

Decision No. 92810 MAR 17 1961

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 trans-)
portation 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.)

And Related Matters.

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

(For appearances see Decision No. 90663.)

Additional Appearances

Murchison & Davis, by Donald L. Murchison,
Attorney at Law, and Fred H. Mackensen, for
Air Courier Express and 25 other respondent
highway carriers; Handler, Baker, Greene &
Taylor, by Marvin Handler, for Westside
Transport, Inc. and 27 other respondent
highway carriers; and Michael Eggleton,
for Osterkamp Trucking; respondents.

Gene Carmody, for himself; Leon R. Peikin, for Traffic Managers Conference of California; R. A. Dand, for Norris Industries; William A. Watkins, for Bethlehem Steel Corporation; Barry L. Kaltenbaugh, for Georgia-Pacific Corporation; Jess Butcher, for California Manufacturers Association; and Brundage, Davis, Frommer & Jessinger, by Roger A. Carnagey, Attorney at Law, for California Teamsters Public Affairs Council and Western Conference of Teamsters; interested parties.

O P I N I O N

In Decision No. 90663, in these proceedings, the Commission established a comprehensive reregulation plan with respect to transportation subject to Minimum Rate Tariffs (MRTs) 1-B, 2, 9-B, 11-A, 15, and 19. That reregulation plan did not establish investigation and suspension procedures in connection with contract carrier rate reductions made after the conclusion of the transition period. The captioned proceedings were reopened by Decision No. 91955 dated June 17, 1980 for the limited purpose of receiving evidence on procedures for processing proposed contract carrier rate reductions after the transition period and related modifications to the reregulation plan adopted in Decision No. 90663.

Public hearing in the reopened proceeding was held before Administrative Law Judge Mallory in San Francisco on September 4 and 5, 1980, and the proceeding was submitted upon receipt of concurrent briefs on October 3, 1980.

Evidence was presented by the staff of the Commission's Transportation Division (Exhibit 884-95); California Trucking Association (CTA) (Exhibit 884-96); the group of respondent carriers represented by Murchison & Davis (Murchison Group) (Exhibit 884-97); Traffic Managers Conference of California (Conference) (Exhibit 884-98); and California Teamsters Public Affairs Council and Western Conference of Teamsters (Teamsters) (Exhibit 884-99).

Briefs were filed by staff, CTA, Conference, and California Manufacturers Association.

Staff Recommendations

The staff witness recommended that Item 12 of the fourteen-point regulatory program for the general freight industry set forth on pages 7, 8, and 9 (mimeo) of Decision No. 90663 should be modified as shown below.

12. After the transition period, contract carriers will be governed by the following:
 - (a) Except as provided in 12(b), 12(c), and 12(d), contract rates will become effective 30 days after the date filed, absent protest. Such rates may be filed at any level without initial justification.
 - (b) Contract rates at or above the charges of motor carrier competitors may be made effective the date filed with the Commission or such later date as may be provided by the contract terms. Such filings shall be justified by reference to a motor carrier competitor's rate being met.

- (c) Contract rates which are below the charges of motor carrier competitors, but which are at or above the carrier's own current and lawfully filed rates, may be made effective the date filed with the Commission or such later date as may be provided by the contract terms. Such filings shall be justified by reference to the carrier's own rate.
- (d) Contract rates of specialized contract carriers authorized to solicit individual one-time shipments and exempted from continuing relationship requirements (by Decision No. 89575) may be made effective the date filed with the Commission or such later date as may be provided by the contract terms. Such filings shall be justified by a statement that the contract covers specialized transportation within the meaning of Decision No. 89575.

The following is a summary of the staff evidence in support of the above recommendation. The result of the proposal is that after the transition period established by Decision No. 90663 is completed, contract carrier rates below the level of the rates of competing motor carriers will not become effective for thirty days after filing, thus permitting investigation and suspension (I&S) procedures to apply to contract carrier rate reductions. The proposal is designed to foster a more equitable degree of competition between common and contract carrier classes in the post-transition period. Under the Public Utilities Code (Code) and the Commission's present reregulation program, common carrier rate filings below the level of motor carrier competitors must be filed on thirty days' notice, while any post-transition rate filings of contract carriers may be made effective on the date filed. Under the staff proposal, that disparate treatment of common and contract carriers would not occur.

After the transition period, the general rule will be that contract filings require thirty days' notice. Such filings will not require initial justification, that is, statements of justification need not accompany the contract filing. However, these filings will be subject to protests, and subsequent justification as to the rate levels filed may be required. There are three proposed exceptions to the 30 days' notice requirement: (1) rates filed to meet competition; (2) rates which represent increases from currently filed rates, extensions or renewals of current rates, or technical changes; and (3) rates for "specialized" contract carriage. Staff proposed that any contract filing made effective on less than 30 days' notice must refer to one of these three exceptions to justify departure from the 30 days' notice requirement.

