

1/7/80

Decision No. 91202 JAN 8 - 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Investiga-)
tion for the purpose of consid-)
ering and determining minimum)
rates for transportation of any)
and all commodities statewide)
including, but not limited to,)
those rates which are provided)
in Minimum Rate Tariff 2 and the)
revisions or reissues thereof.)

Case No. 5432
Petition for Modification
No. 1035
(Filed October 11, 1978)

And Related Matters.)

Case No. 5439
Petition for Modification
No. 330
Case No. 5441
Petition for Modification
No. 411
Case No. 7402
Petition for Modification
No. 2
(Filed October 11, 1978)

William R. Haerle, Attorney at Law, for California
Trucking Association, petitioner.
Lee Pfister, for Willig Freight Lines, respondent.
Jess J. Butcher, for California Manufacturers
Association, protestant.
John Lenke, for the Commission staff.

O P I N I O N

Petitioner California Trucking Association (CTA) requests that, with one exception, the collect on delivery (C.O.D.) provisions of Minimum Rate Tariffs 1-B, 2, 9-B, and 19 (MRTs) and of the tariffs of highway common carriers be canceled and in lieu thereof have the C.O.D. provisions established by Item 430 of the National Motor Freight Classification 100-F (governing classification) apply. A hearing was held on the matter before Administrative Law Judge Pilling on February 13, 1979 at San Francisco.

The provisions of Item 430 of the governing classification have been adopted by the MRTs with the following exceptions: (1) the MRTs' scale of charges, based on the amount to be collected, for collecting and remitting C.O.D.s is lower than the scale of charges in the governing classification; (2) the MRTs offer a Special C.O.D. Service^{1/} charge for collecting and forwarding checks and drafts, whereas the governing classification does not have such a special rule; (3) the MRTs allow a carrier to accept a "certified check", whereas the governing classification calls for a "bank certified check"; and (4) the MRTs prescribe a charge to the consignor of \$5.00 for the carrier to change the status of a C.O.D. shipment at the request of the consignor, whereas the governing classification charge for changing the status is \$9.14. CTA's proposal, if approved by the Commission, would increase the MRT scale of charges to the level provided for in the governing classification for collecting and remitting C.O.D.s; would retain the present MRTs' Special C.O.D. Service rule but increase the charge for such service from \$3.15 to \$6.73; and would increase the fee of the carrier for changing the status of a C.O.D. shipment from \$5.00 to \$9.14.

The present MRT scale of minimum charges at selective levels for collecting and remitting C.O.D.s and the governing classification scale of charges at the same levels for this service are as follows:

^{1/} Under the present Special C.O.D. Service tariff rule a shipper may pay the carrier a C.O.D. charge of only \$3.15, in lieu of making payment in accordance with the scale of C.O.D. charges, for collecting and remitting checks and drafts in any amount by merely noting on the bill of lading "Special C.O.D. Service Requested" and the precise name and mailing address of the payee to the C.O.D. shipment. ✓

TABLE I

<u>MRT 2 Charge</u>	<u>C.O.D. Amount</u>	<u>NMF 100-F Charge</u> ✓
\$ 3.15	\$ 25.00	\$ 6.73
3.15	50.00	6.73
3.15	75.00	6.73
3.25	101.00	6.73
4.70	201.00	6.73
5.45	301.00	6.73
6.35	401.00	7.85
7.45	501.00	9.19
8.55	601.00	10.54
9.65	701.00	11.90
10.75	801.00	13.24
11.80	901.00	14.57
12.35	1,001.00	15.26

