

**ORIGINAL**

Decision No. 67491

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Amendment and Revision of the Rules of Procedure of the Public Utilities Commission of the State of California.

Case No. 4924

Investigation on the Commission's own motion to determine, in view of the amendment of Public Utilities Code Section 454, whether the Commission's Rules of Practice and Procedure or General Order No. 109, as they relate to common carriers, should be modified or a new general order issued.

Case No. 7234

APPEARANCES ARE LISTED IN APPENDIX B

O P I N I O N

In 1961 Section 454 of the Public Utilities Code was amended by adding the following language:

"The Commission may establish such rules as it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed increases, the form and manner of the presentation of such showing, and the procedure to be followed in the consideration thereof. Rules applicable to common carriers may provide for the publication and filing of any proposed increase together with a written showing in support thereof, giving notice of such filing and showing in support thereof to the public, affording an opportunity of protest thereto, and to the consideration of, and action on, such showing and any protest filed thereto by the Commission, with or without hearing; provided that the proposed increase shall not become effective until it has been approved by the Commission."

On November 21, 1961, the Commission, on its own motion, instituted an investigation, Case No. 7234, for the purpose of determining whether the Commission's Rules of Practice and Procedure, or General Order No. 109, should be modified or a new general order

issued in view of the 1961 amendment to Section 454 of the Public Utilities Code.

Public hearings were held in Case No. 4924 which also pertains to the amendment and revision of the Commission's Rules of Practice and Procedure and Case No. 7234 before Commissioner Holoboff and Examiner Cline on May 16, 1962, in San Francisco, and on May 23, and September 17, 1962, in Los Angeles. Further hearing was held in Case No. 7234 on October 25, 1962, in San Francisco, and this matter was taken under submission upon the filing of closing statements on December 13, 1962. Case No. 4924 was taken under submission after further hearing on May 23, 1963 and the filing of written comments by the Commission staff on August 15, 1963 and replies thereto on September 18 and 23, 1963.

The procedures already established by this Commission relating to increases proposed by common carriers under Section 454 are those set forth (1) in the general Rules of Practice and Procedure pertaining to rate increase applications, and (2) in the Commission's Special Tariff Docket (General Order No. 109). Matters considered on the Special Tariff Docket are limited to those which are narrow in scope, not adverse to the interest of other parties, not of general interest, and noncontroversial. Special Docket matters are usually handled in less than a week from the date of the filing of the request. On the other hand, matters handled under the Commission's Rules of Practice and Procedure normally require 56 to 154 days or more.

There are matters which clearly fall within the Special Tariff Docket criteria, and there are other matters which, because of their broad scope, general interest or controversial nature, clearly fall under the Commission's Rules of Practice and Procedure. In addition, there are requests for Commission authority under Section 454 which fall between the two clear extremes, such as rate adjustments which are of limited scope but

too broad for the Special Tariff Docket and which may involve the interests of an extensive segment of the public but, at the same time, involve such a limited amount of revenue that the cost burden of a proceeding under the present Rules of Practice and Procedure may not be justified.

The purpose of this proceeding is to provide a simplified and expedited procedure which can be used to handle the matters which fall between the two clear extremes and also many of the proceedings which currently are handled under the Commission's present Rules of Practice and Procedure.

Three separate proposals to implement the 1961 amendment to Section 454 have been introduced into evidence, one through the Commission staff witness, another through the witness for the California rail carriers, and the third through the witness for the California Trucking Association. All parties agree that it is only the second sentence of the amendment which is in issue in this investigation, and that, if the Commission Rules of Procedure are to be amended they should be amended by the insertion of a new Article 6a (hereinafter designated Article 6.1) entitled "Applications of Common Carriers to Increase Rates under the Shortened Procedure Tariff Docket."

The provisions of the new Article 6.1 and the additional forms No. 4 and No. 5 to be added to Rule 79 which the Commission concludes should be adopted are set forth in Appendix A attached hereto. Only those provisions of said Appendix A which were the subject of disagreement among the parties or are substantial modifications of the proposals submitted by the parties will be discussed in this opinion.

(1) The original staff proposal for Rule 24.1 contained requirements that the application show that the proposed increases:

- (a) are not subject to any known or anticipated objections by interested parties,
- (b) do not require public hearing,
- (c) if a public hearing were held, no appearances by any protestant would be anticipated,
- (d) do not effect as much as one percent of the applicant carrier's traffic, and
- (e) would not increase the applicant carrier's gross revenue by as much as one percent.

The California Farm Bureau Federation in its statement of position urges that all of the above provisions be retained in Rule 24.1, and the California Manufacturers Association desires that the carriers notify the Commission of any known or anticipated objection to a proposed increase.