The Commission determined in Decision No. 89575 that certain types of carrier service, while falling within the broad definition of contract carrier operation, are sufficiently specialized as to be different from contract carrier operations generally. Heavy haulers, for example, are not required, nor are other contract carriers, to maintain continuing relationships with a shipper and are permitted to solicit individual shipments. An exception is made in the staff proposal for one-time shipments handled by specialized carriers.

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The staff witness also recommended that methods be devised for publicizing contract carrier rate reduction filings. That recommendation has been accomplished.^{1/}

1/ The Commission's Daily Calendar of May 23, 1980 contains the following special notice:

"SPECIAL NOTICE

"Under the Commission's reregulation program adopted in D90663 (MRTs 2, 1-B, 9-B, 15 and 19) rate reduction filings of highway common and contract carriers below the level of the foregoing transition tariffs will be noticed on the Commission's Daily Calendar. The reduced rate filings will be numbered consecutively in the order received beginning with RR-1. Such tariff and contract filings become effective thirty days after filing unless a substantive protest and request for suspension is received by the Commission within the thirty day period. Requests for suspension will be handled under established I&S procedures. (GO 113-B)"

The Commission's Daily Calendar of September 2, 1980 contains the following notice:

"SPECIAL NOTICE (This procedure supersedes that announced on the Commission Calendar of May 23, 1980.) Under the Commission's reregulation program adopted in D.90663 (MRTs 2, 1-B, 9-B, 11, 15 and 19), D.91861 (MRTs 6-B and 13), and any future decision establishing other transition tariffs, rate reduction filings of highway carriers below the level of the transition tariffs or the rates of competing carriers will be noticed on the Commission's Daily Calendar. The reduced rate filings will be numbered consecutively in the order received. Such tariff and contract filings become effective thirty days after the filing date noticed on the Calendar unless a substantive protest and request for suspension is received by the Commission within eighteen days after filing. Requests for suspension will be handled under established I&S procedures (G.O. 113-B). The Calendar also will notice the effective date of all rate reduction filings."

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Evidence of Other Parties

CTA presented evidence concerning the substantial problems it perceives in the current administration of the Commission's reregulation plan. CTA is concerned about the availability of rate reduction for review by possible protestants. It believes that the staff is accepting rate reductions without assigning an RR number. An RR number indicates the filing contains rate reductions below the level of the transition tariffs and rates of competing carriers. CTA believes the criteria used by our staff to analyze rate reduction filings should be standardized and furnished to interested parties in order to accord uniform treatment. CTA charges that confusion results from the number of proceedings in which reregulation orders are issued. The several proceedings assertedly fragment issues making it difficult to understand the overall program. CTA's recommendations included in its exhibit follow:

California Trucking Association's
Preliminary Recommendations for Contract Carrier Rate Filings

1. The Commission should provide, in a single source document, its rules, regulations, and procedures governing the filing of contracts, contract rates, and the procedures to be followed in filing petitions for Investigation and Suspension and/or complaints against contract carrier rates.

2. Rates filed below transition tariffs and below the charges of competing carriers should become effective not less than 30 days after the rate is filed, absent protest. In the event of protest (Petition for I & S), all such rates should be temporarily suspended for a period of time not to exceed an additional 30 days from the date of filing the protest, during which time the Commission must either reject the protest and allow the rate to become effective or suspend the rate pending hearing. (See Decision No. 91861, page 58.)
3. Amendments to contracts should be signed by both carrier and shipper, and amendments should specify with clarity prior material which is superseded or replaced.
4. The Commission should require that all contracts be filed in either the Los Angeles or San Francisco office. Such contracts should be filed in triplicate. Both the Los Angeles office and the San Francisco office should maintain a copy of every filed contract and a log listing each contract. The log should list each contract in both alphabetical and T-number sequence. All filed contracts should be available for public inspection.
5. Each filed contract should be publicly noticed in the Commission's Daily Calendar or other official daily publication of the Commission devoted strictly to contract rate filings.
6. The Commission should require that contract carriers make copies of their contracts available upon request, subject to assessment of a reasonable charge. Such reasonable charge shall not exceed the cost of printing (reproduction), postage, and handling.
7. The Commission should establish requirements for written contracts and related rules and regulations pertaining thereto, and it should then compel adherence to such requirements by all contract carriers, irrespective of commodity transported or geographical area served.

8. The Commission should require that contract carriers, who wish to increase or reduce rates, be required to submit operational and cost justifications for such changes, bearing the burden of proving such rates reasonable in the case of petitions for suspension and investigation.
9. The Commission should encourage a friendly test of the lawfulness of its prevailing wage concept and, if lawful, should make such changes as will truly assure that all filed rates do, in fact, always reflect prevailing wage levels.
10. Commission should define "reduced rates". Such definition should indicate that any change in a rate, rule or other provision of a contract or tariff which lowers overall (total) charges to a shipper is a reduced rate. Such reduced rates should, in all cases, be noticed as an "RR" filing.