According to the number of carriers who have filed C.O.D. bonds with the Commission, 3.8 percent of California carriers, or 805 carriers, hold themselves out to handle C.O.D. shipments. CTA surveyed the C.O.D. experience of 11 out of the 805 carriers during a recent 5-day work week and found that the 11 carriers issued a combined total of 123,999 bills of lading of which 2,391 bills of lading covered C.O.D. shipments. There are 364 C.O.D. shipments under \$100, 1,083 C.O.D. shipments between \$100 and \$350, and 944 C.O.D. shipments over \$350. Statistics furnished to CTA by the carriers showed that the special handling required of a C.O.D. shipment amounted to 44.5 minutes more than the routine handling time of a non-C.O.D. shipment. Some of the special handling required concerns calling the consignee to prearrange for the delivery to verify the consignee's preparedness in receiving the shipment so that he will have the required cash, certified check, or money order on hand when delivery is made; storing the shipment under lock and key; logging the shipment and keeping a historical record of the various dates and transactions concerning the handling of the shipment; collecting the C.O.D. and remitting the C.O.D. money; the possibility of redelivering in the event the consignee is unable to accept shipment; and handling of cash.

The present MRTs' scale of C.O.D. were established by Decision No. 84535 effective July 14, 1975. Reproduced below are tables taken from CTA's Exhibit 3 which show the alleged impact of the present and proposed C.O.D. charges on carriers' revenue. CTA felt 44.5 minutes required for special handling C.O.D.'s may be a little high and so used 40 minutes in computing present impact and 38 minutes, due to time saving, in computing proposed impact. The hourly wage of \$13.26 used in the tables was a state-wide composite of Teamsters Union contract wages for 10 separate types of labor allocated to C.O.D. activity; namely, dispatcher, driver, driver helper, dock man, forklift driver, posting clerk, bookkeeper, cashier, billing clerk, and computer clerk.

TABLE II

1. IMPACT OF PRESENT C.O.D. CHARGES ON CARRIERS' REVENUE

(Such as published in Item 182 of
Minimum Rate Tariff 2)

A. C.O.D. amounts under \$100.

* 364 C.O.D. bills of lading x MRT 2 fee of \$3.15 = \$1,146.00 revenue

B. C.O.D. amounts between \$100 and \$350.

*1,083 C.O.D. bills of lading x MRT 2 fee of \$5.45 = \$5,902.35 revenue

C. C.O.D. amounts exceeding \$350.

* 944 C.O.D. bills of lading x MRT 2 fee of (1) \$9.10 = \$8,590.40 revenue

Total Revenue From C.O.D. Fees \$15,639.35

D. Labor for handling all above C.O.D.s:

2,391 C.O.D. bills of lading at 40 minutes per bill = 1,594 hours
x \$13.26 hourly wage = \$21,136.44

E. Net revenue (loss) (\$5,497.09).

* Number of bills of lading shown in Columns 4, 6, or 8 of Table I.

(1) The C.O.D. fee used here is for \$650-\$700 as it is the median
charge between the \$350 and \$1,000 charges.

TABLE II
(Continued)

2. IMPACT OF PROPOSED C.O.D. CHARGES ON CARRIERS' REVENUE
(Such as published in Item 430,
Section 12 of NMF 100-F)

A. C.O.D amounts under \$350.

* 1,447 C.O.D. bills of lading x NMFC fee of \$6.73 = \$9,738.31
revenue.

B. C.O.D. amounts exceeding \$350.

* 944 C.O.D. bills of lading x NMFC fee of (1) \$11.21 = \$10,582.24
revenue.

Total Revenue From C.O.D. Fees \$20,320.55

C. Labor for handling all above C.O.D.s:

2,391 C.O.D bills of lading at 38 minutes per bill = 1,514 hours
x \$13.26 hourly wage = \$20,075.64

D. Net revenue (gain) \$244.91.

* Number of bills of lading shown in Columns 4, 5, or 8 of
Table I.

(1) The C.O.D. fee used here is for \$650-\$700 as it is the
median charge between the \$350 and \$1,000 charges.

In support of its request that the Commission adopt the governing classification fee of \$9.14 to be charged by the carrier for changing the status of a C.O.D. shipment at the request of the consignor in lieu of the MRTs' fee of \$5.00, CTA points out that the Commission's \$5.00 fee was established in 1971 and has not been changed since that time in spite of all the increases that have been experienced in the labor of handling requests for a change in C.O.D. status. CTA points out that a request for a change of status of a C.O.D. shipment usually reaches the carrier after the shipment has been billed and copies of the billing have been distributed throughout the carrier's system. Upon a request for a change in status the carrier must reassemble the bills and recut them, issue countermanding instructions to concerned parties, and try to contact the delivering driver if he is en route to making the delivery, and if the driver has been unable to make a delivery because of not having received the word of there being a change, create an additional delivery.

