

Decision 89 01 032 JAN 11 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
STEPHEN G. SINKS ENTERPRISES, INC.)
doing business as CALIFORNIA INTERSTATE)
TRANSPORT, INC. seeking authority to)
depart from General Order 147-A, as)
provided in Rule 2 thereof, to transfer)
publication of its tariffs to CAL-WEST)
TARIFF BUREAU, INC. from WESTCOAST)
MOTOR TARIFF BUREAU, INC. at rate)
levels of the Generally Applicable)
Common Carrier Rates.)

ORIGINAL

Application 88-11-016
(Filed November 9, 1988)

-AND-

For authority to depart from the terms)
of Sections 454, 461.5 and 491 of the)
Public utilities Code when accomplishing)
such publication.)

OPINION

By this application Stephen G. Sinks Enterprises, Inc. (applicant), doing business as California Interstate Transport, Inc., a highway common carrier, requests authority pursuant to Rule 2 of General Order (GO) 147-A (a) to transfer publication of its rates, charges and tariffs from Westcoast Motor Tariff Bureau, Inc. (Westcoast) to Cal-West Tariff Bureau, Inc. (Cal-West); (b) to depart from the provisions of Rule 7 of GO 147-A by allowing applicant to publish reduced rates and charges at levels of generally applicable common carrier rates without cost justification; and (c) to depart from the provisions of Public Utilities (PU) Code §§ 454, 461.5, and 491 as may be necessary to accomplish such publication.

In support of its request, applicant alleges generally as follows:

In January 1981 applicant became a participant and party to the tariffs of Westcoast. Prior thereto, it had adopted the Commission's tariffs at levels of rates set forth in the various transition tariffs. Rates in the Westcoast tariffs were the same as those published in the transition tariffs. On June 26, 1981 Westcoast filed Application (A.) 60688, seeking authority to publish an 11% increase in its tariffs. On August 18, 1981 The Commission issued Decision (D.) 93453, authorizing the increase. On August 21, 1981 Westcoast informed its participating carriers of the 11% increase, stating that unless a written response was received, each participant would be indicated in the appropriate tariff as being subject to the increase. Applicant elected not to take the increase, and so informed Westcoast by letter. Applicant is unable to locate its copy of the letter, dated approximately August 22, 1981. Exhibit 2 included with the application is a declaration signed by Stephen G. Sinks, affirming that the letter was sent to Westcoast, but that Sinks is unable to locate a copy of the letter in his files. Westcoast inadvertently included applicant as one of the carriers electing to take the full 11% increase.

On March 7, 1985 Westcoast filed A.85-03-019, requesting authority to publish a 15% increase in its tariffs. On June 25, 1986 the Commission issued D.86-06-067, authorizing the increase, but specifying that the increase could be published only by those carriers who had already taken the full 11% increase authorized in 1981. Applicant is now informed that Westcoast claims to have sent a written notice to its participating carriers regarding the 15% increase, stating that unless otherwise notified in writing the 15% increase would become effective for all participating carriers. Applicant has never received such notice, and has never requested this increase. Westcoast implemented the increase by filing with

the Commission its Master Increase Tariff 102-A. Applicant has never received either a notice or Master Increase Tariff from Westcoast showing that Westcoast had implemented the 15% increase.

Applicant was unaware of the 11% and 15% increases until notified by a member of the Commission's staff during an audit of applicant's records during the past several months. Applicant has never received from Westcoast, nor does it have in its copy of the Westcoast tariffs, any pages from the Master Increase Tariff 102-A showing that it had taken all or any portion of the abovementioned permissive increases. Applicant received a copy of the increase tariff from the Commission representative performing the audit. It indicates that a 26% increase was placed into effect for applicants tariffs, PUC Nos. 1 and 3. A copy of the increase tariff is included with the application as Exhibit 3. Also included with the application are Exhibits 4 and 5, copies of page 14 of the increase tariff issued September 20, 1985 and August 19, 1986, respectively. The pages show increases in applicant's rates of 11% effective September 20, 1985 and 26% effective August 19, 1986. These latter two pages were received by applicant's attorney from Westcoast on September 6, 1988. It was not until this time that applicant had ever seen or received copies of tariff pages indicating increases in its tariffs.

Applicant has experienced great difficulty in obtaining information and copies of its tariffs from Westcoast since its initial dealings with that publishing agent. Prior to and since its participation in Westcoast tariffs, applicant has in good faith applied and charged its customers the transition level rates with such increases as have been mandated by the Commission, excepting those specific rates authorized by the Commission in either rate reductions or cost justifications. It has never intended to take all or any portion of the permissive increases of 11% and 15% granted to Westcoast.

The purpose of this application is to allow applicant to participate in the tariffs of Cal-West at generally applicable common carrier rates, i.e., rates not subject to either of the above cited permissive increases. Applicant proposes to participate in Cal-West Tariffs Nos. 1, 2, 3, 4, 15, 16, 17, 19, 21, 26, 27, and 28. Applicant requests that this request be granted by ex parte action.

Notice of filing of the application appeared in the Commission's Daily Transportation Calendar of November 15, 1988. No protest to the granting of the application has been received. In the circumstances the application should be granted. A public hearing is not necessary. The effective date of this decision should be the date of signature.

Findings of Fact

1. Applicant's present common carrier rates on file with the Commission are published in Westcoast tariffs, and include a combined surcharge of 26%.

2. Applicant proposes to transfer its rate bureau participation to tariffs issued by Cal-West, at the generally applicable common carrier rate levels, i.e., at rates not subject to any permissive increases.

3. Rule 7 of GO 147-A requires that rate reductions be cost-justified. Rule 2 of GO 147-A provides for departures from the provisions of GO 147-A when reasonable and necessary.

4. Under the circumstances outlined above, it is reasonable to authorize applicant to transfer its rate bureau participation to tariffs issued by Cal-West, at the generally applicable common carrier rates, and to authorize applicant to depart from the provisions of GO 147-A to the extent necessary in order to reduce its rates under this authority.

Conclusions of Law

1. The application should be granted.
2. A public hearing is not necessary.

3. Because of the circumstances described in the body of this decision, the effective date of this order should be the date of signature.

ORDER

IT IS ORDERED that:

1. Stephen G. Sinks Enterprises, Inc. (applicant), doing business as California Interstate Transport, Inc., is authorized to transfer publication of its highway common carrier tariffs from Westcoast Motor Tariff Bureau, Inc. to Cal-West Tariff Bureau, Inc. at generally applicable common carrier rate levels, and to depart from the provisions of Rule 7 of General Order 147-A to the extent necessary to reduce its rates under this authority.

2. Tariff publications authorized to be made as a result of this decision shall be filed on or after the effective date of this order, and may be made effective not earlier than 5 days after the effective date of this order on not less than 5 days' notice to the Commission and to the public.

3. Applicant, in establishing and maintaining rates authorized by this order, is authorized to depart from the provisions of Public Utilities Code Section 461.5 to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations; such outstanding authorizations are modified only to the extent necessary to comply with this order; and schedules containing the rates published under this authority shall make reference to the prior orders authorizing long- and short-haul departures and to this order.

4. The authority granted herein shall expire if not exercised within 60 days after the effective date of this order.

5. The application is granted as set forth above.

This order is effective today.

Dated JAN 11 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. CHANIAN
Commissioners

Commissioner Stanley W. Hulett
being necessarily absent, did
not participate.

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

Victor Weisner
Victor Weisner, Executive Director