

Decision 87 10 018**ORIGINAL**

OCT 16 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application for)
 approval of amendments to the)
 Section 496 agreement between)
 participating motor common carrier)
 members and the Pacific Motor Tariff)
 Bureau, Inc., and approval of)
 Amendments to the by-laws of)
 Pacific Motor Tariff Bureau, Inc.)

Application 87-04-064
 (Filed April 30, 1987,
 amended August 17, 1987)

OPINION

Applicant Pacific Motor Tariff Bureau, Inc. (the Bureau), a California nonprofit corporation, requests approval of its amended agreement between its highway common carrier members and the Bureau and of its amended bylaws and procedures relative to the joint consideration, initiation, or establishment of rates, charges, classifications, and rules. Such approval is requested under Public Utilities (PU) Code § 496 and General Order (GO) 154. Notice of the filing of the application and the amendment appeared in the Commission's Daily Calendar of, respectively May 4, 1987 and August 20, 1987. The application and amendment show they were both served on the Attorney General of the State of California and the Antitrust Division of the U.S. Department of Justice. While no protests to the original application were received, the Commission's Transportation staff objected to the granting of the original application as filed as it allegedly did not conform with GO 154 in some respects. However, through a subsequent amendment the alleged discrepancies were corrected to the staff's satisfaction.

Procedure for Exemption From State Antitrust Laws

PU Code § 496 provides that any carrier which is a party to an agreement between or among two or more highway common carriers relating to rates, fares, classifications or changes, or

rules and regulations pertaining thereto may apply to the Commission for approval of such agreement. Subject to the three prohibitions listed in Paragraphs (d), (e), and (f) of PU Code § 496, Commission approval of such an agreement exempts the carriers party to the agreement and others from the operation of Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code relating to combinations in restraint of trade with respect to such agreement. PU Code § 496 provides that the Commission shall approve such agreement if it finds that the agreement, rules, regulations, and procedures provided for the operation thereof are fair and reasonable and are not contrary to public policy, except that the Commission shall not approve the agreement if the agreement (1) is between a highway common carrier and railroad and the agreement is not limited to matters relating to transportation under joint rates or over through routes (PU Code § 496(d); (2) concerns the pooling or division of traffic, service, or earnings, unless the Commission finds that the agreement will be in the interest of better service to the public or of economy of operation resulting in efficient utilization of fuel and will not unduly restrain competition (PU Code § 496(e); or (3) establishes a procedure for the determination of any matter through joint consideration unless the Commission finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination is arrived at through such procedure (PU Code § 496(f)).

On April 16, 1986, we issued Decision 86-04-045 in Case (C.) 10368 et al. In that opinion we adopted a reregulation program for transportation of general commodities. Continued collective ratemaking, actively supervised by the Commission, is an integral part of that program. Also, as a result of C.10368 we adopted GO 154 effective January 1, 1987 and titled "Rules Governing the Organization and Operation of Rate Bureaus and Their Common Carrier Members Engaged in Collective Ratemaking." That GO

acts as a guide for the filing of future applications with the Commission seeking approval of § 496 agreements and lists new rules which rate bureaus and their members must adopt and abide by relative to their collective ratemaking. GO 154 provided that if current rate bureau agreements and procedures did not conform to the requirements of GO 154 that they should be amended to conform and that a new application be filed seeking approval of the amended documents. The Bureau's agreements and procedures were first approved by us in Decision 83165, dated July 23, 1974. This application seeks approval of the agreements and procedures as amended to conform to GO 154.

The Section 496 Agreement and Bureau Bylaws

The bylaws provide that any motor common carrier of property operating in intrastate commerce within the state may become a member of the Bureau. Membership will be terminated for failure to pay dues after 90 days notice of such failure. The Bureau offers two types of membership: active and limited. Active members are entitled to one vote at regular and special corporate meetings as well as at rate committee meetings in which the member is involved. A limited member is not entitled to vote at corporate meetings or on rate and tariff matters, but may be a participant in a bureau tariff. The purpose of the Bureau, as stated in the bylaws, is to act as an agency through which members can accomplish, as a group activity, the joint consideration, initiation, and establishment of rates, classifications, allowances, charges, and rules and regulations pertaining thereto and to cause the publication and filing of tariffs maintained by members as a group activity.

The Section 496 agreement between and among the carrier members and the Bureau states that each carrier will initiate, change, publish and file tariffs or rates or exceptions to classification ratings, and rules, regulations or practices pertaining thereto insofar as they have application from, to, or

between points encompassed within the tariffs published by the Bureau, while the Bureau agrees it will publish or cause to be published and file tariffs or rates on behalf of its members authorized as a group activity.

The agreement or bylaws variously provide for general rate committees to be composed of all members participating in a particular tariff or related group of particular tariffs of the Bureau. Each such general rate committee shall elect from its membership a standing rate committee, consisting of not less than three members of that general rate committee. Tariff proposals for group action may be submitted by any member or shipper or receiver of freight who would be affected thereby. The proposal is submitted to the Secretary of the Bureau who then docket it on the appropriate committee's rate docket. The Secretary is to give not less than 14 days notice of any rate committee meeting and its docket. Such notice is required to be sent to all persons who request that their names be placed on the mailing list for notice of the particular committee meeting.

At any rate committee meeting, which is open to the public, 30% of the active members participating in any Bureau tariff or committee shall constitute a quorum and all matters shall be determined by the majority vote of those present who are entitled to vote. An appeal may be taken by a member from any action of a standing rate committee to the related General Rate Committee whose action, after notification to interested parties and opportunity for a hearing, is final. Such final action, including reasons therefore, is to be mailed to persons listed on the docket mailing list within 5 days. A shipper may only take an appeal from its proposal.

Minutes of each rate meeting are to be recorded and retained for a period of one year subject to inspection by the Commission staff. Any interested person may speak at a rate committee meeting. Voting by proxy is allowed but no telephone

votes will be accepted. If no appeal is taken from the action of a rate committee such action is final and if the action is one requiring a tariff change, it shall be published as soon as practicable, but not sooner than 10 days after the date of the committee meeting.

A provision is made for a modified procedure wherein at the request of the proponent of a proposal the proposal will be deemed approved unless, after notification, objection thereto is received in writing within ten days. If objection is received the proposal will be docketed as a general rate proposal and handled accordingly.

Both the bylaws and the agreement provide that every member shall have the free and unrestricted right to take independent action either before, during, or after any determination arrived at as a combined or group action. The agreement provides that the Bureau may not file a protest or complaint with the Commission against any tariff item published by or for the account of any motor carrier of property.

The agreement allows a member of the Commission or its staff to be present at any Bureau or committee meeting at which voting on a public agenda item is held.

The Bureau will make available its books and records for inspection by the Commission.

Discussion

Since only motor common carriers of property may become members of the Bureau, PU Code § 496(d) does not stand in the way of our approving the agreement and bylaws. Also, there is no provision in the agreement or bylaws for approving agreements between railroads and highway common carriers.

PU Code § 496(f) is satisfied by the agreement and bylaws as a member's independent action is safeguarded and the agreement prohibits the Bureau from protesting such independent action.

Part II, Article I, Section 1. of the bylaws provides that the purpose of the Bureau, among other things, is to act as an agency through which members can accomplish the joint consideration of "divisions" in any Bureau tariff. The word "division" is, unfortunately, susceptible to two interpretations. On the one hand, the word could refer to the division of a joint rate charged for the movement of freight over the lines of two carriers. On the other hand, it could refer to the division or pooling or traffic, service, or earnings, which require a special showing in the application before the Commission may give approval to such joint consideration. No such special showing has been made in respect to the pooling of traffic, service, or earnings.

Therefore, to prevent any confusion over the word division we will condition our approval of the application on the Bureau amending its bylaws to include a section in Part III to read as follows:

"Nothing contained in these bylaws shall permit any agreement with respect to the pooling or division of traffic, service, or earnings."

The agreement and bylaw procedures, with our suggested amendment, are fair and reasonable and not contrary to public policy. We will approve the application.

