

ORIGINAL

Decision No. 78981

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 highway 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 2).

Case No. 5432
Petitions for Modification
Nos. 636, 637, 638, 639, 640,
641, 642, 643, 644 and 647

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances, and practices of all highway 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 15).

Case No. 7783
Petition for Modification
No. 39

In the Matter of the Investigation into the constructive mileages, and related rules and provisions of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between all points in California (including, but not limited to, constructive mileages provided in the Distance Table).

Case No. 7024
Petition for Modification
No. 27

(For List of Appearances see Appendix A)

ORDER ON MOTIONS TO DISMISS PETITIONS
PURSUANT TO ORAL ARGUMENT

Decision No. 78707, dated May 18, 1971, in Case No. 5432 (Petition 636) et al., authorized oral argument on motions to dismiss several petitions, filed by the California Trucking Association (CTA) in this proceeding, without benefit of public hearing or further consideration by the Commission. Said motions were filed by the California Manufacturers Association and the Traffic Managers Conference of California on April 14, 15 and 21, and May 5 and 14, 1971.

Oral argument on the motions was held before Examiner Gagnon on May 27, 1971, at Los Angeles, California. Representatives on behalf of the California Manufacturers Association, Traffic Managers Conference of California, California Fertilizer Association and the Commission's Transportation Division staff argued in support of the motions. Argument in opposition to the motions was presented by counsel for the CTA.

Minimum rates for the highway transportation of property by for-hire carriers between points located within the Metropolitan Los Angeles Area^{1/} were recently established by Decision No. 78264, dated February 2, 1971, in Case No. 6322 (OSH Decision No. 74991) et al. The rates thus adopted replaced the prior governing minimum rates published in Minimum Rate Tariffs 5 (Los Angeles Drayage Area)^{2/} and 2 (Statewide-General Commodity). The rates established by Decision No. 78264 are published in Minimum Rate Tariffs 2 and 15 (hourly vehicle unit rates) and were originally published to

1/ Includes the geographical area embraced by the portions of Los Angeles and Orange Counties included in the 58 Metropolitan Zones 201 through 258, as described in Section 2-A of the Commission's Distance Table.

2/ The rates published in Minimum Rate Tariff 5 governed the local drayage of general commodities within the central "Core Area" portion of Los Angeles County (Metropolitan Zones 218, 227, 228, 229, 234, 235 and 236).

C. 5432, Pet. 636 et al HJH

become effective on March 13, 1971. This effective date was stayed by the timely filing of a petition by CTA for reconsideration, modification or rehearing of Decision No. 78264. Said petition was denied by the Commission's order in Decision No. 78472, dated March 23, 1971, in Case No. 6322 (OSH Decision No. 74991) et al., whereupon the newly established minimum rates for the Metropolitan Los Angeles Area became effective as of April 24, 1971.

Subsequent to the issuance of the Commission's order in Decision No. 78472, CTA commenced filing the petitions listed below:

List of Petitions Filed by CTA in This Proceeding

<u>Case and Petition Nos.</u>	<u>Date Filed</u>	<u>Summary of Sought Relief</u>
C.5432 (Pet.636) C.7783 (Pet.39)	4-2-71 4-2-71	Increase MRT 2 & 15 Metro. L.A. rates by amounts averaging 9%
C.5432 (Pet.637)	4-5-71	Amend definition of "Lowbed Equipment."
C.5432 (Pet.638)	4-6-71	Revise Metro. L.A. tariff rule for mixed shipments.
C.5432 (Pet.639)	4-7-71	Clarification of tariff terms.
C.5432 (Pet.640)	4-8 & 4-29-71	Revise Metro. L.A. forklift charges and make applicable statewide.
C.5432 (Pet.641)	4-15-71	Cancel L.A. "Core Area" lower temporary shipment charges.
C.5432 (Pet.642)	4-16-71	Cancel Metro. L.A. commodity rates.
C.5432 (Pet.643)	4-21 & 5-24-71	Cancel application of exception rating in ERT 1 & MRT 2 to Metro. L.A. rates; cancel application of MRT 2, Section 3 commodity rates to points within Metro. L.A.
C.5432 (Pet.644)	4-22-71	Amend MRT 2 exemption provisions; make certain exemptions not applicable within Metro. L.A.
C.5432 (Pet.647) C.7024 (Pet.27)	4-27-71 4-27-71	Amend rules in Distance Table 7 for computation of constructive mileages for less-than-truckload shipments within Metro. L.A.

Representatives for the California Manufacturers Association, Traffic Managers Conference of California and the Commission's Transportation Division staff contend that the issues raised in each of the CTA's petitions have already been considered and decided upon by the Commission in Decision No. 78264. Proponents of the motions to dismiss are of the view that the several petitions constitute an effort by CTA to move the Commission to pursue a course of action which it had just recently rejected in Decision No. 78472. It is argued that the CTA has not made any showing of any change in circumstances or other justifications authorized by law which would compel the Commission to give further consideration to the issues determined in Decision No. 78264. It is concluded, therefore, that such issues are res judicata and the CTA's petitions should be summarily dismissed.

