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ORIGINALDecision No. 90152 APR 10 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation)	Case No. 5432, OSH 957
for the purpose of considering and)	Case No. 5439, OSH 310
determining minimum rates for)	Case No. 5441, OSH 392
transportation of any and all)	Case No. 5603, OSH 208
commodities statewide including,)	Case No. 7783, OSH 156
but not limited to, those rates)	Case No. 5330, OSH 100
which are provided in Minimum)	Case No. 5432, OSH 958
Rate Tariff 2 and the revisions)	Case No. 5433, OSH 67
or reissues thereof.)	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
And Related Matters.)	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
_____)	(Filed April 12, 1977)

(See Decision No. 89575 for list of appearances.)

Additional Appearances

H. W. Hughes, J. C. Kaspar, and Ronald C. Broberg,
for California Trucking Association; William D.
Mayer, for Del Monte Corporation; Jess J. Butcher,
for California Manufacturers Association; and
Calhoun E. Jacobson, for Traffic Managers Conference
of California; interested parties.

SUPPLEMENTAL OPINION AND ORDER

Senate Bill 860 (SB 860) enacted as Chapter 840,
 Statutes 1977, amended the Public Utilities Code to eliminate the

radial highway common carrier classification. Carriers holding radial permits were provided the opportunity to continue their operations by converting their permit into a highway common carrier certificate and/or a highway contract carrier permit. Eligibility for conversion was limited, however, to carriers in bona fide operation on July 1, 1978, and continuously thereafter to date of filing. On October 31, 1978 the Commission issued Decision No. 89575 establishing a method for implementing SB 860, which recognized these legislative prerequisites for conversion. Carriers whose permits were in suspension at any time between July 1, 1978 and the date of filing were denied conversion privileges.

A considerable number of petitions for rehearing were filed with respect to this issue. They were denied in Decision No. 89730 dated December 12, 1978. Although the Commission recognized both the scope of the problem and the inequity of the legislation, it felt constrained by the clear wording of the statute and said in that decision:

". . . The latest data available indicates that this will affect a substantial number of carriers. In excess of 1,000 radial permits were suspended between July 1 and the end of October (1978). In all probability, more have been suspended since then. Some of these permits were suspended voluntarily at the specific request of the carrier. Others were suspended involuntarily for a variety of reasons including failure to maintain adequate insurance and failure to remit quarterly fees. We do not doubt that some carriers have had their authority suspended for reasons entirely beyond their control and will be denied conversion privileges under Decision 89575 as a result. We are sympathetic with the plight of these carriers and have found no shortage of equitable reasons in their petitions to grant the relief they have requested. The problem they have presented is not, however, susceptible to administrative resolution. We are constrained by the unfortunate language of the statute which fails to recognize that the ordinary course of business for many perfectly legitimate trucking companies is not always 'continuous'." (D.89730, mimeo. pp. 4 and 5.)

We encouraged affected carriers to seek legislatively the solution which we were unable to provide administratively and indicated that we would support any such legislative effort. (D.89730, mimeo. p. 5.)

After denial of the petitions for rehearing, six separate petitions for writ of review were filed with the Supreme Court of the State of California;^{1/} each requested a stay of Decision No. 89575. On January 16, 1979 the Commission issued Decision No. 89897, a supplemental order, granting a limited stay with respect to carriers who were in suspension at any time from July 1, 1978 to December 31, 1978.

Remedial legislation has been introduced as Assembly Bill 27 (AB 27), and has received the overwhelming support of the Legislature and appears well on the way to becoming law. The bill would amend SB 860 to extend conversion privileges to any carrier in bona fide operation as a radial highway common carrier at any time from July 1, 1978 to the date of filing for conversion. The final date for filing applications for conversion would be extended from December 31, 1978 to October 1, 1979. If enacted, this legislation will fully resolve the inequity to which suspended carriers were previously subject.

Conversion applications from previously ineligible carriers can be processed within our established implementation procedure. Extending the deadline for filing applications for conversion will, however, require several modifications to the schedule for implementation established in Decision No. 89575. In order to provide a common date for conversion of all radial permits sufficient time must be added to our schedule to permit processing applications received under the new deadline. Modifying the common conversion date will in turn necessitate several other minor adjustments to our schedule.

^{1/} Nos.: S.F. 23970, S.F. 23972, S.F. 23973, S.F. 23974, S.F. 23975 and S.F. 23976.

In order to receive comments and suggestions from interested parties on the required changes to the schedule adopted in Decision No. 89575, hearings were held in Los Angeles and San Francisco on March 29, 1979 and April 2, 1979, respectively. The notice of hearing, attached hereto as Appendix A, set forth a revised schedule proposed by the assigned Commissioner. California Trucking Association (CTA), Western Motor Tariff Bureau (WMTB), and Highway Carriers Association representatives were the only parties to take exception to the proposed schedule. They proposed that the suggested schedule in the notice of hearing be extended by at least 9 months. CTA and WMTB maintained that there was no way that tariff bureaus could prepare the new tariffs required to be filed by Section 1063.5 common carriers within the time limits proposed. (A statement of the Commission staff representative present indicated that there could be in excess of 10,000 new common carrier certificates issued as a result of SB 860.)

In order to determine when the staff could begin the process of sending out the new certificates, the presiding Administrative Law Judge requested and the staff furnished a witness for that purpose. The witness testified that the staff is ready to start sending out the new certificates whenever the Commission authorizes it to do so, and he assumed that that would be as soon as AB 27 becomes law and the key dates therein are known for sure. The witness testified that there are three important terms which affect the certificate process; in order to understand the time frame within which new common carriers must implement their certificates, these are:

Date certificate granted is the date the certificate receives final processing and is mailed to the carrier,

Date certificate effective is 30 days after the certificate is granted, and

Date certificate issued is the date the new carrier may commence operating.

