

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Amend Minn. Reg. PSC 3, Records, by adding a paragraph (k) as follows:

(k) No motor common carrier operating under authority of the Commission shall provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months after delivery of the property or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

APPROVED AS TO FORM AND LEGALITY

MAR 14 1977 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael S. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 14 1977 - 2:00 pm
Joan Anderson Growe
Secretary of State

2/76

295

Rod Wilson
Special Assistant
Attorney General

March 15, 1977

-Public Service Commission rules relating to motor vehicle carriers, PSC 3

#295 Public Service

received 2/4/77

due 2/24/77

Called 2/24 + requested Order adopting Rules

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard W. Session	Commissioner

In the Matter of the Proposed Adoption of Rules Amending the Rules of the Minnesota Department of Public Service Relating to Motor Vehicle Carriers.

A-8117-14

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held before Hearing Examiner Sam Fried in the Large Hearing Room, Seventh Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, on Tuesday, March 30, 1976, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mailing an original and nine copies to the Secretary of the Public Service Commission, 7th Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, and a duplicate original to the Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within twenty days after the close of the hearing.

The proposed rules, if adopted, would amend Minn. Reg. PSC 1 by adding a section defining "courier service;" would amend Minn. Reg. PSC 2 by providing an expedited procedure for carriers providing "courier service" to extend their authority without the necessity of formal hearings; and would amend Minn. Reg. PSC 3 by providing for a nine months' loss and damage rule to apply to all motor common carriers operating under authority of the Department of Public Service. One free copy of the actual rules with existing language stricken and new language underlined may be obtained by writing to the Department of Public Service. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. §216A.05 (1974).

A Statement of Need is available for review at the Office of the Department of Public Service, which statement explains the need for and reasonableness of the proposed amendments. Similarly, a Statement of Evidence, as will be required by Minn. Reg. HE 103(h) (proposed), is available for review at the Office of the Department of Public Service. Copies of these statements may be obtained by submitting a written request to the Office of the Department of Public Service.

Please be advised that pursuant to Minn. Stat. §10A.01, subd. 11 (1974), any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

BY ORDER OF THE COMMISSION

/s/ LAWRENCE J. ANDERSON
Secretary

SERVICE DATE: February 26, 1976

(S E A L)

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Mike Miller
Special Assistant Attorney General

DATE: 3-2-77

FROM : Rod Wilson RW
Special Assistant Attorney General

SUBJECT: Public Service Commission proposed rules relating to motor vehicle carriers, PSC Docket No. A-8117-14

Attached is the "Order Adopting Rules" which hopefully will complete the Commission's file.

RW/bs

COMMISSION
ORIGINAL

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Richard J. Parish	Commissioner
Katherine E. Sasseville	Commissioner

Approved of Record
2/28/ 1977
Secretary

In the Matter of the proposed Adoption of Rules Amending the Rules of the Minnesota Department of Public Service Relating to Motor Vehicle Carriers.

A-8117-14

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Department of Public Service of the State of Minnesota on the 30th day of March, 1976, at 9:30 a.m. in the American Center Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. § 15.0412 (1975 Supp.) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules and the reasonableness thereof.

NOW, THEREFORE, IT IS ORDERED that Rule PSC 3(k) is adopted this 28th day of February, 1977, pursuant to authority vested in this Department by Minn. Stat. §§ 216A.05 (1974) and 221.031 (1974).

BY ORDER OF THE COMMISSION

Lawrence J. Anderson
Secretary

Dated: February 28, 1977

(S E A L)

CERTIFICATION OF COMMISSION'S
AUTHORIZING RESOLUTION

I, Lawrence J. Anderson, do hereby certify that I am the duly appointed and acting Secretary of the Minnesota Public Service Commission, an agency authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a motion made and passed at a meeting of the Commission duly and properly called and held on the 18th day of February, 1976; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the Minutes of said meeting and that it has not been rescinded or modified:

Item 167. It was voted to approve a formal order convening a public hearing on Tuesday, March 30, 1976, at 9:30 a.m. in the Commission Hearing Room on the 7th Floor of the American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota, for the purpose of adopting amendments to the rules of the Minnesota Department of Public Service relating to motor vehicle carriers pursuant to the provisions of M.S.A. Section 15.0412.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the Minnesota Public Service Commission.

Dated this 28th day of October, 1976.

Secretary

(S E A L)

COMMISSION
ORIGINAL

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard W. Session	Commissioner

In the matter of the Proposed Adoption of Rules Amending the Rules of the Minnesota Department of Public Service Relating to Motor Vehicle Carriers.

