L/AKM:bjw *

Decision 83-11-045 NOV 2 - 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of fresh or green fruits and vegetables and related items statewide as provided in Minimum Rate Tariff 8-A, and the revisions or reissues thereof.	Case 5438, OSH 116 (Filed April 12, 1977)
And Related Matters.	Case 5438, Pet. 129 (Filed June 29, 1982) Case 5438, Pet. 130 (Filed July 15, 1982) Case 5438, Pet. 131 (Filed September 29, 1982 Case 5438, Pet. 132 (Filed October 29, 1982)

ORDER MODIFYING DECISION 83-06-083
AND GRANTING LIMITED REHEARING

An application for rehearing of Decision (D.) 83-06-083 has been filed by the California Trucking Association (CTA). After careful evaluation of the allegations made therein, the Commission is of the opinion that further hearing should be held limited to issues concerning the impact of deregulation on less-than-truckload (LTL) traffic, small shippers and carriers, and related matters. D.83-06-083 left this proceeding open in order that the determination could be made whether further hearing was appropriate; thus the further hearing we order is not in the nature of a rehearing as such, although the issues it covers coincide with some of those raised by CTA. However, for

procedural clarity, we will also denominate it a grant of limited rehearing. We are also of the opinion that D.83-06-083 should be modified or clarified in several respects. We discuss both of these conclusions further below.

Initially we discuss CTA's allegation that commmon carriers will be disadvantaged completely by D.83-06-083. As CTA knows and has recognized in its application, constitutional and statutory restrictions on common carriers cannot be removed by actions of this Commission. If CTA wishes to pursue the matter of deregulation of common carriers, its remedy lies with the Legislature.

Moreover, while we agree that this record does not contain much evidence of the competitive situation which deregulation will create between common carriers and permitted carriers carrying agricultural commodities, several factors persuade us that the dire result predicted by CTA is not likely to occur.

First, regardless of how the numbers are described by CTA, the number of common carriers transporting these commodities is quite small. To reiterate our findings from D.83-06-083, only 3% of the $227.4 million in revenue from the transport of agricultural commodities was reported by common carriers. Only 273 carriers of all types reported revenue generated from transportation subject to MRT-8A. Clearly, only a small number of these are common carriers.

Secondly, the Public Utilities Code allows common carriers to cancel at any time the portions of their common carrier tariffs covered by MRT-8A. If they wish to continue carrying agricultural commodities, they may apply for a permit to do so. In fact, this has already begun to happen. Therefore, nothing is preventing such carriers from improving their competitive situation if they believe continuing to transport

agricultural goods as common carriers is disadvantageous.

In view of the above, we will not require further evidence on the competitive situation between common carriers and permit carriers transporting agricultural commodities under D.83-06-083.

CTA also contends that we have improperly compared exempt intrastate field-to-shed hauling with non-exempt intrastate shed-to-market hauling, and that therefore it is erroneous to base on such a comparison a finding and conclusion that deregulating shed-to-market satisfies the public policy expressed in P.U. Code Sections 726 and 3661. Of course, we do not mean to state or imply that the two types of hauling are completely similar; obviously, D.83-06-083 points out several differences. However, the important point is that we do not have evidence of chaos, of severe competitive problems, of service interruptions, in an area which is and always has been exempt from Commission regulation. This, taken together with the persuasive evidence on exempt intrastate and interstate shed-to-market transportation showing the competitive benefit of no regulation, strongly indicates that the competitive situation would similarly benefit if regulation were eased on the non-exempt portion of this transportation. Consistent with this discussion, we will modify the relevant findings as indicated below.

Finally, CTA alleges we have a fatal gap in our record in that we do not have evidence on the impact of deregulation of LTL shipments. In fact, we recognized the potential importance of this issue in D.83-06-083 by keeping these proceedings open and giving the parties an opportunity to indicate whether they would be prepared to present evidence on this issue if we were to order further hearings. Five parties responded that they would do so: the Commission staff, CTA, the California-Arizona Citrus League, the California Grape and Tree Fruit League, and Certified Freight

Lines.