The California Trucking Association urges that the limitations in Rule 24.1 as originally proposed by the Commission staff witness would restrict the use of the shortened procedure to trivial rate changes. This association claims that the purpose of the shortened procedure is to economize on time and expense on those applications which should not require a public hearing, and that the only appropriate requirement is that the applicant set forth facts which will show that a public hearing will not be required. The interested rail carriers originally proposed that Rule 24.1, paragraphs (a) and (c) be eliminated and that paragraphs (d) and (e) be modified by inserting the words "California intra-state" before "traffic" and "gross revenue". However, in their closing statement they concurred with the proposals of the California Trucking Association pertaining to Rule 24.1.

In its closing statement the Commission staff urged retention of paragraph (e) of Rule 24.1 with the insertion of the words "California intrastate" before "gross revenue".

The Commission concludes that Rule 24.1 as proposed by the staff in its closing statement should be adopted with the following language suggested by the carriers being added so that paragraph (a) will read:

"(a) do not require public hearing and the application contains a statement of the facts and circumstances upon which such belief is based, and"

In order that the Commission will be apprised in the manner suggested by the California Farm Bureau Federation and the California Manufacturers Association, the Commission further concludes that the following paragraph (d) should be added to Rule 24.3 as proposed in the Closing Statement of the Commission Staff:

"(d) The position of interested parties regarding the application insofar as known to applicant."

(2) The proposed rules of the Commission staff set forth in Exhibit 1 provide that copies of the application shall be served upon interested shippers, carriers or other parties or their attorneys or agents and that the application shall list the names of all interested parties upon whom a copy of the application is served.

The representatives of both carrier groups oppose the requirement that service of the application be made on interested parties and urge that notice through the Commission calendar is sufficient notice. They contend that the service requirement would be burdensome on the applicants and they point out that proposed

increases in rates are widely publicized and are discussed with interested shippers well in advance of the filing of applications. They also contend that most shippers receive notice of the filing of applications either through the Commission's calendar or by notification from shipper organizations which rely on the calendar for notice.

The Commission concludes that the requirement for serving copies of applications on all known interested parties would be burdensome and in some cases infeasible and that the service requirements as proposed in the rules attached to the staff's closing statement should be deleted. The Commission further concludes that Rule 24.4 providing that applicant shall furnish a copy of the application to each interested party making a written request therefor should be added to the rules to be adopted.

Similarly the Commission concludes that Rule 24.8 should provide that protestant shall promptly furnish a copy of the protest to each interested party making a written request therefor.

(3) The representatives of the California Manufacturers Association and the California Farm Bureau Federation recommended that action on the applications be withheld for thirty days subsequent to the listing in the calendar of the notice of the filing of the applications so that interested parties would have a reasonable opportunity to file protests. The staff witness originally proposed a fifteen-day period but in its closing statement extended the time to thirty days. The carrier representatives interposed no objection to the extension of the fifteen-day period to thirty days. The Commission concludes that the thirty-day period should be incorporated in the rules to be adopted.

ORDER

IT IS ORDERED that the Rules of Practice and Procedure be amended by adding "Article 6.1 - Applications of Common Carriers to Increase Rates under the Shortened Procedure Tariff Docket" and by adding the following forms to Rule 79:

"No. 4 - Application - Shortened Procedure Tariff Docket"  
and

"No. 5 - Protest - Shortened Procedure Tariff Docket",  
which are set forth in Appendix A attached hereto.

Said Article 6.1 and Forms No. 4 and No. 5, attached hereto, shall become effective 180 days after the date hereof.

The Secretary is directed to cause an adequate number of copies of this decision to be made available for Commission use and for service upon and distribution to the appearances herein and to other practitioners, utilities, carriers, political subdivisions, and others who appear before the Commission.

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

Dated at San Francisco, California, this  
7th day of JULY, 1964.

Frederick B. Hobbitt  
President  
John E. Mitchell  
Robert C. Leary  
George A. Traver  
Commissioners

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

APPENDIX A

AMENDMENT TO RULES OF PRACTICE AND PROCEDURE

Article 6.1 - Applications of Common Carriers to Increase Rates under the Shortened Procedure Tariff Docket  
(See P.U. Code, Sec. 454, 2d paragraph.)

This article applies to applications of common carriers to increase any rate or so alter any classification, contract, practice or rule as to result in any increase in any rate under the Shortened Procedure Tariff Docket as hereinafter described in this article. Applications and protests under this article are subject to Rules 2, 3 and 7 of Article 2 but are not subject to the other provisions of Article 2 nor the provisions of Article 4 or Article 6.