A-8117-14

ORDER FOR HEARING

To effectively implement the laws pertaining to motor vehicle carriers subject to its regulation, the Minnesota Department of Public Service deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in it by Minn. Stat. §216A.05 (1974).

NOW, THEREFORE, IT IS HEREBY ORDERED that a public hearing on the proposed rules captioned above be held in the Large Hearing Room, Seventh Floor, American Center Building, 160 East Kellogg Boulevard, St. Paul, Minnesota 55101, on Tuesday, March 30, 1976, commencing at 9:30 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and further, that notice of said hearing shall be published in the State Register.

BY ORDER OF THE COMMISSION

/s/ LAWRENCE J. ANDERSON
Secretary

DATED: February 18, 1976

(S E A L)

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

Julian Johnson, being first duly sworn, upon oath deposes and says:

1) That he is an employee of the Minnesota Public Service Commission of the State of Minnesota.

2) That on the 24th day of February, 1976, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 1971, Section 15.0412.

3) That on the 24th day of February, 1976, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Julian Johnson

Subscribed and sworn to before me this 25th day of February, 1976.

SHARON A. SCHMIDT
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Sept. 29, 1977

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

CERTIFICATE

In the matter of the proposed adoption of rules amending the rules of the Minnesota Department of Public Service relating to motor vehicle carriers.

Docket No. A-8117-14

I hereby certify that the attached #71 labels & one sheets constitute the complete list of persons, associations, and other interested groups who as of three o'clock, P .M. this 24th day of February, 1976, have requested pursuant to M.S. 1974, Section 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Ceil Dion

STATE OF MINNESOTA)+
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF MAILING

In the matter of the proposed adoption of rules amending the rules of the Minnesota Department of Public Service relating to motor vehicle carriers.

Docket No. A-8117-14

Sharon A. Schmidt, being first duly sworn, deposes and says:

That on the 26th day of February, 1976, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the notice of hearing in the above-captioned matter by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons at the addresses shown on the attached mailing list.

Sharon A. Schmidt

Subscribed and sworn to before me this 26th day of February, 1976.

Muriel J. Volpe
Notary Public

MURIEL J. VOLPE
Notary Public, Ramsey County, Minn.
My Commission Expires, Jan. 26, 1978

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard W. Session	Commissioner

In the Matter of the Proposed Adoption of Rules Amending the Rules of the Minnesota Department of Public Service Relating to Motor Vehicle Carriers.

DOCKET NO. A-8117-14

STATEMENT OF NEED

In order to effectively implement the laws pertaining to motor vehicle carriers subject to its regulation, the Minnesota Department of Public Service ("Department") deems it necessary to consider adoption of the proposed rules captioned above. The authority to adopt said rules is vested in the Department by Minn. Stat. § 216A.05 (1974).

Proposed Minn. Reg. PSC 1(s) would add a new definitional section to the various motor vehicle carriers termed "courier service." Proposed Minn. Reg. PSC 2(v) would permit contract carriers providing courier service to add to their accounts without the necessity of formal hearings. That such rules are necessary to accommodate the shipping and receiving public is illustrated by the unique nature of courier service as defined by the proposed rule. There are hundreds of banks and other businesses throughout the State of Minnesota which require courier service. In order for carriers who provide courier service to extend their authority, they must formally petition the Commission. Because many additional shippers have required courier service, many contract carriage extension applications have been filed within the past year commanding a good deal of the Commission's time and attention. Many of these applications have been contested, thus leading to lengthy hearings and prolonged service delays, disadvantaging and inconveniencing the Commission and the public, as well as the couriers themselves.

The banks, computer centers, financial institutions, and other

businesses which have or desire courier service deem it important to have the services of more than one courier available to them. Proposed Rules PSC 1(s) and 2(v) would facilitate such availability. Most of these businesses presently do not have a choice of couriers outside the local cartage zone. Having such a choice is necessary because of the flexibility required by the problems inherent in the day-to-day scheduling and routing of pick ups, deliveries and processing of materials. For example, many businesses desire on occasion to change from one courier to another, and some who are served by both couriers for different commodities may wish to consolidate their service with a single courier. Such changes are necessary and desirable in order to meet their needs with respect to routes, schedules, security, rates, convenience and other factors. In many cases the needs of these shippers cannot be met because of the procedures and requirements presently imposed by the Commission for obtaining extensions of contract carrier authority.

