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Decision 96-07-052 July 17, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern Pacific Transportation Company, The Atchison, Atchison, Topeka and Santa Fe Railway Company, Union Pacific Railroad Company, and Burlington Northern Railroad Company to Modify General Order 77-K. Application 95-02-005 (Filed February 7, 1995)

ORIGINAL

OPINION

By application filed February 7, 1995, Southern Pacific Transportation Company, The Atchison, Topeka and Santa Fe Railway Company, Union Pacific Railroad Company, and Burlington Northern Railroad Company, which represent all of the Class I railroads operating in the State of California, jointly seek modification of the California Public Utilities Commission's (Commission) General Order 77-K (GO 77-K) so as to eliminate from its coverage those railroads for whom regulation of intrastate rates and charges has either been transferred to the Interstate Commerce Commission (ICC) [or its successor in interest], or has been deregulated.

Notice of the filing of the application was published in the Commission's Daily Calendar on February 9, 1995, and no protests or other objections to the application have been filed. Because the resolution of the issues raised by this application is a matter of policy rather than of fact or law, no hearing on the application is deemed necessary.

For the reasons discussed below, we agree that all Class I railroads operating in this state whose rates and charges for service are subject to the regulatory control of the federal government, should be exempt from the reporting requirements of GO 77-K. Because of the cumbersome procedure to be followed in amending a Commission General Order, rather than amend GO 77-K to

exempt this specific group, we prefer to leave GO 77-K as it now reads and effectuate the exemption by individual decision. In this way, should we at some time in the future find it appropriate to exempt other industries from the requirements of GO 77-K, that exemption can be effectuated simply by decision and no amendment of the general order would be required.

General Order 77-K

In summary, GO 77-K requires the filing by each "public utility" meeting a certain operating revenue threshold with the Commission, on or before March 31 of each year, a statement showing for the preceding calendar year the names, titles, and duties of all officers or employees who receive compensation at or above a specified limit, the amount of compensation received by each, the amount of the expense account or other monies directly or indirectly paid to each such officer, as well as payments to attorneys, and dues, donations, subscriptions, and contributions directly and indirectly paid by the public utility.

The term "public utility" as defined by Public Utilities (PU) Code § 216 includes common carriers. Each of the named applicants is a common carrier, and hence is subject to the definition and the requirements of GO 77-K.

Purpose Behind GO 77-K

In Decision (D.) 94-02-007, Application of Pacific Bell and Roseville Telephone Company to Modify General Order 77-K, 53 CPUC2d 177, the Commission described in detail the purpose of GO 77-K, and the reasoning behind the reporting requirement contained therein. While that background is of interest from a historical perspective, it is not necessary in this instance to set it forth in any detail. Suffice it to say that the Commission recognizes a clear and direct relationship between the expenses claimed by a utility regulated by the Commission and the rates which are allowed to be charged for the provision of utility services. In the context of GO 77-K, amounts paid by a utility to

its officers and employees is a legitimate area of inquiry in the rate-setting process in that the Commission must ascertain whether salaries and compensation paid by the utility are excessive, out of line with prevailing standards, or represent some form of bad bus cross-subsidization in which the ratepayers are burdened with costs unrelated to the services for which they are charged.

In years past, a large portion of the Commission's work has been devoted to rate regulation of the Class I railroads, and the propriety of expense items was a necessary element of the rate-setting process. In 1980, however, Congress passed the Staggers Rail Act of 1980, Public Law 96-448, effective October 1, 1980, which caused a major transfer of regulatory authority over intrastate commerce from the states to the federal government, specifically to the ICC. Pursuant to that Act, states, which had previously exercised primary jurisdiction over rail rates and charges for intrastate transportation, were given three choices: (1) states could elect to allow intrastate rail transportation to be deregulated; (2) states could modify their intrastate regulatory procedures to effectively mirror those of the ICC; or (3) states could allow the ICC to directly take over the intrastate rate regulatory functions previously exercised by state commissions. (See, 49 U.S.C. § 11501.)

As the constitutional and statutory framework for California's railroad rate-regulation activities was incompatible with the ICC's program of rate regulation, California was unable to certify that it would conform its rate-regulation requirements to match those of the ICC. Rather than direct that California intrastate rail rates and charges be deregulated, this Commission requested the ICC to take over California's rate-regulation functions for the California intrastate railroads.

v. The Atchafalaya, Topeka and Santa Fe Railroad Company and Southern Pacific Transportation Company. CPUC relinquished that jurisdiction long ago, and affirmatively requested that the

By decision served February 8, 1982 (in Ex Parte No. 388), State Intra-state Rail Rate Authority PL 96-448, the ICC noted that California and 13 other states had not sought certification and had to abstain from proceeding to arbitrate matters until they had lost all jurisdiction to regulate intrastate transportation. (Footnote omitted.) The states should inform us by March 10, 1982 if they wish us to assume intrastate regulation. In the absence of such notification, we will not assert jurisdiction. By letter dated March 4, 1982, and by telex dated March 10, 1982, this Commission specifically requested the ICC to assume jurisdiction over California intrastate rail transportation. On May 11, 1982, the ICC published a notice in the Federal Register that it had assumed such jurisdiction. (See, State Intra-state Rail Authority PL 96-448, 365 ICC 700.)