Findings of Fact

1. The Bureau and its member carriers request approval of the agreements and bylaw procedures governing collective action in considering, initiating, and establishing rates, rules, and regulations in regard to the tariffs published by the Bureau on behalf of the members.
2. The Bureau is a nonprofit California corporation.
3. No protests to the application or requests for hearing were received.

4. Membership in the Bureau is open only to persons, partnerships, or corporations engaged in the business of transporting property as a motor common carrier in California.

5. The bylaws and agreement establish the rules governing the collective ratemaking of the Bureau members.

6. The rules in the Bureau's bylaws and/or agreement which are required by GO 154 to govern the organization and operations of a rate bureau are as follows:

- a. The Bureau shall not terminate membership except for good cause, such as failure to pay dues.
- b. Bureau employees shall not have power to vote on any rate proposal.
- c. The quorum for holding meetings at which rates, rules, or classifications are discussed in committee is 30% of the California intrastate members and the majority vote of the committee is necessary for approval of any matter.
- d. Votes regarding a rate proposal shall be cast in person by the carrier representative at the committee meeting.
- e. All meetings involving introduction or discussion of proposals to establish or amend rates or charges are to be open to the public at which members of the public may express an opinion upon such a proposal.
- f. Minutes of each meeting shall be recorded, either in writing or electronically, and retained for a period of one year subject to inspection by the Commission staff.
- g. Each rate proposal is docketed and assigned a docket number.
- h. Notice of each docketed rate proposal is to be sent by first-class mail not less than 14 days before the docket meeting to all California intrastate members, interested

persons who have requested notice, and the Commission's Freight Economics Branch located in San Francisco and Los Angeles.

- i. The identity of the proponent carrier of a proposal will be divulged to the Commission staff upon request.
 - j. The Commission may attend the committee's meetings.
 - k. The Bureau may conduct executive sessions from which the public is excluded and discussion of public agenda items is excluded at such sessions, except that if a public agenda item is voted at such session (without discussion), verbatim written or electronic records of such sessions shall be made and retained and be subject to Commission inspection for a period of a year thereafter.
 - l. A member of the Commission or its staff, serving in an official capacity as observer at a meeting of the Bureau or any committee thereof, may not be excluded from an executive session at which voting on public agenda items is conducted.
 - m. The Bureau and its affiliates shall make their books and records available to the Commission staff for inspection.
7. The agreement and bylaws each provide that each member reserves the right to take free and unrestrained right to independent action.
8. The agreement prohibits the Bureau from interfering with any participating motor common carrier's right to independent action.
9. The Bureau's bylaws should include a provision which specifically forbids the making of any agreement relative to the pooling or division of traffic, service, or earnings.
10. The agreement and bylaws are fair and reasonable.

11. The agreement and bylaws, once the bylaws are amended as set out in Finding 10, are not contrary to public policy.

12. A public hearing is not necessary.

Conclusions of Law

1. The agreement and bylaws come within the purview of PU Code § 496.

2. The agreement and bylaws are not prohibited by Paragraphs (d) and (f) of PU Code § 496.

3. The Bureau should amend its bylaws and Rules of Procedure to include the following wording:

"Nothing contained in these bylaws shall permit any agreement with respect to the pooling or division of traffic, service, or earnings."

4. Upon the amendment of the Bureau's bylaws as set out in Conclusion of Law 3 the agreement and bylaws are not prohibited by Paragraph (d) of PU Code § 496 and the application should be approved.

ORDER

IT IS ORDERED that:

1. Subject to Pacific Motor Tariff Bureau, Inc. (the Bureau) amending its bylaws as provided in Conclusion of Law 3, the agreement and bylaws attached to the application as amended are approved to govern the organization and operation of the Bureau and its California intrastate members in the collective consideration, initiation, and establishment of rates, rules, and regulations of highway common carriers.

2. The Bureau shall have 60 days from the date of this order to amend its bylaws as provided in Conclusion of Law 3 and to notify the Commission by verified statement that such amendment to the bylaws has been made. Failure to make the amendment and notify the Commission as provided for herein shall result in the disapproval of the application.

This order becomes effective 30 days from today.

Dated OCT 16 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
Commissioners

Commissioner John B. Ohanian, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.

Victor Weiss
Victor Weiss, Executive Director