24.1 (Rule 24.1) Applications under the Shortened Procedure Tariff Docket. Applications may not be processed under the Shortened Procedure Tariff Docket unless the application shows that, in the knowledge and belief of applicant, the proposed increases:

(a) do not require public hearing and the application contains a statement of the facts and circumstances upon which such belief is based, and

(b) would not increase the applicant carrier's California intrastate gross revenue by as much as one percent.

24.2 (Rule 24.2) Verification or Certification and Signatures. The original of each application shall be verified under oath or certified under penalty of perjury, and shall be signed by the applicant, a responsible officer thereof, or by an agent to whom power of attorney has been given. Applications concerning joint rates or fares shall be signed by or on behalf of all carriers participating therein.

24.3 (Rule 24.3) Contents. Applications shall state clearly and concisely the authority or relief sought and:

(a) The legal name, mailing address and telephone number of the applicant. If the carriers are numerous, and constitute all the participants of the specified tariff, they may be identified by reference to the tariff.

(b) The present rates, fares, charges or rules which are proposed to be changed and those proposed to be established.

(c) Clearly, specifically, and in detail, the justification in support of each authority sought.

(d) The position of interested parties regarding the application insofar as known to applicant.



24.4 (Rule 24.4) Copy of Application Upon Request. Applicant shall promptly furnish a copy of the application to each interested party making a written request therefor to applicant.

24.5 (Rule 24.5) Processing and Notice. The filing of Shortened Procedure Tariff Docket applications shall be listed in the daily calendar. (Rule 40.)

The listing shall identify the applicant and the type of application and briefly state the authority sought and the date of filing. Action on an application shall be withheld for 30 days subsequent to the first date of listing in said calendar.

24.6 (Rule 24.6) Protests. Anyone interested may file a protest which shall:

(a) State the protestant's full name, mailing address and telephone number.

(b) State the facts constituting the grounds for protest and showing how protestant is affected and why the proposed increase may not be justified.

(c) State the names of each applicant or its attorney or agent upon whom a copy of the protest is being served pursuant to Rule 24.7.

(d) Be verified under oath or certified under penalty of perjury and be signed by protestant or its attorney.

(e) Be addressed to the Public Utilities Commission, State Building, San Francisco, California 94102.

(f) Be forwarded so as to reach the Commission not later than the thirtieth day following the listing of the application in the daily calendar.

24.7 (Rule 24.7) Service. One copy of each protest shall simultaneously be served upon each applicant or its attorney or agent. Service shall be made personally or by deposit in the United States mail of a sealed envelope with first class postage prepaid, containing a true copy of the documents to be served and addressed to the party to be served at the last known address of such party.

24.8 (Rule 24.8) Copy of Protest Upon Request. Protestant shall promptly furnish a copy of the protest to each interested party making a written request therefor to protestant.

ADD THE FOLLOWING FORMS TO RULE 79

No. 4 - Application - Shortened Procedure Tariff Docket  
(See Rules 2, 3, 7 and 24.1 - 24.4)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John Jones under the Shortened Procedure Tariff Docket to make increases in (here state specifically or by reference the increase in rates sought to be made, and specify short notice and long- and short-haul authority, if any, sought).

Shortened Procedure Tariff Docket Application No.

(Commission will insert number)

APPLICATION

The application of (exact legal name, mailing address and telephone number of each applicant) respectfully shows:

1. Authorization is requested to (Here state clearly and concisely the specific authority or authorities sought, together with the current rates, fares, charges or rules being increased).

2. This application is based upon the following facts and circumstances:

(Here, and in succeeding numbered paragraphs or attached exhibits, set forth the specific facts required by the applicable rules, a statement of or reference to exhibits showing present and proposed rates, fares, charges, or rules, and the additional facts and circumstances deemed to be material).

3. The position of interested parties in this matter is as follows:

(Here list the position of each interested party insofar as known).

4. Applicant will furnish a copy of this application to any interested party upon request.

I hereby declare under penalty of perjury that the  
foregoing is true and correct.

Executed at \_\_\_\_\_, California, this  
\_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

No. 5 - Protest - Shortened Procedure Tariff Docket

(See Rules 2, 3, 7 and 24.6 - 24.7)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of John Jones under the Shortened Procedure Tariff Docket to make increases in (here state specifically or by reference the increase in rates sought to be made, and specify short notice and long- and short-haul authority, if any, sought.

Shortened Procedure Tariff Docket Application No.

(Insert the number of the application)

PROTEST

The protest of (exact legal name, mailing address and telephone number of each protestant) respectfully shows:

1. (Here, and in succeeding numbered paragraphs or attached exhibits, state the facts constituting the grounds for the protest and showing how protestant is affected by the proposed increase and indicate in what respects the proposed increase is considered not justified).

