUGH 1977

(IN THOUSANDS OF DOLLARS)

YEAR	RAILROADS	WATER CARRIERS	AIR FREIGHT CARRIERS	HIGHWAY CARRIERS	TOTAL	HIGHWAY CARRIERS (1)
1968	$113,159 (7.58%)	12,769 (.86%)	N/A	$1,377,676 (92.24%)	$1,493,604 (100.00%)	$1,176,273
1969	121,143 (7.43)	1,917 (.12)	$ 2,492 (.15%)	1,504,707 (92.30)	1,630,259 (100.00)	1,269,755
1970	110,427 (6.17)	2,288 (.13)	3,184 (.18)	1,673,887 (93.52)	1,789,786 (100.00)	1,245,171
1971	100,780 (4.42)	2,447 (.11)	3,558 (.16)	2,171,137 (95.31)	2,277,922 (100.00)	1,352,030
1972	109,935 (4.25)	2,556 (.10)	4,543 (.18)	2,467,390 (95.47)	2,584,424 (100.00)	1,472,668
1973	128,361 (5.06)	1,725 (.07)	5,727 (.22)	2,411,248 (94.65)	2,547,561 (100.00)	1,604,213
1974	146,132 (5.27)	1,477 (.05)	6,334 (.23)	2,620,185 (94.45)	2,774,128 (100.00)	1,743,618
1975	129,555 (4.92)	530 (.02)	6,097 (.23)	2,494,378 (94.82)	2,630,560 (100.00)	1,745,538
1976	135,713 (4.53)	549 (.02)	7,310 (.24)	2,855,092 (95.21)	2,998,661 (100.00)	1,967,355
1977	144,706 (4.12)	929 (.03)	8,571 (.24)	3,354,796 (95.61)	3,509,002 (100.00)	2,308,625

(1) REVENUE UPON WHICH CARRIERS PAID TRANSPORTATION RATE FUND FEES

APPENDIX C
Page 2 of 15

From: Transportation Division Report 630-8, p. 17

TABLE 1.4

INTRASTATE TAXABLE REVENUE BY HIGHWAY CARRIERS

CALENDAR YEARS 1968 THROUGH 1977

(IN THOUSANDS OF DOLLARS)

	CERTIFICATED				PERMITTED				TOTAL	
YEAR	NO. OF CARRIERS	%	REVENUE	%	NO. OF CARRIERS	%	REVENUE	%	NO. OF CARRIERS	REVENUE
1968	717	4.30	$520,354	44.24	15,939	95.70	$655,919	55.76	16,656	1,176,273
1969	720	3.75	564,000	44.42	18,481	96.25	705,755	55.58	19,201	1,269,755
1970	681	3.80	538,415	43.24	17,249	96.20	706,756	56.76	17,930	1,245,171
1971	693	3.79	581,419	43.00	17,576	96.21	770,611	57.00	18,269	1,352,030
1972	695	3.77	626,453	42.54	17,763	96.23	846,215	57.46	18,458	1,472,668
1973	688	3.64	663,638	41.37	18,213	96.36	940,577	58.63	18,901	1,604,213
1974	710	3.70	705,124	40.44	18,496	96.30	1,038,494	59.56	19,206	1,743,618
1975	689	3.57	709,399	40.64	18,600	96.43	1,036,139	59.36	19,289	1,745,538
1976	688	3.51	790,071	40.16	18,901	96.49	1,177,284	59.84	19,589	1,967,355
1977	666	3.30	916,978	39.72	19,514	96.70	1,391,647	60.28	20,180	2,308,625

Exhibit 244-10, p. 10

TANK TRUCK INDUSTRY PROFILE

TABLE 9

NET REVENUE BY MINIMUM RATE TARIFFS (IN DOLLARS)

	1973	1974	1975	1976	1977
MRT 2 Truckload exempt revenue	111,144,177	114,539,588	109,523,991	131,335,530	151,238,215
MRT 6-B Total revenue	46,522,595	59,282,117	62,750,842	74,647,646	89,245,546
MRT 13 Total revenue	9,968,344	14,718,115	14,033,286	15,939,391	19,619,023

Source: Transportation Division Reports 601-4, 601-5, 601-6, 601-7, 601-8

Exhibit 244-10, p. 2

TANK TRUCK INDUSTRY PROFILE

TABLE 1

NUMBER OF OPERATING AUTHORITIES

	12/31/73	12/31/74	12/31/74	12/31/76	12/31/77	3/31/78
Petroleum Irregular Route Carrier	109	108	108	106	104	101
Petroleum Contract Carrier	239	268	287	310	338	354