After full consideration of the instant application, the notice of intent to present evidence filed by the above parties, and the record as compiled in the proceedings held to date, we conclude that it would be appropriate to hold further hearings on LTL-related issues. Therefore,

IT IS ORDERED that D.83-06-083 is modified as indicated below:

1. Finding 14 is changed to read:

 "It is inconsistent to regulate the rates for the intrastate shed-to-market movement of fresh fruits and vegetables when neither the intrastate field-to-shed movement nor the intrastate portion of interstate and foreign shed-to market movement is regulated."

2. Finding 15 is changed to read:

 "The record developed in this case indicates that for the future, the public policy expressed in Section 726 and 3661 will likely best be met by the cancellation, rather than the continuation, of MRT 8-A."

IT IS FURTHER ORDERED that this proceeding shall remain open in order that an additional hearing may be held to consider the following issues:

1. Operational and tariff distinctions for LTL versus truckload traffic.

2. The impact, if any, of deregulation of LTL traffic on small and medium growers, producers, and carriers.

This hearing is to be held at such time and place as shall hereafter be designated by the assigned Administrative Law Judge.

The Executive Director is directed to cause notice of the hearing to be mailed at least ten (10) days prior to such hearing.

IT IS FURTHER ORDERED that limited rehearing of D.83-06-083 as modified herein is hereby granted as provided above.

This order is effective today.

Dated November 2, 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
WILLIAM T. BAGLEY
Commissioners

Commission Donald Vial, being necessarily absent, did not participate.

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

Joseph E. Bodovitz, Executive Director

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation for the purpose of considering and determining minimum rates for transportation of fresh or green fruits and vegetables and related items statewide as provided in Minimum Rate Tariff 8-A, and the revisions or reissues thereof.	Case 5438, OSH 116 (Filed April 12, 1977)
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ORDER MODIFYING DECISION 83-06-083
AND ~~SETTING FURTHER HEARING~~ Granting Limited Rehearing

An application for rehearing of Decision (D.) 83-06-083 has been filed by the California Trucking Association (CTA). After careful evaluation of the allegations made therein, the Commission is of the opinion that further hearing should be held limited to issues concerning the impact of deregulation on less-than-truckload (LTL) traffic, small shippers and carriers, and related matters. D.83-06-083 left this proceeding open in order that the determination could be made whether further hearing was appropriate; thus the further hearing we order is not in the nature of a rehearing as such, although the issues it covers coincide with some of those raised by CTA. However, for

procedural clarity, we will also denominate it a grant of limited rehearing. We are also of the opinion that D.83-06-083 should be modified or clarified in several respects. We discuss both of these conclusions further below.

Initially we discuss CTA's allegation that commmon carriers will be disadvantaged completely by D.83-06-083. As CTA knows and has recognized in its application, constitutional and statutory restrictions on common carriers cannot be removed by actions of this Commission. If CTA wishes to pursue the matter of deregulation of common carriers, its remedy lies with the Legislature.

Moreover, while we agree that this record does not contain much evidence of the competitive situation which deregulation will create between common carriers and permitted carriers carrying agricultural commodities, several factors persuade us that the dire result predicted by CTA is not likely to occur.

First, regardless of how the numbers are described by CTA, the number of common carriers transporting these commodities is quite small. To reiterate our findings from D.83-06-083, only 3% of the $227.4 million in revenue from the transport of agricultural commodities was reported by common carriers. Only 273 carriers of all types reported revenue generated from transportation subject to MRT-8A. Clearly, only a small number of these are common carriers.

Secondly, the Public Utilities Code allows common carriers to cancel at any time the portions of their common carrier tariffs covered by MRT-8A. If they wish to continue carrying agricultural commodities, they may apply for a permit to do so. In fact, this has already begun to happen. Therefore, nothing is preventing such carriers from improving their competitive situation if they believe continuing to transport

agricultural goods as common carriers is disadvantageous.

In view of the above, we will not require further evidence on the competitive situation between common carriers and permit carriers transporting agricultural commodities under D.83-06-083. However, as part of the evidence to be presented at the further hearings discussed below, we will order our staff to prepare updated information on the number of common carriers who have requested authority to cancel the MRT-8A portion of their certificates and replace it with permitted authority. We will also entertain evidence on the specific economic impacts of such a change, should any party wish to present it.

CTA also contends that we have improperly compared exempt intrastate field-to-shed hauling with non-exempt intrastate shed-to-market hauling, and that therefore it is erroneous to base on such a comparison a finding and conclusion that deregulating shed-to-market satisfies the public policy expressed in P.U. Code Sections 726 and 3661. Of course, we do not mean to state or imply that the two types of hauling are completely similar; obviously, D.83-06-083 points out several differences. However, the important point is that we do not have evidence of chaos, of severe competitive problems, of service interruptions, in an area which is and always has been exempt from Commission regulation. This, taken together with the persuasive evidence on exempt intrastate and interstate shed-to-market transportation showing the competitive benefit of no regulation, strongly indicates that the competitive situation would similarly benefit if regulation were eased on the non-exempt portion of this transportation. Consistent with this discussion, we will modify the relevant findings as indicated below.

Finally, CTA alleges we have a fatal gap in our record in that we do not have evidence on the impact of deregulation of LTL shipments. In fact, we recognized the potential importance of

this issue in D.83-06-083 by keeping these proceedings open and giving the parties an opportunity to indicate whether they would be prepared to present evidence on this issue if we were to order further hearings. Five parties responded that they would do so: the Commission staff, CTA, the California-Arizona Citrus League, the California Grape and Tree Fruit League, and Certified Freight Lines.

After full consideration of the instant application, the notice of intent to present evidence filed by the above parties, and the record as compiled in the proceedings held to date, we conclude that it would be appropriate to hold further hearings on the LTL impact and related issues. We find the enumeration of issues presented by CTA's notice of intent reflects, in large part, our own concerns, and will therefore adopt much of it in our statement below of issues upon which further evidence will be received. To the extent the parties wish to present additional relevant evidence, they are free to do so, subject to concurrence of the Administrative Law Judge. Therefore,

IT IS ORDERED that D.83-06-083 is modified as indicated below:

1. Finding 14 is changed to read:

> "It is inconsistent to regulate the rates for the intrastate shed-to-market movement of fresh fruits and vegetables when neither the intrastate field-to-shed movement nor the intrastate portion of interstate and foreign shed-to-market movement is regulated."

2. Finding 15 is changed to read:

"The record developed in this case indicates that for the future, the public policy expressed in Section 726 and 3661 will likely best be met by the cancellation, rather than the continuation, of MRT 8-A."

IT IS FURTHER ORDERED that this proceeding shall remain open in order that an additional hearing may be held to consider the following issues:

1. Operational and tariff distinctions for LTL versus truckload traffic.

2. The extent of integration of performance factors between truckload and LTL traffic under the minimum rate tariff and in individual carrier operations.

3. The impact of deregulation on small and medium growers, producers, and carriers.

4. How intrastate shed-to-market traffic differs substantially from field-to-shed in terms of operational characteristics of carriers, shippers, receivers, markets; and the significance of these differences in the context of D.83-06-083.

5. The degree to which common carriers have sought authority from this Commission to cancel the

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agricultural commodities portions of their certificates and replace same with agricultural permits, and the economic significance of such action.

It is the Commission's hope that this hearing will occur expeditiously. To the extent possible, the staff should be prepared to present any results it has gathered to date on the monitoring program ordered in D.83-06-083, and on the field study referred to in its notice of intent to present evidence.

This hearing is to be held at such time and place as shall hereafter be designated by the assigned Administrative Law Judge.

The Executive Director is directed to cause notice of the hearing to be mailed at least ten (10) days prior to such hearing.

IT IS FURTHER ORDERED that limited rehearing of D.83-06-083 as modified herein is hereby granted as provided above.

This order is effective today.

Dated NOV 2 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
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WILLIAM T. BAGLEY
Commissioners

Commissioner Donald Vial, being necessarily absent, did not participate.