The proposed rules would further amend Minn. Reg. PSC 2 so that in providing courier service, carriers holding authority both as a permit contract carrier and as an irregular route common carrier may engage in more than one of such types of carriage at the same time with the same vehicle. The rationale advanced against co-mingling is not applicable in this type of carriage; the anti-co-mingling policy is based on the notion that different shippers could be discriminated against if they were charged varying rates (contract or irregular route) even though their shipments were being transported in the same vehicle. Since the Commission has recognized that a special tariff must be applied for bank and audit media because of its unique character, there would be no rate discrimination problem; such media always moves by a special tariff. Furthermore, the reasons against co-mingling have been undermined by the advent of the fuel crisis and new awareness of the cost to the environment of traffic pollution and the safety hazard caused by congestion on the highways.

Finally, the proposed rules would amend Minn. Reg. PSC 3 by providing for a nine months loss and damage rule which would apply to all motor common carriers operating under authority of the Department of Public Service. The

language for this proposed rule is taken from Section 20(11) of the Interstate Commerce Act (49 U.S.C. § 20(11)) as applied to railroads, and as also applied to motor vehicle carriers in Section 219 of the Interstate Commerce Act (49 U.S.C. § 219), and also from Section 2(b) of the Uniform Straight Bill of Lading which is contained in the National Motor Freight Classification. This rule would make uniform a time limit for the filing of loss and damage claims among all motor common carriers operating under authority of the Commission, thereby making uniform the current practice of the great majority of said motor common carriers. The rule would also make the time limit for filing loss and damage claims consistent with that which applies to interstate motor common carriers.

/s/ Lawrence J. Anderson
LAWRENCE J. ANDERSON
Secretary
Minnesota Public Service Commission

Dated: March 8, 1976

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Katherine E. Sasseville	Commissioner
Richard W. Session	Commissioner

Approved of record 8/4/ 1976

Secretary

In the Matter of the Proposed Adoption of Rules Amending the Rules of the Minnesota Department of Public Service Relating to Motor Vehicle Carriers.

A-8117-14

PSC-76-079-SF

ORDER ADOPTING REPORT

On June 8, 1976 the hearing examiner who served as presiding officer in the above-captioned matter issued a report and served it, together with a notice of the right to file exceptions within twenty days, on each of the parties pursuant to Minn. Stat. §15.052.

The said twenty-day period has expired and no exceptions have been filed by any party aggrieved by the report. The Commission has reviewed the report and determined that it should be adopted as its decision herein, it is NOW, THEREFORE, ORDERED as follows:

ORDER

The report of the hearing examiner dated June 8, 1976 be and hereby is adopted by the Commission as its Findings of Fact, Conclusions of Law and Order in this proceeding, effective on the service date below.

BY ORDER OF THE COMMISSION

/s/ LAWRENCE J. ANDERSON
Secretary

By: _____
Deputy Secretary

COMMISSIONER SASSEVILLE DOES NOT CONCUR IN THE DECISION OF THE MAJORITY. HER DISSENTING OPINION WILL FOLLOW.

(SEAL)

PSC-76-079-SF
A-8117-4

COMMISSION ORIGINAL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES AMENDING THE RULES OF THE MINNESOTA DEPARTMENT OF PUBLIC SERVICE RELATING TO MOTOR VEHICLE CARRIERS.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing at the American Center Building, St. Paul, Minnesota, on March 30, 1976, at 9:30 a.m. before S. B. Fried, Hearing Examiner, 1745 University Avenue, St. Paul, Minnesota 55104. The following members of the Public Service Commission participated in said hearing:

Karl F. Rolvaag, Chairman

Arlen I. Erdahl, Commissioner

Katherine E. Sasseville, Commissioner

The following appearances were made:

Rod Wilson, Special Assistant Attorney General, representing the Department of Public Service;

Jerome Pedersen, Transportation Rate Division Director, Department of Public Service.

The following witnesses testified:

David Rubenstein, for Freight Transportation Consultants, Inc., 301 North 5th Street, Minneapolis 55403;

Douglas L. Skor, Esq., 2200 First National Bank Building, St. Paul 55101, for Loomis Courier Service, Inc.;

Robert P. Balck, Vice-President and General Manager, Loomis Courier Service, 390 4th Street, San Francisco, California 94107;

Diana E. Murphy, Esq., 4200 IDS Center, Minneapolis 55402, for Purolator Courier Corporation.

This Report has been prepared pursuant to Minnesota Statute Section 15.052, Subd. 3.

