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DEC 18 1991

Decision 91-12-041 December 18, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

In the Matter of the Petition of Viking Freight System, Inc., for authority to depart from the requirements of General Order No. 147-C, with respect to contract renewals.	Application 91-10-038 (Filed October 16, 1991)

INTERIM OPINION

Summary of Decision

We authorize Viking Freight System, Inc. (Viking) to depart from the provisions of Rule 6.10(c) of General Order (GO) 147-C. Rule 6.10(c) of GO 147-C requires that a supplement or amendment to a contract shall contain the signature of both shipper and carrier.

Background

Viking is authorized by the Commission (under CAL T-84,649) to operate as a common carrier and as highway contract carrier. Viking serves as a regional motor carrier in California, Arizona, Nevada, Oregon, Washington, Idaho, Utah, and Colorado with intermodal operations to Alaska, Hawaii, Guam, and Australia.

Viking currently has several contracts on file with the Commission as required by GO 147-C, Rules 4 and 6. Rule 4 requires a contract carrier, among other things, to file copies of tariff, contract, and contract rate schedule with the Commission. Rule 6.6 requires, among other things, that every contract contain the signature of the shipper and specify the date the contract is executed and its duration. Rule 6.10(c) requires that contract supplements and amendments shall contain the signatures of the shipper and carrier, and Rule 6.3 provides that special contracts, as defined by Rule 3.18 of GO 147-C, shall have a term of one year

and be renewable by amendments. Viking seeks an ex parte order authorizing it to deviate from Rule 6.10(c) of GO 147-C, contending that it is experiencing difficulties in tracking the expiration dates for each special contract and in obtaining shippers' signatures on each contract renewal. Specifically, Viking requests that its special contracts be allowed to continue in force until terminated by mutual agreement between contracting parties. According to Viking, many of its shippers question the need to execute a signed amendment requesting contract extension in light of the 30-day cancellation clause contained in Viking's special contracts which states:

> "This contract shall become effective _____ or the 20th day after listing on the California Public Utilities Commission's Transportation calendar, whichever is later, and shall expire one (1) year thereafter unless terminated upon thirty (30) days written notice by either party."

In support of its request, Viking cites Conway Western Express, Inc.'s (CWX) recent application (Application (A.) 91-06-051) seeking deviation from Rule 6.10(c) of GO 147-C. Decision (D.) 91-10-009 in A.91-06-051 granted CWX authority to renew its special contracts without the signature of the affected shipper. However, D.91-10-009 did not exempt CWX from the requirement of renewing its contract after a duration of one year. CWX still has to renew its contracts after one-year duration by providing a notice to the affected shipper and filling a copy of the notice with the Commission.

Viking acknowledges that its request exceeds the relief granted CWX. However, Viking opines that the relief granted CWX falls short of removing the unnecessary burden imposed on both shippers and motor carriers. Accordingly, Viking requests that its special contracts be allowed to remain in effect without a specific expiration date until terminated by mutual agreement between

contracting parties. To achieve its objective, Viking proposes to include the following clause in its contracts:

> "This agreement shall be effective for a period of one (1) year from the date authorized by the California Public Utilities Commission and shall continue from year to year thereafter unless terminated. Either party may terminate its participation in this Agreement, including termination within the first year, upon thirty (30) days written notice to the other and to the Commission."

Viking asserts that the inclusion of the language will eliminate the need to provide the Commission with renewal notification including a written amendment signed by both parties.

While Viking believes that its proposal is reasonable, it requests that the Commission at least grant it the same relief as it granted CWX.

On November 21, 1991, the Transportation Division staff (staff) filed advice of its planned participation in A.91-10-038. Staff recommends against granting Viking's request. However, staff has no objection to Viking receiving the same relief as CWX received in D.91-10-009 provided Viking includes appropriate language in its contract.

In response to staff's advice of participation, Viking in its November 26, 1991 letter to the assigned administrative law judge (ALJ) requests that the Commission issue an interim order granting it the relief received by CWX in D.91-10-009, i.e., authorizing Viking to renew its special contracts without the shipper's signature. Viking also requests that the additional relief regarding contract renewal requests in this application be the subject of a hearing.

As to staff's concern regarding the specific language to be included in Viking's contracts, Viking has attached new forms for special contracts to its letter. These forms which are included in Appendix A are identical to the ones proposed by CWX in

A.91-06-051. Form A in Appendix A is a revised form for future special contracts which contains a provision that allows renewal of the contract without the signature of the shipper (paragraph 4). Forms B and C in Appendix A contain renewal notices to the shippers. Form B contains renewal notice for existing contracts, and Form C contains renewal notice for contracts containing the revised terms in Form A.

