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Decision 89 09 053 SEP 7 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Frank C. Alegre Trucking, Inc.,)
 a California corporation, for)
 authority to establish cement)
 carrier rates less than the maximum)
 reasonable rate pursuant to the)
 provisions of Sections 452 and)
 452.1 of the Public Utilities Code)
 and General Order 150-A.)

Application No. 87-12-052
 (Filed December 28, 1987)

ORDER DENYING REHEARING
AND MODIFYING D.89-04-083

FRANK C. ALEGRE TRUCKING, INC. (Alegre) has filed an application for rehearing of Decision (D.) 89-04-083. Les Calkins Trucking, Inc. (Calkins) and Frank E. Hicks Trucking, Inc. (Hicks), and Foothill Bulk Transport (Foothill) have filed responses to Alegre's application. We have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has not been shown. However, the application for rehearing has demonstrated that D.89-04-083 was unclear in some aspects. Therefore,

IT IS ORDERED that:

1. Rehearing of D.89-04-083 is hereby denied.
2. D.89-04-083 is hereby modified as follows:
 - a) The first three full sentences of page 18 are deleted and the following language is substituted:

Appendix B to GO 150-A seems to contemplate such an interpretation in the first part of the sample form entitled "Summary of Revenues and Expenses." This form clearly indicates that the mileage figure used to calculate revenue is to include all empty miles, and specifically the mileage to and from the terminal.

GO 150, which governed the applicable calculations prior to the enactment of AB 4033, contained similar provisions. Thus it would appear that this language in GO 150-A is not in fact a response to AB 4033. However, under GO 150, stem mileage was not considered separately for each trip. Rather, an average cost factor for stem mileage was derived from the actual costs incurred by a sample of carriers. Between 50 and 100 carriers were used for each average factor calculation. As there has been no change in the language of the General Order since the enactment of AB 4033, there is no reason to abandon the inclusion of stem mileage in the calculation of costs, in determining whether or not a proposed rate is compensatory.

b) The first full paragraph of page 18 of D.89-04-083 is amended to read:

The purpose of GO 150-A is to interpret the changes in the statutes instituted by the passage of AB 4033. That bill's addition of §452.1 to the Code clearly indicates a legislative intent to require that all rates lower than the maximum reasonable rate be proven fully compensatory. It is a basic principle of statutory construction that a statute is not to be interpreted in such a way as to make it meaningless. Alegre's position on the stem mileage issue would make §452.1's enactment meaningless; accordingly, we must reject Alegre's argument. We conclude that compensatory rates must include consideration of stem miles.

c) Conclusion of Law No. 4 is amended to read:

Alegre's application for authority to establish cement rates at less than the maximum reasonable rate does not meet the requirements of PU Sections 452 and 452.1, in that it does not show that the proposed rates are justified by transportation conditions, or that they are fully compensatory. The application should therefore be denied.

This order is effective today.

Dated SEP 7 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. SOKERY
Commissioners

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

Wesley Franklin

WESLEY FRANKLIN, Acting Executive Director

WB