

T/MHS/jpk\*

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking )  
concerning the 20-day delay to the )  
effective date of Special Contracts, )  
the 10-day delay to the effective )  
date of common carrier tariffs, the )  
annual expiration of Special )  
Contracts, and the shipper )  
signature requirement for contract )  
amendments, all pursuant to )  
General Order 147-C. )

FILED  
PUBLIC UTILITIES COMMISSION  
JUNE 3, 1992  
SAN FRANCISCO OFFICE

R. 92-06-003

ORDER INSTITUTING RULEMAKING

We are opening this rulemaking proceeding to consider proposed changes to the current general freight regulatory program implemented by Decision (D.) 90-02-021 and General Order (G.O.) 147-C. A number of carriers<sup>1</sup> have requested departures from Rules 3.6, 6.3, 6.10(c), 6.14, 8.1 and 8.2 of G.O. 147-C. Rules 3.6, 6.3 and 6.14 provide for, among other things, annual expiration of all contracts. Rule 6.10(c) requires the signatures of both the carrier and shipper on amendments to contracts. Rule 8.1 provides for a 10-day delay before common carrier tariffs may become effective. Rule 8.2

<sup>1</sup> Application (A.) 91-06-047 and A.91-06-051 by Conway Western Express Inc.; A.91-08-009 by Condor Freight Lines; A.91-10-038, A.91-10-039 and A.91-10-040 by Viking Freight System Inc.; A.91-10-042, A.92-02-014 and A.92-02-015 by TNT Bestway Transportation Inc.; A.91-11-013 and A.91-11-015 by Willig Freight Lines; A.91-11-038 and A.91-11-039 by Di Salvo Trucking; A.91-11-044, A.92-02-041 and A.92-02-042 by Matheson Fast Freight; A.92-01-050 by Shane Transport; A.92-02-047 by Merchants of California; and A.92-04-020 by G. I. Trucking Company, Inc.

provides for a 20-day delay before special contracts may become effective. The Transportation Division staff (staff) has recommended an exploration of issues raised by the ten applicants, or raised as a result of the 19 departure applications filed.

The Transportation Division staff has analyzed the applications and the issues raised by applicants relating to the requested departures from the 10-day and 20-day delays to common carrier tariffs and Special Contracts and any resulting effect that may have on public protest and Commission suspension of tariffs and Special Contracts (Rule 9 of G.O. 147-C). The staff has recommended against granting departures from the 10-day and 20-day delays individually, noting the distinct advantage such departures would give to the applicants. The staff has also recommended establishing this rulemaking to seek comment on:

- o Whether the 10-day and 20-day delays to common carrier tariffs and Special Contracts should be reduced or eliminated from G.O. 147-C for all carriers;

- o Whether the protest and suspension procedures for common carrier tariffs and Special Contracts should be eliminated (or otherwise modified);

- o Whether publication of Special Contracts and/or common carrier tariffs in the Transportation Division Daily Calendar should be eliminated;

- o Whether the annual expiration of Special Contracts should be eliminated (or otherwise modified);

- o Whether the requirement for shipper signature on Special Contract amendments should be changed or eliminated.

In addition, the staff has recommended exploring the implications of eliminating these provisions.

R.92-06-003 T/MHS/jpk\*\*

We believe A.91-06-047, A.91-06-051, A.91-08-009, A.91-10-038, A.91-10-039, A.91-10-040, A.91-10-042, A.91-11-013, A.91-11-015, A.91-11-038, A.91-11-039, A.91-11-044, A.92-01-050, A.92-02-014, A.92-02-015, A.92-02-041, A.92-02-042, A.92-02-047, A.92-04-020, and the recommendations of the Transportation Division staff warrant exploration of the elimination or modification of Rules 3.6, 4.2(c), 6.3, 6.10(c), 6.14, 8.1, 8.2, and Rule 9 of G.O. 147-C. We have determined that we should seek comment from parties on whether there should be any modifications to the abovenamed Rules of G.O. 147-C that would provide to all carriers the departures requested in the 19 applications filed or, alternatively, why the abovenamed rules should not be eliminated. We have also determined that the following implications should be addressed in this rulemaking:

o Would elimination of Rules 8.1 and 8.2 of G.O. 147-C (the 10-day delay to common carrier tariffs and the 20-day delay to Special Contracts) negatively affect the balance of incentives provided (in D.90-02-021) to assure adequate common carrier service?

o Would elimination of Rules 8.1 and 8.2 of G.O. 147-C effectively eliminate the ability to file a protest against and/or suspend common carrier tariffs and/or Special Contracts before they become effective?

o Would elimination of the 10-day delay to common carrier tariffs require re-examination of the Commission finding that the new and increased common carrier rates approved by D.90-02-021 are justified?

o Would elimination of Rules 8.2 and 9 of G.O. 147-C affect the degree of reliance shippers place on prices negotiated in Special Contracts which fall out of compliance with the General Orders and D.90-02-021?

THEREFORE, IT IS ORDERED that:

1. Pursuant to RULE 14.2(a) and (b) of the Commission's Rules of Practice and Procedure, a rulemaking proceeding be instituted into the advisability of modifying or eliminating:

The part of Rule 3.6 of General Order (G.O.) 147-C which provides for the annual expiration of Special Contracts.

Rule 6.3 and 6.14 of G.O. 147-C, which require that contracts contain a specific termination date and provide for the annual expiration of Special Contracts and for contract renewal by amendment.

