

Mailed

Decision 91-09-083 September 25, 1991

SEP 26 1991 ORIGINAL

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)

And Related Matters.

Application 90-09-003
Application 90-09-005
Application 90-09-023
Application 90-09-028
Application 90-09-029
Application 90-09-030
Application 90-09-031
Application 90-09-033
Application 90-09-039

FINAL OPINION

Summary of Decision

This decision terminates the program authorized in Decision (D.) 90-09-086 which allowed certain carriers to file and justify rate changes within the increased zone of reasonableness on one day's notice to offset changes in fuel costs.

Background

In response to certain events in the Middle East and rising oil prices, the Commission, on August 8, 1990, issued Resolution TL-18374 which authorized a 10% increase in the upper limit of the "zone of reasonableness" for highway common carriers subject to General Order (GO) 147-B (now 147-C). The Commission later granted similar emergency relief to highway common carriers not subject to GO 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.

Resolutions TL-18374, TL-18380-A, and TL-18380-B (the Resolutions) authorized common carriers to make tariff filings

showing a percentage surcharge on any or all of their tariffs within the increased "zone of reasonableness," and to justify the surcharge by a simple calculation showing the percentage by which increases in fuel costs due to the Middle East crisis have increased their overall costs. The Resolutions also authorized such tariff filings to be made effective upon one day's notice.

On September 6, 1990, the California Trucking Association (CTA) filed Application (A.) 90-09-003 seeking to rescind the September 30, 1990 expiration date contained in the Resolutions. CTA requested that carriers authorized to file fuel surcharges under the 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 crisis. CTA also requested that the Commission remove the 10% cap for rates justified by higher fuel costs.

In addition to the application by CTA, the following applications were filed seeking similar relief:

A.90-09-005 by Western Motor Tariff Bureau,
Inc., Agent, (WMT)

A.90-09-023 by Pacific Motor Tariff Bureau, Inc.

A.90-09-028 by Frank C. Alegre Trucking, Inc.

A.90-09-029 by United Parcel Service, Inc.

A.90-09-030 by Willig Freight Lines

A.90-09-031 by Di Salvo Trucking Co.

A.90-09-033 by SuperShuttle of San Francisco, Inc.

A.90-09-039 by Clairence E. Daniels

On September 25, 1990, the Commission issued an interim opinion, D.90-09-086, in A.90-09-003 and A.90-09-005. D.90-09-086, among other things, extended the effective date of fuel surcharges authorized by the Resolutions until further Commission order. D.90-09-086 also extended until further order the provision to make

the tariff filings made pursuant to the Resolutions effective on one day's notice, an exemption from Public Utilities (PU) Code 491.

While D.90-09-086 extended the effective date of the fuel surcharge, it did not address CTA's request to remove the 10% cap on the fuel surcharge. To consider CTA's request, A.90-09-003 et al. were consolidated¹ with the Commission's Order Instituting Investigation in the Matter of the Regulation of General Freight Transportation by Truck (I.88-08-046). Hearings in the consolidated proceeding were held before Administrative Law Judge (ALJ) Garde on September 20 and October 15, 1990. The fuel surcharge phase of the consolidated proceeding was submitted on October 15, 1990.

The ALJ's proposed order in the fuel surcharge phase of the proceeding which was the third interim opinion in I.88-08-046 was placed on the Commission's agenda for the February 21, 1991 meeting. The Gulf War ended in February, 1991. The Commission withdrew the matter from its agenda.

While the Commission did not act on the fuel surcharge decision, it directed the ALJ, in the fourth interim opinion in I.88-08-046 (D.91-05-027), to conduct hearings to determine if the fuel surcharge program should be continued.

As directed by the Commission, hearings on the fuel surcharge issue were held on June 19, 1991 before ALJ Garde. The matter was submitted the same day upon conclusion of the hearings.

Positions of Parties

The Division of Ratepayer Advocates (DRA) and CTA provided testimony on the fuel surcharge issue.

1 It should be noted that A.90-09-033 and A.90-09-039 were not consolidated with I.88-08-046 during the hearings. However, since the applications seek relief similar to that authorized herein, we will consolidate them with I.88-08-046 and include them in the caption of this order.

DRA recommends that the fuel surcharge program should be terminated. Although DRA recommends termination of the program, it believes that the limited rate flexibility offered by the program has worked effectively during the Middle East crisis and recommends that the Commission institute a proceeding to consider whether carriers should be given similar downward and upward rate flexibility for changes in all cost components in the future. DRA also recommends that even if the Commission terminates the fuel surcharge program, it should not require carriers to roll back surcharges that are already in effect.

CTA contends that at no time during this year have the fuel prices returned to the \$1.04 per gallon price which existed just before the Middle East crisis began in August, 1990. CTA believes that the Commission should not rescind the 10% increase in the zone of reasonableness authorized to offset the increase in fuel costs. CTA also recommends that the Commission should continue to allow carriers to change rates with one-day notice in accordance with the authority granted in the Resolutions and D.90-09-086.

In addition, CTA disagrees with DRA's recommendation to institute a new proceeding to consider the issue of rate flexibility to respond to changes in various costs for carriers.

Discussion

The fuel surcharge program worked efficiently during the the crisis in the Middle East. Carriers were allowed to recover increased cost of fuel in a volatile fuel market.

