

July 31
Filed August 1, 1970

PSC 20

4:15 P.M.

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

STATE OF WISCONSIN)
) SS
PUBLIC SERVICE COMMISSION)

I, John F. Goetz, Secretary of the Public Service Commission of Wisconsin and legal custodian of the official records of said Commission, do hereby certify under my signature and official seal of the Commission that the attached created rule, Wis. Adm. Code section PSC 20.01, with accompanying Note (Chapter PSC 20, revised to appear as Note), relating to reporting instances of isolated or emergency transportation to the Commission, was duly approved and adopted by order of July 31, 1970.

I further certify that the copy of the created rule together with the Note attached hereto has been compared by me with the original on file in this Commission and that the same is a true copy thereof.

Dated at Madison, Wisconsin

July 31, 1970

John F. Goetz
John F. Goetz
Secretary

ORDER OF THE
PUBLIC SERVICE COMMISSION
ADOPTING A RULE

and revising previous Wis. Adm. Code
Chapter PSC 20 to appear as a Note to said rule

Pursuant to authority vested in the Public Service Commission by chapter 194, Wis. Stats., the Public Service Commission hereby adopts a rule and revises the previous Wis. Adm. Code chapter PSC 20 to appear as a Note thereto.

Section PSC 20.01 of the WISCONSIN ADMINISTRATIVE CODE is adopted to read:

PSC 20.01 Reporting isolated or emergency instances of transportation. (1) REPORT TO COMMISSION. All contract motor carriers performing isolated or emergency instances of transportation under the provision of section 194.34 (4), Wis. Stats., shall report to the Commission in writing each time transportation on such a basis is performed. Such report shall be a statement made in triplicate, naming the commodity hauled, origin, destination, consignor, and consignee, and stating the facts and circumstances which it is claimed require the movement to be classified as one of the isolated or emergency type.

(2) COPIES. One copy of the report required by subsection (1), above, shall be placed upon the vehicle performing the transportation and shall be made available for inspection immediately upon the request of any law enforcement officer or Public Service Commission personnel. One copy shall be mailed to the Public Service Commission in Madison within 24 hours after the transportation is performed, and one copy shall be retained in the office of the carrier performing said transportation.

Note: This note gives examples of transportation and explanations designed to bring about a greater degree of uniformity in the construction and application of the "isolated and emergency" provision of

section 194.34 (4), Wis. Stats., and Wis. Adm. Code section PSC 20.01.

Erroneous interpretation. (a) A great deal of misunderstanding has arisen with reference to the meaning of section 194.34 (4), Wis. Stats., the effect of which is to permit the performance of isolated or emergency instances of transportation by any contract motor carrier without securing specific authority of the commission therefor. The difficulty is interpreting the facts of a given situation so as to determine whether or not the contemplated transportation is either "isolated" or "emergency". Many have fallen into the error of construing these two terms together and as referring to but one type of transportation. The words are not synonymous and should be construed separately, and if the transportation contemplated is either emergency or isolated, it falls within the meaning of the statute.

(b) Another common error is that this provision relates to all transportation which is only occasionally performed by carriers. That is to say, many carriers are of the impression that if they make a given movement only once or twice a year, it is an isolated instance of transportation. If the movement is one which is regularly occurring, it is not isolated regardless of what carrier or what class of carrier performs it.

(c) In an attempt to clarify the meaning of the statute, the commission expresses the following views with reference to the proper interpretation of the statutory provision.

Isolated transportation. (a) An isolated instance of transportation is one which is not performed in the ordinary course of the business of the shipper, the receiver, or the carrier. For example, the movement of household goods for a person who is changing his residence, when it is not performed by a carrier who makes a regular business of household-goods moving, is clearly an isolated instance of transportation. The shipper, who is also the receiver in such a case, does not engage in the movement of his household goods in the ordinary course of his business. Where, however, a carrier holds himself out to move household goods for the public, and does perform such movements regularly as a part of his usual business, the movement is no longer isolated but must be authorized by a specific grant of authority to the carrier. In other words, an isolated instance of transportation must be performed aside from the transaction of the ordinary business of all parties directly concerned in the shipment.

(b) The same rule holds true with respect to the movement of the equipment of a factory, the furniture of an office, or any other movement which is incident to the removal of a place of business from one location to another.

(c) The legislature no doubt provided this classification for this type of transportation contract which, although not an emergency, cannot be contemplated sufficiently in advance so as to be authorized by the commission either specifically or in general terms. If the carrier, however, regularly performs this type of transportation for the public, such as moving household goods, he can contemplate such operations in general sufficiently to enable him to secure authority in general terms (i.e., to move household goods for the public within, to, or from, a certain city or within a defined territory).

(d) A shipper who is engaged in the production and selling of a given commodity, and is regularly shipping the same, does not, in the opinion of the commission, ever move that commodity in an isolated instance of transportation, even though the transportation be to a point to which he has never shipped in the past and to which he may never ship in the future.

(e) Probably as good a rule to follow as any is to determine whether the commodity to be handled is one which the shipper repeatedly ships, or which the receiver repeatedly receives, or whether the movement of it is one which the carrier repeatedly performs. If any one of these elements is present, the movement is not, as a general rule, an isolated movement.

Emergency transportation. (a) An emergency instance of transportation is one which must move in order to meet the actual requirements of the shipper or the receiver, or which is necessary in the public interest, and which cannot be performed by a carrier having authority, service, and facilities therefor adequate to meet the necessities of the occasion.

(b) The emergency clause, in the commission's opinion, was put into the statute in order to permit the supplementing of regularly authorized service by licensed contract carriers when specific authority therefor is lacking, and when public facilities for transportation whether by motor carrier or railroad, are inadequate to supply the reasonable requirements of shipper, receiver, or the public. In no case will a shipment which can be performed in a reasonably equivalent manner, by authorized and available transportation facilities and service, be considered an emergency instance

of transportation which may be performed by a contract motor carrier without specific authorization.

(c) The emergency need not be a life or death matter, but must be sufficient to indicate an actual need which, if not supplied, will result in financial damage or inconvenience to the shipper or to the receiver which is out of proportion to the importance of the transportation required.

Examples of emergency transportation. (a) For example, an automobile may break down in a country town and a new part must be secured from some nearby city. This is an emergency to the owner of the automobile, who must wait until the new part is secured. The actual transportation is a minor matter. The delay to the owner of the car is important. It is clearly an emergency which justifies the movement by any contract carrier.

(b) A school or hospital may run short of coal during an exceptionally cold period. Coal must be supplied if the building is to remain open. The dispatch of a truck loaded with coal is clearly one which is justified to take care of such an emergency where the service cannot be obtained from an authorized carrier. The transportation involved is insignificant in comparison with the degree of the need for the commodity transported. Of course, it goes without saying that the receiver of coal in such an instance cannot voluntarily create an emergency so as to utilize the services of an unauthorized contract motor carrier by designedly permitting his supply of coal to become exhausted for that purpose. Such evasion in time would be indicated if there were repeated or frequent occurrences of so-called "emergencies" in such cases.

(c) A contract motor carrier's truck may be involved in an accident requiring extensive repairs which may take a day or two to complete. He has milk or other farm produce of a perishable nature to haul and has no other vehicle. His patrons and the public would suffer if the hauling were not taken care of. Another contract carrier under such circumstances may do this hauling, during the time that the truck is being repaired, as emergency hauling.

(d) An engine in a factory may break down and repair parts become necessary. Employment of numerous persons depends upon the promptness of the repair job. The repair parts are available at another city. Common carrier service would deliver them by 10 A. M. the following morning. A special trip could bring the parts by midnight, enabling the completion of the repairs and the reopening of the factory in the morning. Such a haul would be within the meaning of an emergency instance of transportation under the statutes.

The adopted rule contained herein shall take effect on September 1, 1970 as provided in section 227.026(1) (intro. par.), Wis. Stats.

dated: July 31, 1970

PUBLIC SERVICE COMMISSION


John F. Goetz
Secretary