

Decision No. 91414 MAR 4 1980

ORIGINAL

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
Petitions for Modification
Nos. 884, 951, 966
Order Setting Hearing 957

Case No. 5439
Petitions for Modification
Nos. 270, 307, 312
Order Setting Hearing 310

Case No. 5441
Petitions for Modification
Nos. 356, 388, 394
Order Setting Hearing 392

Case No. 5603
Order Setting Hearing 208

Case No. 7783
Order Setting Hearing 156

And Related Matters.

OPINION AND ORDER
DENYING REHEARING OF DECISION NO. 90663

On August 14, 1979, the California Public Utilities Commission (Commission) issued Decision No. 90663 abolishing minimum rate regulation of general commodity transportation and establishing in lieu thereof a more competitive regulatory system of carrier-filed rates. Petitions for rehearing were filed by California Trucking Association, California Teamsters Public Affairs Council and Western Conference of Teamsters, American

Transfer Co., et al., Max Binswanger Trucking, et al., Delta Lines, Inc., Pacific Motor Trucking Co., A and B Transportation Services, Inc., et al., Highway Carriers Association, Jet Delivery, Inc., et al., Highway Carriers Association, Jet Delivery, Inc., the National Small Shipments Traffic Conference and the Drug and Toilet Preparation Traffic Conference, Inc.

The Commission has considered each and every allegation of the petitions and finds no good cause for rehearing. The petitions, have, however, raised one issue which should be clarified.

A number of petitions alleged unlawful reliance upon Decision No. 90354, issued May 22, 1979, in Case 5436, OSH 244.

Typical of such petitions is the following allegation of Delta Lines:

"While completely disregarding the evidence in this proceeding, the Commission has relied almost exclusively on the record in Case No. 5436, OSH 244, et al., which led to Decision No. 90354 and, in effect, adopted findings and conclusions in that proceeding in which the transportation of commodities in bulk in tank trucks, not general commodities as here involved, was addressed. That proceeding did not deal with rates governing general commodities shipments, and carriers cannot have been expected to have anticipated that the resolution of issues crucial to this decision were being determined in that proceeding. ... This is a blatant denial of the affected carriers' right to notice and an opportunity to be heard."

This allegation is entirely without merit. In Decision No. 90663 we did refer to Decision No. 90354 but only for the purpose of explaining why we found it unnecessary to describe, in full, the issues and evidence presented on the record in this proceeding. We reached our decision, and its underlying findings of fact and conclusions of law, in this case independently and entirely on the evidence introduced in the 58 days of hearing held in this proceeding. Both the issues and material evidence, as well as our analyses, findings and conclusions were, however, in essential respects, indistinguishable from those fully discussed in Decision No. 90354. Having recently issued Decision No. 90354 in which these same issues were discussed at length and having mailed copies to all highway

carriers, we simply decided an abbreviated discussion referring to Decision No. 90354, and separately stating our findings of fact and conclusions of law independently made on the basis of this record, would suffice. A careful reading of Decision No. 90663, mimeo pages 2-4, 6, 7 and 9 should be sufficient to clarify any ambiguity.

In the event any doubt remains as to the evidentiary basis of our decision, the parties should reacquaint themselves with the extensive testimony and 103 exhibits received in evidence in this proceeding. Exhibits 13, 13A, 38, 54, 89 and 94, and the testimony of Professor Thomas Gale Moore, and Paul J. Trahan should be particularly enlightening.

Trahan, through Exhibit 13 and related testimony, convincingly presented a number of reasons why the Commission's Transportation Division believes the minimum rate system no longer serves the public interest and should be abolished. These reasons were summarized in Exhibit 13:

- "1. Every common and permit carrier must increase its rates when minimum rates are increased, even though the present rate level may be fully compensatory for some carriers
2. With exception of deviation procedures and the negotiating zone that exists between Commission-established rates and the rail rates, the present system does not allow carriers to set rates based on the efficiencies of their own operations and the specific circumstances and needs of shippers.
3. Industry (both shippers and carriers) and the staff agree that many of the truckload rates established by the Commission are too high. This is partly evidenced by the fact that, in 1975, approximately 18% of the non-exempt truckload revenue of commodities ratable under MRT 2 was generated under the alternative application of rail rates, either applied alone, or in combination with truck rates. This highlights a need for an adequate commodity rate system; however, it has been impossible for the Commission with its present staffing to develop an adequate one.

4. The application of alternative rail rates under the provisions of the minimum rate tariffs is highly discriminatory to shippers and/or consignees who are located off rail. Additional freight charges incurred by an off-rail consignee could be 50% higher than those paid by his on-rail competitor for an identical shipment, both being transported in the same manner and by the same motor carrier.
5. Reliance on the rail commodity rates as an available method of assessing rates less than those established by the Commission can be frustrated when the railroad, for reasons appropriate to its own operations, decides to cancel some of its rates. In such instances, it is actually the railroad that is increasing the minimum rate, albeit with Commission approval.
6. Many of the tariff rules and methods of determining freight charges are too complex. Correctly applying rail rates requires a great amount of detailed analysis and expertise, as routing provisions must be complied with, switching charges must be assessed when applicable, etc. The maze of classification ratings, exception rates, commodity rates and special rules, such as those involving the rerating of shipments having multiple destinations or origins, boggle the mind.
7. The present system is very expensive to maintain and keep current. Adjustments of minimum rates because of their broad application and influence also require extensive and protracted public hearings. These proceedings involve substantial studies requiring large time commitments by carriers, shippers, and Commission staff personnel. As a result, it is very difficult to keep revising the provisions of the tariffs to reflect the ever-changing transportation conditions. There is constant pressure on the Commission from the carriers to increase the minimum rates.
8. The Transportation Division staff has been unable to produce cost, rate and traffic flow studies in sufficient volume and time to keep current all of the Commission's minimum rate tariffs.

