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ORIGINAL

Decision No. _____

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 any and all)
commodities statewide including,)
but not limited to, those rates)
which are provided in Minimum Rate)
Tariff 2 and the revisions or)
reissues thereof.)

And Related Matters.

Case No. 5432 /
Petition for Modification
No. 996
(Filed October 20, 1977)

Case No. 5330, Pet. 102

Case No. 5433, Pet. 68

Case No. 5436, Pet. 259

Case No. 5437, Pet. 294

Case No. 5438, Pet. 117

Case No. 5439, Pet. 316

Case No. 5440, Pet. 105

Case No. 5441, Pet. 400

Case No. 5603, Pet. 212

Case No. 5604, Pet. 60

Case No. 7857, Pet. 162

Case No. 8808, Pet. 44

Case No. 9819, Pet. 26

Case No. 9820, Pet. 10

(For appearances see Decision No. 88667.)

ORDER OF DISMISSAL

In these petitions California Trucking Association (CTA) seeks to amend the alternative application of common rates provisions of the Commission's minimum rate tariffs so as to provide more restrictive availability of the use of lower rail carload rates by highway carriers in lieu of the specific minimum rates established by the Commission for transportation by highway carriers.

Decision No. 88667 dated April 4, 1978 in these proceedings denied the motions to dismiss CTA's petitions filed by California Manufacturers Association (CMA), Cannery League of California (Cannery League), and Traffic Managers Conference of California (TMCC). CMA, Cannery League, and TMCC represent major industries that ship their goods throughout California in truckload quantities.

Decision No. 88667 recited the background data surrounding the issues raised in CTA's petition. In particular, that decision pointed out that the tariff provisions in question are designed to implement Section 3663 of the Public Utilities Code;^{1/} that in several prior investigative proceedings the Commission considered

1/ Section 3663 of the Public Utilities Code reads as follows:

"3663. In the event the Commission establishes minimum rates for transportation services by highway permit carriers, the rates shall not exceed the current rates of common carriers by land subject to Part 1 of Division 1 for the transportation of the same kind of property between the same points."

the tariff provisions in issue;^{2/} that issues raised by CTA in its instant petitions are similar in most respects to issues raised in the aforementioned proceedings; and that several attempts to have the Legislature repeal the provisions of Section 3663 have failed.^{3/}

Decision No. 88667 stated:

"We believe CTA and other parties favoring the reduction or partial elimination of the use of alternatively applied rail carload rates by highway permit carriers should come forward with proposals which will permit highway carriers to expeditiously establish lower levels of compensatory truckload rates that would become effective concurrently with the minimum rate tariff amendments proposed in these petitions. Therefore, we will direct petitioner to amend its petitions within sixty days after the effective date of this order to incorporate such proposals. In the event that the petitions are not so amended, they will be dismissed."

Decision No. 89144 extended the time for compliance with the above provisions of Decision No. 88667 for an additional 90 days. ✓

2/ A comprehensive review of all minimum rate provisions here in issue was conducted in Case No. 5432 (Petition 621) et al. leading to Decision No. 79937 dated April 11, 1972 (73 CPUC 309). In addition, the Commission considered in Case No. 5432 (Petition 660) whether to cancel provisions authorizing combinations of rates in the minimum rate tariffs with alternatively applied common carrier rates. That request was denied in Decision No. 83788 dated December 10, 1974 (unreported). In Case No. 5432 (Petition 618) the Commission considered whether the charges on truck shipments should be computed at the applicable rail minimum weight for each unit of highway carriers' equipment furnished. That request was denied in Decision No. 78915 dated July 13, 1971 (72 CPUC 400).

3/ The most recent attempt to repeal Section 3663, Assembly Bill 1397 (Papan), introduced in the 1977 session of the Legislature, died in committee.

By letter dated October 20, 1978 CIA advised the Commission as follows:

"You will recall that we previously advised the need for additional time to develop an industry proposal, which was granted by Decision 89144. Unfortunately, the uncertainties concerning the industry structure which will exist following the Commission interpretation and implementation of Senate Bill 860 are still substantial. At each of our meetings to develop a proposal, additional questions have developed because of the pendency of the Commission investigations into that subject, and the collateral issues in the related proceedings.

"Accordingly, I have been directed to request your cooperation in providing a further extension of time to permit an intelligent response. We particularly believe that we must have time to review the final Commission decisions in the Senate Bill 860 policy case (OSH 977, Case 5432, et al), and in the tariff bureau case (Case 10368), before we can intelligently suggest procedures which will comply with the spirit of Decision 88667, and will provide a lawful and workable procedure for further rate-making by shippers, carriers and the Commission."

CMA, by letter dated October 25, 1978, urged that the petitions herein "be summarily denied without delay".

We conclude that the CIA petitions should be dismissed. In our view CIA has had more than ample time in which to prepare reasonable proposals as directed by Decision No. 88667. We are disappointed that CIA cannot or will not present proposals to lessen the rate impact on shippers to go along with the more restrictive alternative application rules proposed in these petitions. All we requested of CIA was to devise a proposal "to expeditiously establish lower levels of compensatory truckload rates that would become effective concurrently with the minimum rate tariff amendments proposed in these petitions". We believe that, despite the enactment of SB 860 (which was CIA-proposed legislation) and ongoing proceedings examining

existing highway carrier regulation, CTA has had ample opportunity to come forward with some proposal pursuant to Decision No. 88667.

We point out to CTA that we will not entertain future petitions similar to these dismissed herein. No useful purpose would be served by new petitions requesting this Commission to modify its tariffs to effectively eliminate or substantially nullify the provisions of Section 3663, as this Commission must strictly adhere to the clear legislative mandate set forth in that code section. Only the Legislature can eliminate that mandate.

Hopefully, the change in regulatory climate as a result of SB 860 (1977) and the Commission orders implementing that bill^{4/} will, to some extent reduce the broad shipper opposition to the annulment of Section 3663. In view of SB 860 this Commission believes that Section 3663 is no longer required to provide the lowest level of reasonable and nondiscriminatory rates for truckload traffic and that Section 3663 should be repealed.

^{4/} SB 860 was enacted as Chapter 840, Statutes of 1977. It amended the Public Utilities Code to eliminate the classification of radial highway common carrier. Our initial order implementing SB 860 is Decision No. 89575 dated October 31, 1978 in Case No. 5432 (OSH 957) and related proceedings.

A.5432, Pet. 996 et al. dz

In the circumstances, IT IS ORDERED that Petition 996 in Case No. 5432 and the related petitions filed by California Trucking Association on October 20, 1977 are hereby dismissed.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 16th day of JANUARY, 1979.

Robert B. Johnson
President
Richard W. Howell
Paul J. DeBrie

Commissioners