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**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Westcoast Motor )  
Tariff Bureau to conduct collective )  
ratemaking with only those express )  
corporations affiliated with a highway )  
common carrier or a cement carrier. )

Application 87-09-021  
(Filed September 15, 1987;  
amended June 3, 1988)

OPINION

By amended application Westcoast Motor Tariff Bureau (the Bureau), a nonprofit California corporation, and its highway common carrier members seek approval under Public Utilities (PU) Code Section 496 and Commission General Order (GO) 154 of the agreement between carriers and rules, regulations and procedures governing collective action by the Bureau's member carriers in considering, initiating, and establishing rates, rules, and regulations in tariffs published by the Bureau on behalf of the carrier members of the Bureau.<sup>1</sup> The application shows that a copy of the application and amended application were served on the Attorney General of the State of California and on the U.S. Department of Justice, Antitrust Division. Notice of filing of the application and amendment appeared in the Commission's Daily Calendar of respectively, September 21, 1987 and June 7, 1988. No protests to the application have been received.

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

1 The caption of this case, composed by the Bureau, is misleading as it refers only to express corporations. The body of the application concerns collective ratemaking between only highway common carriers.

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 Agreement Bylaws, and Procedures

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 bylaws provide that only highway common carriers may become members of the Bureau and that each member is entitled to one vote at regular and special corporate meetings as well as rate committee meetings in which the member is involved.

The rules of procedure 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 appropriate Standing Rate Committee which then docket it on the committee's rate docket. The committee 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. Bureau employees are not 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. The General Rate Committee shall accord any interested person a hearing on the appeal.

Minutes of each rate committee 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.

Both the bylaws and rules of procedure 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 highway 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.

No evidence was presented with the application respecting the pooling or division of traffic, service, or earnings or was any request for authority to consider such pooling or divisions. To prevent any confusion as to whether our approval includes any such authorization we will condition our approval on the Bureau amending its bylaws to include a section in Article VIII of its bylaws to read as follows:

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

The agreement, by laws, and procedures, as amended, with our suggested further 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 highway common carrier in California.

5. The bylaws, agreement, and rules of procedure govern the collective ratemaking of the Bureau members.

6. The rules in the agreement, bylaws, and/or procedures are consonant with those required by GO 154 to govern the organization and operations of a rate bureau.

7. The agreement, bylaws, and rules of procedure provide that each member reserves the right to take free and unrestrained right to independent action.

8. The rules of procedure prohibit 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, bylaws, and rules of procedure once the bylaws are amended as set out in Conclusion of Law 3 are fair and reasonable and are not contrary to public policy.

12. A public hearing is not necessary.

#### Conclusions of Law

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

2. The agreement, bylaws, and rules of procedure are not prohibited by paragraphs (d) and (f) of PU Code § 496.

3. The Bureau should amend its bylaws to include the following wording:

"Nothing contained in these bylaws shall permit the making of 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, bylaws, and rules of procedure are not prohibited by paragraph (d) of PU Code § 496 and the application should be approved.

ORDER

IT IS ORDERED that:

1. Subject to Westcoast Motor Tariff Bureau, Inc. (the Bureau) amending its bylaws as provided in Conclusion of Law 3, the agreement, bylaws, and rules of procedure 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 provide for herein shall result in the disapproval of the application.

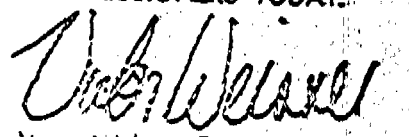
This order becomes effective 30 days from today.

Dated OCT 14 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 Weissor, Executive Director