

Mailed

JUL 22 1988

Decision 88-07-049 July 22, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Decision 87-07-084)
 under Section 496 of the Public)
 Utilities Code, of an agreement)
 between motor common carriers and)
 between said carriers and SOUTHWEST)
 MOTOR TARIFF BUREAU and of the rules)
 and regulations and procedures of)
 SOUTHWEST MOTOR TARIFF BUREAU.)

ORIGINAL
 Application 88-03-039
 (Filed March 18, 1988)

OPINION

In Decision (D.) 87-07-084 we approved the amended agreement and amended bylaws attached to Application (A.) 86-12-016 for governing the organization and operation of the Southwest Motor Tariff Bureau (Bureau) and its California intrastate highway common carrier members in the collective consideration, initiation, and establishment of rates, rules, and regulations of highway common carriers under Public Utilities (PU) Code § 496.

By this application the carrier members of the Bureau and the Bureau seek approval of their power of attorney form, proxy form, amended application for membership form, and amended Rate and Tariff Agreement, all of which are attached to the application. Notice of filing the application appeared in the Commission's Daily Calendar of March 24, 1988. No objections to the application have been received. ✓

The proxy form, power of attorney form, and application for membership form contain nothing objectionable or contrary to PU Code § 496 or Commission General Order (GO) 154; likewise, with one exception, the Rate and Tariff Agreement (agreement). ✓

The agreement is a collective agreement between and among the carrier members and the Bureau. Paragraph 2 of Part Three of the agreement properly reserves to each carrier member the right to

take independent action. However, the second sentence of that paragraph states as follows:

"Each and every provision of this agreement and the By-Laws and rules of procedure which might otherwise be construed as a limitation or restraint of the right of any individual carrier, or group of connecting carriers, to take such independent action is hereby understood to be advisory only and not mandatory or binding."

Rule 5.13 of GO 154 provides that the agreement "shall include a provision that any member carrier shall have the free and unrestrained right to take independent action". The quoted sentence from the agreement waters down somewhat the "free and unrestrained right" to take independent action. Making the limitation of the right "advisory" would allow it to be used to intimidate a carrier to go along with the group and not take independent action. The sentence should be removed from the agreement.

Findings of Fact

1. The Bureau and member carriers request that we approve under PU Code § 496 and GO 154 their power of attorney form, proxy form, application for membership form, and Rate and Tariff Agreement.
2. In D.87-07-084 the Commission approved the Bureau's bylaws and agreement between carriers.
3. The agreement provides that any provision in the agreement or in the bylaws which might otherwise be construed as a limitation or restraint of the right to take independent action shall be considered advisory only.
4. An advisory limitation on a carrier's rights to take independent action may be used to intimidate the carrier not to take independent action.
5. A public hearing is not necessary.

Conclusions of Law

1. Approval of the agreement should be withheld until the second sentence of Paragraph 2 of Part Three of the agreement is deleted.

2. Except as provided in Conclusion of Law 1, the agreement is not prohibited by Paragraphs (d) and (f) of PU Code § 496.

3. The forms of the power of attorney, proxy, and membership application are not contrary to public policy or to PU Code § 496 or GO 154.

4. The agreement, except as provided in Conclusion of Law 1, is not contrary to public policy or to PU Code § 496 or GO 154.

5. The application should be granted conditioned on applicants striking the second sentence of Paragraph 2 of Part Three of the agreement.

ORDER

IT IS ORDERED that:

1. Subject to Southwest Motor Tariff Bureau (the Bureau) amending its Rate and Tariff Agreement as provided in Conclusion of Law 1, the Rate and Tariff Agreement attached to the application is approved.

2. The forms of the proxy, power of attorney, and membership application are approved.


3. The Bureau shall have 60 days from the date of this order to amend its Rate and Tariff Agreement as provided in Conclusion of Law 1, and to notify the Commission by verified statement that such amendment to the agreement has been made. Failure to make the amendment and notify the Commission as provided for herein shall result in the disapproval of the agreement.

This order becomes effective 30 days from today.

Dated JUL 22 1988, at San Francisco, California.

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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


Victor Wolmer, Executive Director

js

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