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Decision 90-09-086 September 25, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
California Trucking Association.)
Resolutions TL-18374, TL-18380-A, and)
TL-18380-B Authorizing Certain)
Highway Common Carriers, Passenger)
Stage Corporations, Vessel Common)
Carriers to make Tariff and Contract)
Filings in Response to Major Fuel)
Cost Changes Due to the Crisis in the)
Middle East)

Application 90-09-003
(Filed September 6, 1990)

ORIGINAL

In the Matter of the Application of)
Western Motor Tariff Bureau, Inc.,)
Agent (WMT) requesting extension of)
the Temporary Emergency Relief)
granted in the Commission's)
Resolutions TL-18374, TL-18380-A, and)
TL-18380-B, authorizing Common)
Carriers, subject to General Order)
147-B, Certain Highway Common)
Carriers and Cement Common Carriers)
to make tariff filings in response to)
Major Fuel Cost Changes due to the)
crisis in the Middle East,)

Application 90-09-005
(Filed September 4, 1990)

and)
for authority to depart from the)
provisions of Sections 454, 454.1,)
460, 461.5 and 491 of the Public)
Utilities Code of the State of)
California to the extent necessary to)
permit publication of the Emergency)
Fuel Surcharge Provisions)

INTERIM OPINION

In response to recent events in the Middle East and rising oil prices, the Commission ordered, in Resolution TL-18374 on August 8, 1990, a revised "zone of reasonableness" for highway common carriers subject to General Order (G.O.) 147-B. Similar emergency relief was later granted to highway common carriers not subject to G.O. 147-B, passenger stage corporations, vessel common

carriers and highway contract carriers, in Resolution TL-18380-A and also to cement common carriers in Resolution TL-18380-B. Tariff filings and contract amendments authorized by the above resolutions expire on September 30, 1990, absent further order by this Commission.

On September 6, 1990, California Trucking Association (CTA) filed Application 90-09-003 seeking to rescind the September 30, 1990 expiration date contained in the Commission's Resolutions TL-18374, TL-18380-A, and TL-18380-B. CTA requested that carriers authorized to file fuel surcharges under these resolutions be allowed to continue to file and justify rate increases on one day's notice to offset higher fuel costs for the duration of the current hostile occupation in the Middle East. In addition, CTA requested that the Commission remove the 10% rate increase limitation for rates justified by higher fuel costs.

Similarly, on September 4, 1990, Western Motor Tariff Bureau, Inc., Agent, (WMT), filed Application 90-09-005 on behalf of common carriers for whom they publish tariffs. WMT sought to extend the temporary emergency relief granted in the Commission's Resolutions TL-18347, TL-18380-A, and TL-18380-B to make tariff or contract filings in response to major fuel cost changes due to the crisis in the Middle East. Applicant proposes to eliminate the expiration date of September 30, 1990 and allow fuel surcharge tariff filings to remain in effect until the crisis is resolved and fuel prices have stabilized.

Applicant also sought exemption from the requirement of Commission approval of rate increases in Sections 454 and 454.1 of the Public Utilities (P.U.) Code to allow other than cement highway common carriers, and cement highway common carriers, respectively, to publish independent carrier increases. Additionally, exemption is sought from the notice requirements of Section 491 of the P.U. Code to allow carriers to publish the increased rate provisions on one day's notice. Further, exemption is sought from the long- and short-haul provisions of Sections 460 and 461.5 of

the P.U. Code to allow carriers to adjust long- and short-haul departures now maintained under outstanding authorizations.

First, we will address the exemption requested from P.U. Code Sections 454 and 454.1 (exemption from rate increase provisions) to make fuel cost increase filings, and from P.U. Code Section 491 (exemption from notice requirements) to make those fuel cost increase filings effective on one day's notice. Consistent with our prior Resolutions, we will grant departure from the otherwise applicable notice requirements of Section 491 of the P.U. Code. Also, this decision extends the authority for carriers to recover fuel cost increases related to the Middle East crisis by making an appropriate filing under the applicable Resolution. Since the provisions of our Resolutions are to be continued in effect, it is not necessary to seek exemption from the rate increase provisions of P.U. Code Sections 454 or 454.1 and none will be granted.¹

Second, the necessary exemption from Sections 460 and 461.5 of the P.U. Code (exemption from long- and short-haul provisions) will be granted to carriers filing under provisions of this decision to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations.

Applicants have requested ex parte consideration in their filings. Notice of the filing of the applications from CTA and WMT appeared in the Commission's Daily Transportation Calendar on September 11 and 13, respectively. The applications were filed pursuant to ordering paragraph 8 of TL-18380-A and ordering paragraph 6 of TL-18380-B. No protest to granting the relief requested in these applications has been received.

Further, we understand that the Interstate Commerce Commission (I.C.C.) has amended its Special Tariff Docket Authority

¹ In any case, the Commission is not authorized to grant such exemptions under Section 454, except as provided in Sections 454.1 and 455.

No. 90-110 (authorizing carriers to file fuel-related increases on short notice as a result of the Persian Gulf crisis) by deleting the requirement that tariff publications filed thereunder contain an expiration date.

In view of the circumstances described in these applications, the continuing crisis in the Middle East with its consequent fuel price increases, and the action taken by the I.C.C., we believe that good cause exists to grant relief sought by applicants to the extent set forth in this order. Therefore, we will continue in effect until further order of the Commission the temporary authority granted in Resolutions TL-18374, TL-18380-A, and TL-18380-B.

Resolutions TL-18374, TL-18380-A, and TL-18380-B authorized carriers to file tariffs and contract amendments with an expiration date no later than September 30, 1990. Because we are issuing this decision on September 25, 1990, carriers that wish to continue charging rates otherwise set to expire on September 30, 1990, may not have sufficient time, prior to September 30, 1990, to make tariff and or contract filings to extend their current surcharge rates. Therefore, we will direct common carriers of all classes subject to the above resolutions to continue charging until October 5, 1990 the surcharged tariff rates that, pursuant to the above resolutions, would otherwise expire on September 30, 1990, even though their filed tariff pages contain a September 30, 1990 expiration date. However, common carriers that nevertheless wish their surcharges to expire before October 5, 1990, may make a filing with the Commission to do so effective on one day's notice. Similarly, common carriers wishing to increase or otherwise change their surcharges before October 5, 1990, may make a tariff filing in accordance with the provisions of this decision. To deal with the short notice, we will also authorize highway contract carriers to continue charging, with the continuing consent of the shipper, the rates contained in contract amendments filed under the authority of Resolution TL 18380-A until October 5, 1990, even

though such contract amendments are set to expire on September 30, 1990.

Any carrier wishing to extend its existing surcharge beyond October 5, 1990 must file new tariff pages or surcharge supplements and contract amendments to extend its existing surcharges without a change in rate level. However, the justification required by Resolutions TL-18374, TL-18380-A, and TL-18380-B should not be required again for tariff and contract filings which only extend, without a change in rate level, the application of surcharges already filed pursuant to these resolutions. New tariff pages or surcharge supplements and contract amendments need not contain an expiration date. New surcharges and those containing changed rate levels will continue to require appropriate justification as specified in the applicable resolution.

We will set a public hearing in this matter for Monday, October 15, 1990, at 9:00 a.m., in the Commission's courtroom, San Francisco, to further consider these applications along with the formal filings received from the following parties seeking similar relief:

Application 90-09-023 Pacific Motor Tariff Bureau, Inc.
90-09-028 Frank C. Alegre Trucking, Inc.
90-09-029 United Parcel Service, Inc.
90-09-030 Willig Freight Lines
90-09-031 Di Salvo Trucking Co.

Parties of interest in these matters will be given the opportunity to present any evidence they believe relevant to the need for any extension or termination of, or any changes to, this program to provide relief from the fuel cost increases caused by the current Middle East crisis.

Parties should not interpret this action we take today as an indicator of how we will treat rate increase matters of a more routine nature in the future. We take this action only because of the ongoing Middle East crisis situation which continues to cause

unforeseen and significant increases in fuel costs.

Findings of Fact

1. Recent events in the Middle East continue to result in precipitous and unforeseeable fuel price increases associated with abnormal market conditions.

2. Applicants state that carriers they represent continue to pay significantly higher fuel prices.

3. Without extending additional authority, a number of carriers may be unable to continue to recover cost increases due to this crisis.

Conclusions of Law

1. All carriers authorized to make tariff filings and contract amendments under the provisions of Resolutions TL-18374, TL-18380-A, and TL-18380-B should be permitted to continue to do so until further order of the Commission due to the continued rise in fuel costs.

2. It would serve no useful purpose to require carriers who refile surcharges pursuant to the above Resolutions to rejustify those filings for the purpose of extending the expiration date only. New or changed surcharge rate levels will require appropriate justification.

