ei

Decision No. 87047

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order instituting investigation on the Commission's own motion into rules and procedures for filing of freight tariffs and/or contracts of carriage by highway permit carriers as defined in the Highway Carriers Act and in the Household Goods Carriers Act.	Case No. 9963 (Filed September 3, 1975)

ORDER OF DISMISSAL

This investigation was instituted to determine whether rules should be promulgated under which highway carriers should file tariffs naming the rates and rules for their transportation services or their contracts. We desired to take testimony so that we could "make a determination as to the nature and extent of change that should be implemented." (Page 2) Prehearing conference was held October 1, 2, and 14, 1975. No prehearing conference order was issued. On October 22, 1975 the presiding examiner removed Case No. 9963 from the Commission's calendar. On November 3, 1975 Teamsters Joint Councils 7, 38, and 42 filed a motion to dismiss. On January 26, 1977 the California Trucking Association (CTA) filed a motion requesting the Commission to either issue a prehearing conference order or dismiss. On March 2, 1977 CTA sent a letter to Commissioner Batinovich with copies to all parties, in which it stated in part:

"Although there are some issues which touch equally on all areas of the for-hire trucking industry, there are others that properly deserve special attention as related to different types of transportation (e.g., general commodity, tank trucks, household goods moving, etc.).

"There are two objectives that the California Trucking Association (CTA) would like accomplished in the Commission's ensuing review of trucking regulation:

1. The establishment of a reasonable and responsible limitation on entry into the for-hire industry, and

2. The establishment of a regulatory program whereby carriers establish rates and initiate changes in rate levels.

"We recognize that there are collateral issues for the Commission to resolve in the course of adopting regulatory changes that would accomplish our two basic objectives; I am sure you have found that trucking regulation has many interlocking pieces.

"Case 9963 is not the best forum for either the Commission, the trucking industry nor interested parties to fully explore regulatory change. Rather, since there are different types of transportation, with attendant special considerations, CTA proposes that the Commission dismiss Case 9963 and proceed to approach trucking regulation in separate proceedings (perhaps with presently ongoing Commission cases expanded as follows):

	Tariff No.	Case No.
(1)	MRT-2	5432
	MRT-1-B	5441
	MRT-9-B	5439
	MRT-15	7783
	MRT-19	5441
	MRT-11	5603
(2)	MRT-3-A	5433
	MRT-14-A	7857
	MRT-8	5438
(3)	MRT-7-A	5437
	MRT-17-A	9819
	MRT-20	9820
(4)	MRT-6-B	5436
	MRT-13	6008
(5)	MRT-4-B	5330
(6)	MRT-10	5440
(7)	MRT-12	5604
(8)	MRT-18	8808

"Procedurally, to accomplish the above, CTA proposes that the Commission issue the appropriate orders setting hearing and consolidating cases in the above-listed proceedings so that there are essentially eight forums in which to address possible changes in regulation. You will find our proposal will enable a more systematic and meaningful development of issues, even though there will be more ongoing proceedings; I am sure that it is the Commission's thought that these critical issues warrant an organized and detailed analysis."

We have also received letters from officials of the Teamsters Union, the California Manufacturers Association, the California Farm Bureau, the Highway Carriers Association, the California Dump Truck Owners Association, the California Moving and Storage Association, and the Association of Independent Owner-Operators expressing their support for the CTA position.

Just as there has been an interchange of ideas and thinking within the California trucking industry as a result of Case No. 9963 so also there has been an interchange of ideas and thinking within the Commission and between the Commission and the industry and the shippers and the public. Some of the ideas which were to have been explored in Case No. 9963 are presently being explored in such cases as Case No. 5438, OSH 111 (MRT-8 - fresh fruits and vegetables), Case No. 5432, Pet. 884 (MRT-2 - general commodities), and Case No. 5436, Pet 194 (MRT-6-B - petroleum and petroleum products in tank trucks). Because of the information gained in those cases and because of our experience with having statewide trucking matters considered in cases which include requests for increases in the minimum rates, we have concluded that the procedure set forth by CTA is reasonable.

By a separate order issued this date we have instituted an investigation (Case No. 10278) to examine requirements to be met by applicants for highway carrier authority. That investigation will explore the need and procedure to establish a reasonable and responsible limitation on entry into the for-hire industry. By orders setting hearing to be issued within the next few weeks in eight separate proceedings consolidating the cases as set forth in the CTA letter of March 2, we shall explore whether the Commission should

establish a regulatory program whereby carriers would establish rates and initiate changes in rate levels; Case No. 10278 may selectively be consolidated with some of those proceedings. Because of the view we now take concerning the proper procedure for investigating changes in entry into the field and in carriers setting rates we feel that further proceedings in Case No. 9963 would serve no purpose; therefore,

IT IS ORDERED that Case No. 9963 is dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 9th day of MARCH, 1977.

Robert Batinovich
President

Vernon L. Sturgeon

Leonard Ross

Richard D. Gravelle
Commissioners

I have attached a concurrence
Leonard Ross

I concur in part and dissent in part on the attached opinion
William Symons Jr.

C. 9963 - D.87047
COMMISSION INVESTIGATION INTO MOTOR CARRIER REGULATION

COMMISSIONER WILLIAM SYMONS, JR., Concurring in Part and Dissenting in Part

I concur in the dismissal of Case No. 9963. Yet, there are matters for concern.