The argument on behalf of the California Fertilizer Association is addressed to Petition 644 only. Here the CTA seeks an ex parte order eliminating, among other minimum rate exemptions, the exemption of minimum rates on fertilizers when transported within the Metropolitan Los Angeles Area. The counsel for the fertilizer association argues that in Petition 644 CTA is attempting to have the Commission authorize by ex parte order a CTA rate proposal fully considered and rejected on the basis of a public record in Decision No. 78264. It is further contended that, in the absence of any allegation in Petition 644 indicating CTA's intention to present new or additional evidence, said petition is simply defective and should be dismissed.

Petitioner correctly points out that the Commission performs quasi judicial and quasi legislative functions. In the first instance, the CTA counsel states the Commission is adjudicating or rendering a judgment on a set of facts involving past events. For example, when the Commission makes a determination with respect to controverted facts between adversary parties its decision is likened to the judgments of the courts. When, however, the

Commission concerns itself with an investigation and determination of existing facts for the future regulation of entities under its jurisdiction, such prospective functions are said to be quasi legislative.

The petitioner points out that the status of the Commission, relative to the doctrine of res judicata, has been considered by the Supreme Court of California. The following citations will suffice here:

"It is true the Commission's decisions and orders ordinarily become final and conclusive if not attacked in the manner and within the time provided by law... This is not to say, however, that such a decision is res judicata in the sense in which that doctrine is applied in the law courts... The Commission has continuing jurisdiction to rescind, alter or amend its prior orders at any time..." (Sale v. Railroad Commission (15 Cal. 2d, 612, 616).)

"The Commission is not a judicial tribunal in the strict sense, although many of its functions are quasi judicial, so that its orders are not judgments, and in particular, its findings of fact are not adjudications and facts found by it are not res judicata..." (Stratton v. Railroad Commission (186 Cal. 119, 126).)

Reference is also made in the first citation noted above to the provisions of Section 1708 of the Public Utilities Code which reads as follows:

"The Commission may at any time, upon notice to the public utility affected, and after an opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as an original order or decision. "

In its implementation of the above statutory mandate, the Commission has generally adhered to the doctrine of res judicata in the execution of its delegated quasi judicial powers. With respect to the Commission's recognition of the principle of res judicata

in matters involving the exercise of delegated legislative powers, the staff's reference to the following excerpts from Decision No. 76133 of September 3, 1969, in Application No. 51122 are apropos:

"...Rigid application of the judicial doctrines would be inappropriate in such proceedings. However, strong justification is required before the Commission contemplates reversing its decisions. Professor Davis has discussed this problem in his treatise on administrative law.

'No practical reason appears for deciding the same question twice until circumstances change.'
(2 Davis Administrative Law Treatise, Section 18.08 at 605, N.32 (1958).)

'We have followed this practice.

'It is a long established rule that when the Commission, upon a given statement of facts, reaches a conclusion regarding a certain rate, it will adhere to that conclusion in subsequent proceedings regarding the same rate, unless (a) some new facts are brought to its attention, (b) conditions have undergone a material change, or (c) it proceeded on a misconception or misapprehension.'
(Carnation Co. v. Southern Pacific
(CRC November 9, 1936) D.29255, C.3220.)"

The contending parties appear to be in general agreement over the Commission's recognition of res judicata in matters involving the exercise of its quasi judicial functions. There is, however, a difference of opinion between the moving parties and petitioner relative to the degree of emphasis that should be given to the doctrine of res judicata by the Commission when resolving issues, such as involved in this proceeding, requiring the exercise of its quasi legislative powers. In brief, the proponents of the motions to dismiss and the staff advocate the continuance of prior

Commission practice as generally set forth in Decision No. 76133. Petitioner, on the other hand, argues that, in continuing minimum rate proceedings, "...there is no question about the non-application of the doctrine of res judicata... It is foreign to it. It is incapable of being applied and its application would defeat the very purpose of the legislature in giving to the Commission the responsibility to establish and maintain reasonable rates..." (RT 36). This hard-and-fast position of the CTA is tempered by an equally emphatic contention that petitioner is not attempting, as the supporters of the motions to dismiss contend, to have Decision No. 78264 retried but, on the contrary, CTA seeks an opportunity to substantiate the following allegations:

1. Decision No. 78264 contains errors which result in unjust, unreasonable or discriminatory minimum rates for the Metropolitan Los Angeles Area.
2. Decision No. 78264 is predicated upon the use of certain data which is not a part of the underlying evidence of record.
3. Decision No. 78264 does not reflect evidence pertaining to changes in transportation costs and traffic conditions since the Metropolitan Los Angeles Area rates were established.

