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Decision 92-04-057 April 22, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of )	
DI SALVO TRUCKING CO., (Cal T-61078) )	
Requests Authority to Depart from )	Application 91-11-038
the Requirements of General Order )	(Filed November 5, 1991)
147-C Concerning Contract Renewals )	

O P I N I O N

Summary of Decision

We authorize DI SALVO TRUCKING CO. (Disalvo)<sup>1</sup> to depart from the provisions of Rule 6.10(c) of General Order (GO) 147-C which requires that a supplement or amendment to a contract shall contain the signature of both shipper and carrier.

Background

Disalvo is authorized by the Commission (in file T-61078) to operate as a common carrier and as a highway contract carrier.

Disalvo 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 to, among other things, file copies of tariffs, contracts, 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(o) 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. Disalvo seeks an ex parte order

<sup>1</sup> As originally filed, Disalvo's file number in the caption is incorrectly shown as T-62078.

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. DiSalvo also requests authority to make minor adjustments to its contracts without the shipper's signature.

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

DiSalvo opines that paragraph c 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 of DiSalvo's shippers of the new procedures for contract renewals. According to DiSalvo, its proposed procedure will relieve DiSalvo of an unnecessary administrative burden without affecting in any way: (1) the notice requirements to the public and 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 recommends that DiSalvo be authorized to renew its contracts without the shipper's signature. However, Transportation Division recommends that DiSalvo not be authorized to make any amendments to its contracts without the shipper's signature.

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 designed to extend a contract contain the signatures of carrier and shipper. Since DiSalvo has several contracts which must be renewed at the end of their yearly terms, DiSalvo 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, DiSalvo's terms of contract include the following clause which assures shipper's consent to extension of the contract without signature:

"This agreement shall be effective from the date authorized by the Commission and shall terminate one year from said authorized date, except as otherwise shown in this Contract. Carrier and Shipper agree that this Contract may be extended by one year increments, without signature, upon notification by the Carrier to the Shipper and the filing of a Renewal Notice in substantially the form approved by the Commission in Decision \_\_\_\_\_."

While it is the Commission's policy to require signatures of both parties for renewal of contracts, the Commission has made exception in certain cases. One such exception would be the renewal of contracts for natural gas transportation, where the Commission does allow renewal of contracts 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.

DiSalvo's request appears to be a reasonable one and necessary for the efficient conduct of its business. We will authorize DiSalvo 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 DiSalvo.

While we authorize DiSalvo to renew its contracts without the shipper's signature, we agree with the Transportation Division that DiSalvo not be allowed to make any amendments to its contracts without the shipper's signature.

Findings of Fact

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

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

7. The Transportation Division recommends that DiSalvo be authorized to renew its contracts without the shipper's signature.

8. DiSalvo also requests authority to make minor amendments to its contracts without the shipper's signature.

9. The Transportation Division recommends that DiSalvo not be allowed to make any amendments to its contracts without the shipper's signature.

Conclusions of Law

1. DiSalvo should be authorized to renew its contracts without the shipper's signature.

2. DiSalvo 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 furnished such notice.

3. DiSalvo should not be authorized to make any amendments to its contracts without the shipper's signature.

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

ORDER

IT IS ORDERED that DI SALVO TRUCKING CO. (DiSalvo) 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, DiSalvo 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

A.91-11-038 ALJ/AVG/tcg

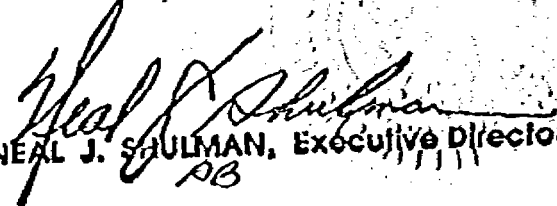
extension containing a certification that each shipper has been furnished such notice.

This order becomes effective 30 days from today.

Dated April 22, 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  
PB

**SPECIAL TRANSPORTATION CONTRACT**

DATE: \_\_\_\_\_

PUC Contract T-61078-

This Agreement is entered into this date, to be effective no sooner than the date of the filing of this Agreement with the Public Utilities Commission of the State of California (Commission), by and between Di Salvo Trucking Co., (Carrier) and \_\_\_\_\_ (Shipper), hereinafter called Commission, Carrier and Shipper.

