

ORIGINALDecision No. 91280 JAN 29 1980

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
Petition for Modification
No. 1027

OPINION ON REHEARING

By Decision No. 89806 dated December 19, 1978 in the instant proceeding, the Commission granted rehearing of Decision No. 89497 for the purpose of allowing the submission of briefs and/or oral argument on the issue of whether Section 454 of the Public Utilities Code requires a showing, and a finding by the Commission, to increase rates falling between a previously authorized decrease from the minimum rate under Section 452^{1/} and the published minimum rate under Section 3662.

Pursuant to a ruling issued by the assigned administrative law judge, the matter was submitted on briefs which were filed by the California Trucking Association (CTA) and the Commission staff.

Background

On June 20, 1978 Big Pine Trucking Company, Inc. (petitioner) filed its petition requesting authority to continue to publish less than minimum rates for the transportation of clay and related articles from Laws, Keeler and Olancho to points located within a defined

^{1/} Sections refer to sections of the Public Utilities Code.

area of Los Angeles and points in Orange County. The petition also sought authority to increase the previously authorized rates. The sought increased rates were below those set forth in the Commission's minimum rate tariffs. On August 8, 1978 we issued Decision No. 89228 which was an interim opinion and order authorizing the continuation of the previously authorized rates without the sought increases. On October 3, 1978 we issued Decision No. 89497 where we concluded:

- "1. When a common carrier has published a less than minimum rate under authority granted pursuant to Section 452 and increases such a rate to a level less than or equal to the Commission published minimum rate, the requirements of Section 454 of the Code are satisfied by the showing and finding made in the establishment or approval of the published minimum rate as well as the decision granting the original 452 authority.
- "2. The needs of commerce and the public interest require that the authority to publish rates less than minimum on clay and related articles from Laws, Keeler and Olancho to the Los Angeles area and Orange County be continued.
- "3. No further authority from the Commission is required to allow the published rates on alfalfa pellets from Cottonwood Canyon Ranch to be increased to the level of the present minimum rates.
- "4. No further authority from the Commission is required to allow the petitioner to publish increased rates, which increased rates are less than the minimum rates, on the transportation of clay and related articles between the points named herein."

and authorized the requested increased rates.

Discussion

As stated previously, rehearing of Decision No. 89497 was granted limited to the issue of whether the requirements of Section 454 are met when a common carrier has published a less than minimum rate under authority granted pursuant to Section 452 and increases such rate to a level less than or equal to the Commission's published minimum rate.

CTA argues in its briefs that the Commission has failed to recognize that when petitioner was authorized to publish the reduced rate pursuant to Section 452 that authorized rate, by operation of law, became the minimum rate for highway carriers (Public Utilities Code Section 3663). It further argues that any subsequent increase in the rate must be accomplished under Sections 726 and 3662 or under Section 454 of the Public Utilities Code.

The Commission staff argues in its brief that the practical effect of authorizing a decreased rate in accordance with Section 452 is that this rate becomes an alternative minimum rate for all highway carriers pursuant to Section 3663. However, the published minimum rate pursuant to Section 3662 remains in effect notwithstanding the existence of an alternative application. The staff further argues that in establishing both the Section 452 and Section 3662 rates, a showing and finding that the rate is justified under Section 452 and reasonable and fair under Section 3662 are required, and the net effect of such showing and finding is to create a zone of reasonable rates bounded by the Section 452 rate and the Section 3662 rate. By fixing the parameters of the reasonableness of rates, it logically follows that any rate falling within these parameters must necessarily be reasonable.

The staff also points out that pursuant to Section 454(b) the Commission may determine the nature of the showing required for a rate increase within the parameters of Section 454. The staff argues that the Commission may thus find reference to showings and findings previously made in Section 452 and Section 3662 proceedings adequate to justify increasing certain common carrier rates. In support

of its argument that no further showing is required under Section 454, the staff cites City of Los Angeles v Cal. P.U.C. (1975) 15 C 3d 680.

Review of our previous decisions in this matter, and the briefs filed by CTA and the Commission staff, discloses no substantial reason to alter our findings or conclusions set forth in Decision No. 89497.

Many common carrier deviations are granted subject to expiration dates. If the carrier takes no action to renew the authority prior to such date, the authority expires and in most instances higher class rates become applicable. This effect is automatic. It occurs without any consideration or approval by the Commission. It would be anomalous to require a full "showing" in order for a carrier to increase such a rate to some level lower than the otherwise applicable class rate. Section 454 certainly does not require such an absurd result.

An examination of the different rates involved in this case is illustrative. Big Pine had previously been granted authority to assess rates of 50 and 52 cents per hundredweight for the involved transportation. The authority to assess these rates had an expiration date of August 1, 1978. Upon this expiration date, the rates of 50 and 52 cents per hundredweight would have automatically increased to at least 84 cents. By the present petition (Petition 1027 in Case 5432), Big Pine requested authority to continue the deviation authority and to increase the rates from 50 and 52 cents to 55 and 57 cents, which was still well below the otherwise applicable class rate of 84 cents.

O R D E R

IT IS ORDERED THAT:

The findings, conclusions and Order set forth in Decision No. 89497 are affirmed.

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

Dated JAN 29 1980, at San Francisco, California

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

John E. Guyon
President
William L. Stegeman
Richard W. Howell
James J. [unclear]
Lawrence [unclear]
Commissioners