(Decision No. C93-1302){PRIVATE
}

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE MOTOR VEHICLE OPERATIONS OF WESTERN TRANSPORTATION, INC., UNDER PUC CERTIFICATE NO. 1407 AND PUC PERMIT NO. B-1148 & I.	)))))	DOCKET NO. 93I-429CY DECISION

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Mailed Date: October 15, 1993
Adopted Date: October 13, 1993
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STATEMENT

BY THE COMMISSION:

This matter comes before the Colorado Public Utilities Commis-sion ("Commission") on consideration of the following motions filed by Western Transportation, Inc. ("WTI"): (1) Application for Rehearing, Reargument, or Reconsideration ("Application") and Sup-plement to Earlier Filed Application ("Supplement"); (2) Motion for Leave to File Reply; and (3) Petition for Reargument, Rehearing, and Reconsideration ("Petition"). The Staff of the Commission ("Staff") has filed a response to WTI's Application. For the rea-sons set forth below, WTI's Motion to File a Reply will be granted. WTI's Application, as supplemented, and its Petition will be denied in part and granted in part, as set forth below. Decision No. C93-1097 will be amended to vacate the stay previously granted therein.

DISCUSSION

1.1Background

On August 4, 1993, this Commission issued Decision No. C93-913 which opened the above-captioned Docket and authorized the investi-gation of WTI. The order conferred on the Staff all the powers of the Commission to conduct an investigation of WTI, including, but not limited to, the right to inspect books and records, to require the filing of periodical or special reports, to subpoena books and records, and to examine persons under oath.

On August 24, 1993, WTI filed an Application for Rehearing, Reargument, or Reconsideration of Decision No. C93-913. WTI alleges in this application and in its Supplement to the Applica-tion that this is an "adversarial" proceeding which requires the Staff to proceed under normal discovery guidelines and entitles WTI to a specific itemization of the charges against it so that it may respond and challenge those allegations, that the investigatory powers conferred by Decision C93-913 exceed the Commission's statu-tory authority, that the Staff's investigation of WTI constitutes an unlawful interference with its business, that the Staff is equi-tably *estopped* from pursuing the investigation, as well as other allegations more fully set forth below.

On September 7, 1993, WTI filed its Supplement to its Applica-tion.

On September 16, 1992, WTI filed a Petition in which it alleged that the Commission's decision to exempt from the stay the Staff's audit request to WTI to preserve its books and records was not discussed in the open meeting held on September 7, 1993. WTI further argues that the decision was contrary to the Retention of Business Records Act and the Commission's rules regarding retention of records.

On September 22, 1993, the Commission Staff filed a Response to the Application and Supplement. In general, the Staff argues that this is an investigatory process to which formal rules of discovery do not apply, that WTI is not entitled at this stage of the proceedings to propound discovery on the Staff, that the authority vested in the Staff by virtue of this decision does not exceed the Commission's lawful authority, and otherwise denies WTI's allegations.

On September 28, 1993, WTI filed a Motion Requesting Leave to File a Reply to Staff's Response. While Rule 22 of the Commis-sion's Rules of Practice and Procedure, 4 CCR 723-1, generally does not permit parties to file a reply brief, the Commission finds that it is important that WTI be able to fully and completely set forth its arguments. Therefore, the request to file a reply brief will be granted.

B. The Nature of Investigative Proceedings

WTI begins its Application with the assertion that the pro-cess initiated by Decision No. C93-913 was an "adversarial" pro-ceeding. This assertion is repeated throughout its pleadings and is the premises from which a number of arguments flow. In partic-ular, WTI argues that:

1. The Commission Staff must follow formal discovery proce-dures set forth in its rules;

2. WTI is entitled to a specific delineation of the charges against it and an opportunity to challenge those allega-tions;

3. It has been deprived of the right to counsel, its rights to due process, and of its right to have the case heard by those vested with the authority to decide matters; and

4. Its Fourth Amendment Rights regarding search and seizure have been violated.

This Commission has carefully and thoroughly reviewed these allega-tions and finds them to be contrary to statute, well-established case precedent, and to be without merit.

In reviewing WTI's allegations here, it is helpful to begin with a general discussion of administrative agencies' authority to conduct investigations and the distinction between those investiga-tions and adjudicatory proceedings.

Administrative agencies generally have the authority to deter-mine whether a law is being violated. See United States v. Morton Salt Company, 338 U.S. 632, 70 S. Ct. 357, 94 L. Ed. 401 (1950) ("When investigative and accusatory duties are delegated by statute to an administrative body, it...may take steps to inform itself as to whether there is probable violation of the law."). The Commis-sion is no exception. See, e.g., §§ 40-3-102, 40-6-106, and 107, C.R.S. (1993). Investigations are used to gather evidence to determine whether there has been a violation. Oklahoma Press Pub-lishing Co. v. Walling, 327 U.S. 186, 201, 66 S.Ct. 494, 501, 90 L.Ed. 614 (1946).

Once the investigation is complete, the administrative agency can initiate formal adjudicatory proceedings to adjudicate the rights and liabilities of the Respondent. Adjudications result in a "final disposition" or "order" as defined by the Administrative Procedures Act, § 24-4-102(10), C.R.S. (1988). Investigations can-not result in any adjudication of rights or liabilities.

This distinction between investigations and adjudications has long been recognized by both state and federal courts. See, Stein, Administrative Law, section 19.01, et seq. For example, this dis-tinction was addressed in detail in Genuine Parts Company v. Fed-eral Trade Commission, 445 F.2d 1382, (5th Cir. 1971). There, the Federal Trade Commission ("FTC") commenced an investigation of Gen-uine Parts Company to determine whether it had violated any anti-trust laws. The Commission ordered the company to file a special report pursuant to the Commission's directive which opened up the investigation. Genuine Parts Company argued, as WTI argues here, that once the investigation focused on the company, the Commission was required to follow formal discovery procedures and that it was entitled to conduct its own discovery. The court flatly rejected these claims.