**WHEREAS:**

- a. Carrier is authorized to transport freight by motor vehicle as a Highway Contract Carrier, pursuant to the laws of the State of California and Regulations issued by the Commission.
- B. That at all times for which this Agreement shall be effective, Carrier shall comply with said laws and regulations and otherwise maintain its for-hire transportation operating authority, and,
- C. This agreement shall be effective from the date authorized by the Commission and shall terminate one year from said authorized date, except as otherwise shown in this Contract. Carrier and Shipper agree that this Contract may be extended by one year increments, without signature, upon notification by the Carrier to the Shipper and the filing of a Renewal Notice in substantially the form approved by the Commission in Decision \_\_\_\_\_.

**IT IS AGREED AS FOLLOWS:**

- 1. For the period commencing upon the effective date of this Agreement and ending thirty (30) days after written notice by either party, but in no case prior to thirty (30) days after the effective date of this Agreement, Carrier agrees to render transportation services to Shipper of a kind described in this Agreement. Rates and Charges for these services will be as published in applicable Tariff's named in this Contract on the day of shipment.
- 2. Carrier shall provide and Shipper agrees to accept the following transportation services:
  - a. Commodities transported shall be as shipped by Shipper and as classified in the National motor freight Classification, 100 Series.
  - b. Shipper will tender Carrier not less than \$1,000 per month for delivered transportation services.
  - c. Service shall be on-call and will be picked up by Carrier on regular scheduled routes on a regular workday basis (excluding Saturdays, Sundays, and holidays).
  - d. Compensation for services rendered shall be as provided in the following tariff's published by Western Motor Tariff Bureau, Inc., for the account of the carrier, or successive reissues thereto:
    - 1. Rules Tariff - WMT 170 (Cal POC 51)
    - 2. Distance Table 8-1 issued by the Western Motor Tariff Bureau, Inc. (Cal P.U.C. No. 175).
    - 3. Rates and Charges in Items 340 and 7030 of WMT 570-A (Cal POC 85).
  - e. A \_\_\_\_\_ Discount will be deducted from the Applicable Minimum Charge in Item 610. (See 2-d-1). A \_\_\_\_\_ Discount will be deducted from the applicable rate in Item 7030. (See 2-d-3). Discounts will not apply to accessorial charges, C.O.D. shipments, or shipments when freight charges do not remain current. Discounts shall be shown clearly on the freight bill.
  - f. Discounts will apply on shipments delivered direct and will be deducted from rates or charges as shown in 2d above: (Check Box if Applicable).
 

Outbound Prepaid     Outbound Collect     Inbound Collect
- 3. This Agreement shall be interpreted under the laws of the State of California and the Provisions of CA POC General Order 147-C.
- 4. All Notices to be delivered or deliverable under this Agreement shall be in Writing, sent by United States Mail.

CARRIER: Di Salvo Trucking Co.  
660 Mariposa Street  
P. O. Box 193765  
San Francisco, California

SHIPPER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Robert L. Oligher  
Vice President/Sales & Traffic

By: \_\_\_\_\_

**Di Salvo**

DI SALVO TRUCKING CO. — P.O. BOX 193765 — SAN FRANCISCO, CALIFORNIA 94119-3765  
(415) 864-1400

EXHIBIT "B"

SUPPLEMENT NO. 1

CONTRACT T-61078-

SPECIAL CONTRACT RENEWAL

Pursuant to the California Public Utilities Commission Decision \_\_\_\_\_, this Contract is hereby extended for a period of One (1) year from the effective date shown below.

SHIPPER:

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EFFECTIVE: \_\_\_\_\_





DI SALVO TRUCKING CO. — P.O. BOX 193765 — SAN FRANCISCO, CALIFORNIA 94119-3765  
(415) 864-1400

**EXHIBIT "C"**

SUPPLEMENT NO. \_\_\_\_\_

CONTRACT T-61078

SPECIAL CONTRACT RENEWAL

Contract Number Cal T-51078 \_\_\_\_\_, between Di Salvo Trucking Co. (DSAL) and \_\_\_\_\_ is hereby extended for a period of one (1) year from the effective date of this renewal.

DSAL and Shipper agree that the Contract may be renewed again, without the necessity for signature by Shipper, pursuant to California Public Utilities Commission (CPUC) Decision \_\_\_\_\_, upon DSAL's service of a subsequent Renewal Notice and the filing of the renewal with the CPUC.

This Agreement may be terminated, by either party upon thirty (30) days notice by hand-delivery or the U.S. mail, to the other party. This renewal will not affect any terms of the Contract, except to extend the expiration date for a period of one year.

SHIPPER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EFFECTIVE: \_\_\_\_\_