

**ORIGINAL**

Decision No. 74516

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's	)	
own motion into the operations,	)	
rates and practices of WILFRED J.	)	Case No. 8642
FLEURY TRUCKING CO., INC., a	)	
California corporation.	)	

ORDER REOPENING PROCEEDING AND  
ORDER AFTER RECONSIDERATION OF RECORD

Good cause appearing, Case No. 8642 is hereby reopened on the Commission's own motion to reconsider Decision No. 74113 on the record heretofore made. Said decision concluded that respondent through the device of the lease of property of the shipper, San Jose Transit-Mix Co., charged less than the applicable minimum rates for the transportation performed. Subsequent to the issuance of said decision doubt arose as to the correctness of the findings and conclusions contained therein.

Upon re-examination of the record, the Commission concludes that the evidence does not establish to its satisfaction that the lease of the property in question constituted a device by which minimum rates or charges were refunded or remitted to the lessor.

Therefore, IT IS ORDERED that Decision No. 74113 is vacated and Case No. 8642 is discontinued.

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

Dated at San Francisco, California, this 6<sup>th</sup> day of AUGUST, 1968

William J. ...  
President  
...

I concur in Vacating Decision No. 74113 and discontinuing Case # 8642 and will file a concurring opinion.  
Fred P. Monahan

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Commissioners

Commissioner William M. Bennett

Present but not participating.

C. 8642 MM

Decision No. 74516

COMMISSIONER GATOV, Dissenting:

I dissent.

By Decisions Nos. 74516 and 74517 today the majority of the Commission, on its own motion, with nary a word from carriers and shippers involved, reversed its Decisions Nos. 74112 and 74113. These new decisions were based "upon re-examination of the record". The records are the same ones used to reach Decisions Nos. 74112 and 74113, which found respondents Marbach and Fleury had used unlawful devices to rebate a portion of transportation charges.

I trust the Trucking Industry and the Commission Staff will join me in the charitable conclusion that the two new decisions are merely aberrations.

  
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Commissioner

San Francisco, California,  
August 6, 1968.