It would be desirable if the closing of this case ended a bad chapter of regulatory turmoil brought on by the arbitrariness of the Public Utilities Commission itself. I fear it may not.

It is history that in the past sixteen months the for-hire motor carrier industry in California has been "under the gun", as reregulators at the Commission sought to impose an other-than-statutory framework of regulation upon California carriers. The California system of Minimum Rate Regulation has been under attack by the very governmental agency charged by the Legislature to enforce and administer minimum rates. Statutory language has been wrenched and given completely new and antithetical meaning so as to undermine minimum rate operations. Staff has been instructed not to update cost studies underlying minimum rates. Deviations from minimum rates have been granted without the requisite justifying evidence.

On February 4, 1977, I called for corrective action by the Commission to end the inadequate, disjointed way we were proceeding in attempts to reregulate the trucking industry of California.

Today's response continues to be less than ideal. Instead of the single comprehensive case I have proposed, or even the three to four now before the Commission, we are now launching into eight, plus one into limitations of entry into trucking. Such proliferation increases the difficulty of dealing in a comprehensive way with the one question of overriding import in these cases: "Should California's economic regulation

of motor carriers be totally restructured, and if so, how?"

Today's order only sets forth in a very general way what to expect next. I hope we will see thoughtful proceedings where comprehensive evidence, required before one orders major change, is demanded and is produced.

I am not pleased that the order omits any reference to the role of the Legislature if there is to be major change. Page 4 says:

> "We shall explore whether the Commission should establish a regulatory program [of filed tariffs and changes in entry into motor carriage] ..."

The Legislature's role in establishing the framework for Minimum Rate Regulation over the last forty years must be acknowledged. Since extensive statutory changes will be necessary, the Legislature must assent.

Second, the case must be made in public that it is truly in the interest of the California public to abolish minimum rate regulation and to close the relatively open entry of new people into trucking. I fear that if we change for changes sake we may end up with our own little Interstate Commerce Commission system in California. This is a regulatory system justifiably criticized for collusive rate bureaus, reduced competition, higher rates and poorer service. I have reviewed seven letters from carrier and shipper interests which were sent to the President of the Commission this week. I do not agree with the statement of the one writer who stated that "we now have the <u>what</u> ..." of reregulation decided. I am not so quick to have the major issue so suddenly decided. At least those concerned with the general public's well-being would like to see a public showing on the alternatives before we hurriedly carve the turkey.

San Francisco, California
March 9, 1977

William Symons Jr.
WILLIAM SYMONS, JR.
Commissioner

CONCURRING OPINION OF COMMISSIONER LEONARD ROSS:

This order suggests a procedure which meets the approval of many of the major private parties involved in trucking regulation and which allows a prompt, orderly reexamination of the system of minimum rate regulation. In undertaking this reexamination, I think that the Commission and reviewing courts should bear in mind several guiding principles:

(1) A system of minimum rates, set high enough to constitute going rates, amounts to price-fixing under color of state law. It contravenes the principles of state and federal antitrust laws, and if properly tested in the courts might well be found to violate the letter of the statute as well.

(2) The economic effect of a system of high, uniform minimum rates is unlikely to be favorable for any segment of the industry or public. If entry were tightly restricted, carriers might make monopoly profits at the expense of the shipping public. But entry is easy. The result is that the possible monopoly profits from high rates are dissipated through excess capacity. Actual profits are low; expenses are needlessly high; energy and capital are wasted; carriers, labor, and the public are worse off.

(3) At present, there are essentially no entry requirements for permitted carriers, while entry into certificated carriage generally takes place when a carrier has, in the opinion of the staff, violated the ambiguous and unintelligible law which defines the differences between "irregular route" carriers and common carriers. A uniform requirement of financial responsibility for all carriers might well improve the stability of the industry without leading to monopoly profits or restricted service. The acid test is whether PUC operating rights can be sold for substantial sums of money. Entry restrictions under the ICC system, for example, are so severe that ICC operating

rights can be sold for hundreds of thousands or millions of dollars. Legal prohibitions against the sale of operating rights, such as those in our Code and under federal statutes, are hypocritical. If entry is severely limited, any arms-length sale of a business will include allowance for operating rights, however disguised to meet legal niceties.

(4) Under the Interstate Commerce Commission system, rate bureaus function as legalized cartels with the practical power to coerce rate filings by threatening expensive legal proceedings. Neither the substance nor the legality of California's system of rate regulation would be changed if we interpreted "carrier set" rates to mean rates set by one or a few rate bureaus and then ratified (or even modified) by the Commission. Obviously, it is impractical for thousands of carriers to make up complex rate books on their own. But I am confident that the Commission staff can perform the function of aiding carriers to set their own rates. Legitimate functions might remain for tariff agents, such as those functions permitted under our current system of warehouse regulation. But these functions must be carefully defined to avoid conflict with state and federal antitrust laws and with the objective of non-predatory competition which underlies them.

(5) Changing from the current minimum rate system to one compatible with antitrust laws and principles will and should take time. The hearing process is well advanced in the case of some aspects of the industry, and has yet to begin in others. In granting offset relief today, the Commission once again is making a necessary practical compromise between the goals it has set forth and the realities of cost increases for the industry. I am convinced that the new procedural method suggested in this decision will allow the Commission to proceed with a transition to responsible, competitive ratemaking.

Leonard Ross

Leonard Ross
Commissioner

San Francisco, California
March 9, 1977