"Six states have asked us to assume jurisdiction: California, Connecticut, Delaware, Mississippi, Nevada and North Carolina. Consequently, the Commission (ICC) shall assume jurisdiction over intrastate rail transportation in those states upon publication of this notice in the Federal Register. Rail carriers in these states shall comply with Commission regulations such as the filing of intrastate tariffs with us."

By supplemental order served March 5, 1985, the ICC ordered the transfer of official records in pending intrastate rate complaints to the ICC for handling and adjudication. In so doing, the ICC stated:

"The CPUC does not have jurisdiction to handle the rate proceedings in CPUC's Docket No. 10979, Heppner Iron and Metal Company v. The Atchison, Topeka and Santa Fe Railroad, Southern Pacific Transportation Company and The Western Pacific Railroad Company, or in CPUC's Docket No. 10980, Levi's Iron and Metal Company v. The Atchison, Topeka and Santa Fe Railroad Company and Southern Pacific Transportation Company. CPUC relinquished that jurisdiction long ago, and affirmatively requested that the

[Interstate Commerce] Commission regulate California intrastate rail rate matters. To enable the [Interstate Commerce] Commission to do so effectively in these particular proceedings, the CPUC is required to transfer the official records for the two proceedings to this Commission.

Applicants now have no intrastate tariffs legally filed with this Commission. While they provide this Commission with informational copies of tariffs affecting California intrastate traffic, all rate-regulation functions over applicant's rates and charges for California intrastate traffic now reside in the Surface Transportation Board, the ICC's successor agency.

We also note that the ICC has not required reports similar to GO 77-K in order to exercise its regulatory functions, as it has found that adequate information concerning executive salaries is available through Securities and Exchange Commission filings and other wage statistics. (Revision to Railroad Annual Report Form R-1, Docket 38590, November 20, 1985, 50 F.R. 47749, 44751 (deletion of schedule 900).)

Conclusion

While the above quote from Revision to Railroad Annual Report Form R-1 makes no reference to information concerning employees other than executives as would our GO 77-K report, we believe that such information is or can be made available to federal regulatory authorities as required by them to fulfill their regulatory responsibilities.

In view of the fact that this Commission no longer has jurisdiction over the setting and enforcement of intrastate rail rates, we believe the time has come for us to exempt all Class I railroads from the reporting requirements of GO 77-K. To protect legitimate state interests in the future, we reserve unto this Commission the right to reexamine this policy decision should future changes in the regulatory practices of the federal government warrant such action on our part.

Findings of Fact

1. By the present application, all Class I railroads operating in California seek modification of GO 77-K to eliminate from its coverage those railroads for whom regulation of intrastate rates and charges has either been transferred to the ICC (or its successors in interest), or has been deregulated.

2. Notice of the application was published in the Commission's Daily Calendar; no protest or other objection to the application has been filed.

3. The information required by GO 77-K was formerly needed by the Commission to determine and set rates to be charged by Class I railroads for the intrastate carriage of goods within California.

4. In 1982, jurisdiction to set rates for all Class I railroads intrastate operations within California was transferred from the Commission to the federal government.

5. Since the intrastate carriage rate making function for Class I railroads formerly performed by the Commission has been transferred to the federal government, the Commission no longer has a need for the information required by GO 77-K concerning those railroads.

6. Applicants has no intrastate tariffs legally filed with the Commission.

7. The Commission believes the time has come to exempt the Class I railroads conducting intrastate operations within California from the reporting requirements of GO 77-K.

Conclusions of Law

1. The Commission no longer has rate setting authority over the intrastate carriage of goods by the Class I railroads operating in this state.

2. In the case of the Class I railroads conducting intrastate operations within California, the Commission no longer has a need for the information required by GO 77-K.

3. The Commission should exempt the Class I railroads operating in this state from the reporting requirements of GO 77-K.

4. The Commission should reserve the right to reexamine this policy decision should future changes in the regulatory practices of the federal government warrant such action.

O R D E R

IT IS ORDERED that:

1. Southern Pacific Transportation Company, The Atchison, Topeka and Santa Fe Railway Company, Union Pacific Railroad Company, and Burlington Northern Railroad Company, which represent all of the Class I railroads operating in the State of California, are, subject to further order of the California Public Utilities Commission (Commission), relieved of the reporting requirements of General Order 77-K.

2. The Commission reserves the right to reexamine this policy decision should future changes in the regulatory practices of the federal government warrant such action.

This order is effective today.

Dated July 17, 1996, at Sacramento, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners