

L/dp

Decision 90-11-032 November 9, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion into the operations, rates,)
and practices of All Counties)
Express, Inc., a California corpora-)
tion; and Cascade Steel Rolling)
Mills, Inc., an Oregon corporation;)
Gary Metals, Inc., a California)
corporation; and Pitcal, Inc.)
and Posco-West Corp., Delaware)
corporations, doing business jointly)
as USS-Posco Industries.)

ORIGINAL

I.88-08-047
(Filed August 24, 1988)

ORDER DENYING REHEARING

CASCADE STEEL ROLLING MILLS, INC. (Cascade) and All Counties Express, Inc. (ACE) have filed applications for rehearing of Decision (D.) 90-09-058. We have considered all the allegations of error in the applications and are of the opinion that good cause for rehearing has not been shown in either application, and we will deny both applications.

We note in so denying that both parties attempted to argue that section 3671 of the California Public Utilities Code¹ contains a method whereby the ordinary statute of limitations in such cases may be shortened. Section 3671 provides for a three-year statute of limitations on suits by highway permit carriers to collect charges from customers who refuse to pay. It further provides that:

Whenever the Commission institutes an investigation of unlawful undercharges by a highway permit carrier, the institution of the investigation by the Commission shall toll the three-year period specified in this

1. Unless otherwise specified, all further statutory references are to the California Public Utilities Code.

section until the Commission has rendered its initial decision on the matter. The Commission shall render its final decision within two years of the date of the order instituting the investigation.

Code § 3671. Cascade argues, and ACE joins the argument, that because we issued D.90-09-058 two years, one month, and four days after the Order Instituting Investigation was filed, "section 3671 presents an absolute bar to A.C.E.'s collection of those alleged undercharges." Application, p. 2.

The same allegation was attempted in Investigation (I.)83-11-003, in a similar investigation against Russell V. Wilson. Wilson moved to dismiss the investigation for alleged violation of § 3671, but the Commission denied the motion, saying:

The two-year period to render a decision is not jurisdictional, a violation of which deprives the Commission of authority to decide the matter, but procedural, which causes the three-year statute of limitations on commencing actions to collect charges to be tolled for two years. The effect of the two-year decision period in this investigation was to toll the three-year statute between November 22, 1983, when the OII was issued and November 22, 1985 when the time to render a final decision (for tolling purposes) ended and the three-year statute recommenced. ... Not only does the statute refer to an OII tolling the limitation period but our interpretation is comparable to the tolling of the limitation statute when appeals are taken or arbitrations are pursued.

D.86-11-061, citing CCP §§ 583.310 - 360; *County of Santa Clara v. Hayes Co.* (1972) 43 Cal.2d 615; *Campbell v. Graham-Armstrong* (1980) 9 Cal.3d 482; *Bergin v. Portman* (1983) 141 Cal.App. 3d 23 on the parallels in the courts; see also *Re Russell V. Wilson*, 22 CPUC 2d 310, headnote 3. Nothing in either application contravenes the interpretation in *Wilson*; thus, this allegation does not show good cause for rehearing.

Therefore,
IT IS ORDERED that rehearing of D.90-09-058 is
hereby denied.

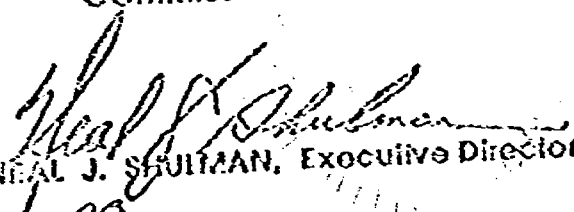
This order is effective today.

Dated November 9, 1990, at San Francisco,
California.

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

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

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


NEAL J. SMITAN, Executive Director