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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's  
own motion into the operations and  
practices of CONTAINER FREIGHT  
TRANSPORTATION COMPANY and EXPRESS  
INTERMODAL TRANSPORT, INC.

**ORIGINAL**

FILED  
PUBLIC UTILITIES COMMISSION  
April 8, 1992  
SAN FRANCISCO OFFICE  
I.92-04-009

**ORDER INSTITUTING INVESTIGATION**  
**AND ORDER TO SHOW CAUSE**  
**WHY OPERATING AUTHORITIES SHOULD NOT BE REVOKED**

Container Freight Transportation Company ("Container Freight") is a California-based carrier which has conducted intrastate operations primarily as an adjunct to its operations in interstate and foreign commerce. On April 26, 1978, this Commission issued Container Freight a permit to operate as an agricultural carrier. The Commission issued a certificate of public convenience and necessity to Container Freight to operate as a highway common carrier on January 31, 1980. On November 3, 1983, this Commission issued it a permit to operate as a highway contract carrier. (T-23,906)

Express Intermodal Transport, Inc. ("Express Intermodal") is also a California-based carrier which has conducted intrastate operations primarily as an adjunct to its operations in interstate and foreign commerce. This Commission granted Express Intermodal a certificate of public convenience and necessity to operate as a highway common carrier on August 20, 1985. (T 148,183.)

These two carriers are under common control and management and operate out of a terminal at the same address.

BACKGROUND

On March 22, 1990, this Commission suspended all operating authorities of both Container Freight and Express Intermodal.<sup>1</sup> These suspensions were ordered on the basis of letters from the California Highway Patrol ("CHP") to this Commission dated March 8, 1990. According to these letters: The CHP had conducted five unsatisfactory fitness inspections of each carrier during the period from July 1988 to December 1989. During these inspections, 39 of the 64 vehicles inspected at Container Freight were put "out of service" by the CHP for imminently hazardous steering, brake, suspension, connecting device and/or tire defects. During these inspections, 38 of the 51 vehicles inspected at Express Intermodal were put "out of service" for similarly unsafe conditions. The CHP concluded that the carriers had ineffective preventive maintenance programs. Prior to recommending suspension of the operating authorities of Container Freight and Express Intermodal, the CHP's Safety Unit conducted two training seminars on vehicle maintenance and safety for the employees of the two carriers.

After the Commission suspended the operating authorities of Container Freight and Express Intermodal, the two carriers asked for hearings by filing Applications 90-04-027 and 90-04-028. Consolidated evidentiary hearings were held on May 10th and 11th, 1990. Before the conclusion of evidentiary hearings, the carriers and the Commission's Transportation Division agreed to continue the matter. More specifically, on

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1. Subsequently, the Commission notified Container Freight that its Highway Contract and Agricultural Carrier permits had lapsed and terminated, pursuant to Public Utilities Code §§ 3573 and 3586, due to failure to exercise those operating authorities during the year ending March 31, 1991. Thus, at the present time both Container Freight and Intermodal Express have only highway common carrier authority, which is under suspension.

May 16, 1990, after consultation with the CHP, they agreed that within 30 days the CHP would provide the two carriers with specific guidelines of how the carriers could come into compliance with CHP rules and regulations. Thereafter, the CHP would conduct an informal inspection to provide further guidance to the carriers. Finally, at a time more than 90 days after May 16th, the CHP would conduct an unannounced formal inspection of the carriers, with a representative of the Commission's Transportation Division in attendance.

On November 28, 1990, the CHP wrote this Commission to report on the results of the formal inspection of the two carriers. According to the CHP's letters: The inspection was conducted on September 21, 1990. More than one-third of the Container Freight vehicles inspected and 40% of the Express Intermodal vehicles inspected were placed out of service for imminently hazardous tire, brake, suspension and/or steering system defects. The CHP noted a number of other safety deficiencies and violations, gave each carrier a seventh unsatisfactory terminal rating, and recommended continued suspension of their operating authorities.

