

FEB 5 1992

Decision 92-02-011 February 5, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of TNT BESTWAY TRANSPORTATION, INC. for authority to depart from the requirements of General Order No. 147-C, with respect to contract renewals.

Application 91-10-042 (Filed October 17, 1991)

ORIGINAL

O P I N I O N

Summary of Decision

We authorize TNT BESTWAY TRANSPORTATION Inc. (TNT) 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

TNT is authorized by the Commission (in file T-139,846) to operate as a common carrier and as highway contract carrier. TNT serves as a regional common carrier and contract carrier in California, Arizona, and Nevada.

TNT currently has approximately 2,300 contracts on file with the Commission as required by GO 147-C, Rules 4 and 6. Rule 4 requires a contract carrier to, among other things, file copies of tariff, contract, and contract rate schedules 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. TNT seeks an ex parte order

authorizing it to deviate from Rule 6.10(c) of GO 147-C, contending that it is often difficult and burdensome to obtain a shipper's signature on each contract renewal for each of its special contracts.

To accomplish the requested relief, TNT proposes to use three new forms for its special contracts. These forms are attached as Exhibits A, B, and C to the application. Exhibit A is a revised form for future special contracts by TNT which contains a provision that allows renewal of the contract without the signature of the shipper (paragraph 4). TNT proposes to renew its contracts by providing notice to the affected shipper and filing a copy of the notice with the Commission. Exhibits B and C are forms for providing renewal notices to shippers. Exhibit B contains a form for renewal notice for existing contracts and Exhibit C contains a form for renewal notice for contracts containing the revised terms in Exhibit A.

TNT opines that paragraph 4 of the proposed form for special contracts (Exhibit A), as well as notices to be provided to shippers and filed with the Commission, will apprise all TNT's shippers of the new procedures for contract renewals. According to TNT, its proposed procedure will relieve TNT of an unnecessary administrative burden without affecting in any way: (1) the notice requirements to the public and to the Commission of the renewal; (2) the opportunity for protest; (3) the opportunity for the Commission staff to review the contract; and (4) the applicable provisions of contract law.

The Transportation Division staff recommends that the application be approved.

Discussion

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 TNT has several contracts

which must be renewed at the end of their yearly terms, TNT 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 on the shipper. However, TNT'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.

TNT's request appears to be reasonable and necessary for the efficient conduct of its business. We will authorize TNT to extend its contracts with shippers without the signature of the shipper. The proposed forms in Exhibits A, B, and C will achieve the deviation sought by TNT.

Findings of Fact

1. TNT holds authority to operate as a highway common carrier and highway contract carrier.
2. TNT has approximately 2,300 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. TNT 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 or declaration of such notice with the Commission's Truck Tariff Section. TNT seeks an ex parte order authorizing it to deviate from Rule 6.10(c).

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

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

7. The Transportation Division recommends that the application be granted.

Conclusions of Law

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

2. The application should be granted.

3. TNT 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 certification that each shipper has been so notified.

4. Since no party has protested the application, a hearing is not necessary.

ORDER

IT IS ORDERED that:

1. TNT BESTWAY TRANSPORTATION Inc. (TNT) 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, TNT 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.

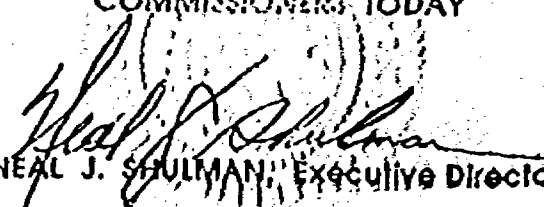
2. This proceeding is closed.

This order becomes effective 30 days from today.

Dated February 5, 1992, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director