

Decision 82 11 045 NOV 3 - 1982

~~CONFIDENTIAL~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the rules, )  
practices, procedures, and )  
activities of all rate bureaus )  
operating pursuant to Public )  
Utilities Code Section 496 )  
agreements as they represent )  
Highway Common Carriers, Petroleum )  
Irregular Route Carriers, Cement )  
Carriers and affiliated Express )  
Corporation. )

Case No. 10368

ORDER TO SHOW CAUSE WHY COLLECTIVE  
RATEMAKING SHOULD NOT BE ABOLISHED

In California today, and in other states, motor carriers may choose to become members of associations known as "rate bureaus". The primary function of rate bureaus is to collectively determine rates and to publish tariffs reflecting those rates.

Section 496 of the California Public Utilities Code explicitly permits the Commission to approve applications for agreements among two or more common carriers to set rates. In substance, this legislation exempts from state antitrust law the collective ratemaking activities of rate bureaus. Section 496(b) also requires the Commission to "find that the agreement and the rules, regulations, and procedures provided for the operation thereof are fair and reasonable and not contrary to public policy; otherwise the application shall be denied".

This investigation commenced on July 6, 1977. Its purpose is to determine the following:

"1. Whether any of the previously approved Section 496 carrier agreements should be amended in any respect.

2. Whether the Commission should adopt any additional rules to govern the activities of carrier rate bureaus receiving Section 496 approval.

3. Whether it remains in the public interest for the Commission to continue to grant antitrust protection to carrier rate bureaus operating pursuant to Section 496 agreements." (Case 10368 Order Instituting Investigation, page 3.)

The Staff and other parties presented evidence and motions pertaining to these major issues. The proceeding has not been active since 1979 because of the possible effects of trucking reregulation.

We believe that this proceeding should be reactivated to examine the issues originally listed in the Order Instituting Investigation. The most important of these is the question of whether the Commission should continue granting antitrust immunity to the ratesetting activities of California rate bureaus. The recent trend towards trucking reregulation brings the marketplace and free competition into greater prominence. This trend may be incompatible with continued special antitrust protection for trucking rate bureaus. In addition, recent federal court proceedings and decisions lead us to question the continued collective rate setting function of rate bureaus. In United States v. Southern Motor Carriers Rate Conference, Inc., 672 F. 2d 469 (1982) the Fifth Circuit Court of Appeals held that rate setting activity by rate bureaus in the southeast states was illegal under the Sherman Antitrust Act. The facts established in the Southern Motor Carrier's case do not appear materially different from the ratemaking activities of California rate bureaus, although the Ninth Circuit may interpret

the law differently. The Southern Motor Carrier decision was reheard en banc by the Fifth Circuit on September 9, 1982. Regardless of the final outcome of that case, it has again raised a substantial question concerning the propriety of collective rate setting. A recent lawsuit filed in the United States District Court for the Northern District of California has named as defendants this Commission, the Western Motor Tariff Bureau, and the California Trucking Association. This suit directly challenges collective ratemaking in California.

Accordingly, each California rate bureau which has been granted authority to file collectively made rates for its members under Public Utilities Code §496 is ordered to show cause why:

- (1) collective ratemaking is not contrary to the public interest in a movement toward free market competition; and
- (2) why the ratemaking activities of California rate bureaus should not be deemed unfair and unreasonable, and contrary to public policy.

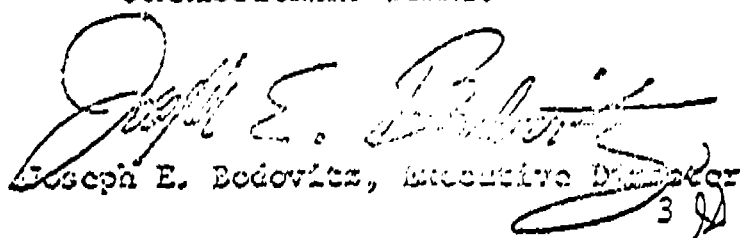
Responses to this Order to Show Cause shall be made in writing and filed with the Commission's docket office by December 3, 1982. In addition to mandatory responses by the ratemaking bureaus, any carrier or other interested party in Case 10368 may, if it desires, file a response to this Order to Show Cause by December 3, 1982.

The parties should not understand this Order to Show Cause as a substitute for hearings and evidence. Administrative Law Judge Patrick Power is now assigned to this proceeding, and after the parties have filed their responses to this Order to Show Cause, he will apprise the parties of a schedule for further proceedings in this investigation.

This order is effective today.

Dated NOV 3 1982, at San Francisco, California.

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

  
Joseph E. Bodovitz, Executive Director

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

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