In December 1990, Container Freight and Express Intermodal filed a motion with the Commission for permission to withdraw their requests for hearings on the suspension of their operating authorities and for reinstatement of those operating authorities. The basis of their motion was their plan to transfer responsibility for compliance with the CHP's Biennial Inspection of Terminal (BIT) and related safety programs to the "owner-operators" that Container Freight and Express Intermodal use to perform their operations. The Transportation Division opposed the reinstatement of the operating authorities. After hearing oral argument, the assigned administrative law judge ("ALJ") issued a Proposed Decision that would grant the carriers' motion.

DISCUSSION

The Proposed Decision would reinstate the operating authorities of Container Freight and Express Intermodal, but not based on a finding that their operations are safe. Rather, the Proposed Decision would reinstate their operating authorities based on the conclusion that Vehicle Code §34501.12 and Public Utilities (P.U.) Code §1070.5 do not authorize the CHP to recommend, and this Commission to order, suspension of a highway carrier's operating authority where the highway carrier relies on "owner operators" to conduct its operations and the highway carrier has declined responsibility for the owner-operators' BIT obligations. Thus the Proposed Decision could have the effect of authorizing operations that are unsafe. This causes us concern.

We do not now decide the merits of Container Freight and Express Intermodal's arguments about the scope of Vehicle Code §34501.12 and P.U. Code §1070.5. Rather, we note that this Commission has authority to suspend or revoke the operating authorities of highway carriers for safety reasons under other provisions of law as well. Thus, P.U. Code Section 701 authorizes the Commission "to supervise and regulate every public utility in the State and . . . do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." In this state, highway common carriers are public utilities. (See P.U. Code §§ 211(d), 216(a).) Moreover, this Commission is specifically empowered to suspend or, after opportunity to be heard, revoke the operating authority of a highway common carrier for "good cause." (P.U. Code Sec. 1070(a).) "Good cause", for purposes of suspension and/or revocation, is further defined as including, but not limited to, the "consistent failure of the [highway common carrier] to maintain vehicles in a safe operating condition . . . as shown by the records of the commission, the Department of the California

Highway Patrol, or the common carrier." (P.U. Code Sec. 1070(c).)<sup>2</sup>

In A.90-04-027 and A.90-04-028 the Transportation Division has contended that Container Freight and Express Intermodal have consistently failed to maintain vehicles in a safe operating condition. Moreover, the CHP's letters to this Commission also report other kinds of safety deficiencies and violations in the operations of these carriers. If the allegations of the Transportation Division and the CHP are substantiated through hearing, the Commission could revoke, or continue the suspension of, the certificates of Container Freight and Express Intermodal, pursuant to P.U. Code §§ 701 and 1070. Indeed, if the violations and safety deficiencies reported in the CHP's letters to this Commission are substantiated through hearing, the Commission could revoke their certificates pursuant to P.U. Code §1070.5(d) as well.<sup>3</sup>

Accordingly, we are instituting this investigation and issuing an order to Container Freight and Express Intermodal to show cause why their operating authorities should not be revoked based on the violations and safety deficiencies previously reported in the CHP's letters to this Commission. Even if the two carriers can show cause why their operating authorities should not be revoked based on their past conduct, the safety of their present and future operations remains an issue. As noted

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2. P.U. Code §3774(g) similarly authorizes this Commission to revoke or suspend the operating permit of any highway permit carrier for consistent failure of the highway carrier to maintain its vehicles in a safe operating condition.

3. In the motion they filed in their application proceedings, Container Freight and Express Intermodal did not contend that they were not responsible for the BIT inspections described in the CHP's letters, they only contended that they would no longer be responsible for BIT inspections once their plan to transfer responsibility was effected.

above, we are troubled by the notion that we should reinstate operating authorities previously suspended for safety reasons without determining whether the reinstated operations would be sufficiently safe. Accordingly, if the two carriers can show cause why their operating authorities should not be revoked based on their past conduct, this investigation will also consider whether their operations are sufficiently safe to justify reinstatement.

