

Decision 90 05 022 MAY 04 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application for)
approval under Section 496 of the)
Public Utilities Code, of an)
agreement between motor common)
carriers and between said carriers)
and TRUCKLOAD MOTOR BUREAU and of)
the rules and regulations and)
procedures of TRUCKLOAD MOTOR TARIFF)
BUREAU.)

ORIGINAL

Application 90-02-005
(Filed February 2, 1990)

O P I N I O N

Applicants Truckload Motor Tariff Bureau (the Bureau) and the highway common carrier members of the Bureau seek approval under Public Utilities (PU) Code § 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. The application file shows that copies of the application were served on the Attorney General of the State of California and on the U.S. Department of Justice Antitrust Division. Notice of the filing of the application was published in the Commission's Daily Calendar and in the Commission's Daily Transportation Calendar. No protests to the application or requests for hearing 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 carriers relating to rates, fares, classifications, or charges 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 in 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 a 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 decision 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 entitled "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 applications with the Commission seeking approval of § 496 agreements and lists rules which rate bureaus and their members must adopt and abide by relative to their collective ratemaking.

The Bureau

The Bureau is a California nonprofit mutual benefit corporation organized for the purpose of operating a motor carrier tariff bureau. It currently has four highway common carrier members operating in intrastate commerce in California who are signatory to the agreement for which approval is sought. Membership in the Bureau is limited to highway common carriers of property by motor vehicle.

Membership in the Bureau is open to all persons, firms, or corporations engaged in business as common carriers, operating between points in California. The Bureau will not terminate membership except for good cause, such as failure to pay dues or violation of the Bureau's bylaws. The Bureau is designed to meet the needs of the smaller carriers who lack the means or the skills to file their own tariffs and other related filing with the California Public Utilities Commission of the State of California.

The method of operation of the Bureau is set forth in its bylaws which are included in the formal file as Exhibit 1.

The management of the Bureau is vested in a three-member Board of Directors, elected by its members. Those three members also serve as the Directors, elected by its members. Those three members also serve as the Bureau's president (Chief Tariff Officer), vice president, and secretary-treasurer.

The § 496 Agreement and Procedures

The agreement between the members provides that each member will subscribe to the rates, classifications, allowances,

and rules and regulations of the Bureau.¹ The Bureau's bylaws contain the rules, regulations, and procedures governing collective ratemaking and publications of tariffs of the Bureau's members. Under the bylaws, proposals for group action may be submitted by any member of the corporation, or any shipper or receiver of freight who would be affected by the proposal. Upon receipt of the proposal, the secretary of the Bureau is to docket the proposal, assign it a docket number, acknowledge its receipt in writing, and set the proposal for consideration at a rate meeting or, where requested, pursuant to modified procedure. The secretary will set a meeting for consideration of the proposal within 30 days of his receipt thereof and shall give notice of such meeting to all interested members, other parties, the Commission offices in both San Francisco and Los Angeles by first class mail at least 14 days prior to the meeting. Thirty percent of the members participating in the affected bureau tariff shall constitute a quorum at the rate meeting. A majority of those members present and in good standing entitled to vote will be required to approve the proposal. Bureau employees do not have the power to vote on any rate proposal.

Any person may attend the rate meeting and express opinions for or against the proposal. 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 staff of the Commission. Commission staff are invited to attend the Bureau meetings. Upon completion of all discussion, the members will vote on whether or not to accept the proposal. All votes regarding a rate proposal shall be cast in person by the individual (or alternate) authorized by a member carrier.

¹ The agreement also provides that each carrier shall have the free and unrestrained right to take independent action.

The Bureau may conduct executive sessions from time to time with the public being excluded; however, discussion of public agenda items during such sessions shall be prohibited. This policy shall not be construed to prevent the voting (without discussion) upon public agenda items during executive sessions provided that verbatim written or electronic records of executive sessions at which voting on public agenda items is conducted shall be made and retained, subject to inspection by the Commission staff, for a period of one year thereafter. A member of the Commission or its staff, serving in an official capacity as an observer at a meeting of the Bureau or any committee, may not be excluded from an executive session at which voting on public agenda items is conducted.

The bylaws provide that each member shall be free to take independent action at any time.

The bylaws prohibit the Bureau from protesting any independent action of any of its members.

The bylaws provide that nothing contained therein shall permit any agreement with respect to the pooling or division of traffic, service, or earnings.

Discussion

The agreement and procedures set out in the bylaws comport with Rules 5.1 through 5.18 of GO 154.

PU Code § 496(d) does not stand in the way of our approving the agreement as, according to the bylaws, only highway common carriers can become members. Also, there are no provisions for approving agreements between railroads and highway common carriers.

PU Code § 496(e) is satisfied, because the bylaws provide that nothing contained therein shall permit any agreement with respect to the pooling or division of traffic, service, or earnings.

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

The agreement and procedure are fair and reasonable and not contrary to public policy.

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 establish the rules governing the collective ratemaking of the Bureau members.

6. The rules in the Bureau's bylaws 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 Economic and Analysis 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 Bureau's bylaws prohibit the Bureau from interfering with any participating motor common carrier's right to independent action.

9. The agreement and bylaws are fair and reasonable.

10. The agreement and bylaws are not contrary to public policy.

11. 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), (e), and (f) of PU Code § 496.

3. The application should be granted.

4. Since there has been no protest to the application, this order should be effective today.

O R D E R

IT IS ORDERED that the agreement attached to the application of Truckload Motor Tariff Bureau, and the bylaws set forth in Exhibit 1, are approved to govern the organization and

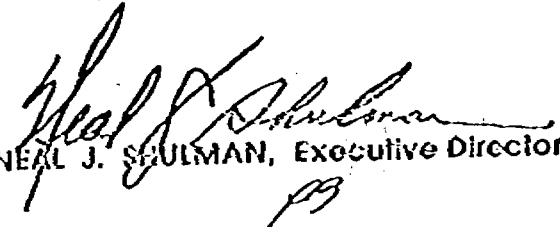
operation of the Bureau and its future members in the collective consideration, initiation, and establishment of rates, rules, and regulations of highway common carriers.

This order is effective today.

Dated MAY 04 1990, at San Francisco, California.

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

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


NEAL J. SCHULMAN, Executive Director