

Decision 90 05 042 MAY 4 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Regulation of )  
 General Freight Transportation )  
 by Truck. )

I.88-08-046  
 (Filed August 24, 1988)

O P I N I O N

There are several matters before the Commission in this proceeding which this decision will address.

Petitions for Extension of Time to Comply

In Decision (D.) 89-10-039 as modified by D.90-02-021, the Commission ordered every less-than-truckload (LTL) carrier with 1988 California intrastate gross annual revenues exceeding \$10 million to phase out shipper-specific tariffs and rates including write-in tariffs, over a 90-day period beginning March 15, 1990. These larger carriers were to bring such rates and tariffs into conformance over a period of 30, 60, and 90 days from March 15, 1990 (one-third of rates and tariffs for each period) on a schedule determined by the Commission's Transportation Division. All other carriers were ordered to bring such rates and tariffs into conformance within 120 days from March 15, 1990.

Four carriers (Petitioners) have filed petitions for extension of time to comply with that portion of the order noted above:

Viking Freight System, Inc. (3/6/90)

Con-Way Western Express, Inc. (3/14/90)

Willig Freight Lines (3/15/90)

Smizer Acquisition Corporation (3/23/90)

Petitioners claim it will be costly if not impossible to comply with the Commission's order by the deadline of June 13, 1990. We have reviewed each of the pleadings and have determined that an

extension of time is warranted, but only for 90 days, that is until September 13, 1990.

We would like to put carriers on notice that we are not interested in entertaining any further requests for delay in the implementation of this aspect of the program. We believe that this revised schedule should be fully adequate.

Viking Write-in Tariffs Subject to  
Cancellation April 16

Viking Freight System, Inc.'s (Viking) Tariffs 211, 220, and 250 require shippers desiring participation in the tariffs to make written notification to Viking's Pricing Department. Participation will be effective upon the date of receipt of the written request. This provision violates D.89-10-039 as modified by D.90-02-021, which prohibits write-in tariffs.

In an effort to help carriers to conform to the Commission's schedule the Transportation Division staff asked carriers to give the staff a preference as to the scheduling of the cancellation or amending of their tariffs. A schedule was sent to Viking and at its request was partially revised to conform to the time limits imposed by the decision. Viking was scheduled to amend or cancel the three tariffs by the April 16, 1990 deadline. Viking has cancelled Tariffs 211 and 250 which contained write-in items. Tariff 211 was cancelled by Supplement 3 effective April 20. However, Tariff 250 was cancelled by Supplement 3, which will not be effective until June 13, 1990. Viking failed to amend or cancel its Tariff 220 by April 16 and should be ordered to do so.

Motion for Clarification of Scope of  
Phase I of Further Hearings in I.88-08-046

On April 24, 1990, Daniel W. Baker, counsel for the Ad Hoc Carriers Committee, filed a motion in which he seeks a response to the following question:

"Will Phase I of the Further Hearings in Case I.88-08-046 be limited to the transportation of 'general freight' whose rates are regulated by the Commission's General Order 147-B?"

Baker posed precisely the same question to the administrative law judge (ALJ) during the April 2, 1990 prehearing conference in Phase I of further hearings in I.88-08-046. Baker also raised similar questions in his April 6, 1990 letter to the ALJ.

During the prehearing conference, the ALJ confirmed that further hearings in Phase I will be limited to the transportation of general freight covered by General Order 147-B.

The portion of the transcript dealing with this matter is cited below:

"MR. BAKER: Then, is it your ruling that this is confined to general freight as covered by General Order 147B?"

"ALJ GARDE: Yes.

"MR. BAKER: Thank you. That means specifically that fresh fruits and vegetables from fields are not included in this proceeding.

"ALJ GARDE: That is correct." (Tr. Vol. PHC 3, p. 49.)

We strongly disapprove of Baker's repeatedly asking the same question; it adds nothing to the proceeding except further delay. We affirm the ALJ's ruling; accordingly, the motion is denied.

Motions of CTA Concerning Hearings  
Scheduled for Phases I and II

On March 28, 1990, California Trucking Association (CTA) moved to suspend scheduled rehearings in this proceeding pending litigation of D.90-02-021. CTA amended that motion on April 10, 1990 to request that the order of hearings scheduled for Phases I and II of this proceeding be reversed. It is not clear from CTA's April 10 motion whether CTA still requests suspension of rehearings pending litigation. In any event, delaying the hearings until pending litigation is completed could severely delay the reforms we

have ordered. We accept the scheduling as ordered by the assigned ALJ and approved by the assigned Commissioner. Accordingly, the motions filed by CTA on March 28 and April 10, 1990 are denied.

Findings of Fact

1. D.89-10-039 as modified by D.90-02-021 requires every LTL carrier with 1988 California intrastate gross annual revenues exceeding \$10 million to phase out shipper-specific tariffs and rates including write-in tariffs, over a 90-day period beginning March 15, 1990,.