The Murchison Group proposed changes in the procedures for processing contract carrier rate reduction filings. The witness proposed that after conclusion of the transition period, contract carriers file schedules of minimum rates which initially would be no lower than the minimum rates in effect when Senate Bill 860 was implemented. The suggestion was furnished to 58 clients of Murchison & Davis, of which 56 indicated support. The proposal is the same as that presented and rejected in Case No. 10278.

Conference believes existing procedures are satisfactory and does not recommend any change.

Teamsters requests that contract carriers be required to furnish cost justification for rate reductions after the end of the transition period, otherwise it believes that the prevailing wage

concept cannot be properly applied or enforced. Teamsters iterated CTA's concerns about the inability of interested parties to review rate reduction filings before expiration of the time for protests set forth in Article 2.5 of the Commission's Rules of Practice and Procedure.

Discussion

The testimony of CTA and Teamsters deals with the administration of our reregulation program, particularly with respect to transition period rate reductions. The CTA and Teamsters proposals affecting the transition period are beyond the announced scope of these proceedings. Such proposals will be considered in connection with the proposed General Order issued for comment on December 16, 1980 in OIR No. 4.

The proposed General Order in OII No. 4 accomplishes the substance of CTA's first recommendation. The General Order establishes tariff and contract filing requirements and suspension procedures applicable to the general commodity and tank truck reregulation plans adopted in Decisions Nos. 90663 and 91861.

The Commission staff proposal that contract carrier rate reductions below the rates of competing carriers be filed on 30 days' notice addresses the principal issue we had in mind when we issued Decision No. 91955 (reopening Case No. 9432 et al.). As the staff witness testified, making such rate reductions effective only on

30 days' notice will preserve equal opportunity for competition between contract and common carriers in the post-transition period of our reregulation program. Accordingly, paragraph 12 on page 8 of Decision No. 90663, which presently reads:

12. After the transition period, rates may be filed at any level without initial justification and will be effective on the date of filing or such later date as may be provided. After the transition period, rate levels will be subject to review only upon the filing of a complaint.

shall be modified to read:

12. After the transition period, rate reduction filings by contract carriers to levels below the rates of competing motor carriers will become effective 30 days after the date filed, or such later date as may be provided in the contract. After the transition period, contract carrier rates may be filed at any level without initial justification and contract carrier rate levels will be subject to review only upon the filing of a complaint.

At this time we decline to adopt the further proposals of either the staff, the Teamsters, or other parties to this proceeding. We are aware of the many practical questions which carriers and other interested parties will have regarding the procedures which the Commission will follow in the post-transition period. For example, the Teamsters' proposal to have a justification statement accompany every contract carrier rate reduction filing

addresses a problem of great practical import, namely, the protection of prevailing wages. Decision No. 90663 clearly stated that initial justification statements would not be required with rate reduction filings. At this time, we decline to modify Decision No. 90663 in the manner sought by the Teamsters. There will be time at the end of the transition period to consider how best to implement our reregulation program, perhaps in the context of a new General Order to govern carrier filings in the post-transition period.

Similarly, we decline to adopt staff's proposal to require either "justification" or an explanation from contract carriers as to why they should be allowed to depart from a 30 days' notice requirement. We simply cannot know at this time the form and shape of our administrative practice in the post-transition period. Whether we shall maintain our present system, as proposed in the General Order in OIR No. 4 for the transition period, or move to an even more flexible system, shall depend on our experience during the transition period and our view of the motor carrier industry at the close of the transition period. We remain committed to the twin goals of protection of prevailing wages and increasing carrier flexibility within a regime of carrier-filed rates.

Findings of Fact

1. CTA recommendation 1 has been or will be implemented.
2. Transition-period recommendations of CTA and Teamsters are beyond the announced scope of this proceeding.

3. Recommendations of the Murchison Group were considered and rejected in Case 10278.

4. The post-transition-period recommendation of the staff to equalize competitive opportunity between contract and common carriers is reasonable and necessary to implement the reregulation plan adopted in Decision No. 90663.

5. Other recommendations of the staff and Teamsters relate to the practical implementation of reregulation in the post-transition period and, accordingly, need not be considered at this time.

6. The order adopted herein complies with the Commission's energy efficiency plan.

Conclusion of Law

The revision of our reregulation plan set forth in Finding 4 is reasonable and should be adopted.

O R D E R

IT IS ORDERED that:

1. Paragraph 12 of the fourteen-point regulatory program for the general freight industry set forth on pages 7, 8, and 9 (mimeo.) of Decision No. 90663 is modified as shown below:

12. After the transition period, rate reduction filings by contract carriers to levels below the rates of competing motor carriers will become effective 30 days after the date filed, or such later date as may be provided in the contract. After the transition period, contract carrier rates may be filed at any level without initial justification and contract carrier rate levels will be subject to review only upon the filing of a complaint.

2. The Executive Director shall serve a copy of this order on all parties of record and all highway carriers.

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

Dated MAR 17 1991, at San Francisco, California.

John E. Dwyer
President
Richard D. ...
Samuel W. ...
Victor ...
Commissioners