RECEIVED
Dept. of Public Service
JUN 1 0 1976
Commission Support

Based upon all of the files, records and proceedings herein, the Hearing Examiner makes the following:

FINDINGS OF FACT

I

By the proposal in the instant matter, the Department of Public Service would add to its existing respective rules the following paragraphs:

Minn. Rule PSC 1

(s) The term "courier service" shall mean expedited door-to-door transportaiton (as hereinafter defined) by the carrier of packages and articles. Door-to-door transportation shall mean the pickup by the carrier of the package or article at the specific location designated by the consignor or consignee and delivery of the package or article to the specific location designated by the consignor or consignee including adherence to all instructions or directions on the bill of lading.

Minn. Rule PSC 2 (The (t) paragraph was shown as (v) rather than (t) in the proposal but was corrected to (t) on the record at the hearing.)

(t) Carriers Providing Courier Service.

The following provisions shall govern the rendition of courier service to the public, notwithstanding other provisions of general applicability contained in the rules of the Commission:

(1) A contract carrier with authority to provide courier service for data processing, bookkeeping, or accounting data or materials, microfilm, cash letters, checks, or other bank or business documents or records (except cash, currency, bonds and negotiable instruments) shall not be required to receive Commission approval to transport such commodities in courier service for additional customers, if the carrier has demonstrated its fitness and ability to provide such service throughout the state. Such a carrier shall be required to file with the Commission all subsequent amendments to contracts in effect pertaining to such service within 15 days of the effective date of said amendment; and shall file all contracts, and amendments thereto, pertaining to such service for additional customers within 15 days of the effective date of said contract or amendment thereto. Carriers shall also file justification statements with the Commission ten days prior to the announced effective date of general increases in outstanding contracts.

(2) The following factors shall be considered by the Commission in determining whether the carrier has demonstrated the requisite fitness and ability under paragraph (1):

(a) The financial ability of the carrier to provide such service throughout the state;

(b) The mental and physical ability of the carrier to comply with rules, regulations and statutes of the Commission;

(c) The length of time which the carrier has provided such service as a contract carrier outside the local cartage area;

(d) The extent to which the carrier is qualified and competent and has the experience necessary to provide such service throughout the area outside the local cartage area.

(3) In providing courier service carriers holding authority both as a permit contract carrier and as an irregular route common carrier may engage in more than one of such types of carriage at the same time with the same vehicle.

Minn. Rule PSC 3

(k) No motor common carrier operating under authority of the Commission shall provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months after delivery of the property or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

II

On February 18, 1976, the following documents were filed by the Department of Public Service at the Office of Hearing Examiners:

The proposed amendments of the regulations or rules of Minnesota Department of Public Service; proposed order for hearing; proposed notice of hearing; estimate of persons expected to attend the hearing; order for hearing; and notice of hearing.

On February 26, 1976, the Department of Public Service served by mail, the Notice of Hearing on all persons shown on the Secretary of State's list for proceedings such as the instant matter, and on all legislators. Attached to the Secretary of State's list was an affidavit

of receipt by the Department of Public Service of the said list and a certificate of the Secretary of State.

On March 9, 1976, a Statement of Need was filed by the Department of Public Service with the Office of Hearing Examiners along with notification of agency appearances and citations to law relied upon for the rule amendments.

III

The hearing record was kept open for 20 days after the hearing, through April 19, 1976. Testimony was filed by the Bus and Truck Division of the Department of Public Service on April 19, 1976, and several letters in support of the rule change were filed before April 19, 1976 by banks using courier services.

IV

The statutory law applicable to all the instant proposed amendments is found at Minnesota Statutes Section 216A.05 which gives the Public Service Department broad rulemaking powers. With regard to paragraph 2(t)(1) and 2(t)(2) of the proposed rules, Minnesota Statutes Section 221.121 Subd. 2 is also applicable. That subdivision of the said section prescribes the conditions for granting extensions to permit authority without a hearing, and it mandates that a hearing shall be held if an extension petition is protested within 20 days after notice of the petition has been published. It provides as follows: "The department may grant extensions of authority ex parte after the notice of a petition has been published. Any party desiring to protest the petition must file its protest by mail or in person within 20 days of the date of notice. If a timely filed protest is received, the matter shall be placed on the calendar for hearing. If a timely protest is not received, the Department may issue its order ex parte."

The proposed Rule 2(t)(1) and 2(t)(2) exempts couriers of the type of materials defined in the Rule from that subdivision of Section 221.121.

V

The rule changes as proposed in PSC 1(s) and PSC 2(t) are opposed by the Bus and Truck Division of the Department of Public Service.

Metro Mail and Courier Service, Inc. opposed PSC 2(t) as proposed.