2. Con-Way Western Express, Inc., Willig Freight Lines, and Smizer Acquisition Corporation request extension of time to comply with the requirement noted in Finding of Fact 1.

3. Viking has cancelled its Tariff 211 containing write-in items.

4. Viking has scheduled its Tariff 250 to be cancelled June 13, 1990 rather than the scheduled date of April 16, 1990.

5. Viking Tariffs 220 and 250 contain items which are prohibited by D.89-10-039 as modified by D.90-02-021.

6. Viking has been notified and has had the opportunity to give the Commission input to the schedule to correct the tariffs.

7. The Director of Transportation scheduled Items 17, 25, 4000, and 5000 of Tariff 220 to be corrected or amended by April 16, 1990.

8. Viking has not cancelled or amended its write-in rates in Tariff 220 which had an April 16, 1990 deadline.

Conclusions of Law

1. Petitioners should be granted a 90 day extension of time to comply with the schedule to phase out shipper-specific tariffs and rates which include write-in tariffs.

2. Viking's Tariffs 220 and 250 contain write-in items and should be cancelled or amended to apply to all customers.

3. Because it is important that affected parties be notified of our decisions herein as soon as possible, this order should be effective today.

ORDER

IT IS ORDERED that:

1. The petitions of Viking Freight System, Inc., Con-Way Express, Inc., Willig Freight Lines, and Smizer Acquisition Corporation for an extension of time to comply with the phase-out requirements of D.89-10-039 as modified by D.90-02-021 are granted but only to the extent specified in Appendix A. They are denied in all other respects.

2. The schedules for Viking Freight System Inc., Con-Way Express, Inc., Willig Freight Lines, and Smizer Acquisition Corporation to phase our shipper-specific tariffs and rates which include write-in tariffs, previously established by the Director of the Commission's Transportation Division, are amended by Appendix A, attached.

3. Viking Freight System, Inc., shall cancel Items 17, 25, 4000, and 5000 in its Tariff 220, and shall cancel Tariff 250 within 10 days of the effective date of this order.

4. The Executive Director shall cause a certified copy of this decision to be served personally on Viking Freight System, Inc., Con-way Western Express, Inc., Willig Freight Lines, Smizer Acquisition Corporation, Daniel W. Baker, and California Trucking Association.

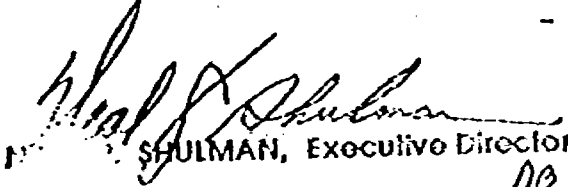
This order is effective today.

Dated     MAY 4 1990    , at San Francisco, California.

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

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

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SHULMAN, Executive Director  
PB

APPENDIX A

Revised 5-4-90

TARIFF WITH WRITE-IN PROVISIONS  
SCHEDULED TO BE CANCELLED

DUE DATE	TARIFF NUMBER	ITEM NUMBER
VIKING FREIGHT SYSTEMS		CAL T-84649
05/23/90	251	
05/23/90	252	
06/29/90	613	
06/29/90	626	
08/09/90	200	
08/09/90	202	
09/13/90	205	
09/13/90	207	
09/13/90	604	
CON-WAY WESTERN EXPRESS, INC.		CAL T-140218
05/23/90	101	112
05/23/90	101	113
05/23/90	101	114
05/23/90	101	115
05/23/90	101	116
05/23/90	101	117
05/23/90	101	118
05/23/90	101	119
06/29/90	101	120
06/29/90	101	121
06/29/90	101	122
06/29/90	101	123
06/29/90	101	124
06/29/90	101	125
06/29/90	101	126
06/29/90	101	127

DUE DATE	TARIFF NUMBER	ITEM NUMBER
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Con-Way Western Express, Inc.

08/09/90	101	128
08/09/90	101	129
08/09/90	101	130
08/09/90	101	131
08/09/90	101	132
08/09/90	101	133
08/09/90	101	134
08/09/90	101	135
08/09/90	101	136
09/13/90	101	137
09/13/90	101	138
09/13/90	101	139
09/13/90	101	140
09/13/90	101	141
09/13/90	101	142
09/13/90	101	143
09/13/90	101	144
09/13/90	101	145

WILLIG FREIGHT LINES

CAL T-11501

05/23/90	200	975
06/29/90	6	30, 300
08/09/90	6	301, 1305, 1345
09/13/90	5-A	2771, 6965

DUE DATE	TARIFF NUMBER	ITEM NUMBER
SMISER FREIGHT SERVICE		CAL T-158246
05/23/90	100	230
05/23/90	100	240
05/23/90	100	250
06/29/90	100	260
06/29/90	100	320
06/29/90	100	330
08/09/90	100	270
08/09/90	100	275
08/09/90	100	280
09/13/90	100	285
09/13/90	100	340
09/13/90	100	350

(END APPENDIX A)