CTA estimates that its proposals will result in an increase of .01 percent of the gross revenue of the 11 carriers which it surveyed.

The Commission staff admits that carriers need to obtain increased revenues for handling C.O.D. shipments. However, the staff differs somewhat with CTA in the manner in which the MRTs' C.O.D. rules should be amended to meet that need. The staff proposes the cancellation of the MRTs' Special C.O.D. Service rule and the MRTs' scale of C.O.D. charges and the adoption, with one exception, of Item 430 of the governing classification as the MRTs' C.O.D. rules. The exception is that the MRTs would not adopt the scale of C.O.D. charges but would adopt a flat C.O.D. charge of \$6.73 regardless of the amount to be collected. This \$6.73 is equal to the governing classification's C.O.D. charge for collecting and remitting C.O.D. of up to \$350. In support of its flat charge proposal the staff points out that since November, 1975 both the

governing classification and the MRT C.O.D. rules restrict carriers from collecting in excess of \$250 in cash on any one shipment, thereby lessening the risk to the carrier of handling large amounts of cash. Furthermore, the collecting and forwarding of a check payable to the consignee of \$350 should entail no more expense than collecting and forwarding a check for a larger amount. (C.O.D. rules provide that checks or money orders must be made payable to the consignor or his designated payee.) A flat C.O.D. charge of \$6.73 is less than any charge found in the MRTs' scale of C.O.D. charges for amounts to be collected in excess of \$499 and would constitute a reduction of charge for collecting those amounts. The staff also suggests that a caveat be included in the new C.O.D. tariff item calling attention to the fact that the Commission's General Order No. 84 governs the handling of C.O.D. shipments. There are certain carrier requirements in the general order which do not appear in the tariff so that in the event there should be any conflict between the general order and the tariff C.O.D. provisions the general order would prevail. The staff witness could not recall that any staff cost study was ever made which was directed toward determining the cost of processing a C.O.D. shipment. In the witness' opinion part of the cost of processing a C.O.D. shipment has been taken into consideration in the establishment of the base freight rate structure.

CTA calculated the revenue impact on carriers of the staff's proposed flat charge of \$6.73 for the handling of 2,391 C.O.D. shipments (the number of C.O.D. collections of \$350 or less taken from CTA's survey mentioned above) using 40 minutes per bill and \$13.26 for the hourly wage and arrived at a net loss to the carriers of \$5,045. CTA estimated that for the carriers to break even the flat charge would have to be \$8.84.

California Manufacturers Association (CMA) objects to increasing the minimum charges on C.O.D.s under \$201, pointing out that the increase proposed by the staff or by CTA would result in a percentage increase of 117 percent for C.O.D.s under \$101 and 107 percent on C.O.D.s between \$101 and \$200. The proposed C.O.D. charges

alone would be equal to 26.9 percent of a \$25 C.O.D., 13.4 percent of a \$50 C.O.D., 8.9 percent of a \$75 C.O.D., and 6.6 percent of a \$101 C.O.D. The CMA witness stated that there is a substantial amount of cash C.O.D. business done with small "mom and pop" type retailers and that requiring them to add between 6.6 percent and 26.9 percent to the cost of the goods purchased would substantially cut into their profit margins and perhaps take them out of the market. The witness contends that the proposed C.O.D. charges for C.O.D.s under \$201 are unreasonably high because of this.