Source: Transportation Division Reports 630-4, 630-5, 630-6, 630-7, 630-8 and 635-3

TANK TRUCK INDUSTRY PROFILE

Table 4

NUMBER OF CARRIERS WITH SELECTED COMBINATIONS OF AUTHORITIES AS OF MARCH 31, 1978

	Selected Combination				Total Number of Authorities Held by Carrier								Total
	HWY	PET	HCC	PIR	1	2	3	4	5	6	7	8	
1.	x	-	-	-	1557	1038	343	88	11	3	0	0	3,040
2.	-	x	-	-	166	76	31	13	3	0	0	0	289
3.	-	-	x	-	34	54	18	3	0	0	0	0	109
4.	-	-	-	x	25	16	4	2	0	0	0	0	47
5.	x	x	-	-	--	9	17	8	6	1	1	0	42
6.	x	-	x	-	--	13	202	39	20	4	1	0	279
7.	x	-	-	x	--	0	7	4	2	0	0	0	13
8.	-	x	x	-	--	0	1	0	0	0	0	0	1
9.	-	x	-	x	--	1	3	0	1	0	0	0	5
10.	-	-	x	x	--	1	5	1	1	0	0	0	8
11.	x	x	x	-	--	--	1	5	3	1	0	1	11
12.	x	x	-	x	--	--	0	1	0	0	0	0	1
13.	x	-	x	x	--	--	0	13	3	10	0	0	26
14.	-	x	x	x	--	--	1	0	0	0	0	0	1
15.	x	x	x	x	--	--	--	0	0	0	0	0	0

Explanation of Abbreviations -- HWY-Highway Contract Carrier
PET-Petroleum Contract Carrier
HCC-Highway Common Carrier
PIR-Petroleum Irregular Route Carrier

Source: Transportation Division Report 635-3

TABLE 3

PERCENT OF TOTAL 1977 NET REVENUE (TAXABLE REVENUE $25,000 OR MORE)

MINIMUM RATE TARIFFS		MINIMUM	COMPETITIVE	SPCL AUTH	EXEMPT	TOTALS
MRT 1B	PARCEL DELIVERY SERVICE	41.28	0.06	42.22	16.44	100.00
MRT 1B	GENERAL COMMODITIES	65.14	0.18	0.07	34.61	100.00
MRT 2	PARCEL DELIVERY SERVICE	11.57	0.25	73.62	14.56	100.00
MRT 2	LESS THAN TRUCKLOAD	84.87	0.53	0.21	14.40	100.00
MRT 2	TRUCKLOAD	58.46	11.04	3.87	26.63	100.00
MRT 2	LOGS	0.00	0.00	0.00	100.00	100.00
MRT 3A	LIVESTOCK	96.73	1.11	0.00	2.16	100.00
MRT 4B	USED HOUSEHOLD GOODS	96.92	0.06	0.16	2.85	100.00
MRT 6B	PETROLEUM	96.04	2.11	0.57	1.28	100.00
MRT 7A	DUMP TRUCK RATES - GENERAL	96.93	2.04	0.48	0.55	100.00
MRT 8	FRESH FRUITS AND VEGETABLES	25.91	0.00	0.01	74.08	100.00
MRT 9B	PARCEL DELIVERY SERVICE	36.89	0.00	49.32	13.79	100.00
MRT 9B	GENERAL COMMODITIES	48.27	0.00	1.90	49.83	100.00
MRT 10	CEMENT	99.26	0.74	0.00	0.00	100.00
MRT 11A	UNCRATED NEW FURNITURE	39.43	0.32	0.00	60.25	100.00
MRT 12	SECONDARY AUTOMOBILE TRUCKAWAY	73.04	0.00	0.00	26.96	100.00
MRT 13	VACUUM AND PUMP TANK TRUCKS	98.40	0.00	0.60	0.01	100.00
MRT 14A	HAY, FODDER, GRAIN, ETC.	94.04	0.35	1.32	4.29	100.00
MRT 15	VEHICLE UNIT RATES	90.51	0.00	9.49	0.00	100.00
MRT 17A	SO. CAL. DUMP TRUCK ZONE RATES	100.00	0.00	0.00	0.00	100.00
MRT 18	TRAILER COACHES AND CAMPERS	99.92	0.00	0.00	0.08	100.00
MRT 19	PARCEL DELIVERY SERVICE	62.84	0.88	24.56	11.72	100.00
MRT 19	GENERAL COMMODITIES	44.11	0.13	0.84	54.91	100.00
MRT 20	NO. CAL. DUMP TRUCK ZONE RATES	98.28	0.86	0.90	0.05	100.00
	TOTALS	67.72	3.27	7.23	21.78	100.00

