

**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. )

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And Related Matters. )

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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

ORDER DENYING PETITIONS  
TO REOPEN

On March 3, 1980, Western Traffic Conference, Inc. (WTC), filed a petition to set aside submission and reopen Case 5432, Petition 884, et al., for further hearing. A similar petition was filed by the California Trucking Association (CTA), March 4, 1980.

The principal grounds alleged by WTC for their petition are:

- a. Decision No. 90663, issued in Case 5432, Pet. 884, et al., has been voided by order of the Federal District Court for the Northern District of California in Case No. C-79-2671 RHS.
- b. Decision No. 90663 merely adopted Decision No. 90354, issued in Case 5436, OSH 244, et al., a case in which WTC did not participate, thereby denying WTC an opportunity to be heard.

The order issued in Case No. C-79-2671 RHS enjoins the Commission from giving any force or effect to Decision No. 90354 or "any Commission decision cancelling other minimum rate tariffs in reliance in whole or in part on Decision No. 90354". Although independently stated, both grounds alleged by WTC assume that Decision No. 90663 was either based on Decision No. 90354 or evidence underlying that decision. Neither assumption is true. Decision No. 90663 was based entirely upon evidence of record introduced in Case 5432, Pet. 884, et al. As we recently explained in Decision No. 91414 denying rehearing:

"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."

CTA has alleged that since hearings were concluded in Case 5432, Pet. 884, et al., prior to the Commission publicizing the specifics of its reregulation proposals, CTA has not had an opportunity to be heard with respect to those proposals.

It is surprising that CTA, a frequent and experienced participant in Commission proceedings, could so badly misconstrue our decision-making process. In proceedings such as these, the Commission has no preconceived proposal which could be announced in advance of public hearings.

These consolidated proceedings were initiated by Petition 884, filed in Case 5432, by the California Manufacturers Association to cancel minimum rates on truckload volume shipments of general commodities. Until the issues raised by this petition and related consolidated pleadings were explored through public hearings, the Commission, as a body, had not met to consider the case and had no basis upon which a "proposal" could properly be developed.

What CTA has called the Commission's reregulation proposal is simply the Commission's decision, reached after consideration of the assigned Administrative Law Judge's recommendation, and all of the evidence of record. To argue that this decision-making procedure denies CTA due process is analogous to arguing that litigants in courts of law are entitled to hear the jury's proposed verdict before presenting their evidence. Moreover, if after every opinion was rendered by the Commission, further evidentiary hearings were required, there literally would be no end to the decision-making process.

The scope of this proceeding was publicly noticed and well publicized within both carrier and shipper circles. All

C. 5432, Pet. 884, et al. MW/ec

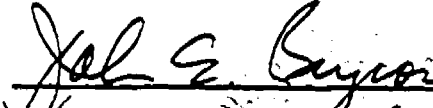
parties were well aware that carrier-set rates were to be considered as a potential alternative to continued minimum rate regulation. The participation of both CTA and WTC on the record in these proceedings clearly reflects their understanding of the issues. Both had ample opportunity to let their views be known in the 58 days of hearing held in this proceeding between January 1, 1977 and May 3, 1978.


Finding no good cause stated,  
IT IS ORDERED that:

The petitions of WTC and CTA to set aside submission and reopen Case 5432, Pet. 884, et al., are denied.

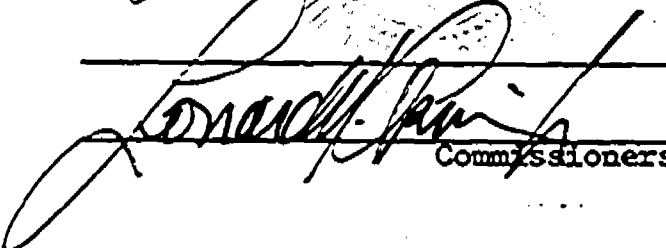
The effective date of this order is the date hereof.

Dated MAR 18 1980, at San Francisco, California.

  
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President

  
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William P. Sullivan

  
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Richard W. Gould

  
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Commissioners

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