Testimony at the hearing was to the effect that the definition of "courier service" in PSC 1(s) was limited to expedited service for data processing, bookeeping, or accounting data or materials, microfilm, cash letters, checks, or other bank or business documents or records (except cash, currency, bonds and negotiable instruments).

Testimony as to the apparent conflict between proposed rule PSC 2(t) and Minn. Stat. Section 221.121, Subd. 2 was to the effect that the Commission could hold a hearing on a petition filed by a carrier to determine whether that carrier had demonstrated its fitness and ability to provide courier service throughout the state. The proposed rule is silent with regard to the method the Commission could use to make its determination. It merely provides that under 2(t)(2) that four factors shall be considered by the Commission. Two of these factors, financial ability of the carrier to provide statewide service and the mental and physical ability of the carrier to comply with rules, regulations and statutes of the Commission are already included in PSC rule 1(q).

VI

No opposition was expressed toward the proposed rule PSC 3(k).

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

I

All statutory and rule requirements of the Office of Hearing Examiners, concerning jurisdiction and procedure of the above-entitled matter, have been complied with by the Department of Public Service.

II

Rule proposal PSC 1(s) while purporting to relate exclusively to contract carriers limited to data processing, bookeeping, or accounting data or materials, microfilm, cash letters, checks, or other bank or business documents or records (except cash, currency, bonds and negotiable instruments) does not perform this limited definition of a courier. Under the proposal, any contract carrier could be considered a courier service.

III

Rule proposal PSC 2(t) conflicts head-on with the statutory law found in Minn. Stat. Section 221.121, Subd. 2. Where a proposed rule conflicts with a statute as it does in the instant matter by exempting certain carriers from hearings where the statute mandates that hearings be held, the proposed rule must be disapproved as a violation of the statute.

IV

Proposed rule PSC 3(k) does not conflict with any Department of Public Service statutes and covers those situations to which it is peculiarly addressed.

Based upon the foregoing Findings of Fact and Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that proposed Rule PSC 3(k) be APPROVED; and

It is further recommended that proposed rules PSC 1(s) and PSC 2(t) be DISAPPROVED.

MEMORANDUM

The Examiner is not unmindful of the reasons for the proposed rule amendments PSC 1(s) and 2(t). With a more limited definition of "courier" or "courier service", that particular change could probably be accomplished through a new rule, but the Examiner is of the opinion that what is necessary to accomplish the objectives of the proposed rules is some statutory changes. Courier or courier service could be defined as one type of contract carrier and contract carriers should be excepted from Minn. Stat. Section 221.121. The inclusion of contract carriers in that section of the statute has prolonged the hearing process and the deliberative and appeals process on behalf of and by the Commission in several contract carrier petitions, but the frustration on the part of carriers, the shipping public, the Commission and their respective counsel or representatives has been the greatest with respect to contract courier petitioners.

The Examiner is persuaded by the evidence in the instant matter and by his experience with the Public Service Commission that changes in the law are necessary to allow courier services that are otherwise fit and able to add to their list of customer accounts according to demand without the necessity of first filing petitions and obtaining Commission approval either ex parte or after a hearing. This would simplify courier service matters for banks and data processing centers, the customers of courier service, to use any PSC certified courier service they might want at will without the necessity of waiting for a hearing to be scheduled, testifying at a hearing and possibly waiting further for a final decision of the Commission after an appeal. Such changes must be made by the legislature however; they cannot be accomplished through the proposed rule addition.

Dated this 8th day of June, 1976.

S.B. Fried
Hearing Examiner

CAPSULE SUMMARY

Proceeding initiated: 2/18/76 — AGENDA NO. 22 — DOCKET NO. A-8117-14 PSC-76-079-SF

PETITIONER Minnesota Public Service Commission — SEQUENCE

ADDRESS — DOCKET TYPE

FILE NO.

FORMAL ORDER [x] PROPOSAL [ ] INFORMAL ORDER [ ]

I. IN THE MATTER OF the proposed adoption of rules amending the rules of the Minnesota Department of Public Service relating to motor vehicle carriers.

II. INVESTIGATION FINDINGS: (include economic impact) Proposed rule PSC 1(s) purports to relate exclusively to contract carriers transporting data processing materials and related items. The record does not bear out that this definition limits the action to "courier." Any contract carrier could perform a courier service.

The examiner finds that proposed rule PSC 2(t) is contrary to the statute.

The examiner further finds that proposed PSC 3(k) is not in conflict with Department regulations or statutes. The examiner finds that the change which is contemplated could be accomplished through a change in the statute and that an attempt to accomplish the proposed change by adopting a rule is of doubtful propriety.