Rule 6.10(c) of G.O. 147-C, which states that all contract amendments shall contain the signature of the carrier and shipper.

Rule 4.2(c) of G.O. 147-C, which states that all tariffs and contracts will be listed on the Commission's Transportation Division Daily Calendar.

Rule 8.1 of G.O. 147-C, which states that common carrier tariffs may be effective not earlier than 10 days after listing on the Commission's Transportation Division Daily Calendar.

Rule 8.2 of G.O. 147-C, which states that Special Contracts may be effective not earlier than 20 days after listing on the Commission's Transportation Division Daily Calendar.

Rule 9 of G.O. 147-C, which provides for protest and suspension of rates.

2. All highway common and contract carriers subject to the jurisdiction of the Commission are made respondents to this rulemaking and are invited to present their comments on the proposed changes.

3. In order to participate in this rulemaking, parties must submit comments. These comments should address the proposed changes to G.O. 147-C described in ordering paragraph 1. They may also address the potential implications of these changes outlined in the preceding discussion. Parties who have proposals which are within the scope of this rulemaking, but which differ from the proposed changes outlined above, should specify the proposed change(s). Only those parties filing comments will receive copies of comments or any further notices, rulings or filings relating to this proceeding prior to the final decision in this proceeding. The final decision in this proceeding will be served on all highway common and contract carriers as well as all other parties filing comments.

4. Pursuant to Rule 7 of the Rules of Practice and Procedure, an original and twelve copies of each party's comments shall be filed with the Commission Docket Office no later than 60 days after the effective date of this Order Instituting Rulemaking.

5. After the filing deadline the assigned Administrative Law Judge shall serve commenting parties with a list of all parties who have filed comments (the Service List). This Service List will be accompanied by a ruling specifying the precise dates for compliance with ordering paragraphs 6, 7 and 8.

6. No later than 10 days after the date that the Service List is mailed, all parties who have filed comments shall serve their comments on all other parties on the Service List provided by the ALJ.

7. No later than 40 days after the date that the Service List of commenters is mailed, any commenting party may file with the Docket Office an original and twelve copies of a response to the comments of other parties. Any party filing reply comments shall simultaneously serve them on all other parties appearing on the Service List.

8. No later than 10 days after the deadline for filing responses to comments, any party that believes evidentiary hearings are needed in this proceeding shall file a Request For Hearing with the Docket Office (serving all parties on the Service List). The Request For Hearing shall include; 1) a statement specifying the issue(s) on which hearing is needed; 2) a statement specifically identifying any material issue of fact the party requesting hearing believes the Commission must resolve through hearing before changing G.O. 147-C (which implements D.90-02-021); and 3) an explanation as to why a hearing is required on the issues specified. To the extent there may be any right to a hearing in this proceeding, such right shall be waived unless the party timely requests and supports its request for a hearing in accordance with this ordering paragraph.

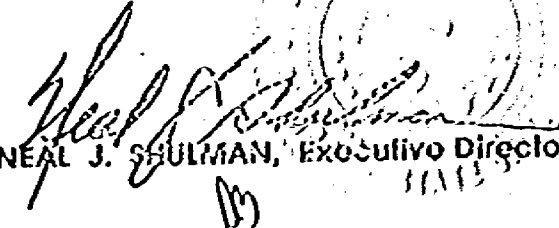
9. The Executive Director shall cause a copy of this Order Instituting Rulemaking to be sent by regular mail to all highway common and highway contract carriers subject to the jurisdiction of the Commission and to the service list attached as Appendix A.

This order is effective today.

Dated June 3, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
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Commissioners

I CERTIFY THAT THIS DECISION  
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Sacramento, CA 95814

Milton Flack  
Cal West Tariff Bureau  
5110 District Blvd.  
Maywood, CA 90720

James Foote  
Associated Independent Owner Operators  
14623 Carmenita Rd.  
Norwalk, CA 90650

Eldon Johnson  
Pacific Motor Tariff Bureau  
P. O. Box 2276  
San Leandro, CA 94577

Daniel Huffman  
22049 Devonshire St.  
Chatsworth, CA 91311

Frank Spellman  
P. O. Box 6068  
San Rafael, CA 94903

Leon H. Carrington  
ICC  
544 S. Indiana Avenue  
Chicago, IL 60615

Diane Moore  
Con Way Western Express  
12903 Lakeland Road  
Santa Fe Springs, CA 90670

Frederick Dooley  
Federal Trade Commission  
901 Market Street, #570  
San Francisco, CA 94563

David Wallace  
California Dept. of Gen. Services  
P. O. Box 1010  
N. Highlands, CA 95660

William K. Ris, Jr.  
Americans For Safe & Competitive  
Trucking  
Wexler, Reynolds, Harrison, & Schole  
1317 F St. NW,  
Washington, DC 20004

Joseph E. McDonald  
Computer Movers & Bekins  
Moving & Storage  
1096 Pecten Ct.  
Milpitas, CA 95035

Tad Muraoka  
IBM  
1697 Hydrangea Lane  
San Jose, CA 95124

William Aylmer  
Southern California Motor Delivery  
P. O. Box 756  
Montebello, CA 90640

National Small Shipments Traffic Conf.  
Daniel Sweeney/McCarthy, Sweeney &  
Harkaway  
1750 Pennsylvania Avenue NW #1105  
Washington DC 20006

Willig Freight Lines  
123 Loomis St.  
San Francisco, CA 94104

(END OF APPENDIX A)