From: Transportation Division Report 601-8, P. 5

From: Transportation Division Report 601-8, p. 19

TABLE 10

BREAKDOWN OF MAT 68 REVENUE REPORTED IN 1977 REV/MAT FILE

BRACKET	CARRIERS	% OF TOTAL CARRIERS	TOTAL REVENUE (DOLLARS)	% OF TOTAL REVENUE
UNDER $5000	9	4.5	11330	0.0
$ 5000 BUT LESS THAN $ 10000	4	2.0	25019	0.0
$ 10000 BUT LESS THAN $ 25000	15	7.5	295134	0.3
$ 25000 BUT LESS THAN $ 50000	26	13.0	962069	1.1
$ 50000 BUT LESS THAN $ 100000	30	15.0	2311293	2.6
$ 100000 BUT LESS THAN $ 200000	33	16.5	4777904	5.4
$ 200000 BUT LESS THAN $ 500000	39	19.5	12279159	13.7
$ 500000 BUT LESS THAN $ 1000000	15	7.5	10286488	11.5
OVER $1000000	29	14.5	58304144	65.4
TOTALS	200	100.0	89245540	100.0

APPENDIX C
Page 8 of 15

From: Transportation Division Report 601-8, p. 28

TABLE 17

BREAKDOWN OF MAF 13 REVENUE REPORTED IN 1977 REV/MAF FILE

BRACKET	CARRIERS	% OF TOTAL CARRIERS	TOTAL REVENUE (DOLLARS)	% OF TOTAL REVENUE
UNDER $5000	2	3.6	3030	0.0
$ 5000 BUT LESS THAN $ 10000	2	3.6	15423	0.1
$ 10000 BUT LESS THAN $ 25000	1	1.8	15695	0.1
$ 25000 BUT LESS THAN $ 50000	13	23.2	499243	2.5
$ 50000 BUT LESS THAN $ 100000	6	10.7	459656	2.3
$ 100000 BUT LESS THAN $ 200000	9	16.1	1386958	7.1
$ 200000 BUT LESS THAN $ 500000	12	21.4	4570264	23.3
$ 500000 BUT LESS THAN $ 1000000	7	12.5	4561463	23.3
OVER $1000000	4	7.1	8106291	41.3
TOTALS	56	100.0	19619023	100.0

Exhibit 244-10A, p. 4

TANK TRUCK INDUSTRY PROFILE

TABLE 4

BREAKDOWN OF 1977 MRT 6-B REVENUE
BY CARRIER AFFILIATIONS

	No. Of Carriers	Percent	Revenue (dollars)	Percent
Carriers reporting shipper affiliations	91	52.0	47,563,320	55.9
Carrier reporting carrier affiliations	14	8.0	10,229,671	12.0
Carriers reporting shipper and carrier affiliations	7	4.0	1,522,212	1.8
Carriers without affiliations	63	36.0	25,808,454	30.3
Total	175	100.0	85,123,657	100.0

Source: Transportation Division Data Bank, July, 1978

Exhibit 244-10A, p. 5

TANK TRUCK INDUSTRY PROFILE

TABLE 5

BREAKDOWN OF 1977 MRT 13 REVENUE
BY CARRIER AFFILIATIONS

	No. Of Carriers	Percent	Revenue (dollars)	Percent
Carriers reporting shipper affiliations	24	48.0	9,940,979	51.5
Carriers reporting carrier affiliations	3	6.0	3,601,827	18.6
Carriers reporting shipper and carrier affiliations	2	4.0	693,317	3.6
Carriers without affiliations	21	42.0	5,077,293	26.3
Total	50	100.0	19,313,416	100.0

Source : Transportation Division Data Bank, July, 1978

TANK TRUCK INDUSTRY PROFILE

TABLE 6

CARRIER SPECIALIZATION IN TANK TRUCK TRANSPORTATION

	MRT 6-B	MRT 13
Number of carriers earning 50% or more of their 1977 taxable revenue under indicated Minimum Rate Tariff	126	42
Number of carriers earning 100% of their 1977 taxable revenue under indicated Minimum Rate Tariff	97	30
Total number of carriers reporting 1977 revenue under indicated Minimum Rate Tariff	175	50