2. Applicants, as shown on the following list (or on an attached list), have been served with a copy of this protest by (here, state the manner of service). (Here list the names and addresses of parties served).

3. Protestant will furnish a copy of this protest to any other interested party upon request.

I hereby declare under penalty of perjury that the foregoing is true and correct,

Executed at \_\_\_\_\_, California, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

LIST OF APPEARANCES

## FOR RESPONDENTS:

McCutchen, Doyle, Brown & Enersen, by A. Crawford Greene, Jr., for California Water Service Company and San Jose Water Works; Rollin E. Woodbury, Harry W. Sturges, Jr., and John R. Bury, for Southern California Edison Company; Armand Karp, for Callison Truck Lines, Inc.; and Roger L. Ramsey, for United Parcel Service.

## INTERESTED PARTIES:

Donald J. Carman and Richard Edsall, by Richard Edsall, for California Electric Power Company; James M. Cooper and Charles C. Miller, for San Francisco Chamber of Commerce; Noel Dyer, for Western Union Telegraph Company; Maurice D. L. Fuller, Jr., for The Pacific Telephone and Telegraph Company; Aaron H. Glickman, for California Motor Tariff Bureau; James C. Haugh, for San Diego Transit System; William L. Knecht and Ralph Hubbard, for California Farm Bureau Federation; Harry P. Letton, Jr., and John Ormasa, for Southern California Gas Company; Francis N. Marshall, for Standard Oil Company of California; William T. Meinhold, for The Greyhound Corporation (Western Greyhound Lines, Division); Jeff H. Myers, for the Port of San Francisco; Walter G. Ramsay, for California Water & Telephone Company; F. T. Searls and John C. Morrissey, by John C. Morrissey, for Pacific Gas and Electric Company; Oscar Sattinger and Russell Twomey, for Pacific Lighting Gas Supply Company; Milford Springer and Robert M. Olson, Jr., for Southern Counties Gas Company of California; R. D. Toll, J. X. Quintrall, A. D. Poe and J. C. Kaspar, for California Trucking Association; Robert C. Ellis, for California Motor Express, Ltd. and California Motor Transport Co.; Robert L. Pierce, for California railroads, their motor and express subsidiaries; Graham, James & Rolph, by Boris H. Lakusta, for himself; George D. Rives and Robert N. Lowry, of Brobeck, Phleger & Harrison, for Pacific Power & Light Company and United Air Lines, Inc.; Chickering & Gregory, by Sherman Chickering, C. Hayden Ames and Richard Morris, and Stanley Jewell, for San Diego Gas & Electric Company; E. K. Slusser, for Permanente Cement Company; C. R. Nickerson, for Members of Pacific Coast Tariff Bureau; Gibson, Dunn & Crutcher, by Raymond L. Curran, for themselves; William Irl Kennedy, for Union Pacific Railroad Company; Eugene A. Reid and William E. Evers, for California Manufacturers Association; Patrick J. Maloney, for California Water Association and Carpinteria Water Company; Theodore W. Russell, for Transcontinental Bus System, Inc., American Bus Lines, Inc., Continental Pacific Line, Inc., and Gibson Lines; Philip K. Verleger, for Western Oil & Gas Association; R. W. Russell, by K. D. Walpert, for Department of Public Utilities and Transportation of the City of Los Angeles; Preston Turner, for the City of Anaheim; Stark Fox, for Oil Producers Agency

LIST OF APPEARANCES  
(Contd)

of California; James E. Krieger, for California Interstate Telephone Company; John E. Skelton, for San Gabriel Valley Water Company; Arthur D. Guy, Jr., for Suburban Water Systems and Southwest Water Company; E. O. Blackman, for California Dump Truck Owners Association; Waldo A. Gillette, for Monolith Portland Cement Company; W. Harney Wilson, for Southern Pacific and its Rail Subsidiaries, Union Pacific, Western Pacific and Santa Fe; E. J. Longhofer, for San Diego Chamber of Commerce; W. J. Knoell, for Western Motor Tariff Bureau, Inc.; Leland E. Butler, for The Atchison, Topeka and Santa Fe Railway Company; Marshall W. Vorkink, for Union Pacific Railroad Company; Harvey Scott, for California Bus Association; Edward L. Blincoe, as an individual and as President of the Utility User's League of California; and Robert E. Murphy, for the Attorney General.

## COMMISSION STAFF:

C. Ray Bryant, by Robert A. Lane; Elinore Charles; Frank F. Watters; and John F. Donovan.