

SEP 16 1992

Decision 92-09-068 September 16, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Western Motor Tariff Bureau, Inc., for authority under General Order 154, to amend and restate its Articles of Incorporation.

ORIGINAL Application 92-05-011 (Filed May 7, 1992)

OPINION

Western Motor Tariff Bureau, Inc. (WMTB), a California nonprofit corporation, seeks approval under the terms of General Order 154 and Public Utilities (PU) Code § 496 to amend and restate its Articles of Incorporation.

A copy of the proposed restated Articles of Incorporation is attached to the application as Exhibit 2.

The application sets forth reasons for the amendment of the Articles of Incorporation as follows:

"The principal purpose of the restatement of the Articles is to permit the Bureau to publish, post and file with the appropriate regulatory authorities, i.e. the California Commission, Hawaii Public Utilities Commission, Nevada Public Service Commission and the Interstate Commerce Commission, including international regulatory authorities, tariffs, schedules, mileage guides or classifications for any carrier by motor vehicle required or permitted by law to do so and also act as agent for such carriers in this regard.

"The term 'Common Carrier' as used in the Code, under Section 212, provides that a 'Common Carrier shall not include'.....

"(d) Any highway permit carrier as defined in Section 3515', Section 3515 provides 'highway permit carrier' means every highway carrier other than a common carrier.

"Under Section 3517 of the Code, Highway Contract Carriers, as an example, are generally

included under the definition of 'highway permit carriers' and are subject to the regulations provided in General Order 147-C which requires the carrier to file and post with the Commission its executed binding contract(s) for transportation of accessorial services to be performed, including the filing of any governing publications, such as classifications or distance tables and schedules. Currently, the Bureau could be limited by its Articles to acting in behalf of only common carriers which also hold a Highway Contract Carrier Permit if the term 'Common Carrier' is interpreted according to the Code, rather than the California Civil Code, Section 2168 which defines 'common carrier' as everyone who offers to the public to carry persons, property or messages. The proposed amendment of the Articles will resolve this ambiguity and clearly allow the Bureau to act for all such carriers in its traditional role of filing schedules, contracts and governing publications for the motor carrier industry.

*As a further example of the conflict, Dump Truck Carriers in the State of California are highway permit carriers and are not required to post and file tariffs. In the State of Hawaii, however, Dump Truck Carriers are required to file tariffs with the Public Utilities Commission and the Bureau provides this service under authority from said Commission.

*The Bureau has recently filed with the Interstate Commerce Commission an application for approval of its restated Articles and amendments to its Section 10706(b) authority by amending its By-Laws and Rules of Procedure to enable its members to participate in international traffic moving between California and the Republic of Mexico. Given the varying laws between the United States and Mexico, continuing use of the term 'common carrier' may thus also give rise to confusion as to whether the Bureau could service Mexican carriers which may not be common carriers under U.S. law and vice versa.

*Approval is not being sought for the broadening of memberships of the Bureau beyond motor

common carriers, nor for any approval of collective or joint ratemaking by California carriers other than those permitted by law to do so.

"In addition, the restatement of the Articles will delete language pertaining to tariffs of public warehousemen for which the Bureau no longer publishes, pursuant to changes in the Code, and also deletes outdated language from the Bureau's Articles of Incorporation so as to permit full application of changes in law made by the California Nonprofit Corporation Law of 1980."

The application states that:

"The modifications to the Articles have been duly approved by the Bureau's membership conditioned upon approval by the Commission, the Interstate Commerce Commission and all other applicable governmental or regulatory authorities. The changes to the Articles will not affect the authority of any carrier-member under Section 496 of the Public Utilities Code nor the ability of any new member to affect or participate in any collective ratemaking activities. No material change is being made to the approved agreement among carriers, the By-Laws of the Bureau, the Bureau's Rules of Procedure, the Bureau's Organization Chart or the Bureau's Verified Statement concerning carriers by highway and carriers by rail."

The application also states that:

"There is nothing in the amendment to the Articles of the Bureau which will in any way impact the tariff making activities of the Bureau or adversely affect the public interest. Rather, the amendment will allow the Bureau to clearly perform its traditional roles in the face of a shifting regulatory environment. The Bureau respectfully submits, therefore, that the amendment of the Articles of Incorporation of the Bureau of which approval herein is sought is in the public interest."

Notice of the filing of the application was published in the Commission's Daily Calendar and Daily Transportation Calendar

on May 13, and 14, 1992 respectively. No protests to the application or requests for hearing have been received.

On July 8, 1992, the Commission's Transportation Division issued an Advice of Participation advising as follows:

"The Transportation Division staff has reviewed the application and believes the proposed amendment: (1) refines and makes more compatible the language of various intra- and interstate commerce agencies as they apply to the Articles of Incorporation, (2) does not affect the Bureau's By-Laws or Rules of Procedure and (3) does not conflict with the Bureau's PU Code, Section 496 authority.

"Staff believes the application is one which, in absence of protest, may be granted by ex parte order."

Findings of Fact

1. WMTB requests approval to amend and restate its Articles of Incorporation.

2. WMTB is a nonprofit association.

3. No protests to the application or requests for hearing have been received.

4. The Transportation Division staff has reviewed the application and based on its review believes that the proposed amendment:

- a. Refines and makes more compatible the language of various intra- and interstate commerce agencies as they apply to the Articles of Incorporation;
- b. Does not affect WMTB's By-Laws or Rules of Procedure;
- c. Does not conflict with WMTB's PU Code § 496 authority.

5. Notice of the filing of the application appeared in both the Commission's Daily and Daily Transportation Calendars; no protests or requests for hearing have been received.

Conclusions of Law

1. The proposed amendment is not prohibited by PU Code § 496.
2. The application should be granted.

O R D E R

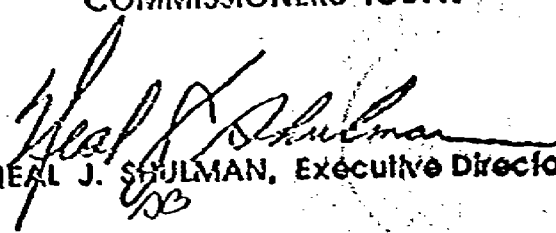
IT IS ORDERED that:

1. Western Motor Tariff Bureau, Inc. (WMTB) is authorized to amend and restate its Articles of Incorporation as proposed in the application.
2. Within 60 days WMTB shall file with the Commission a copy of its amended Articles of Incorporation.
3. Failure to file the amended Articles of Incorporation as required by Ordering Paragraph 2 shall result in the disapproval of this application.

This order becomes effective 30 days from today.
Dated September 16, 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