Source: Transportation Division Data Bank, July, 1978

Exhibit 244-10, p. 7

TANK TRUCK INDUSTRY PROFILE

TABLE 6
COMMON CARRIER TARIFF FILINGS

Tariff	Participants	Pages
Pacific Coast Tariff Bureau		
Local Freight Tariff No. 6 Cal PUC No. 3 Petroleum in bulk	6	85
Local Freight Tariff No. 13 Cal PUC No. 24 Vacuum-type and pump-type tank vehicles	2	18
Western Motor Tariff Bureau		
Local Vacuum and Pump Truck Tariff No. 7 Cal PUC No. 17 Petroleum	20	26
Local Freight Tariff No. 16 Cal PUC No. 20 Specific and Distance LPG commodity rates	87	40
Local and Joint Freight and Express Tariff No. 18 Cal PUC No. 24 Petroleum	94	216
Local Freight Tariff No. 19 Cal PUC No. 26 Liquid Asphalt	87	40

TANK TRUCK INDUSTRY PROFILE

TABLE 8

NUMBER OF UNITS OF
TANK TRUCK EQUIPMENT OPERATED
IN CALIFORNIA FOR-HIRE SERVICE

	As Of Dec. 75	As Of Dec. 76
Power vehicles	1810	1893
Trailing vehicles		
semi-trailers	2665	2818
full trailers	2506	2622
total trailers	5171	5440

Source: Transportation Division Reports 630-7 and 630-8.

APPENDIX C
Page 14 of 15
Exhibit 244-10, p. 11

TANK TRUCK INDUSTRY PROFILE

TABLE 10

BREAKDOWN OF SAMPLE NET 6-B 1977
SHIPMENTS AND REVENUE BY COMMODITY

Commodity Description	Number of Shipments	Percent of Shipments	Freight Revenue (Dollars)	Percent of Revenue
Gasoline	313	46.86	38,001.59	24.89
Fuel Oil	100	14.97	18,649.01	12.22
Liquid Asphalt	80	11.98	17,935.38	11.75
Crude Oil	64	9.58	11,254.58	7.37
Other Oils (includes gas oil, lubricating oil, oil N.O.I.)	32	4.79	9,754.84	6.39
Liquified Petroleum Gas	19	2.84	3,220.15	2.11
Naptha	17	2.54	2,296.50	1.50
Petroleum Toluene	6	0.90	898.05	0.59
Petroleum Wax	6	0.90	2,173.45	1.42
Unspecified	31	4.64	48,471.92	31.75
Total	668	100.00	152,655.47	100.00

Source: Transportation Division Data Bank Freight Bill File

TANK TRUCK INDUSTRY PROFILE

TABLE 11

BREAKDOWN OF SAMPLE MRT 13 1977
SHIPMENTS (ENGAGEMENTS) AND REVENUE BY COMMODITY

Commodity Description	Number of Shipments	Percent of Shipments	Freight Revenue (Dollars)	Percent of Revenue
Water	83	37.73	13,702.71	25.71
Waste (Sump)	25	11.36	8,049.74	15.10
Oil	22	10.00	4,243.08	7.96
Mud	13	5.91	4,560.75	8.56
Sludge/Spent Caustic	8	3.64	2,890.41	5.42
Unspecified	69	31.36	19,856.05	37.25
Total	220	100.00	53,302.74	100.00

Source: Transportation Division Data Bank Freight Bill File

COMMISSION POLICY ON THE PROPER SCOPE OF
HIGHWAY CONTRACT AND PETROLEUM CONTRACT CARRIER OPERATIONS
IN THE TRANSPORTATION OF COMMODITIES IN BULK
IN TANK TRUCKS AND VACUUM-TYPE AND PUMP-TYPE TANK VEHICLES

The purpose of this statement is to inform carriers engaged in contract carriage of tank truck commodities of the Commission's policy on the proper scope of such operations and to set the following guidelines which the Commission will apply in determining whether a highway carrier is operating as a contract carrier. The question of whether a contract carrier is lawfully operating is determined on a case-by-case basis dependent upon the facts surrounding the carrier's operations.

1. A contract carrier generally may not solicit individual one-time shipments; it may solicit and enter into negotiated continuing hauling relationships with shippers, i.e., contracts. Individual one-time shipments may be solicited where the specialized nature of the transportation is sufficient to distinguish it from common carrier service or where a carrier is performing a rate-exempt transportation service.

