

ORIGINAL

Decision No. 78436

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).

And Related Matters.

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 sand, rock, gravel and related items (commodities for which rates are provided in Minimum Rate Tariff Nos. 7 and 17).

Investigation on the Commission's own motion to determine procedure and rules for administration of Public Utilities Code Sections 3575 and 1074, including amount, form and content of bond required thereby.

Case No. 5432
OSH 601
(Dated September 22, 1970)

Case No. 5330, OSH 53
Case No. 5433, OSH 34
Case No. 5435, OSH 160
Case No. 5436, OSH 102
Case No. 5437, OSH 203
Case No. 5438, OSH 79
Case No. 5439, OSH 127
Case No. 5440, OSH 70
Case No. 5441, OSH 206
Case No. 5603, OSH 91
Case No. 5604, OSH 24
Case No. 6008, OSH 14
Case No. 6322, OSH 4
Case No. 7783, OSH 34
Case No. 7857, OSH 37
Case No. 8808, OSH 11
(Dated September 22, 1970)

Case No. 5437
Order Granting Rehearing
Decision No. 77776
(Dated September 29, 1970)

Case No. 5670
Order Granting Rehearing
Decision No. 77776
(Dated September 29, 1970)

INTERIM OPINION AND ORDER ON
MOTION TO VARY PROCEDURE

Orders Setting Hearing, dated September 22, 1970, in Case No. 5432 (OSH 601) et al., was issued, upon request of the Commission's Transportation Division, for the purpose of receiving evidence relative to the need to establish or revise rules concerning collection of charges, credit provisions and payment of moneys due shippers on claims in the applicable minimum rate tariffs. It was also determined that evidence concerning OSH 601 et al., should be heard on a common record with the further evidence to be received relative to the Commission's Order Granting Rehearing (Decision No. 77776, dated September 29, 1970) of its Decisions Nos. 77668 and 77669, dated August 25, 1970, in Cases Nos. 5437 and 5670, respectively. ^{1/}

Public hearings were held before Examiner Gagnon at San Francisco on November 23 and December 14, 1970, and at Los Angeles on January 6, 1971. At the conclusion of the Los Angeles hearing the proceedings were taken off calendar pending further order of the Commission. The hearings held in November and December, 1970, were restricted to evidence pertaining to OSH 601 et al., and Order Granting Rehearing in Decision No. 77776, respectively. At the initial hearing, the Industrial Traffic Association of San Francisco presented a motion to vary the order of the proceedings and requested an interim order granting said motion prior to the receipt of evidence relative to any matters involved in OSH 601 et al. A summary of the Industrial Traffic Association's motion is hereinafter set forth:

^{1/} Petitions for rehearing of Decisions Nos. 77668 and 77669 filed by the California Dump Truck Owners Association and Associated Independent Owner Operators, Inc.

"THE INDUSTRIAL TRAFFIC ASSOCIATION OF SAN FRANCISCO... believes that enforcement of existing minimum rate tariff credit rules against shippers... is an appropriate, practical and heretofore untried means of accomplishing compliance with such rules. Such means of enforcing compliance is desirable in that it imposes no additional burden upon... majority of shippers who... comply with existing credit rules. It is our opinion that this course of action should be taken by the Commission before considering any changes in the credit rules...

"THE ASSOCIATION therefore moves:

"1... That no evidence be received in these proceedings... And that this hearing be continued pending... further order of the Commission.

"2 That... the Commission issue an interim order directing its staff:

"(a) To enforce strictly the credit rules...

"(b) To... enforce... Sections 3802 and 3804 of the Public Utilities Code against shippers... in willful violation of the existing credit rules."

It is argued that if the motion is granted and fully implemented, the anticipated hearing time for these proceedings will be greatly reduced; compliance with existing credit rules will be accomplished without imposing hardship or inconvenience upon those now complying with said rules; and it will ensure that enforcement is applied equally to all parties involved in a minimum rate tariff credit rule violation. Finally, it is contended that implementation of the motion will enable an accurate determination to be made as to whether a need exists for modification of the current credit rules and provide the necessary information to support such modification if the need therefor is found to exist.

The California Trucking Association (CTA), in supporting the Industrial Traffic Association's motion, submitted a proposed Commission staff program of enforcement activities which it believes would be consistent with the contention of the moving party. The

CTA's suggested credit rule enforcement program may be summarized as follows:

CTA's Proposed Staff Enforcement Activity

- STEP 1. Commission address letter of admonishment to all highway carriers, expressing concern over the apparent lack of knowledge and compliance by some carriers of the established credit regulations, plus the following attachments:
- a. Abstract of minimum rate tariff credit regulations and supporting statutory provisions.
 - b. Form and questionnaire to be filled out and returned to the Commission with the required information noted thereon:
 1. Acknowledgment of understanding of Step 1(a).
 2. Listing of all freight billings which remain unpaid beyond established credit period for given number of days.
- STEP 2. Commission address letter of admonishment to all shippers named in questionnaire supplied by carriers (Step 1, b-2), expressing concern with lack of understanding and compliance with credit regulations, plus the following attachments:
- a. Summary of applicable credit regulations and supporting statutory provisions.
 - b. List of shippers freight bills not paid within credit period, as disclosed under Step 1, b-2, with request for contemplated corrective shipper action.
- STEP 3. Formal enforcement action as indicated by responses to Steps 1 and 2, respectively.
- STEP 4. Repeat Steps 1, 2 and 3, modified as required.
- STEP 5. Summarize results of program, including conclusion and recommendations derived therefrom concerning:
- a. Enforcement of credit regulations.
 - b. Changes in the established credit rules.

