

ORIGINAL ~~EX-3~~

Decision 93458

AUG 18 1981

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 5432, OSH 1019
(Filed April 18, 1978)

And Related Matters.

Case 5439, OSH 324
Case 5441, OSH 408
(Filed April 18, 1978)

(For Appearances see Decision 90802)

SUPPLEMENTAL OPINION

Decision (D.) 90802 issued September 12, 1979 in these proceedings exempted from the minimum rates in the Commission's general commodity minimum rate tariffs^{1/} the transportation within this State of property in interstate or foreign commerce when transported in continuity with a prior or subsequent private vessel movement (ex-vessel traffic). D.90802 found this Commission had jurisdiction over ex-vessel traffic as a result of a series of federal court and Interstate Commerce Commission (ICC) decisions cited in that decision.

1/ Minimum Rate Tariffs (MRTs) 1-B, 2, 9-B, 11-A, 15 and 19.

D.90802 was challenged in the California Supreme Court by United States Steel Corporation (U.S. Steel). That court, in United States Steel Corporation v Public Utilities Commission _____ Cal 3d ____ (S.F. 24165, order filed July 6, 1981), annulled D.90802. The court found that we had failed to consider the economic impact of the exemption of foreign steel on domestic steel producers and found that the exemption for imported steel would discriminate against domestically produced steel which would continue to be subject to minimum rates. The court's decision stated also that our reliance on the administrative difficulties in attempting to enforce minimum rates on foreign steel traffic entering this country by private vessel was inadequately supported by the record. Although D.90802 was challenged only as it applied to the "ex-vessel" exemption for imported steel, the entire order was annulled.^{2/}

Since D.90802 was issued the Commission has embarked on the rate reregulation plan enunciated in D.90663 dated August 14, 1979 in Case (C.) 5432, (Petition (P.) 884, et al.). That decision adopted a new program of competitive individual carrier-filed rates to be implemented through a transition period beginning with the cancellation of the MRTs named in footnote 1 and publication of corresponding transition tariffs bearing the same numbers. D.90663 provided that the transition tariffs would not be adjusted during the transition period, and such tariffs will be canceled at the end of the transition period, which date has not yet been determined.

During the transition period, highway contract carriers (contract carriers) and highway common carriers (common carriers) may file rates below the rates in the transition tariffs when their filings are accompanied by a statement of justification, which may consist of either:

^{2/} The court's order recognized at mimeo, p. 2 that the exemption is also applicable to imports of newsprint, paper and salt, and exports of scrap iron and steel and wood chips, and that the U.S. Steel challenged D.90802 only as it affects imported steel. The court accepted the fact that this Commission now has authority to regulate rates on ex-vessel traffic.

- a. Reference to a motor carrier competitor's rate,
or
- b. Operational and cost data showing that the proposed
rate(s) will contribute to carrier profitability.

For the reasons just described, we are convinced the exemption for "ex-vessel" traffic is no longer necessary or warranted. We will let stand the annulment of D.90802, without the taking of additional evidence or argument. With cancellation of MRTs and publication of corresponding transition tariffs, under D.90663 as amended, exemptions which appeared in the former MRTs were transferred to a document titled List of Commodities and Geographic Areas Exempt from Rate Regulation (Exempt List), to which the Transition Tariffs refer.^{3/} The exemption added to the MRTs by D.90802 was among those transferred to the Exempt List. Annulment of D.90802 by the Court also had the effect of annulling that portion of the Exempt List which was based on D.90802. ✓

Findings of Fact

1. The entry reading, "Property, in interstate or foreign commerce, when transported in continuity with a prior or subsequent vessel movement; subject to Note 4," appearing on Original Page 4 of the Exempt List, exists by virtue of the order in D.90802.
2. The Supreme Court has annulled D.90802.

Conclusions of Law

1. That part of the Exempt List reading: "Property, in interstate or foreign commerce, when transported in continuity with a prior or subsequent vessel movement; subject to Note 4," is deleted.
2. Transportation by motor vehicle of property in interstate or foreign commerce, insofar as such transportation is subject to the jurisdiction of this Commission, is subject to our rate re-regulation program as outlined in D.90663 as amended.
3. These proceedings should be closed.

^{3/} See, for example, paragraph 2, Item 40, Transition Tariff 2. The Exempt List was prepared, published and distributed by the Commission staff in accordance with D.89575 as amended, in C.5432, OSH 957, et al. A proposal to amend and reissue the Exempt List is presently before the Commission in Order Instituting Investigation 85.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. The proceedings in C.5432 (OSH 1019), C.5439 (OSH 324), and C.5441 (OSH 408) are terminated and those proceedings are closed.

2. The Executive Director shall serve a copy of this decision on every highway common carrier, or such carriers' authorized tariff agent, performing transportation subject to the Transition Tariffs.

3. The Executive Director shall serve a copy of this order on every highway contract carrier.

This order becomes effective ⁶⁰ 30 days from today.

Dated AUG 15 1987, at San Francisco, California. ✓
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John E. Guynn
President

Richard W. Kaelin

Thomas D. ...

Patricia C. Kher
Commissioners