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ORIGINAL

Decision No. 68719

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432
(Order Setting Hearing dated August 25, 1964)

In the Matter of the Investigation for the purpose of considering and determining revisions in or reissues of Minimum Rate Tariff No. 14-A.

Case No. 7857
(Order Setting Hearing dated September 22, 1964)

ORDER ON MOTION TO SET ASIDE EXAMINER'S RULING

The staff of the Commission's Transportation Division, a party to these proceedings, has filed a motion to set aside a ruling made by the Examiner at the hearing of January 28, 1965.

Mr. Edward Jennings was presented by the Transportation Division at the hearing of November 13, 1964, as an expert witness qualified to express his opinion in the field of the development of the costs of transporting safflower seed by motor vehicle over public highways of the State of California. He testified to his observations made in the field while engaged in a study of the cost of transporting safflower seed and expressed his opinions concerning certain factors relating to the costs of performing such transportation service. Exhibit 1 summarizes his estimates of the costs of transporting safflower seed by a reasonably efficient highway carrier; following his direct

testimony, Exhibit I was received in evidence. At the conclusion of the hearing on that day, Mr. Jennings was still on the witness stand and Pacific Vegetable Oil Corporation had not yet had an opportunity to cross-examine him. The hearings were adjourned to January 25, 1965, at which later time the Transportation Division announced that Mr. Jennings had resigned from the Commission staff and that a substitute witness would be available on January 28, 1965. At the hearing of January 28, 1965, Mr. Jennings was not made available for cross-examination; the reasons given by the Transportation Division for his failure to appear were that he was no longer in the employ of the Commission and that a substitute witness would be provided. Pacific Vegetable Oil Corporation thereupon made its motion to strike Mr. Jennings' testimony and to strike Exhibit I. The Examiner granted the motion.

Following the granting of the motion by the Examiner, the Transportation Division attempted to reintroduce Exhibit I through the testimony of another witness. His testimony showed that he is a professional engineer; that he has been employed by the Commission for twelve years and during that time has made investigations and prepared cost reports dealing with most phases of transportation by truck; that he did not assign Mr. Jennings to the work that led to the preparation of Exhibit I; that he reviewed Exhibit I and discussed the work with Mr. Jennings, both during the time the latter was making his study and after Exhibit I was prepared; that he did not participate in the field study; that his review of Exhibit I concerned only whether Mr. Jennings had followed the procedures and standards prescribed by the Transportation Division in making the study; and that he was "in accord with the contents of Exhibit I."

Objections to the reintroduction of Exhibit I were sustained by the Examiner.

In support of the present motion to overrule the Examiner, the staff relies upon Section 1701 of the Public Utilities Code, which provides that the "technical rules of evidence need not be applied" in proceedings before the Commission. Even so, Rule 55 of the Commission's Rules of Procedure provides that "substantial rights of the parties shall be preserved." In a given case, lack of opportunity for cross-examination might be a mere "technical" or "insubstantial" defect, so that under Section 1701, the direct testimony involved might not be rendered inadmissible. In this case, however, no adequate justification for failing to recall Mr. Jennings has been shown. For all that appears, he may have been available on January 28, 1965; the mere fact of his resignation from the staff, standing alone, would not preclude his appearance in these proceedings to complete his testimony concerning his work while employed by the Commission. On the present state of the record, the testimony of the staff's substitute witness was not, in our view, sufficient to warrant admission of Exhibit I.

The rulings of the Examiner are affirmed.

At the close of the hearing on January 28, 1965, the hearing was continued to March 29, 1965 and the Examiner ordered certain procedural steps to be taken in order to ensure the submission of the matter on or before April 2, 1965. The procedural orders required that the Transportation Division notify the parties of record on or before February 8, 1965 if it intended to supplement its case in chief and that, prior to March 1, 1965, it serve upon the parties all exhibits it proposes to introduce

together with proposed testimony in writing. The aforementioned dates are now past, but sufficient time remains for reasonable notice to the parties by the staff concerning its plans to supplement its case.

IT IS ORDERED that:

1. The petition of the Transportation Division to set aside Examiner's ruling is denied.

2. The Transportation Division may reopen its case in chief herein under the following conditions:

(a) That it serve notice on the parties of record within five days after the effective date of this order of its intention to reopen its case.

(b) That such notice summarize the facts the staff intends to prove, the names of the witnesses it intends to call (together with a summary of their proposed testimony), and a description of any exhibits it intends to offer.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 9th
day of MARCH, 1965.

Fredrick B. Holdhoff
President
George L. Hoover
Commissioners
William B. ...
Commissioners