Discussion

As carriers now are restricted from collecting over \$250 in cash, a scale of charges for collecting checks and drafts in excess of \$250 based upon the amount of the check or draft is outmoded. ✓

Historically, a scale of C.O.D. charges was primarily based on the risks to the carrier of handling increasingly large amounts of cash. Since those risks have disappeared because of the limitation of \$250 on the amount of cash that can be handled in one transaction, the reason for the scale of C.O.D. charges has also disappeared. Shippers and consignees should not be required to pay for a service which carriers do not hold themselves out to perform. The carriers' cost of collecting and forwarding checks is essentially the same regardless of the amount of the check, and the kind or weight of the shipment, or the number of pieces involved in the C.O.D. shipment. We will, therefore, establish a minimum flat charge for the collection and forwarding of all C.O.D.s and cancel the Special C.O.D. Service rule. Another reason for the abolishment of the scale of charges is that the single charge of \$6.73 proposed for the Special C.O.D. Service rule would become the going minimum charge since shippers will naturally invoke the rule in instances where the rule will provide a charge lower than the otherwise applicable charge. In this respect the Special C.O.D. Service rule subverts any higher charges in the scale of charges and has the same net effect as though a flat charge covering all C.O.D. shipments had been established.

Naturally, the flat charge will result in a higher percentage of the C.O.D. charge to the value of the shipment for a C.O.D. in the amount of \$25 than for a C.O.D. of higher amount. Since the carriers' cost for performing the C.O.D. service in all instances will be practically the same, the percentage ratio of the flat charge to the C.O.D. amount is not germane in the absence of compelling evidence to the contrary, for the purpose of establishing a minimum C.O.D. charge. No such evidence was presented; hence, we should deny CYA's request to establish a lower C.O.D. charge on small C.O.D. amounts merely for the sake of lowering the percentage ratio between the charge and the C.O.D. amount.

The evidence is not clear as to what increase in C.O.D. charges is necessary to compensate the carrier for its cost of performing that service. Part of the cost of processing a C.O.D. shipment has been taken into consideration in the establishment of the base freight rate structure, but just what part or its relationship to the overall cost is not in the record of this proceeding. In addition, while we have before us an average of the excess time it takes to process a C.O.D. shipment as estimated by certain carriers, no actual cost studies have been made to substantiate in any degree these estimates. Therefore, we are left with little data of substance on which to determine the amount of the necessary increase. However, we feel sufficiently secure in using as a starting point the lowest charge of \$6.73 in the governing classification's scale of C.O.D. charges, because of its widespread use as the maximum charge for the service, to establish a flat C.O.D. charge which will be within the zone of reasonableness. Since the governing classification charge is an amount to be charged, the establishment of a charge lower than \$6.73 (and a fee lower than \$9.14 for changing the status of a C.O.D. shipment) is appropriate in view of the fact that the base freight rate structure includes part of the cost of processing a C.O.D. shipment. We consider a 15 percent reduction in both charges (equals \$5.72 for the C.O.D. charge and \$7.77 for the change of status charge) to be within the zone of reasonableness for the

services in our best judgment in view of the lack of other probative evidence. We will authorize highway common carriers to revise their C.O.D. rules and charges accordingly. However, in Decision No. 90663, dated August 14, 1979, which was issued as part of the Commission's reregulation program, the Commission stated at folio page 7 that "MRTs 1-B, 2, 9-B, 11-A, 15 and 19 will not be further adjusted by the Commission prior to their cancellation and the establishment of the transition tariffs except in the event exceptional need arises." In this case no exceptional need for revisions of the subject MRT tariffs has been shown to exist so we will not require that MRTs 1-B, 2, 9-B, or 19 be amended in furtherance of our reregulation program.

Findings of Fact

1. CTA contends that the minimum charges applicable to C.O.D. shipments required to be assessed by the MRTs are unreasonably low.

2. CTA proposes that the MRTs and common carrier tariffs adopt the C.O.D. provisions of the governing classification except that the Special C.O.D. Service rule would remain in effect with an increased minimum charge of \$6.73.

3. CTA's proposal would change the C.O.D. provisions in the following material respects:

a. Increase the level of charges in the scale of charges (see Table II for amount of increases).

b. Increase the level of the charge from \$5.00 to \$9.14 for changing the status of a C.O.D. shipment.

c. Increase the level of the charge in the Special C.O.D. Service rule to equal the lowest charge in the governing classification scale of charges, namely, to \$6.73.

d. Require certified checks to be bank certified.