III. PRECEDENTS (A. Applied B. Considered C. Set) Where a proposed rule conflicts with a statute it must be disapproved. M.S. 221.121 Sub 2

IV. RECOMMENDATION Adopt report of hearing examiner which 1) approves proposed rule PSC 3(k) and 2) disapproves proposed rules PSC 2(t) and PSC 1(s).

V. INVESTIGATED BY Leo J. Ambrose DIV. Comm. Sup. DATE 8/3/76

REVIEWED BY Leo J. Ambrose DIV. Comm. Sup. DATE 8/3/76

VI. SUBMITTED TO COMMISSION ON

COMMISSION ACTION: APPROVED [X] REMANDED [ ]

DATE 8/4/76

COPY DISPOSITION
1 – CASE FILE
2 – DIVISION
3 – REG. POLICY

DPS 4 8/75

BEFORE THE MINNESOTA PUBLIC SERVICE COMMISSION

Karl F. Rolvaag	Chairman
Ronald L. Anderson	Commissioner
Arlen I. Erdahl	Commissioner
Richard J. Parish	Commissioner
Katherine E. Sasseville	Commissioner

In the Matter of the Proposed Adoption of Rules Amending the Rules of the Minnesota Department of Public Service Relating to Motor Vehicle Carriers.

DOCKET NO. A-8117-4

DISSENTING OPINION OF KATHERINE E. SASSEVILLE, COMMISSIONER

I dissent from the decision of the majority because I believe the proposed rule may reasonably be interpreted as fulfilling the purpose of the transportation regulation statutes and that it does not conflict with those statutes.

The Hearing Examiner in his Report to the Commission, while acknowledging the need for such a rule and that it would be in the interests of the couriers, the Commission and the shipping public, recommended disapproval based on his conclusion that the proposed rule conflicts with Minn. Stat. § 221.121, subd. 2 (1975 Supp.).

This legal conclusion would be sound only if additions of specialized accounts to couriers (who have already proven fitness and ability and need for their services through public hearings) must necessarily be considered "extensions" of authority within the meaning of that statute. Notably, the statute itself does not define what constitutes an "extension" of a permit, nor do the Commission's rules and regulations.

The only enlightenment as to what constitutes an "extension" of a permit, more specifically of contract carrier authority, is found from a review of Commission records. Minn. Stat. § 221.011, subd. 12 (1974) defining "contract carriers" and limiting the number of accounts to ten was passed into law in 1957. Before then, there was no limit on the number of accounts for contract carriers even if the transportation requirements were of an unspecialized nature. The Commission's records show that it approved a policy on February 28, 1966 terming contract carriers in existence prior to 1957 as "grandfather" contract carriers. In this same policy (appended hereto), the Commission declared that an increase in the number of accounts (non-specialized) was considered an extension of authority held by the carriers and a hearing was required.

To replace an account which the Commission had previously authorized was not considered an extension of authority and a hearing was not necessarily required, rather was subject to Commission discretion. Importantly, this policy did not apply to "grandfather" contract carriers nor to specialized accounts.

In July, 1966, the Commission further defined policy with respect to contract carriers by classifying them into two groups: "A" or grandfather carriers; and "B" or contract carriers obtaining authority subsequent to July 1, 1957. "A" carriers could add up to ten accounts or substitute accounts without hearing upon approval by the Commission. If "A" carriers had more than ten accounts previously approved by the Commission, they could substitute up to the number they had previously been authorized, but only on approval of the Commission. "B" carriers could substitute accounts up to the number of accounts they had previously been authorized but only with Commission approval. Further, "B" carriers could only have additional accounts after hearing and order of the Commission. Most importantly, this policy stated that both "A" and "B" carriers could add accounts or substitute accounts where such accounts require a specialized service to meet their needs, upon approval by the Commission and without the necessity of a hearing, appparently because the Commission did not consider this to be an extension of authority.

In 1970, the Commission adopted a rule concerning contract carriers which, in substance, is the same as the existing Minn. Reg. PSC 2(f). Particularly elucidating are the comments of the representative for Loomis Courier Corporation on the proposed rule (appended hereto):

> "On or about February 5, 1970, this office filed a proposed rule change to Public Service Commission Rule 2(g) . . . . The proposal was intended to (a) eliminate contested hearings involving Loomis Corportion and American Courier Corporation [now the Purolator Corporation] . . . . If you recall, it was the position of [Purolator] that under the policies of the Commission, [Purolator] had the right to give notice to the Commission that they intended to serve additional customers and then they commenced serving those customers. That procedure was provided for under the terms of the written policy of the Commission and it was argued that it was applicable to contract carriers whose permits predated 1957. This policy, if valid, would have covered [Purolator] but not Loomis. Since the rule change was filed in February 1970, the Commission has adopted practices and policies that have eliminated all but one contested hearing, and the present policies of the Commission are acceptable to Loomis Corporation."