It is noted that ten of the CTA's petitions were filed soon after the Commission's Order (Decision No. 78472) denying rehearing of Decision No. 78264 was issued on March 23, 1971, and prior to the April 24, 1971 effective date of the Metropolitan Los Angeles Area rates established by the latter decision.^{3/} A thorough analysis of all twelve CTA petitions involved herein reveals that they may be separated into two categories. In the first group, the pleadings express a desire to present new or additional evidence for Commission consideration relative to

^{3/} Petitions 647 and 27 in Cases Nos. 5432 and 7024, respectively, were filed on April 27, 1971.

circumstances and/or conditions different from those reflected in the evidence supporting Decision No. 78264. In the second category, the petitions indicate a strong desire for an additional opportunity to present a further analysis of certain phases of the evidence of record in Decision No. 78264, wherein the CTA is of the opinion the Commission erred.

Those petitions which fall within the first group noted above should be set for public hearing and motions to dismiss such petitions should be denied. The CTA petitions classified as being within the second group described above are defective on their face. Petitioner, in the first instance, is not in a position to make a knowledgeable evaluation of the Commission's total "thinking process", insofar as its overall evaluation of the underlying evidence of record supporting Decision No. 78264 is concerned. Secondly, in the absence of any allegations in the petitions explaining CTA's intentions to submit new and meaningful evidence concerning the recently established Metropolitan Los Angeles Area rates, such petitions merely constitute an effort to circumvent the Commission's recent order (Decision No. 78472) denying rehearing of Decision No. 78264.

The Commission has determined that the motions to dismiss CTA's Petitions 636, 637, 638, 639, 640 and 647, in Case No. 5432, and Petitions 27 and 39, in Cases Nos. 7024 and 7783, respectively, should be denied and the matters set for public hearing. The Commission further concludes that motions to dismiss Petitions 641, 642, 643 and 644, in Case No. 5432, should be granted.

O R D E R

IT IS ORDERED that:

1. The motions to dismiss, filed by the California Manufacturers Association and the Traffic Managers Conference of California, in this proceeding, are hereby denied insofar as said motions pertain to the California Trucking Association Petitions 636, 637, 638, 639, 640 and 647, in Case No. 5432, and Petitions 27 and 39, in Cases Nos. 7024 and 7783, respectively.

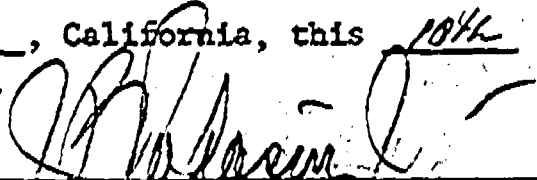
C. 5432, Pet. 636 et al HJH

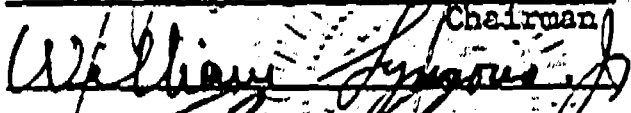
2. The motions to dismiss, filed by the aforesaid parties, are hereby granted insofar as said motions pertain to California Trucking Association Petitions 641, 642, 643 and 644, in Case No. 5432.


3. Petitions not dismissed herein shall be set for public hearing at a time and place to be subsequently determined by the Commission.


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


Dated at San Francisco, California, this 10th
day of AUGUST, 1971.



Chairman







Commissioners

APPENDIX A

LIST OF APPEARANCES

Petitioner: A. D. Poe, Attorney at Law, J. C. Kaspar and H. F. Kollmyer, for California Trucking Association.

Respondents: Otto G. Broyles, for Anaheim Truck & Transfer Co.; J. O. Ernst, for Dependable Motor Trucking; D. A. Miller, for Huskie Freightways, Inc.; Howard Abeling, for Brake Delivery Service; Alan J. Kerner, for Kerner Trucking Service, Inc.; W. S. Rozay, for Rozay's Transfer; and C. M. Alexander, for G. I. Trucking Co.

Protestants: A. L. Libra, Attorney at Law and Jess J. Butcher, for California Manufacturers Association; D. H. Marken, for Traffic Managers Conference of California; Vaughan, Paul & Lyons, by John G. Lyons, Attorney at Law, for California Fertilizer Association; Earl W. Gerloff, for Humble Oil & Refining Co.; and J. D. Kain, for Shell Oil Company.

Interested Parties: Robert Sergeant, for Lamp & Shade Institute of America; R. C. Fels, for California Lamp & Shade Association and Furniture Manufacturers Association of California; Don B. Shields and Milton W. Flack, Attorney at Law, for Highway Carriers Association; Charles H. Caterino, for The Flintkote Co.; Raymond D. Vinick, for Cannery League of California and Hunt-Wesson Foods, Inc.; William D. Grindrod, for Norris Industries; M. J. Nicolaus, for Western Motor Tariff Bureau, Inc.; James Quintrall, for Los Angeles Warehousemen's Association; Rodger E. Marken, for Traffic Associates; R. Canham, by A. A. Wright, for Standard Oil Company of California; Harold Sumerfield and William A. Watkins, for Bethlehem Steel Corp.; and C. Fred Imhof, for Industrial Asphalt, Inc.

Commission Staff: Norman Haley, for Transportation Division.