Discussion

Since Viking is seeking an interim order which would grant it the relief authorized CWX in D.91-10-009, we will limit our discussion to that issue.

Rule 6.3 of GO 147-C provides that contracts may not be made effective for more than one year. Rule 6.10(c) requires that an amendment to a contract to extend it shall contain the signatures of carrier and shipper. Since Viking has several contracts which must be renewed at the end of their yearly terms, Viking will have to file several amendments, with appropriate signatures, yearly.

One might be concerned that an extension of contract without the signature of the shipper may not be binding for the shipper. However, Viking's revised terms of contract include the following clause which assures shipper's consent to extension of the contract without signature:

> "CARRIER and SHIPPER agree that this Contract may be extended by and for additional one (1) year periods, without signature, upon notification by the CARRIER to the SHIPPER and the filing of a Renewal Notice in substantially the form approved by the California Public Utilities Commission in D._____, in Application _____. SHIPPER's objection or desire not to renew shall be evidenced by a written notice delivered to CARRIER within _____ days of the date of the Renewal Notice."

The Commission does allow renewal of contracts for natural gas transportation to go into effect without actual signatures. As long as consented to by the shipper in the initial contract, a renewal need not require an actual signature to be effective. The above clause provides for such consent.

Viking's request appears to be a reasonable one and necessary for the efficient conduct of its business. We will authorize Viking to extend its contracts with shippers without the signature of the shipper. The proposed forms in Appendix A for special contracts attached to Viking's letter to the ALJ will achieve the deviation sought by Viking.

Findings of Fact

1. Viking holds authority to operate as a highway common carrier and highway contract carrier.

2. Viking has several contracts on file with the Commission.

3. GO 147-C requires, inter alia:

   a. Contracts must be bilateral agreements, in writing, which may not be in effect for more than one year.

   b. Contracts may be renewed by amendment to the contract.

   c. Amendments require the signature of both carrier and shipper.

4. On October 16, 1991, Viking filed A.91-10-038 requesting authorization to deviate from requirements of GO 147-C. Specifically, Viking requested that its special contracts, instead of terminating at the end of one year, be allowed to remain in effect until terminated by mutual agreement between parties, or in the minimum Viking be allowed to renew its contracts without the signature of the shipper.

5. Staff, in its advice of participation, recommends that Viking's special contracts should remain in effect for only

one-year duration and that Viking's request to deviate from GO 147-C be denied.

6. Staff does not oppose Viking's request to renew its special contracts without the signature of the shipper.

7. Viking now requests that in lieu of securing signatures on extensions to contracts pursuant to Rule 6.10(c), it be permitted to give written notice to its shippers regarding extensions, and file a certificate of declaration of such notice with the Commission's Truck Tariff Section. Viking seeks an ex parte interim order authorizing it to deviate from Rule 6.10(c).

8. Rule 2 of GO 147-C provides that departures from the provisions of the GO may be granted after a Commission finding that the proposed departure is reasonable and necessary.

9. Viking has demonstrated that requiring signatures to be obtained in connection with each of Viking's contract extensions is not necessary to the proper enforcement of Commission-ordered rates.

Conclusions of Law

1. Departure from the provisions of GO 147-A, as requested by Viking, is reasonable and necessary.

2. The limited relief being requested by Viking should be authorized in an interim order.

3. Viking should be directed to furnish each shipper with a notice of each extension, and to file a notice of each extension with the Commission's Truck Tariff Section containing a certificate that each shipper has been so notified.

4. Since no party protests the limited relief being granted, a hearing is not necessary.

INTERIM ORDER

IT IS ORDERED that Viking Freight System, Inc. (Viking) is relieved from the provision contained in Rule 6.10(c) of General Order 147-C, requiring that each contract extension contain the signature of the shipper. In lieu thereof, Viking shall furnish each shipper with a notice of each contract extension, and shall file with the Commission's Truck Tariff Section a notice of each extension containing a certification that each shipper has been so notified.

This order becomes effective 30 days from today.

Dated December 18, 1991, at San Francisco, California.