(Emphasis added).

After the promulgation of this rule, the Commission, at least for specialized contract carriers providing courier service, approved additions of accounts without the necessity of hearings. However, apparently without any written change of policy, the Commission moved to its present practice of requiring separate petitions for adding specialized accounts to contract carriers providing courier service, and holding hearings thereon if protests are made to such applications.

The Commission's intent in proposing this rule was to eliminate the necessity of requiring specialized contract carriers who provided courier service as defined by the rule, and who had proven "fitness and ability" as set forth in the proposed rule, from the necessity of a hearing (and all the administrative and judicial review procedures entailed by such a hearing) in order to add an additional account, for example, one bank. No one who testified at the rules hearing disputed that such a rule would be in the interest of the shipping public. Rather, the opposition which was expressed was that of a motor carrier who was concerned that the proposed rule might be applied in an arbitrary manner so as to "freeze out" new or small carriers. This unfounded suspicion is without merit and does not justify abandoning a rule the intent of which was precisely the protection of the shipping public for which purpose the transportation regulation laws were first passed. Experience has shown that in some cases it has taken over one year from the initial filing of a petition until the final Commission order granting or denying the petition (which order is in turn subject to judicial review), simply to add one bank to its authority. This procedure is entirely too cumbersome and adds credence to the arguments of those who advocate deregulation in the transportation industry on the basis that there is too much "red tape" and "bureaucracy".

In view of past Commission policies since the inception of the law governing contract carriers, the interpretation of "extension" within the meaning of Minn. Stat. § 221.121, subd. 2 (1975 Supp.), as now determined by the Examiner and affirmed by the majority, is an extremely narrow one which frustrates the overall intent of the motor carrier laws. The proposed rule was an attempt to streamline the administrative process for regulating a highly specialized and unique segment of the motor transportation industry, the objective being to benefit

the shipping public. The majority's decision to reject adoption of this rule on the basis that it conflicts with the aforementioned statute, while simultaneously recognizing the need for such a rule, is a step backward. If there is any doubt as to the legality of the proposed rule, I feel the rule should have been adopted as proposed and a determination as to its legality should be made by the Attorney General in the normal course of review of an agency's rules.

Dated: January 27, 1977

X APPENDIX A

CONTRACT CARRIER ACCOUNTS - approved by Commission 2-28-66.

Except for a " G randfather" Contract Carrier:

To increase accounts - considered an extension of authority held by the carrier HEARING IS REQUIRED.

To replace account already authorized - not considered an extension of authority, as need for service has already been established by the granting of the permit - and a HEARING MAY NOT BE REQUIRED. To make this determination, Commission will consider facts relating to such change. - IF HEARING NOT REQUIRED, written notice of approval of change in accounts shall be given carrier.

Mr. Allen stated that on Contract Carrier Permit orders the words "after hearing" will be omitted from now on from the following:

"IT IS FURTHER ORDERED that there shall be no change in the list of accounts or customers as authorized herein without approval of the Commission(after hearing)"

Maybe copy

COMMISSION APPROVED
2-28-66

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PROFESSIONAL ASSOCIATION
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ROBERT O. SULLIVAN, COUNSEL

April 15, 1972

APR 17 1972
DEPARTMENT OF PUBLIC SERVICE

Public Service Commission
State of Minnesota
State Office Building
St. Paul, Minnesota 55101

Attention: Mr. Harold A. Kind, Secretary

Re: Proposed Rule Changes (Loomis Corporation, our file 3262.7)

Dear Mr. Kind:

This will supplement the suggestions that were given at the time of the hearing on the proposed Rule changes April 11, 1972:

1. On or about February 5, 1970, this office filed a proposed Rule Change to Public Service Commission Rule 2(g). This is the first Rule listed in the proposed Rule Change. The proposal was intended to (a) eliminate contested hearings involving Loomis Corporation and American Courier Corporation, and (b) clarify the practice of the Commission concerning "laminations" to contract carrier authorities. If you recall, it was the position of American Courier Corporation that under the policies of the Commission, American Courier had the right to give notice to the Commission that they intended to serve additional customers and then they commenced serving those customers. That procedure was provided for under the terms of a written policy of the Commission, and it was argued that it was applicable to contract carriers whose permits predated 1957. This policy, if valid, would have covered American Courier but not Loomis. Loomis took the position that the procedure was inconsistent with PSC Rule 2(g). Since the Rule Change was filed in February 1970, the Commission has adopted practices and policies that have eliminated all but one contested hearing, and the present policies of the Commission are acceptable to Loomis Corporation.

