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Decision No. 89897 1 JAN 16 1979

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.)

- Case No. 5432, OSH 957
- Case No. 5439, OSH 310
- Case No. 5441, OSH 392
- Case No. 5603, OSH 208
- Case No. 7783, OSH 156
- Case No. 5330, OSH 100
- Case No. 5432, OSH 958
- Case No. 5433, OSH 67
- Case No. 5432, OSH 959
- Case No. 5438, OSH 116
- Case No. 7857, OSH 159
- Case No. 5436, OSH 244
- Case No. 5432, OSH 960
- Case No. 6008, OSH 36
- Case No. 5437, OSH 292
- Case No. 9819, OSH 22
- Case No. 9820, OSH 8
- Case No. 5432, OSH 961
- Case No. 5440, OSH 103
- Case No. 5432, OSH 962
- Case No. 5604, OSH 59
- Case No. 5432, OSH 963
- Case No. 8808, OSH 38
- Case No. 8808, OSH 42
- Case No. 5432, OSH 964

And Related Matters.)

ORDER GRANTING STAY

The Commission issued Decision No. 89575 in the above-entitled proceedings on October 31, 1978. After the denial of petitions for rehearing filed by many parties to the proceeding, a number of such parties filed six separate petitions for writ of review with the Supreme Court of the State of California, which said petitions are Nos. S.F. 23970, S.F. 23972, S.F. 23973, S.F. 23974, S.F. 23975 and S.F. 23976. Each of such petitions to the Supreme Court requests a stay of the operative effect of Decision No. 89575.

The Commission, after consideration of the requests for stay of Commission Decision No. 89575, set forth in the above-mentioned petitions for writ of review, is of the opinion that good cause has been shown for a stay as to those carriers whose operating rights were suspended at any time between July 1, 1978 and December 31, 1978. The Commission recognized the plight of these carriers in Decision No. 89730, and invited legislative action to amend Public Utilities Code, Sections 1063.5 and 3572.5 to extend conversion privileges to these carriers. Such legislation has been introduced as Assembly Bill No. 27. Granting a stay of Decision 89575 as to this class of carriers pending judicial review will permit such carriers to continue their present operations without threat of enforcement activity and will provide sufficient time for both judicial and legislative review of their plight.

The Commission is of the opinion that, as to all other parties to the California Supreme Court petitions for writ of review (petitions nos. S.F. 23970, S.F. 23972, S.F. 23973, S.F. 23974 and S.F. 23975) there has been and can be no showing of imminent irreparable injury. Issuance of a stay as to these parties would necessitate a general stay of Decision 89575 delaying indefinitely our implementation of SB-860. This would severely restrict the business activities of countless numbers of present carriers as well as an indeterminate number of persons and corporations who may desire to enter the California motor transportation business through acquisition of outstanding carrier authorities. Under Public Utilities Code, Sections 1063.5 and 3572.5 only persons or corporations who were in operation as radial carriers on January 1, 1978 and continuously from July 1, 1978 to the date of filing are eligible for conversion. Any business entity acquiring a radial permit subsequent to January 1, 1978 cannot satisfy this requirement. Consequently, transferability of operating authority is severely restricted by the legislation until conversion by the initial permittee is consummated. Granting a stay would extend indefinitely the period during which time the sale of these authorities is as a practical

matter precluded. We cannot overlook the obvious risk of irreparable harm both to existing carriers and to other business entities desiring to enter the business which would exist if we consented to the general stay as requested.

A general stay of our decision would have adverse impacts in addition to the impact upon transferability of authority. Since no party disputes the fact that radial permits must under SB 860 be converted to common or contract authority, this conversion must proceed sooner or later regardless of the eventual outcome of the petitions filed with the California Supreme Court. This conversion process involving nearly 15,000 carriers has been time consuming, expensive, and difficult to orchestrate administratively, but the Commission has now reached the point at which the necessary administrative machinery has been established and the preliminaries concluded. Carriers have been informed of the legislation and the need to file for conversion through several mass mailings and numerous public meetings held throughout the state. Applications for conversion have been distributed by the Commission and filed by the carriers. The personnel to process the filings has been assembled and organized to begin issuing converted authority. No good cause has been shown why this system finally established should now be dismantled. Neither Decision 89575, nor the converted authority to be issued hereunder will become truly operative until October 1, 1979. Moreover, any errors in the detail of our implementation which might be found on appeal could as easily be remedied after October 1, 1979 as now. Therefore,

IT IS ORDERED that the operative effect of Decision No. 89575 is stayed as to the parties who filed for writ of review in California Supreme Court petition no. S.F. 23976, and to any other permitted carriers who were similarly suspended during the period from July 1, 1978 through December 31, 1978. Said stay is ordered until the Supreme Court of the State of California has issued final judgment in proceeding no. S.F. 23976, and until further order of this Commission.

IT IS FURTHER ORDERED that stay of Decision No. 89575 as to the parties who have filed for writ of review in California Supreme Court petitions nos. S.F. 23970, S.F. 23972, S.F. 23973, S.F. 23974 and S.F. 23975 is denied.

The effective date of this order is the date hereof.

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

Robert B. Atwood
President
Richard D. Howell
Clare T. DeWick

Commissioners