9. In those instances when the staff has been able to complete cost, rate, and traffic flow studies, substantial staff, carrier and shipper commitments and protracted public hearings were involved. Data presented into evidence were outdated before a decision was issued and in some cases before public hearings were concluded. In most every instance, carriers and shippers have not been in accord with staff proposals and/or the methodology utilized by the staff in developing its studies. As a consequence, many days of hearings, adjourned hearings, and petitions for rehearing have followed.
10. The increase in the number of applications filed and decisions issued in the last year regarding authority to charge less than the minimum rates.
11. The existing minimum rates have been distorted over the last ten to twelve years because of the need for offset type proceedings. This is particularly true in connection with the transportation of general commodities. Several of the minimum rate tariffs have not been made the subject of full scale cost, rate, and traffic flow studies for a number of years and, consequently, do not reflect current circumstances and conditions."

Professor Moore provided an even more pervasive indictment of minimum rate regulation. On the basis of his extensive studies of the motor transportation industry, both in this country and abroad, Moore testified that the present method of minimum rate regulation tends to produce excessively high rates and inefficient carrier operations. In his opinion, price competition would go a long way toward remedying these problems.

Moore noted that in all studies of regulated versus unregulated carriage regulated rates were found considerably higher than unregulated rates. Several of the studies cited were particularly convincing. A series of court decisions in the 1950's exempting fresh-dressed poultry, frozen poultry, and frozen fruits and vegetables from ICC rate regulation provided an opportunity to quantitatively determine the effects of price competition upon

rates. The rates for fresh-dressed poultry fell an average of 33 percent, frozen poultry fell 26 percent on average, and the rates for frozen fruits and vegetables declined 19 percent. In a separate study, the National Broiler Council compared the rates its members pay for transportation of ICC regulated cooked poultry with those they pay for transportation of ICC exempt fresh poultry. They found the rates between the same points to be some 33 percent lower on the unregulated fresh poultry. Moore found no evidence to indicate the same result would not occur if price competition were introduced in the California motor transportation industry.

Moore observed that minimum rate enforcement prevents carriers from attracting new business by offering reduced rates. The only effective way to compete under the minimum rate system is to offer better service. This has, in Moore's opinion, resulted in excess service competition which has inflated California carriers' costs of operation. Allowing cost-justified rate differentials would permit carriers to institute innovations in rate design to maximize load factors and lower carrier costs. Efficiency and productivity would be encouraged through the opportunity to compete on a price basis as well as on the basis of service.

Operating efficiencies realized by carriers and passed on to shippers through rate competition will, according to Moore's analysis, filter through free market economics to the public in the form of generally lower product prices.

Contrary to the fears expressed by the many carrier witnesses that testified in this proceeding, the economic analysis of Professor Moore indicates very little danger of predatory competition in the trucking industry in California. There is incentive to price below cost only if marginal competitors can be eliminated and there is some assurance that they will not return or be replaced after market prices are restored. With entry standards relatively liberal and a substantial number of carriers available to move into new markets, there is no such incentive present. Thus, the danger of widespread predatory or cutthroat competition is unlikely even absent regulatory restraints on pricing.

Moore suggested that service may improve in a more competitive regulatory environment, including service to rural communities. Service is now provided to rural communities because it is profitable to serve these communities. Price competition would not make it otherwise. Moore cited a U. S. Department of Agriculture study of unregulated versus regulated agricultural carriage which confirmed his general analysis:

"Not only are the kinds of services offered expanded, but the quality of service improves also. In-transit time for motor carriers is reduced sometimes by half. Schedules and routes are made to suit the shipper. Increased competition causes the carriers to be more eager to please and resolute to maintain good service."

Although numerous carrier witnesses expressed disagreement, no party offered any economic data, analysis or study inconsistent with the analysis and conclusion of Professor Moore.

The exhibit of Trahan and testimony of Moore are merely illustrative of the evidence in Case 5432, Pet. 884, et al., upon which Decision No. 90663 is based. The findings and conclusions contained in Decision No. 90663 reflect our consideration of all of the evidence of record in this proceeding. Neither the manner in which the decision was written nor the apparent ambiguity of our reference to Decision No. 90354 alters the fact that Decision No. 90663 is based entirely upon evidence of record.

IT IS THEREFORE ORDERED THAT:

Rehearing of Decision No. 90663 is denied.

The effective date of this order is the date hereof.

Dated MAR 4 1980 , at San Francisco, California.

John E. Brown

President

Richard D. Howell

Fernando J. Jimenez

Commissioners

I abstain
Vernon L. Sturgeon

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