2. A contract carrier must generally have a continuing relationship with the shipper or shippers it serves. A continuing relationship requires that service be provided periodically over a period of time, not less than thirty days in duration. A continuing relationship cannot be predicated upon a single shipment.

3. A shipper using the service of a contract carrier can be either the consignee or consignor. Normally, the shipper is regarded as the party who pays the charges for the transportation provided; however, the shipper may also be the party who controls the traffic such as the manufacturer of Brand X who ships freight collect to exclusive dealers of Brand X.

4. A contract carrier must provide services that are specialized or tailored to the particular requirements of the shipper being served. Examples of specialized services include, but are not limited

to, providing repeat service over a period of time with specialized equipment, unique loading/unloading and accessorial activity, or specialized scheduling of service. Such specialization alone in some instances distinguishes contract from common carrier operations. Heavy hauling and the transportation of rate-exempt commodities are examples of such specialized operations.

5. All contract carriers, except carriers engaged in rate-exempt transportation, must file written contracts with the Commission prior to, or on the same day, service is initiated. Such contracts shall be available for inspection by the public. Contract carriers may provide service only pursuant to written contracts which shall bind both carrier and shipper to good faith performance for a specific term, and contracts shall contain the following:

   a. The name of the carrier.

   b. The name of the shipper.

   c. The duration of the contract.

   d. The area involved in performance, such as the route and/or termini.

   e. A description of the services to be provided and the projected frequency.

   f. The commodities involved, and the projected tonnage or other appropriate unit of measurement to be handled.

   g. The compensation to be paid and received.

   h. The conditions, if any, under which changes in compensation or other terms of the contract may be made by the parties.

6. Copies of contracts must also be kept on file in the carrier's office and available for inspection by the Commission or the Commission staff. They shall be retained by the carrier for not less than three years after expiration.

APPENDIX E

Respondents: Donald Albin, for Rainbow Truck Company; Arvel G. Batchelor, for Allyn Transportation Company; R. A. Danielson, for Arizona Pacific Tank Lines; Andrew Davlin, Jr., for Energy Transporters Inc.; Don Dixon, for Roadway Express - C & T; Cleo Evans, for Evans Tank Line, Inc.; A. J. Eyraud, for Asbury System; T. Grace for Hercules Oil Company of San Diego, Inc.; Robert Hildreth, for Acme Transportation, Inc.; Betty R. Krazel, for Van Diest Trucking, Inc.; Roy D. Owen, for Routh Transportation; L. D. Robinson, for Fredericksen Tank Lines; Russell, Schureman, Fritze & Hancock, by R. Y. Schureman, Attorney at Law, for Evans Tank Lines, Inc. and Oilfields Trucking Company; G. W. Shearer, for Chancellor & Ogden; John W. Telfer, for Telfer Tank Lines, Inc.; Al Twyford, for P.I.E.; Jack W. Vogt, for CF Tank Lines, Inc.; W. J. Willis, for Hitchcock Transportation Co.; Joseph Mac Donald, for California Motor Express; J. McSweeney and Andrew J. Skaff, Attorney at Law, for Delta Lines; P. N. Deckard, for Dedicated Transfer, Inc.; Warren Goodman, for Ventura Transfer dba ORR Tank Line; Edwin S. Acker, for Miles Tank Lines, Inc.; and Francis P. Lucas, for Energy Carriers, Inc.

Interested Parties: Joseph H. Alvarez, for the Department of General Services, State of California; Richard Austin, for Kaiser Cement & Gypsum Corporation; J. W. Bohannon and Richard N. Bona, for Mobil Oil Corporation; Asa Button, for Spreckels Sugar Divison, Amstar Corp.; James R. Foote, for Associated Independent Owner-Operators, Inc.; R. S. Greitz, M. J. Nicholas, and Elmer R. Steege, for Western Motor Tariff Bureau, Inc.; Charles Kagay, Attorney at Law, for The Attorney General, State of California; J. C. Kaspar, H. W. Hughes, and William R. Haerle, Attorney at Law, for California Trucking Association; Loughran & Hegarty, by Thomas M. Loughran, Attorney at Law, for Wine Institute, Jet Delivery Service, One-Two-Three Messenger Service, and ABC Messenger Service; Bruce H. Frazier and L. M. Krucik, for Shell Oil Co.; Brundage, Beeson & Pappy, by Roger A. Carnagey, Attorney at Law, and Brundage, Davis, Frommer & Jesinger, by Albert Brundage, Attorney at Law, for Western Conference of Teamsters and California Teamsters Public Affairs Council; Philip B. Rogers, for Chevron Chemical Company; John Leinweber, for Diamond Shamrock Corporation; Jess J. Butcher, for California Manufacturers Association; Robert L. McCue, for Atlantic Richfield Company; Philip G. Blackmore, Jr., for California & Hawaiian Sugar Co.; H. W. Endicott, for Chevron U.S.A. Inc.; William Mitze, for Riverside Cement Co.; T. W. Anderson, for General Portland Inc.; Sam Miles, for Jack Burtch Company, Don E. Keith, Bulldog

