

ORIGINAL

Decision No. 86345

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investi-
gation for the purpose of con-
sidering and determining mini-
mum rates for transportation of
fresh or green fruits and vege-
tables and related items state-
wide as provided in Minimum Rate
Tariff 8 and the revisions or re-
issues thereof.

Case No. 5438
OSH 111
(Filed June 22, 1976)

ORDER DENYING MOTION
TO DISCONTINUE PROCEEDING

OSH 111 issued June 22, 1976 in Case No. 5438 reads, in part,
as follows:

"Decision No. 85826 issued May 18, 1976 in Case No. 5438 (OSH 99 and 101) established and approved effective June 19, 1976, the rates, rules, and charges set forth in Minimum Rate Tariff 8-A, designated as Appendix B of that decision, as the just, reasonable, and nondiscriminatory minimum rates and charges for transportation of fresh or green fruits and vegetables and related items.

"Decision No. 85826 delineates the principal issues raised by the parties in Case No. 5438 (OSH 99 and 101). Absent is the issue of whether transportation of fresh or green fruits and vegetables should even be subjected to rate regulation by this Commission. Growers and farmers who move their fresh or green fruits and vegetables in interstate commerce are not subject to rate regulation by the ICC, by reason of exemption; nor are they subjected to regulation by this state agency, by reason of federal preemption. By virtue of this exemption, growers and farmers, primarily from Arizona, enjoy a competitive advantage in certain California markets over California growers and farmers who are subject to minimum rate regulation by this Commission.

California producers of fresh or green fruits and vegetables, particularly those in the Coachella Valley and the Imperial Valley, have expressed concern over the disadvantage they suffer in the Los Angeles market due to competition from interstate shippers whose commodities are delivered to market at lower prices by reason of lower transportation costs assessed by exempt interstate carriers. Accordingly, a public hearing should be held in this proceeding for the receipt of evidence from any interested party opposing the exemption of transportation of fresh or green fruits and vegetables and related items from minimum rate regulation by this Commission."

The public hearing referred to in OSH 111 is scheduled for September 21 and 22, 1976 in Los Angeles.

On July 27, 1976, California Trucking Association (CTA) filed a motion to discontinue and dismiss OSH 111 and to cancel the hearing scheduled September 21 and 22, 1976 pending disposition of its motion. As grounds for discontinuance, dismissal, and stay of hearing, CTA asserts that the Commission is without authority (1) to exempt the transportation of fresh or green fruits and vegetables and related items from minimum rate regulation and (2) to proceed in the manner set forth in OSH 111.

CTA's position that the Commission has a duty to set rates for the transportation of the commodities involved is an issue which may be raised in the hearings to be scheduled in OSH 111 and our ruling on that issue properly should be deferred until the hearing process is completed.

CTA raises a further issue in its motion that the Commission has abused its investigative powers by noticing a hearing for the singular and specific purpose of receiving evidence from parties who oppose the Commission's doing what it intends to do. CTA's motion states that it appears that the majority of the Commission has made a determination to exempt the involved commodities from minimum rates, that OSH 111 has been issued to fulfill the Commission's duty to afford procedural due process of law before it orders such exemption, and that the majority of the Commission believes that

procedural due process of law is all that stands in the way of it ordering such an exemption. CTA urges that it and other parties do not and cannot know how to respond to the Commission's order.

We have considered CTA's motion and conclude that the burden of proof that the minimum rates should not be cancelled should be placed on those parties advocating retention of minimum rates. Our rationale is as follows: The federal government and many states have considered the enactment of so-called "sunset" laws under which all regulatory programs are terminated on specified dates unless extended by further legislative action. Sunset legislation requires periodic review of regulatory programs to determine whether the programs are fulfilling their original purposes and whether there continues to be a public need for the programs.

OSH 111 was issued in the spirit of the sunset legislation enacted elsewhere and because we fully believe that the legislature, in creating the statutes under which minimum rates have been established, felt that such statutes should be reviewed periodically and that those interested in maintaining the current pattern of regulation should be willing to come forward and explain why the status quo should be maintained. We do not believe that such periodic review of our regulation of rates for agricultural products conflicts with any provisions of the Highway Carriers' Act or of related provisions of the Public Utilities Act. Therefore, CTA's motion to discontinue the proceeding in OSH 111 and to cancel the hearings scheduled in that proceeding will be denied.

We recently issued Decision No. 86266 in Case No. 7857 (Petition 138) revising the minimum rates for grain, feed, hay, and oil seeds in Minimum Rate Tariff 14-A and Decision No. 85704 in Case No. 5433 (Petition 61) revising the minimum rates for livestock in Minimum Rate Tariff 3-A. The commodities covered by those tariffs also are exempt from economic regulation in interstate commerce. By separate order we will consolidate with OSH 111 in Case No. 5438




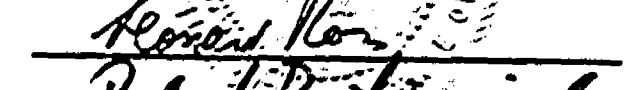

orders setting hearing in Cases Nos. 5433 and 7857 for the purpose of receiving evidence from any interested party opposing the exemption of traffic now subject to Minimum Rate Tariffs 3-A and 14-A from minimum rate regulation by this Commission.

O R D E R

IT IS ORDERED that the motion of California Trucking Association filed on July 27, 1976 in Case No. 5438 (Order Setting Hearing 111) is hereby denied.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 31st
day of AUGUST, 1976.


President




Commissioners

I will file a
written dissent.
William S. Squires, Jr.
San Francisco

I dissent
Lynn L. Sturgeon
San Francisco

C. 5438 OSH 111 -

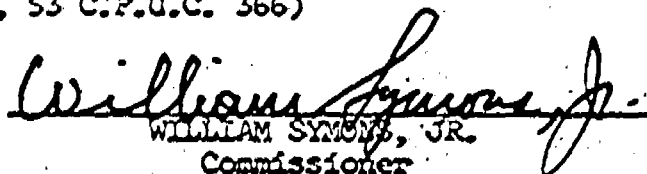
COMMISSIONER WILLIAM SYMONS, JR., Dissenting

Since when is the Public Utilities Commission entitled to convene as California's Sunset Legislature? Has Sacramento signalled San Francisco that it wants us to abolish minimum rates? If so, how and in what manner? Today's majority decision is so good at divining what the California Legislature intends, it has to rely on alleged "...sunset legislation enacted elsewhere [out-of-state]..." (p. 3). The majority ignores the replete enactments occurring in our California Public Utilities Code which establish the Legislature's framework for minimum rates. If that statutory framework were a dog, it would jump up and bite them.

In its Order Setting Hearing 111, a 3 - 2 decision, I indicated my disagreement with placing the burden upon the regulated carriers to show cause why regulation should be maintained as this Commission has previously ordered. Those Commissioners who would have state government change its regulatory method, should themselves, or with staff studies, or with outside witnesses introduce affirmative evidence to demonstrate the merit and consequence of their changes.

The truckers have a valid point here. Before the carriers undergo the burden and the expense of mounting an evidentiary defense of the state's traditional regulatory role, let us hear the legal arguments by both proponents and petitioners on the basic threshold question: Is it legally permissible for this Commission to begin wholesale abandonment of minimum rates, absent legislative consent? The last thorough investigation by this Commission concluded it was not. (Investigation into the Operation of All Carriers of Property for Compensation, 53 C.P.U.C. 366)

San Francisco, California
August 31, 1976


WILLIAM SYMONS, JR.
Commissioner