Public Service Commission
Mr. Harold A. Kind April 15, 1972

2. I am enclosing as Exhibit A the Rule change which was originally submitted February 5, 1970, and this revision incorporates the comments I made at the public hearing.

3. I am also enclosing as Exhibit B the Commission's proposed Rule change, to which Loomis now has no objection. You will note, however, we have amended the Rule to provide that the applicant or contract carrier has the option to file a copy of its contract with the shipper or "other written documentation" to substantiate the existence of an agreement between the carrier and the shipper. We make this suggestion so there is no necessity of having a separate rule applicable to armored car service or other specialized transportation of valuable commodities. As I indicated in my letter of April 10, 1972, a copy of which is enclosed for your easy reference, armored car shipments are exempt from such regulation by the Interstate Commerce Commission.

I am advised that American Courier Corporation and Brink's, Inc. support the Commission's proposed Rule with this suggested change.

We will be glad to confer with the staff or the Commission at any time convenient.

Very truly yours,

MJG:mb
enc.
cc: Mr. William E. Fox, Attorney at Law
Mr. Francis D. Partlan, Attorney at Law
Mr. George Hart, Attorney at Law
Mr. Lawrence Charbonneau
Mr. Robert Konrad
Mr. James Finley, Attorney at Law
Mr. James Malecki, Attorney at Law, New Ulm
Official Reporters of the PSC
(w/enc.)

RE: Additional Accounts or Substitution of Accounts for Contract Carriers.

For the purpose of promoting uniformity in the handling of applications of contract carriers for additional accounts or substitution of accounts, the Commission adopted the following policy:

Contract carriers are classified into two groups, "A", grandfather carriers, and "B", carriers obtaining authority subsequent to July 1, 1957.

"A", or grandfather carriers, may add accounts up to 10 or substitute accounts without hearing upon approval by the Commission. If "A", or grandfather carriers, have more than 10 accounts previously approved by the Commission, they may substitute up to the number they have been previously authorized, but only on approval of the Commission. However, "A", or grandfather carriers, when requesting Commission approval to serve an additional account or to substitute one authorized account for a new account, must furnish a letter from such new account to be added or substituted indicating the name of the carrier who is presently doing its hauling, so that the Commission can notify said carrier.

"A", or grandfather contract carriers, may not increase the number of accounts above 10 without a hearing and order of the Commission.

"B", or contract carriers obtaining authority after July 1, 1957, may substitute accounts up to the number of accounts they are authorized by order, but only with approval of the Commission. However, "B", or contract carriers obtaining authority after July 1, 1957, when requesting Commission approval to substitute one authorized account for a new account must furnish a letter from such new accounts indicating the name of the carrier who is presently doing its hauling, so that the Commission can notify said carrier.

"B", or contract carriers obtaining authority after July 1, 1957, can only have additional accounts after hearing and order of the Commission.

"A", or grandfather carriers, and "B", or contract carriers obtaining authority after July 1, 1957, may add accounts or substitute accounts where such accounts require a specialized service to meet their needs, upon approval by the Commission.

(Approved February 28, 1966 by the Public Service Commissioners.)

CERTIFICATE OF COMMISSION'S ADOPTION

OF RULES RESOLUTION

I, Lawrence J. Anderson, do hereby certify that I am the duly appointed and acting Secretary of the Minnesota Public Service Commission, an agency authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a motion made and passed at a meeting of the Commission duly and properly called and held on the 4th day of August, 1976; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the Minutes of said meeting and that it has not been rescinded or modified:

Item 953. A-8117-14 It was voted to adopt the report of a hearing examiner approving proposed rule Minn. Reg. 3(k) and disapproving proposed rules Minn. Reg. PSC 2(t) and PSC 1(s). Commissioner Sasseville does not concur in the decision of the majority and will file a dissenting opinion.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the seal of the Minnesota Public Service Commission.

Dated this 28th day of October, 1976.

Secretary

(S E A L)

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Rodney Wilson, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Rod Wilson
Special Assistant Attorney General
Minnesota Department of Public Service

Dated: 2/3/77