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

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

NEAL J. SHULMAN, Executive Director

Form A

CUSTOMER CODE: _____ CONTRACT NO.
_____ CAL T 140.218-_____
_____

SPECIAL CONTRACT

This Contract is entered into this _____ day of _____, 1991, by and between CON-WAY WESTERN EXPRESS, INC. ("CARRIER"), 12904 Lakeland Road, Santa Fe Springs, California 90670, and _____ _____, ("SHIPPER").

THE PARTIES AGREE AS FOLLOWS:

1. This Contract shall be effective from _____, or twenty (20) days after appearing on the Commission's Daily Transportation Calendar, whichever is later, and shall continue for a period commencing upon the effective date of this Contract, and ending thirty (30) days after written notice by either party, or one (1) year from the effective date of this Contract.

2. CARRIER shall provide, and SHIPPER agrees to accept, the following transportation services: CARRIER will be providing pickup and delivery service transporting _____ and related articles BETWEEN: _____ AND: Points in California.

   MAXIMUM LIABILITY: In no case shall CARRIER's liability exceed $25.00 per pound, per piece.

3. SHIPPER agrees to compensate CARRIER for said transportation services in accordance with the following provisions and governing publications:

   Classification: NMP 100 Series
   Rates and Charges: CWX Tariff 200
   CWX Tariff 205, Items 30 and 120
   Rules: PMTB 125
   Hazardous: ATA 111 Series
   Mileage Guide: CWX 100-A

   SHIPPER agrees to tender a minimum of two (2) shipments each month with a projected average monthly revenue of $_____.

   The rates and charges herein shall be those in effect on the actual date of shipment. Minimum Charges and LTL Class Rates as shown in CWX Tariff 200, Item 90, Scale 16, and Item 760 respectively including supplements and reissues thereof shall apply subject to the following:

   Discount Minimum Charge:_____ Discount LTL Class Rated Shipment:____

4. CARRIER and SHIPPER agree that this Contract may be extended by and for additional one (1) year periods, without signature, upon notification by the CARRIER to the SHIPPER and the filing of a Renewal Notice in substantially the form approved by the California Public Utilities Commission in D._____, in

A.91-10-038

Application_____. SHIPPER's objection or desire not to renew shall be evidenced by a written notice delivered to CARRIER within _____ days of the date of the Renewal Notice.

The provisions of this Contract shall not change unless agreed to in writing by both parties as set forth in Rule 6, General Order 147-C.

CON-WAY WESTERN EXPRESS, INC.
CARRIER

By:_____

Date:_____

_____
SHIPPER

By:_____

Date:_____

Form B

CUSTOMER CODE: _____

CONTRACT NO.
CAL T 140.218-_____

RENEWAL OF SPECIAL CONTRACT

Contract Number CAL T 140.218-_____ between CON-WAY EXPRESS, INC. ("CWX") and _____ (the "Contract") is hereby extended for a period of one (1) year from the effective date of this Renewal.

CWX and SHIPPER agree that the Contract may be renewed again, without the necessity for signature by SHIPPER, pursuant to California Public Utilities Commission Decision _____, upon CWX's service of a subsequent Renewal Notice and the filing of the Renewal with the CPUC.

Either party may terminate this Agreement upon thirty (30) days' written notice provided by hand-delivery or certified, registered mail to the other party. This Renewal will not affect any rates or charges being assessed under the Contract.

CON-WAY WESTERN EXPRESS, INC.
CARRIER

By: _____

Date: _____

_____
SHIPPER

By: _____

Date: _____

Form C

CUSTOMER CODE: _____ CONTRACT NO.
_____ CAL T 140.218-_____
_____

RENEWAL OF SPECIAL CONTRACT

Pursuant to Paragraph 4 of the Contract between CON-WAY EXPRESS, INC. ("CWX") and _____ ("Shipper"), (Contract No. CAL T 140,128-_____, the "Contract"), and the authority granted by the California Public Utilities Commission in Decision _____, dated _____, the Contract is hereby extended for a period of one (1) year from the effective date of this Renewal. As provided in Paragraph 4 of the Contract, this Renewal shall be effective upon filing with the California Public Utilities Commission. This Renewal will not affect any rates or charges being assessed under the Contract.

Either party may terminate this Renewal upon thirty (30) days' written notice provided by hand-delivery or by certified, registered mail to the other party.

This Renewal is issued and filed pursuant to the authority of the CPUC granted by Decision_____, and pursuant to General Order 147-C, Rule 6.14.

CON-WAY WESTERN EXPRESS, INC.

By:_____

Date:_____

(END OF APPENDIX A)