In Decision No. 89575 the Commission provided that carriers must have their tariffs on file 30 days after the certificate is effective and, in no case, less than 30 days prior to the date issued. This was done purposely so that there would not be a crush of tariff filings just prior to the common issue date of all Section 1063.5 certificates, which is now October 1, 1979. The staff witness said that the mailing of the new certificates, and hence the granting dates, could be done over a period of time at any rate the Commission deemed appropriate. We believe proper timing of the granting of certificates can avoid the last minute rush of tariff business for tariff bureaus that CTA and WMTB fear. If the granting of certificates commences May 1, 1979, for example, there will be a seven-month period (May-November, inclusive) over which carriers can prepare and file their tariffs if the proposed time schedule in the notice of hearing is adopted. We will set no specific rate for processing and mailing the certificates upon our staff, but caution them to spread out the processing over the time period finally available.

We find that a revised schedule for the implementation of SB 860 is necessary to properly comply with the provisions that may be enacted by AB 27 and conclude that the revised schedule contained in Appendix A is reasonable and should be adopted.

We further find that the allegations raised in S.F. 23976 with respect to carriers whose permits were in suspension between July 1, 1978 and December 31, 1978 will be resolved through enactment of AB 27, and no reason for the stay granted in Decision No. 89897 will remain.

We conclude that the stay should be lifted 30 days after AB 27 becomes law.

In order to integrate these modifications as soon as possible after enactment of AB 27, this order should be effective the date hereof.

IT IS ORDERED that:

1. Finding 3 of Decision No. 89575 is amended as follows:

3. In order to convert all radial permits on a common date, and in order to allow sufficient time for administrative processing, we find the following schedule reasonable:

- a. Section 1063.5 certificates will be granted during the period from the effective date of Assembly Bill 27 (AB 27) to November 1, 1979.
- b. Certificates will be granted with a thirty-day effective date.
- c. All certificates will be issued January 1, 1980.
- d. Carriers must file their tariffs or affidavit of subhauling within thirty days after, but not prior to, the effective date of the certificate, except that carriers who file applications for conversion under the extended deadline provided by AB 27 may file their tariffs prior to the effective date of their Section 1063.5 certificates.
- e. Tariffs must be filed upon at least a thirty-day notice to the public.
- f. All Section 1063.5 tariffs must be made effective on the common date, January 1, 1980, and must be filed no later than December 1, 1979.
- g. All radial highway common carrier permits will be revoked effective January 1, 1980.

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2. Written contracts must be filed by contract carriers with the Commission on or before January 1, 1980.

3. The stay granted by Decision No. 89897 is lifted thirty days after AB 27 becomes law.

4. The Executive Director shall serve a copy of this decision on all highway carriers.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 10th
day of APRIL, 1979.

J. C. Boyce
President
James L. Stinson
Charles D. Howell
Clair J. Deloria
James M. King
Commissioners

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- Case No. 8808, OSH 42
- Case No. 5432, OSH 964

NOTICE OF HEARING

TO: ALL PARTIES APPEARING IN PHASE SB 860

NOTICE IS HEREBY GIVEN that the Public Utilities Commission of the State of California has set hearing in the above-entitled matter before Administrative Law Judge Porter for Thursday, March 29, 1979, at 10 a.m. in the Commission Courtroom, State Office Building, 107 South Broadway, Los Angeles, California, and for Monday, April 2, 1979, at 10 a.m. in the Commission Courtroom, State Building, 350 McAllister Street, San Francisco, California, at which time and place all interested parties may appear and be heard for the following purpose:

APPENDIX A

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In Decision No. 89575, issued October 31, 1978, the Commission established a plan for the implementation of SB 860 (Chapter 840, Statutes 1977). An implementation schedule was established to permit the conversion of all radial permits on the common date October 1, 1979.

Subsequent to Decision No. 89575, AB 27 was introduced before the California Legislature to extend previously denied conversion privileges under SB 860 to all carriers whose operating authority was in suspension for some period of time between July 1, 1978, and December 31, 1978. In addition, the bill would extend the final date for filing applications for conversion from December 31, 1978, to October 1, 1979. The bill has received the overwhelming support of the Assembly. All indications are that it will receive a similar reception in the Senate and should be enacted shortly.

In order to incorporate these amendments into the Commission's existing procedure for the implementation of SB 860, the assigned Commissioner has proposed the following modifications to the implementation procedure and schedule previously established in Decision No. 89575:

1. All converted authorities (1063.5 certificates and 3572.5 permits) will be granted by November 1, 1979.
2. Carriers who file applications for conversion under the extended deadline provided by AB 27 may file their tariffs prior to the effective date of their 1063.5 certificates.
3. The common date for issuance of all converted authority will be changed from October 1, 1979, to January 1, 1980.
4. Written contracts must be filed by contract carriers with the Commission on or before January 1, 1980.

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5. All radial highway common carrier permits will be revoked effective January 1, 1980.
6. In order to begin operation under converted 1063.5 certificates on January 1, 1980, tariffs must be filed by December 1, 1979.

Hearings will be held for the limited purpose of considering these proposed amendments to incorporate the provisions of AB 27 into the Commission's existing procedure for the implementation of SB 860. Since no substantive changes are proposed in our implementation plans, the substantive aspects of Decision No. 89575 will not be reconsidered.

Dated at San Francisco, California, this 20th day of March, 1979.



Albert C. Porter
Administrative Law Judge