In this regard, we note the breadth of the Commission's authority to suspend or revoke carriers for safety-related reasons. Public Utilities Code §§ 701 and 1070 permit us to suspend or revoke the operating authority of a carrier whose operations are routinely unsafe, even if those operations are conducted through the use of "owner operators" and even if those "owner operators" are responsible in the first instance for day-to-day maintenance of their vehicles. For example, the Commission could suspend or revoke a carrier that regularly uses "owner operators" that it knows, or has reason to know, are unsafe.

Public Utilities Code §1070.5 contemplates that, once a carrier has been suspended pursuant to that section and has requested a hearing, the Commission can as a result of the information developed at that hearing exercise authority granted to it under other sections of the P.U. Code as well. (See P.U. Code §1070.5(d).) Accordingly, and to make efficient use of resources, we will consolidate this investigation and order to show cause with Applications 90-04-027 and 90-04-028, which were filed pursuant to P.U. Code §1070.5 .

Good cause appearing; therefore,

**IT IS ORDERED** that:

1. Container Freight Transportation Company and Express Intermodal Transport, Inc. are named Respondents in this investigation.
2. Respondents shall show cause why their certificates of public convenience and necessity should not be revoked.

3. Each Respondent shall have 30 days after being served with a copy of this order to request a hearing. The request for a hearing must be in writing and shall be addressed to the Commission's Executive Director, with copies to both the General Counsel and Chief Administrative Law Judge, all at 505 Van Ness Avenue, San Francisco, CA 94102. Any request for hearing must be received within 30 days after service of this order.

4. IF CONTAINER FREIGHT DOES NOT TIMELY REQUEST A HEARING, AN EX-PARTE ORDER WILL BE ISSUED REVOKING THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OF CONTAINER FREIGHT TRANSPORTATION COMPANY [T-23,906], WITH PREJUDICE.

IF EXPRESS INTERMODAL DOES NOT TIMELY REQUEST A HEARING, AN EX-PARTE ORDER WILL BE ISSUED REVOKING THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY OF EXPRESS INTERMODAL, INC. [T 148,183], WITH PREJUDICE.

5. In the event Container Freight Transportation Company and/or Express Intermodal Transport, Inc. make a timely request for a hearing, an Administrative Law Judge shall expeditiously hold a public hearing on this matter at a time and date to be set.

6. At the hearing, Respondent(s) shall appear and show cause why their certificates of public convenience and necessity should not be revoked with prejudice in light of the violations and safety deficiencies reported to this Commission in the California Highway Patrol's letters dated March 8, 1990 and November 28, 1990, assuming the violations and safety deficiencies are proven at the hearing.

7. If Respondent(s) show cause why their certificate(s) should not be revoked based on the matters reported in those Highway Patrol letters, then this investigation will also consider:

a. Whether the operations of Container Freight Transportation Company and Express Intermodal Transport, Inc. are sufficiently

safe to justify reinstatement of their operating authorities; or

b. Whether additional evidence produced at hearing about the safety of the operations and practices of Respondents justifies further suspension or revocation of their certificates.

8. This investigation shall be consolidated with Applications 90-04-027 and 90-04-028.

9. The Executive Director shall cause a certified copy of this order to be personally served upon Respondents, Container Freight Transportation Company and Express Intermodal Transport, Inc. If personal service cannot be made, despite diligent efforts, then service may be made by mailing a copy, by both certified and regular mail, to Container Freight Transportation Company at P.O. Box 900, Long Beach, California 90801 and Express Intermodal Transport, Inc. at P.O. Box 22626, Long Beach, California 90801. Copies of the California Highway Patrol letters cited above, and accompanying supporting materials, shall be provided to Respondents when service of the order is made.

10. The Executive Director shall also cause a certified copy of this order to be served by mail upon all appearances in A.90-04-027 and A.90-04-028, including Respondents' attorney of record, and the California Highway Patrol, Enforcement Services Division, P.O. Box 942898, Sacramento, CA 94298-001.

This order is effective today.

Dated April 8, 1992, at San Francisco, California.

DANIEL WM. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA ECKERT  
NORMAN D. SHUMWAY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

*Neal J. Shulman*  
NEAL J. SHULMAN, Executive Director  
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