

Decision No. 92541 DEC 16 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order instituting rulemaking on the Commission's own motion to prepare and adopt a transportation energy efficiency plan for highway carriers in compliance with Section 3502.1 and 3502.2 of the Public Utilities Code.

OIR No. 1  
(Filed September 3, 1980)

Sam Shafer, Jr., and Graham & James, by David Marchant, Attorney at Law, for California Carriers Association; James D. Martens, for California Dump Truck Owners Association; J. C. Kaspar, Ronald C. Broberg, and Antone E. Bartolic, for California Trucking Association; Jess J. Butcher, for California Manufacturers Association; Steven M. Cohn and Renee Haman-Guild, Attorneys at Law, for California Energy Commission; Sam Miles, for Sam Miles, Inc.; Joseph R. Moderow, Attorney at Law, for United Parcel Service; and George F. Moody, for Los Angeles Chamber of Commerce; interested parties.

Ellen LeVine, Attorney at Law, and Geoffrey Meloche, for the Commission staff.

O P I N I O N

Procedure

In 1979 the Legislature added Section 3502.1 and 3502.2 to the Public Utilities Code (Code). These sections require the Commission to prepare and adopt, in cooperation with the California Energy Commission (CEC), a transportation energy efficiency plan for highway carriers no later than December 31, 1980. After adopting the plan, the Commission must include a finding in each appropriate decision that it complies with the guidelines established in the plan.

On September 3, 1980 we issued an Order Instituting Rulemaking (OIR) for the purpose of receiving comments, suggestions, or proposals of any interested party, particularly the CEC, on the implementation of the legislation. In order to give all parties ample advance notice, the proposal of the PUC staff was attached to the OIR and served on all parties.

We received comments and/or alternate proposals from the following parties:

1. California Trucking Association (CTA)
2. California Manufacturers Association (CMA)
3. California Carriers Association (CCA)
4. California Dump Truck Owners Association (CDTOA)
5. Sam Miles, Inc. (Miles)
6. United Parcel Service (UPS)
7. Los Angeles Chamber of Commerce
8. California Energy Commission

On November 5, 1980 oral argument was held before Administrative Law Judge Kenneth K Henderson with Commissioner Richard D. Gravelle in attendance. No evidence was received in this proceeding.

This opinion will not attempt to summarize the comments of the parties and then discuss the issues raised by each. Rather, this decision will contain (1) a preliminary statement, (2) our regulatory philosophy in this area, and (3) the plan adopted. We will draw from and enumerate the contributions of the parties to our conclusions as we discuss each area.

#### Preliminary Statement

Before continuing our discussion there are two preliminary subjects that must be understood: (1) our definition or concept of the term energy efficiency, and (2) the relationship of the new code section to our other statutory duties.

The comments received in this proceeding revealed that there is no general understanding or agreement regarding the term energy efficiency. CTA, sponsor of the legislation, in its comments stated that:

"A definition of 'efficiency' is elusive in much the same way that 'productivity' is. It is often easier to state what is not productive than what is."

If the sponsor of the legislation does not offer a more specific definition of the term, we would expect other parties to also have difficulty in offering a meaningful definition. In fact, there was no meaningful definition offered in this proceeding. Nor was there any agreement concerning the elements appropriate to such a definition.

With this lack of understanding in this area on the part of all parties, it is to be expected that the plan we adopt will be limited in scope and framed in general terms.

As a matter of convenience the terms energy productivity and energy efficiency will be used interchangeably. For the purposes of this decision we construe energy efficiency in terms of freight moved per gallon of fuel. We will not at this time adopt any single unit of measurement as standard for the industry to measure the amount of freight moved. However, it is important to state immediately that we do not intend to discuss energy efficiency simply in term of miles per gallon of fuel. The product of the industry is not the movement of trucks but rather the transportation of freight. For example, if carrier A transports a commodity between two points at half his capacity and achieves 10 miles per gallon, he would be as energy efficient as Carrier B who transports the same commodity

between the same points at full capacity at the rate of 5 miles per gallon. Each carrier can increase his productivity: carrier A by increasing his load factor and carrier B by increasing his miles per gallon.

The next preliminary matter to clarify is the emphasis that we place on the new policy contained in Code Section 3502.1. CEC suggests that this policy should be of overriding concern, and where other regulatory policies conflict with this policy they should be changed. We disagree. The new legislation did not alter the Commission's statutory duties and responsibilities or the regulatory policies designed to carry out those duties. We agree with the staff and CTA that the new code sections must be administered in harmony with all other sections of the Code.

#### Regulatory Philosophy

The implementation of this new legislation offers us the opportunity to follow either of two widely divergent paths to achieve a stated goal. The state policy is to "achieve increasingly efficient utilization of energy in the performance of transportation service by highway carriers". One path to implement this policy is to visualize the industry as a whole and attempt to increase energy productivity in the aggregate. This will be referred to as the industrywide path. The second path to reach our stated goal is to attempt to increase the energy efficiency of individual carriers. This will be referred to as the individual carrier path.

The choice of either path will result in different Energy Efficiency Plans. The industrywide plan will necessarily

involve intensive regulatory activity. To ensure increasing energy productivity of the entire industry would require extensive data-gathering in terms of total energy usage and total movement of freight. The industrywide path implies that energy productivity can be quantified for the entire industry. Two other implications of such an approach are that the industry produces a homogeneous product and that a single unit of measurement can be devised to accurately measure energy efficiency. If such a unit of measurement could be devised and if energy efficiency could be quantified, then more intrusive regulatory strategies would logically follow.

An example of a possible activity would be the establishment of standards of energy efficiency to govern entry. The standards could establish the most energy efficient number of carriers and the most energy efficient size of each firm to be allowed to participate in the industry. Also, it could logically follow that the total amount of freight should be divided and allocated among the carriers by the regulatory agency. In addition to determining the prices to be charged, the regulatory agency could also mandate the type of equipment and the method of operations of every carrier in the industry. All these activities would be in the interest of achieving a quantifiable increase in the energy productivity of the entire industry. The result would be an industry totally planned by government.

The alternative path, which is to visualize the industry as a group of individual carriers, contains an entirely different set of implications. The alternative path assumes that as individual carriers improve their energy productivity the industry as a whole will have improved. The individual carrier path does not assume a homogeneous product nor a single industrywide unit of

measurement of energy productivity. Rather, a unit of measurement can be used for each carrier. Energy productivity can much more easily be quantified for individual carriers, particularly when the purpose of the quantification is not to compare one carrier against another but rather to measure the improvement of individual carriers over time. This alternate path recognizes that incentives for individual carriers to improve their performance are more desirable than regulatory mandates. The second path would also use free market competitive forces as the best incentives for individual decisions. Governmental action should be necessary only when there is a deficiency in the marketplace, such as a lack of adequate information. The basic goal of our plan to achieve the state policy of increasing energy efficiency is to encourage individual carriers to improve their energy efficiency over time.

Certain CTA proposals offer the most striking example of the industrywide path. CTA's plan calls for actions which:

- "(a) Improve overall efficient industry use of fuel and energy by highway carriers,..."

CTA also proposes a guideline to be used in operating rights matters for the Commission to:

- "(a) Exercise authority to encourage energy efficient numbers of carriers and vehicles in for hire services."

Also, CTA proposes that as a standard for entry, new applicants be required to demonstrate "that their proposed operations will not result in a net increase in the totality of industry fuel use."

These types of activities proposed by CTA might be logical were we to adopt the industrywide path. However, we reject this path as not only impossible to administer but also requiring too much regulatory involvement in a competitive industry.

Examples of comments which can be construed to support the alternative path were offered by UPS, CMA, and the Commission staff.

We agree with UPS' statement that "no single factor contributes to energy efficiency more than free operation of competitive market forces." UPS also stressed the important role that this Commission could play in the dissemination of information regarding new techniques and technologies.

CMA, in addition to stressing the need for increased competition, went so far as to propose that the staff not attempt to establish any standards for fuel productivity. It is apparently concerned about how these standards might be used in the future.

The staff's proposal is essentially in support of the alternative path. The exception in the staff's proposal is its apparent interest in developing industrywide standards of fuel productivity to be used in rate-setting proceedings.

Other parties seemed to follow the approach of CMA in that they supported the staff's plan but also favored extreme caution by the Commission in the use of any standards that might be developed.

With these considerations in mind we will adopt a goal for our plan which will be consistent with our philosophy of regulating competitive industries. The goal adopted is to improve the energy efficiency of individual highway carriers over time.

#### The Adopted Plan

The Energy Efficiency Plan required by Section 3502.2 will consist of (1) our goal, (2) guidelines, and (3) future studies which we support. Section 3502.2 is unclear about whether

the plan that we adopt today can ever be changed. We could not agree more with CTA's statements that the Legislature:

"...contemplated a 'living' transportation energy efficiency plan with guidelines which could be modified and improved upon as experience is gained, available technology improved, and as energy resource availability shifts."

Review of the comments of all the parties in this proceeding reveals that there is totally absent a body of knowledge regarding energy efficiency in the field of highway carriage. There are no quantified standards of energy efficiency, and there is no agreement on the appropriate unit of measurement of energy efficiency. It is obvious that we are at the threshold of the study of energy efficiency. We hope to gain knowledge, experience, and wisdom with the passage of time. As our experience increases, we will be able to, and intend to, refine the energy efficiency plan adopted today.

An additional point that should be made before describing the plan is that the plan we adopt today will not be totally encompassing of our activity in the field of improving energy efficiency. It is for the purposes of fulfilling the legislative requirement of Section 3502.2 that we make a finding in future orders impacting energy efficiency that the order complies with the guidelines of our plan. Because of this necessity our plan must be sketched in broad general terms. However, we wholeheartedly endorse the state policy of improving energy efficiency and our attempts to comply with this policy will not be limited solely to the points in our adopted plan.

#### The Goal

The goal of our plan is to increase the energy efficiency of individual carriers over time. This goal has been fully discussed previously.



Guidelines

The next element of the plan is the guidelines. Based upon our limited knowledge in the field and also based on our stated goal and regulatory philosophy, we are able to supply five guidelines. We expect to refine our guidelines as we gain experience in this field.

Competition

The first guideline is the basic cornerstone of the plan. This guideline is that our future actions should maintain or increase market competition within the for-hire trucking industry. All parties, with the exception of the CEC, acknowledge that free market competitive forces will lead to greater energy efficiency on the part of highway carriers. CTA, UPS, staff, and others point out that the single most effective force in a free market to serve as an incentive to increase fuel efficiency is the price of fuel. The price of fuel has increased dramatically over the past several years. Projections indicate similar increases in the future. Not only has the price of fuel increased, but the proportion of fuel costs to total costs has also increased. This most powerful of incentives can best operate in a competitive free market.

CEC takes the position that increased competition will offer an incentive for carriers to operate more efficiently overall and might not necessarily be an incentive to increase fuel efficiency. While this statement might be true it appears to take a rather narrow view of the trucking industry. As the proportion of fuel costs to total costs continues to increase, the powerful incentive to conserve fuel increases, as compared with other factors of production. Also, it is important to realize that for-hire highway carriage does not operate in a vacuum. The entire trucking industry

is comprised of 10 percent for-hire carriage and 90 percent proprietary carriage. Small economic incentives can serve to disturb this balance. Were we to mandate uneconomic regulations for the for-hire industry, a result would likely be an increase in proprietary carriage without any social benefits. Not only do for-hire carriers compete with proprietary trucking, but also there is competition between modes (rail, air, etc.). It is our belief that as long as each mode, and each division within a mode, prices its service in light of their total true social and economic costs, then the most efficient allocation of resources will occur.

#### Incentives

The second guideline is that our actions will tend to provide information and/or incentives to encourage individual carriers to make management decisions to improve their energy efficiency. The intention of this guideline is to create greater awareness of fuel economy and the significance that conservation and efficiency can play on the profitability of a firm. One example of a type of activity that this guideline could cover would be to require carriers to submit the fleet average mileages whenever they request certain authority from us. Another type of activity that this guideline envisions is the publication of standards of energy productivity, if possible, for the purpose of allowing carriers to compare their own performance with an optimum standard.

#### Small Businesses and Regulatory Burden

Guidelines 3 and 4 are closely related and will be discussed together. Guideline 4 is to not add unnecessarily to the regulatory burdens of the industry because of our implementation of the state energy policy. Guideline 3 indicates that any new burdens found necessary will be directed away from small businesses. We are

aware that the implementation of this policy provides us the opportunity to require large amounts of data from carriers and also to require that carriers meet many new standards any time they approach this Commission for relief of any type. CTA cautions against unwarranted expansion of "bureaucratic" activities. Miles warns against a flood of data requests directed at small, unsophisticated carriers. We wish to acknowledge these concerns by adopting these guidelines with the intention that any new standards imposed or data requested will be approved with a great deal of caution. Also we will direct that any new paperwork burdens found necessary will be directed as much as possible to larger Class I and Class II carriers.

#### Direct Intervention

The fifth guideline is closely related to but not exactly the same as the second guideline. The distinction is that while we intend to rely on incentives and information to encourage individual carriers to act, we do not want to rule out the possibility that we might intervene in the practices of highway carriers. It is our present intention to avoid intervening directly in the operations of individual carriers. Instead we would act upon the entire industry or upon groups of carriers. An example is pricing decisions. If, for instance, the multiple-lot rule discouraged energy efficiency, we might attempt to change or abolish the rule for the entire industry, not for individual carriers.

#### Future Studies

The third element of our plan consists of a list of studies that should be undertaken. It is as follows:

1. A study to develop an information dissemination program to inform carriers of new facts pertinent to improving energy productivity.

2. A study of the feasibility of developing energy efficiency standards.
3. A study to develop what incentives could be offered to carriers both within and outside our jurisdiction to improve energy efficiency.

CEC was most helpful in the development of this section. CEC proposed an interagency State Truck Fuel Economy Program funded by the Transportation Rate Fund which would, among other things, conduct a series of studies. Within that series of studies were three items that we have adopted as part of our plan. The adoption of the CEC's proposal, in total, would probably require substantial legislative changes. It is our desire that the plan we now adopt be carried out without further legislation. Therefore, all elements of our plan should be entirely within our jurisdiction. We believe that the subject matter of the three chosen studies is within our jurisdiction, and each of the studies can be funded by the Transportation Rate Fund. Also, we conclude that our staff should perform or oversee the chosen studies. We realize that any increased staff activity in this area will undergo legislative scrutiny, primarily through the budgetary process.

Most importantly, we do not wish the preceding comments to be construed as opposing interagency cooperation. Nor do we wish to denigrate the value and necessity of studies involving other agencies and jurisdictions. We value the participation of the CEC in this proceeding. In retrospect participation by the California Department of Transportation and the Air Resources Board would have been helpful. We look forward to working with these other agencies in the future. However, the area of funding any other studies will have to undergo closer scrutiny.

#### Findings of Fact

1. Sections 3502.1 and 3502.2 of the Public Utilities Code were added by Chapter 1195, statutes 1979.

2. Section 3502.2 of the Public Utilities Code requires that we adopt before December 31, 1980 a transportation energy efficiency plan for highway carriers,

3. Order Instituting Rulemaking No. 1 was issued to solicit comments or proposals regarding the adoption of the required plan.

4. Comments or proposals were received from eight parties in addition to the plan prepared by our staff.

5. We adopt the transportation energy efficiency plan contained in Appendix A attached hereto.

6. Because of the legislative mandate the effective date of this decision should be the date hereof.

Conclusion of Law

The plan we adopt as contained in Appendix A attached hereto satisfies the requirements of Section 3502.2 of the Public Utilities Code.

O R D E R

IT IS ORDERED that the transportation energy efficiency plan in Appendix A is adopted pursuant to requirements of Section 3502.2 of the Public Utilities Code.

The effective date of this order is the date hereof.

Dated DEC 16 1980, at San Francisco, California.

John E. Guyon  
President

Michael D. Keadle

Clare T. DeWitt

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Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Leonard M. Grimes, Jr., being necessarily absent, did not participate.

APPENDIX A

Energy Efficiency Plan

Goal

The goal of our plan is to improve the energy productivity of individual highway carriers over time.

Guidelines

All of our actions which impact the energy efficiency of highway carriers will be governed by the following guidelines:

The action taken will tend to:

1. Maintain and increase market competition within the for-hire trucking industry.
2. Provide information and/or incentives to encourage individual carriers to make management decisions that will improve their energy efficiency.
3. Direct any added regulatory burden found necessary because of this plan away from small businesses.

The action taken will not tend to:

4. Add unnecessarily to the regulatory (paperwork) burdens of the industry.
5. Result in direct intervention in the operations of any individual carrier regarding its energy productivity.

Future Studies

We believe that the following studies should be undertaken or supervised by our staff as soon as fiscally possible:

1. A study to develop an information dissemination program to inform carriers of new facts pertinent to improving energy productivity.
2. A study of the feasibility of developing energy efficiency standards.
3. A study to develop what incentives could be offered to carriers both within and outside our jurisdiction to improve energy efficiency.