

Decision No. 87070

ORIGINAL

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 petroleum and petroleum products in bulk, in tank truck equipment statewide as provided in Minimum Rate Tariff 6-B and the revisions or reissues thereof.

Case No. 5436
Petition for Modification
No. 194

O R D E R

Miles Tank Lines (Miles) and Edwin S. Acker have filed a document entitled "Appeal of Examiner's Ruling on Motion to Quash Subpoenas and Motion for a Protective Order". The Attorney General filed a response to the motion.

Previously, the Commission issued 10 subpoenas at the request of the Attorney General requiring those subpoenaed to testify and produce documents at depositions in this matter. The California Trucking Association (CTA) filed a motion to quash all the subpoenas and a motion for a protective order. The Attorney General responded and opposed the motions. On January 14, 1977, Examiner Tanner, who was at the time the assigned examiner, issued an Examiner's Ruling denying the motions. Thereafter, the CTA filed a purported appeal from the ruling. As hereinafter indicated, the Commission does not ordinarily entertain or pass upon rulings of its presiding officers prior to a decision on the merits of a matter. In the instance of the purported appeal of CTA, Commissioner Symons placed before the Commission a request that the challenged subpoenas be stayed pending further decision of the Commission. On January 25, 1977, the Commission voted 2-2 on the request of Commissioner Symons.

On January 28, 1977, Examiner Jarvis, one of the examiners presently assigned to this matter, notified the parties that no stay had been issued and that the ruling of Examiner Tanner continued to be in effect.

On January 5, 1977 at the request of the Attorney General, the Commission issued a subpoena to testify and produce documents on deposition to Acker, individually, and as president of Miles. Thereafter, Acker and Miles filed motions to quash and for a protective order. Examiner Porter, one of the assigned examiners, issued an Examiner's Ruling denying the motions. This purported appeal followed.

The Commission has determined that it is appropriate to set forth its applicable procedures to bring to an end the procedural wrangling among the parties and provide for the orderly and expeditious disposition of this matter.

There is no appeal from a procedural or evidentiary ruling of a presiding officer prior to consideration by the Commission of the entire merits of the matter. The primary reasons for this rule are to prevent piecemeal disposition of litigation and to prevent litigants from frustrating the Commission in the performance of its regulatory functions by inundating the Commission with interlocutory appeals on procedural and evidentiary matters.

Section 310 of the Public Utilities Code^{1/} provides in part that: "The evidence in any investigation, inquiry, or hearing may be taken by the commissioner or commissioners to whom such investigation, inquiry, or hearing has been assigned, or, in his or

^{1/} All references are to the Public Utilities Code unless otherwise stated.

their behalf, by an examiner designated for that purpose." Section 311 provides in part that: "The examiners may administer oaths, examine witnesses, issue subpoenas, and receive evidence, under such rules as the commission adopts." Section 312 provides in part that: "The commission and each commissioner may issue writs or summons, subpoenas, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record." In addition, Section 7 provides that: "Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise."

Pursuant to the aforesaid sections, as well as Sections 1701 and 701, the Commission has adopted Rules of Practice and Procedure. Rules 62, 63, and 65 provide as follows:

"(Rule 62) Designation. When evidence is to be taken in a proceeding before the Commission, one or more of the Commissioners, or an Examiner, may preside at the hearing.

"(Rule 63) Authority. The presiding officer may set hearings and control the course thereof; administer oaths; issue subpoenas; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or motions which do not involve final determination of proceedings; receive offers of proof; hear argument; and fix the time for the filing of briefs. He may take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory or other authorities under which the Commission functions and with the rules and policies of the Commission.

"(Rule 65) Rulings. The presiding officer shall rule on the admissibility of all evidence. Such rulings may be reviewed by the Commission in determining the matter on its merits. In extraordinary circumstances,

where prompt decision by the Commission is necessary to promote substantial justice, the presiding officer may refer the matter to the Commission for determination."

While presiding officers prepare proposed reports or proposed decisions, the principles established by the courts which deal with piecemeal review of rulings and interlocutory orders are applicable to their rulings. (People ex rel Dept. Public Works v Romano (1971) 18 CA 3d 63, 67 fn 1; Gosney v State (1970) 10 CA 3d 921, 928; Gibson v Savings and Loan Commr. (1970) 6 CA 3d 269; Caruso v Snap-Tite, Inc. (1969) 275 CA 2d 211.)

A record of Commission proceedings is taken by a court reporter. (Section 1706.) The Commission's rules establish procedures for briefs or oral argument. (Rules 75, 76.) Thus, a party contesting a ruling of a presiding officer has a full record when the entire matter is reviewed on its merits by the full Commission. (Rule 65.) Unless a presiding officer refers a ruling to the Commission pursuant to Rule 65, there is no provision in the rules for consideration of a ruling prior to consideration on the merits. Even when a presiding officer, in extraordinary circumstances, refers a ruling to the Commission, the ruling continues in effect and must be followed unless deferred or suspended by the presiding officer. Where a purported appeal is filed by a party from a ruling of a presiding officer the Commission's rules do not provide for any formal Commission action prior to the disposition of the entire matter on its merits. The ruling continues to be in effect and must be followed by the parties. Nothing should be abated because of a hope that a Commissioner might present the matter to the full Commission and that the full Commission might act thereon prior to consideration of the matter on its merits. Failure to comply with a ruling may result in the imposition of appropriate sanctions.

The present matter arises from subpoenas issued in connection with depositions noticed at the request of the Attorney General. Section 1794 provides that:

"The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this State and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts."

The subpoenas were duly issued by the Commission and the Examiner's Rulings were made pursuant to law. If there has been a failure to comply with the rulings, the aggrieved party may apply for sanctions. (Code of Civil Procedure Section 2034; Public Utilities Code Sections 1792, 2113.)

As the matter is presently before us, we make the following observations for the guidance of the parties. We believe that the contention that the Attorney General has no standing to participate in a proceeding before the Commission to be frivolous. (Public Utilities Code Sections 1701, 1702, 1705; Rules 53, 54.) We find no abuse of discretion in the Examiner's Ruling issued by the presiding officer; the ruling was correct.

C.5436 Pet. 194 kd

IT IS ORDERED that the depositions noticed by the Attorney General be rescheduled and proceed forthwith.

Because the depositions relate to a presently calendared matter, the effective date of this order is the date hereof.

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

Dale B. Baker
President
Vernon J. Sturgeon
William S. Simons, Jr.
Commissioners

Commissioner William Simons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.