

L/jmc

Decision 91-08-038 August 7, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own)
motion to evaluate proposed General)
Order 143-A, governing safety)
standards for light rail transit.)

ORIGINAL

I.89-07-003
(Filed July 6, 1989)

ORDER GRANTING LIMITED REHEARING

AMALGAMATED TRANSIT UNION, LOCAL 265 (ATU) has filed an application for rehearing of Decision (D.) 91-05-015, alleging legal error. WILLIAM GARBETT (Garbett) has also, and on different allegations of error, filed an application for rehearing of that decision. We have considered all the allegations of error in both applications.

Garbett's application for rehearing was initially filed timely but without the certificate of service required by Rule 4.5 of our Rules of Practice and Procedure. That filing was made on the last of the 30 days allowed by California Public Utilities Code § 1731 for an application for rehearing. Accordingly, no later filing could have been made under § 1731, although a petition for modification could have been entertained. Garbett then filed another petition, which also failed to comply with the requirement of a certificate of service. As no party has been served with a copy of either of his filings, no party has been given a chance to respond. We cannot consider either of the petitions, and accordingly we deny both.

ATU's application alleges legal error in our adoption of paragraph 12.04 of General Order 143-A, regarding safety limitations on working hours for safety-sensitive transit employees such as train operators. ATU alleges that we should have held evidentiary hearings "concerning fatigue and its effects on the safe operation of these vehicles before approving the rule" Application for rehearing, p. 2.

We have reviewed the record and are not convinced that legal error has occurred. Despite its inclusion on the initial service list for I.89-07-003, ATU's first comments were filed more than two weeks late. At the prehearing conference on March 30, 1990, ATU nevertheless expressed concern that it had not been given an opportunity to respond as early as it would have liked. In deference to this concern, the Administrative Law Judge provided for an additional comment period, and specifically directed Commission staff to assist ATU with as much information as it needed to make comments timely. Despite this special consideration, ATU filed its comments two days late.

And, despite repeated invitations to do so, ATU never made a specific and definite request for evidentiary hearings, although its second set of comments suggested that hearings would be necessary "should the hours of driving be increased above [those] of other Transit Operators." We do not believe, on this basis, that we erred in adopting Rule 12.04 in D.91-05-015.

Nonetheless, the issue ATU raises is a genuine and serious issue of safety. Specifically, ATU's application raises the question of whether Rule 12.04 should conform to relevant Federal standards, and whether it is consistent with other state rules. We will accordingly grant limited rehearing for the sole purpose of examining Rule 12.04 and its consequences for safety. Therefore,

IT IS ORDERED that:

1. Garbett's application for rehearing of D.91-05-015 is hereby denied.

2. ATU's application for rehearing of D.91-05-015 is hereby granted for the sole purpose of examining Rule 12.04 of General Order 143-A and its consequences for safety, specifically with respect to conformity with relevant Federal and state standards regarding maximum on-duty and driving hours for operators.

3. To the extent not granted herein, ATU's application for rehearing is hereby denied.

4. The Executive Director shall provide notice of such rehearing to the parties hereto, in the manner prescribed by Rule 52 of the commission's Rules of Practice and Procedure.

This order is effective today.

Dated August 7, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

Commissioner Daniel Wm. Fessler, being necessarily absent, did not participate.

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


NEAL J. SHULMAN, Executive Director