3. Because carriers may need to respond promptly to changes in fuel costs, as outlined in our Findings of Fact above, there is good cause to continue to authorize tariff and contract filings on one day's notice.

4. The temporary tariff and contract filings authorized by this order are justified.

5. A public hearing in this matter is set for Monday, October 15, 1990.

6. Contract and tariff filings otherwise scheduled to expire on September 30, 1990, pursuant to Resolutions TL-18374, TL-18374, TL-18380-A, and TL-18380-B, should be extended through October 5, 1990, subject to the conditions discussed above, in order to allow adequate time for further filings.

INTERIM ORDER

IT IS ORDERED that:

1. Ordering paragraphs 1 and 4 of Resolution TL-18374 are amended to remain in effect until further order of the Commission.
2. Ordering paragraphs 1, 2, 4, and 6 of Resolution TL-18380-A are amended to remain in effect until further order of the Commission.
3. Ordering paragraph 8 of Resolution TL-18380-A is deleted.
4. Ordering paragraphs 1 and 4 of Resolution TL-18380-B are amended to remain in effect until further order of the Commission.
5. Ordering paragraph 6 of Resolution TL-18380-A is deleted.
6. Common carriers of all classes subject to Resolutions TL-18374, TL-18380-B, shall continue charging, until October 5, 1990 the surcharged tariff rates that, pursuant to the above resolutions, would otherwise expire on September 30, 1990, even though their filed tariff pages contain a September 30, 1990 expiration date. However, common carriers that nevertheless wish their surcharges to expire before October 5, 1990, may make a filing with the Commission to do so effective on one day's notice. Similarly, common carriers wishing to increase or otherwise change their surcharges before October 5, 1990, may make a tariff filing in accordance with the other provisions of this decision.
7. Highway contract carriers are authorized to continue charging, with the continuing consent of the shipper, the rates contained in contract amendments filed under the authority of Resolution TL-18380-A until October 5, 1990, even though such contract amendments are set to expire on September 30, 1990.

8. Carriers wishing to extend their existing surcharges beyond October 5, 1990 with an unchanged rate level must file new tariff pages or surcharge supplements or contract amendments.

9. The justification required by ordering paragraph 2 of Resolution TL-18374, ordering paragraph 3 of Resolution TL-18380-A and ordering paragraph 2 of Resolution TL-18380-B, is not required for tariff and contract filings which only extend the application of surcharges already filed pursuant to those Resolutions. New or changed surcharge rate levels will continue to require appropriate justification as specified in the applicable Resolution.

10. Tariff filings and contract amendments pursuant to this order may be made effective upon one day's notice (one day after filing with the Commission). An expiration date is not required to be shown on the filings. For good cause shown, exemption from Sections 460 and 461.5 of the P.U. Code is granted to carriers filing under provisions of this decision to the extent necessary to adjust long- and short-haul departures now maintained under outstanding authorizations. Exemption is also granted to carriers to depart from the notice requirements of Section 491 of the P.U. Code.

11. Any tariff filings and contract amendments authorized pursuant to this order are temporary and may only remain in effect until further order of the Commission.

12. A public hearing in this matter is set for Monday, October 15, 1990, at 9:00 a.m., before Administrative Law Judge Anand Garde, in the Commission's courtroom, 505 Van Ness Avenue, San Francisco, California at which time all parties may appear and be heard.

13. This decision does not authorize any collective ratemaking or other collective action pursuant to P.U. Code Section 496. However, independent carrier action within rate bureaus is not prohibited. Individual carriers may use rate bureaus as their publishing agent for individual tariff filings pursuant to this order.

14. In all other respects, Resolutions TL-18374, TL-18380-A, and TL-18380-B shall remain in full force and effect.

15. The Executive Director shall serve a copy of this decision on all highway common carriers, all passenger stage corporations, all vessel common carriers, all highway contract carriers, and all cement common carriers.

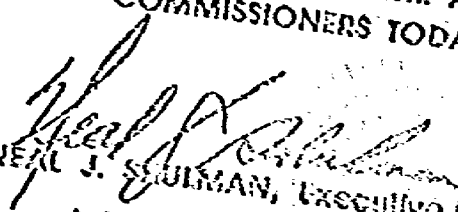
This order is effective today.

Dated September 25, 1990, at San Francisco, California.

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

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SULMAN, Executive Director
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