4. The Commission staff's recommendation parallels CTA's proposal except the staff would cancel the Special C.O.D. Service rule and establish a flat minimum charge of \$6.73 for all C.O.D. shipments in lieu of a scale of charges.

5. A Special C.O.D. Service rule containing a charge equal to or lower than the lowest charge in a companion scale of charges has the same net effect as establishing a flat charge for all C.O.D. shipments.

6. The present scales of charges based on C.O.D. amounts in excess of \$250 were predicated on the risks involved to carriers in handling increasing amounts of cash.

7. Present and proposed C.O.D. rules restrict carriers from collecting cash in excess of \$250.

8. No cost studies have been made to determine California carriers' costs of handling C.O.D. shipments.

9. The costs of handling C.O.D. shipments advanced by CTA in all probability include some costs which have been taken into consideration in the establishment of the base freight rate structure and are therefore overstated.

10. Until a reliable C.O.D. cost study is made it is appropriate and reliable to use as a reference point the lowest charge in the governing classification's scale of C.O.D. charges, namely \$6.73, as a basis for the establishment of a flat C.O.D. charge in the MRTs.

11. C.O.D. charges set out in the governing classification represent actual charges to be assessed rather than charges representing the low end of the zone of reasonableness.

12. A flat C.O.D. charge of \$5.72, equal to 85 percent of \$6.73, should more than cover the carriers' C.O.D. costs when associated costs are taken into consideration in the establishment of the base rate structure.

13. The charge appearing in the governing classification of \$9.14 for changing the status of a C.O.D. shipment should also be reduced by 15 percent to \$7.77 for the same reason as set out in Finding 12.

14. The percentage ratio of a flat C.O.D. charge to the amount of the C.O.D. is not germane in the establishment of a minimum C.O.D. charge.

15. It was the intent of the Commission in requiring a certified check that the check be certified by a bank.

16. The overall increase in C.O.D. and change of status charges authorized by this decision will result in an increase of less than .01 percent in the gross revenue of the 11 carriers in the CTA sample.

17. The adjustments in rates and charges authorized by this decision are justified and reasonable.

18. ~~Decision No. 90663 has placed a freeze on the adjustment of the MRTS.~~ *KM*

~~18~~ *X*. No exceptional need has been shown for adjusting the MRTS.

Conclusions of Law

1. Common carriers should be authorized to cancel from their tariffs all existing C.O.D. provisions and in their place adopt the C.O.D. provisions of the governing classification, except that in lieu of the scale of C.O.D. charges appearing in the governing classification the carrier shall adopt a single charge of no more than \$5.72 for the collecting and remitting of any C.O.D. amount, and except that in lieu of the charge appearing in the governing classification for changing the status of a C.O.D. shipment the carrier shall adopt a charge for such change of no more than \$7.77.

2. Except to the extent authorized herein, the petitions should be denied.

O R D E R

IT IS ORDERED that:

1. Common carriers are authorized to cancel from their tariffs all existing C.O.D. provisions and in their place adopt the C.O.D. provisions of Item 430 of the National Motor Freight Classification 100-F (governing classification), except that in lieu of the scale of C.O.D. charges appearing in the governing classification, the carrier shall adopt a single charge of no more

than \$5.72 for the collecting and remitting of any C.O.D. amount, and except that in lieu of the charge appearing in the governing classification for changing the status of a C.O.D. shipment, the carrier shall adopt a charge for such charge of no more than \$7.77.

2. Tariff publications authorized as a result of this order shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order, on not less than ten days' notice to the Commission and to the public; this authority shall expire unless exercised within ninety days after the effective date of this order.

3. To the extent not granted herein, the request of California Trucking Association in its Petitions for Modification Nos. 1035, 330, 411, and 2 in Cases Nos. 5432, 5439, 5441, and 7402, respectively, is denied.

4. The Executive Director shall serve a copy of this decision on every common carrier, or such carriers' authorized tariff publishing agents, performing transportation services subject to Minimum Rate Tariffs I-B, 2, 9-B, and 19.

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

Dated JAN 8 - 1980, at San Francisco, California.

John E. Guyon
President
Richard W. Howell
Commissioners