Trucking Company, Cain Trucking, Inc., Central Valley Petroleum, Inc., Corcoran Construction Co., Inc., Hayter Trucking, Petroleum Transportation Company, Vel Marv Petroleum Corporation, Western Hyway Distributing Co., Inc., A. W. Coulter Trucking, Gist Farms, Inc., Kings County Truck Lines, Cal Western Transport, Inc., Mitchell West, Shannon Bros. Co., and Souza's Milk Transportation Co., Inc.; Michael W. Harvath, for Hunt-Wesson Foods, Inc.; G. B. Fink, for Dow Chemical Co.; H. Ronald Child, for Eight Ball Line Trucking; E. J. Bertana, for Lone Star Industries, Inc.; George B. Shannon, for Southwestern Portland Cement Co.; Ann P. Frechette, for Exxon Company, U.S.A.; Gene Carmody, for Holland Oil Co. and himself; and Winton Jones, for himself.

Commission Staff: Edward O'Neill and Steven Weissman, Attorneys at Law, R. E. Bouchet, and Robert E. Walker.

C.5436, OSH 244, et al - D.

COMMISSIONER VERNON L. STURGEON, Dissenting

The most forceful argument against the action taken by the Commission today is simply and clearly presented in the first seven pages of the majority opinion itself. The historical record graphically reflects the safety and health hazards, deceptive practices, and destructive competition which beset the trucking industry prior to the institution of minimum rates and consistent regulation. The present minimum rate structure, determined on the basis of prevailing wages, has resulted in a transportation system unparalleled in the industry for service and efficiency. The Commission's directive to move toward rates based upon actual wages could prompt disruption of the labor market and return us to the competitive chaos of the early 1930's. Today's decision may well be the first unfortunate step into the past. Therefore, I must respectfully dissent.

San Francisco, California
May 22, 1979

Vernon L. Sturgeon
VERNON L. STURGEON
Commissioner

C. 5436, OSH 244, etal.

COMMISSIONER LEONARD M. GRIMES JR., CONCURRING

A major concern in my reaching a decision has been the absence of "consumer participation in these proceedings. The impact of trucking rates upon the average citizen is indirect... they are a "middleman" cost largely hidden in the price of the goods and service we buy. The major exception, of course, is when any of us use a moving company. As a result, consumers are not really aware of the inflationary pressure of trucking rates upon them, nor have they become greatly aroused about government regulation of the trucking industry. Thus, the Commission has been without the good counsel and research from consumers and consumer groups.

On the other hand, the record in the instant case and in cases investigating the matter of trucking regulation is dominated by the pleas of special interests. Even though we render a decision today only regarding tank truckers, we cannot deny that this case sets the stage for new approaches to regulating the entire trucking industry. The resolution of this trucking issue is not anti-labor, anti-small business, or anti-minority as these various special interests' spokespersons have claimed. It is rather, in my opinion, a sincere effort on our part to promote the "American Dream" of healthy, competitive private enterprise that provides us with our goods and services at fair prices.

I am hopeful that our direction will create a new incentive for labor unions to organize and fairly negotiate so that the claimed benefits of union membership is extended to others; offer small business, women and minority businesses the potential and freedom to find and capitalize on their particular competitive advantages and thereby increasing their business share; for the entire trucking industry, the realization of their plea for less red tape and government intervention; for us all the hope for reduced inflationary pressure on consumers.

We have taken our dual role of protector of both consumer and industry seriously and have arrived at a decision after a lengthy assessment of how these interests can best be protected. The decision provides for a strong monitoring program. In any change of regulation, there are unforeseen difficulties...those "rough edges" that can and will continually be eliminated as they are brought to our attention through our monitoring program. In particular, the Commission will not sit idly by and watch small communities bear an inappropriate burden for this change as it appears airline deregulation by our Federal counterparts has created in California.

LEONARD M. GRIMES, JR.
Commissioner

San Francisco, California
May 22, 1979