The record in this proceeding shows that fuel prices have returned to a level of \$1.15 per gallon. We note that \$0.11 per gallon in State and Federal fuel taxes have been added since the crisis in the Middle East began in August 1990. When this \$0.11 is deducted from the \$1.15 price the conclusion is that fuel prices have returned to the \$1.04 per gallon price which existed just before the Middle East crisis began. In addition, the Gulf War has

ended. The fuel crisis is over. The fuel surcharge program should be terminated.

Next, we will consider DRA's proposal to institute another proceeding to evaluate whether carriers should be allowed similar rate flexibility to reflect changes in other operating costs. The Commission has made several changes to the regulatory framework in the past few years. Carriers must adjust to the changing rules. We need time to evaluate these programs in action. Instituting another proceeding will make such an evaluation difficult and strain the Commission's limited resources. We will not adopt DRA's proposal.

Findings of Fact

1. In response to certain events in the Middle East and rising oil prices, the Commission issued the Resolutions which authorized highway common carriers, passenger stage corporations, vessel common carriers, highway contract carriers, and cement common carriers to increase their rates up to 10% to offset their increased fuel costs.

2. The Resolutions also authorized carriers to file and justify fuel-related rate increases on one day's notice.

3. Tariff filings and contract amendments authorized by the Resolutions were to expire on September 30, 1990.

4. On September 6, 1990, CTA filed A.90-09-003 and requested that the Commission rescind the September 30, 1990 expiration date for the Resolutions.

5. A.90-09-003 also requested that the 10% limit on rate increases be removed.

6. In addition to A.90-09-003, the following other applications have been filed seeking similar relief:

A.90-09-005 by WMT
A.90-09-023 by Pacific Motor Tariff Bureau, Inc.
A.90-09-028 by Frank C. Alegre Trucking, Inc.
A.90-09-029 by United Parcel Service, Inc.
A.90-09-030 by Willig Freight Lines
A.90-09-031 by Di Salvo Trucking Co.
A.90-09-033 by SuperShuttle of San Francisco, Inc.
A.90-09-039 by Clairence E. Daniels

7. In response to A.90-09-003, et al., the Commission issued D.90-09-086, which extended, until further order of the Commission, the effective date of fuel-related rate increases.

8. D.90-09-086 also extended, until further order of the Commission, the provision which allowed carriers to file and justify fuel-related rate changes on one day's notice (exemption from PU Code 491).

9. D.90-09-086 did not address CTA's request to remove the 10% cap on fuel surcharges.

10. A.90-09-003 et al. were consolidated with I.88-08-046 and separate hearings were held in the fuel surcharge phase of I.88-08-046.

11. The ALJ's proposed order in the fuel surcharge phase of the proceeding, which was the third interim opinion in I.88-08-046, was placed on the Commission's agenda for the February 21, 1991 meeting, but was withdrawn from the agenda.

12. The Commission issued its fourth interim opinion (D.91-05-027) in I.88-08-046 which directed the ALJ to conduct hearings to address the fuel surcharge issue.

13. Hearings in the fuel surcharge issue were held on June 19, 1991.

14. DRA recommends that the fuel surcharge program should be terminated since the Gulf War is over.

15. DRA recommends that the Commission should institute a proceeding to consider whether carriers should be given similar

downward and upward rate flexibility for changes in cost components in the future.

16. CTA requests that the fuel surcharge program should continue indefinitely.

17. Fuel prices, net of tax changes, have returned to the \$1.04 per gallon price which existed just before the Middle East crisis began.

18. The Gulf War has ended.

19. The fuel crisis is over.

20. The fuel surcharge program should be terminated.

21. The Commission has made several changes to the regulatory framework in the past four years.

22. Further modification to the regulatory framework without evaluation of the effect of the changes already in place will pose difficulties for carriers and will strain limited Commission resources.

Conclusions of Law

1. The 10% increase in the zone of reasonableness adopted in the fuel surcharge program should be terminated.

2. Carriers should no longer be allowed to file and justify changes in rates reflecting increases or decreases in fuel costs on one day's notice.

FINAL ORDER

IT IS ORDERED that:

1. Ordering paragraphs 1 and 4 of Resolution TL-18374 as amended by D.90-09-086 are canceled.

2. Ordering paragraphs 2 and 3 of Resolution TL-18374 are canceled.

3. Ordering paragraphs 1, 2, 4, and 6 of Resolution TL-18380-A as amended by D.90-09-086 are canceled.

4. Ordering paragraphs 3 and 5 of Resolution TL-18380-A are canceled.

5. Ordering paragraphs 1 and 4 of Resolution TL-18380-B as amended by D.90-09-086 are canceled.

6. Ordering paragraphs 2 and 3 of Resolution TL-18380-B are canceled.

7. Ordering paragraphs 1, 2, 4, 6, 7, 8, 9, 10, and 14 of D.90-09-086 are canceled.

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

9. Since all issues raised in these proceedings have been resolved, the proceedings are closed.

This order becomes effective 30 days from today.

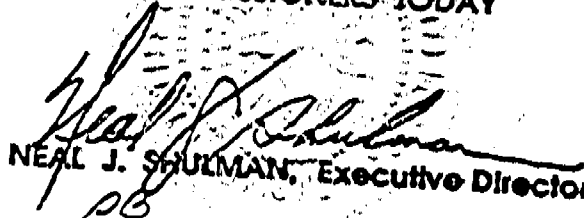
Dated September 25, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I abstain.

/s/ G. MITCHELL WILK
Commissioner

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


NEAL J. SHULMAN, Executive Director