The Commission's Transportation Division took the following position on the motion:

1. To continue the enforcement of the credit rules as they now stand;
2. Part of the motion which would direct the staff to prepare costly and time consuming shipper penalty actions in the courts should be rejected;
3. Shippers, in violation of the credit rules, should be named as respondents in O.I.I.'s, similar to the procedure now employed in undercharge cases; and
4. CTA's program should not be adopted but that a brief letter such as the one read into the record be sent to all carriers.

The representative for Transport Clearings of Los Angeles, which supports the motion in its totality, expressed concern over the possibility that the limited activity proposed by the staff would, in effect, render the motion non-productive. Those opposed to the granting of the motion contend that it would only result in a further delay of needed accelerated staff enforcement and revision of the Commission's established credit regulations.

The motion of the Industrial Traffic Association of San Francisco is not without merit. The Commission's credit regulations are directly involved in the intricate sales and accounting practices of shippers within their so-called commercial trade channels, the financial and record keeping requirements of the carriers performing the transportation service, and the inherent integrity and effectiveness of the Commission's minimum rate program. In view of the significant impact of the Commission's credit regulations upon the trade and accounting practices of both shippers and carriers, it is imperative that the Commission avail itself of as much pertinent information as is reasonably available relative to the application of such credit rules prior to authorizing any substantive revisions

therein. Such information is not now before the Commission for its analysis and ultimate consideration.

The traffic association's motion should be partially granted to the extent it would initiate staff action that would result in the development of information pertinent to a determination of the issues involved in these proceedings. Staff studies conducted initially in substantial conformity with Step 1 outlined above, to be completed within 120 days from the date hereof, should establish a basis for developing the desired additional information. It is not necessary to send copies of the Commission's credit rules to carriers. The desirability and/or feasibility of Steps 2, 3, 4 and 5, as separate phases of a special staff effort in these proceedings, are not fully apparent at this time and should not be initiated by the staff unless subsequent events and circumstances should dictate otherwise.

INTERIM ORDER

IT IS ORDERED that:

1. The motion of the Industrial Traffic Association of San Francisco to vary the order of procedure of these proceedings is hereby partially granted as follows:

The Commission's Transportation Division is authorized to initiate staff action and studies, to be completed within 120 days from the date hereof, which will initially be developed and employed substantially in conformity with the suggested procedures summarized in the Opinion hereof as Step 1 as modified.

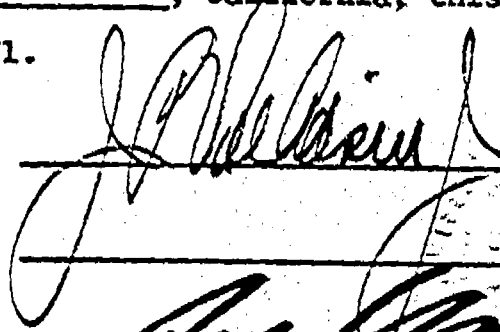
2. Upon completion of its study, the staff will request a hearing to be scheduled at which time a staff exhibit will be offered setting forth the results of its study.

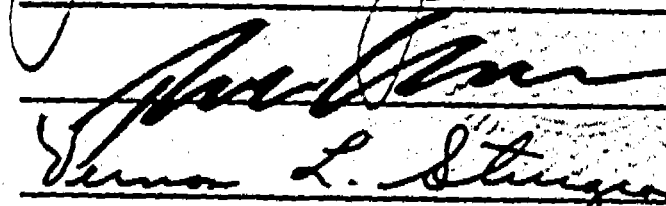
3. To the extent not authorized herein, the motion of the Industrial Traffic Association of San Francisco is hereby denied.

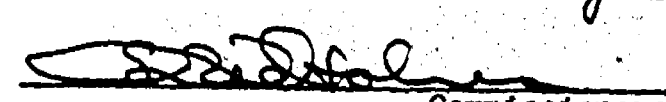
4. Final disposition of the Commission's Orders Setting Hearing, in Case No. 5432 (OSH 601) et al., and Order Granting Rehearing (Decision No. 77776), all matters being heard on a common record, shall be deferred pending completion of staff studies or as otherwise ordered by the Commission.

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

Dated at San Francisco, California, this 16th day of MARCH, 1971.



Chairman


Verna L. Sturgeon


Commissioners

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