

ORIGINAL

Decision No. 91284 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 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  
Order Setting Hearing  
No. 244

And Related Matters. )

Case No. 5432  
Order Setting Hearing  
No. 960

Case No. 6008  
Order Setting Hearing  
No. 36

SUPPLEMENTAL ORDER

The Commission's reregulation program for the transportation of commodities involving tank or vacuum tank vehicles was adopted by Decision No. 90354 in these consolidated proceedings on May 22, 1979.

On November 20, 1979 we issued Decision No. 91063 which reopened these proceedings for the purpose of allowing the California Trucking Association (CTA) and other original appearances of record to examine witnesses Thomas G. Moore, Peter Max, and Michael Conant. A prehearing conference was held following that order reopening these proceedings on January 2, 1980, before Administrative Law Judge (ALJ) Alderson. Hearing dates were scheduled beginning January 21, 1980 to allow examination of these witnesses, and parties of record as of that date who participated in earlier phases of these proceedings may present rebuttal evidence, provided it is in prepared testimony form and mailed to all appearances on or before February 8, 1980. Hearings will commence on February 19, 1980 for the presentation of any such rebuttal.

These proceedings were reopened as a result of action taken on November 16, 1979 by the United States District Court for the Northern District of California (U.S. District Court) in Civil Action No. C-79-2671 RHS, a proceeding brought by CTA to enjoin the Commission from implementing the reregulation program adopted by Decision No. 90354. On January 16, 1980 the U.S. District Court permanently, by written order, enjoined the Commission from giving any force or effect to Decision No. 90354 in view of what that Court found to be procedural due process deficiencies. Decision No. 90354 was stayed until further order of the Commission.

Although we take exception with the U.S. District Court's holding, and will exhaust our remedies of appeal, we will in the meanwhile undertake to remedy the procedural due process deficiencies found by the U.S. District Court.

The U.S. District Court's order requires that CTA be afforded opportunity to examine the witnesses mentioned above and to meet or rebut the testimony of such witnesses. This is now underway. Further, however, the Commission must notify tank and vacuum truck carriers affected by Minimum Rate Tariffs (MRTs) 6-B and 13 and grant them an opportunity to be heard on the reregulation (or rate cancellation) program set forth in Decision No. 90354.

By this opinion and order we are providing notice to all carriers subscribing to the MRTs affected by these proceedings (2, 6-B, and 13) that they may testify concerning the regulatory program contemplated by Decision No. 90354 (all highway carriers were served a copy of that decision by mail shortly after it was issued). Such testimony shall be prepared in written form and served by mail on all appearances to these proceedings (with two copies addressed to ALJ Alderson) on or before March 3, 1980. Hearings to allow the presentation of this testimony will commence Friday, March 14, 1980.

CTA's contention that we are precluded from going forward with these reopened proceedings is without merit. By these reopened proceedings and this order we are not giving "force and effect" to Decision No. 90354. In fact we are merely taking procedural steps necessary to insure due process as ordered by the U.S. District Court. Upon completing these procedural steps and weighing the evidence we will consider alternatives for implementing any changes in highway carrier regulation that are reasonable in light of these proceedings.

CTA's contention that it should be allowed to recall witnesses who testified during the original hearings in these proceedings is also without merit. It, along with the respondents and other interested parties, had ample notice of the scope of these proceedings and participated accordingly. It has cross-examined witnesses Moore and Conant and has opportunity to rebutt their testimony; further it, by this order, is afforded opportunity to present testimony on the reregulation program adopted by Decision No. 90354.

Since we are affording ample notice and opportunity for examination of witnesses Moore and Conant<sup>1/</sup> and parties may present rebuttal to their testimony, and since we are allowing respondents and interested parties to present testimony on the regulatory reform program announced in Decision No. 90354, no further procedural steps are necessary as we move forward in our effort to examine highway carrier regulation with the goal of having regulation that serves the public interest.

Findings of Fact

1. These consolidated proceedings have been reopened by Decision No. 91063.
2. The U.S. District Court permanently enjoined the Commission from giving force and effect to Decision No. 90354 by an order entered January 16, 1980.
3. Decision No. 90354 has been stayed until further order of the Commission by Decision No. 91063.
4. These reopened proceedings, the scope of which is set forth in Decision No. 91063 and this opinion and order, will allow an opportunity to comply with the U.S. District Court's order.

Conclusion of Law

Since Decision No. 90354 has been stayed, in compliance with the U.S. District Court's order, and will not become effective in application until further order, this Commission may, in these reopened proceedings, undertake to remedy the procedural due process deficiencies found by the U.S. District Court.

IT IS ORDERED that:

1. The scope of these reopened proceedings is broadened from that directed in Decision No. 91063 in that respondents and interested parties may present testimony on the reregulation program announced by this Commission in Decision No. 90354.

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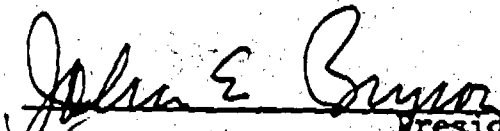

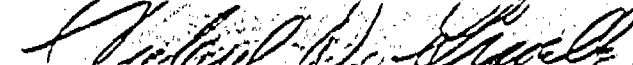
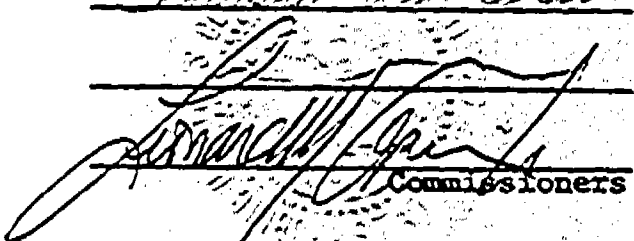
<sup>1/</sup> Peter Max has not been called and we will not consider his testimony in any subsequent decision. ✓

2. The testimony to be presented, as outlined in Ordering Paragraph 1, shall be presented in written prepared testimony form, with a copy served by mail on all appearances of record in these proceedings, and two copies to ALJ Alderson, on or before March 3, 1980; a declaration of such mailing and service shall be attached to the testimony. Public hearings for the presentation of such testimony shall commence Friday, March 14, 1980 in the Commission Courtroom, 350 McAllister Street, San Francisco, at 9:30 a.m.

3. The Executive Director is directed to serve a copy of this order on all highway carriers who transport commodities in tank or vacuum tank vehicles, or all carriers subscribing to Minimum Rate Tariffs Nos. 2, 6-B, and 13.

The effective date of this order is the date hereof.

Dated JAN 29 1980, at San Francisco, California.

  
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President  
  
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Commissioners

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