> Genuine Parts Company takes the position in this appeal that when the FTC investigation is no longer a general in-quiry, but has begun to focus, and the Commission is in the process of

gathering evidence to be used in an agency process for the formulation of an order in an adjudicative proceeding, prior to the formal initiation of that proceeding through the issuance and service of a complaint, the adjudicative pro-cess *substantively* commences and from that point forward the requirements of due process demand that further investigation be conducted pursuant to the procedural rules established by the Commission for adjudicative hearings. *Cf. Escobedo v. Illinois*, 378 U.S. 478, 84 S. Ct. 1758, 12 L. Ed. 2d 977 (1964). On this basis, Genuine Parts seeks the right to dis-cover from the Commission facts which would enable the Dis-trict Court to find that the adjudicative process had, in substance, begun, and order the Commission to conduct any subsequent investigation according to the discovery rules applicable to adjudicative proceedings.

We find this novel attempt to engraft the principles of *Escobedo* into the field of administrative law without merit.

Although it is quite possible to view investigative pro-ceedings and adjudicative proceedings as merely constituent parts of the administrative enforcement process, they have long been recognized as separate and distinct proceedings serving different functions and entitling parties to different rights under the due process clause of Fifth Amendment....

....

The purpose of an investigative proceeding conducted by an administrative agency "is to discover and produce evidence not approve pending charge or complaint, but upon which to make one if, in the [agency's] judgment, the facts thus dis-covered should justify doing so." *Oklahoma Press Publishing Company v. Walling*, 327 U.S. 186, 201, 66 S. Ct. 494, 501, 90 L. Ed. 614 (1946). Thus, granting that to be effective an administrative investigation must focus on specific parties and particularized matter "to get information from those who best can give it and who are most interest in not doing so," *United States v. Morton Salt Company*, 338 U.S. 632, 70 S. Ct. 357, 94 L. Ed 401 (1950); such an investigation serves a func-tion which is directly related to, but at the same time dis-tinct from, the function of an adjudication. An investigation discovers and produces evidence, an adjudication tests such evidence upon a record in an adversary proceeding before an independent hearing examiner to determine whether it sustains whatever charges are based upon it....

Aside from this, there are grave policy considerations which militate against the line of process of administra-tive investigations to be adversary in nature, even after it becomes specific and particularized, these consider-ations were succinctly stated by the supreme court in *Hannah*

v. Larche, *supra*, through 63 U.S. at 443-444, 80 S. Ct. at 1515, where it stated: ....

"... [T]he investigative process could be completely disrupted if investigative hearings were transformed into trial-like proceedings ... fact-finding agencies ... would be plagued by the injection of collateral issues that would make the inves-tigation interminable.... This type of proceeding would make a shambles of the investigation and stifle the agency in its gathering of facts.

We therefore hold that there is no shift from the inves-tigative to the adjudicative stage until a complaint is issued and served by the Commission on the party charged, 16 C.F.R. § 3.11(a) (1971), and until that point is reached the proce-dural safeguards required by due process in and adjudicative proceeding are unavailable."

Id. at 1387-1388. See also Bowles v. Baer, 142 F.2d 787 (7th Cir. 1944).

Throughout WTI's Application and Supplement, it characterizes the Commission's proceeding as "adversarial" and, thus, it is enti-tled, among other things, to a specific recitation of the charges against it and an opportunity to respond and challenge those charges, and that the Staff must proceed under normal discovery guidelines as set forth in the Colorado Rules of Civil Procedure. As in Genuine Parts Company, this Commission finds WTI's conten-tions without merit.

This is an investigation, not an adjudication. Decision No. C93-913, which opened up this docket, expressly states that this is an investigation to determine whether WTI has violated Commission statutes, rules, and orders. Based upon this investiga-tion, the Commission will then determine whether it is appropriate to commence an adjudication through a show cause proceeding, notice of assessment, or otherwise. If and when an adjudicatory process is begun, WTI will be given full and complete itemization of the charges that the Staff believes are justified by the evidence obtained in its investigation. WTI will be allowed every opportu-nity to respond and challenge all aspects of the Staff's case. Until such time, however, WTI cannot convert the investigation into an adjudicatory proceeding.

C.The Commission's Investigatory Authority is Not Limited to the Inspection of WTI's Books and Records

WTI asserts that § 40-3-110, C.R.S., only authorizes the Commission to generally gather information regarding the public utilities industry and is not entitled to use this statute in enforcement proceedings or as a substitute for formal discovery. WTI cites no authority for this narrow interpretation, nor is this Commission aware of any such interpretation. Moreover, the express terms of this statute belie any such interpretation. The statute expressly states that:

> the commission has the authority to require any public utility to file ... special reports concerning any matter about which the commission is authorized by articles 1 through 7 of this title or in any other law to enquire or to keep itself informed or which it is required to enforce.

The plain language of the statute specifically authorizes this Commission to require special reports and to do so in the context of any enforcement proceeding. Moreover, this statute authorizes this Commission to obtain these special reports with respect to "any other law" over which it has jurisdiction. There is no ques-tion but that this Commission has jurisdiction over WTI as both a common and contract carrier.

Moreover, we note that this Commission's authority to request special reports is an investigatory tool widely used by other administrative agencies. For example, in Genuine Parts Company v. Federal Trade Commission, supra, the Federal Trade Commission ordered the company to produce a special report as part of its investigation.[1] See also, Re Ohio Bell Telephone Company, 41 PUR 4th 157 (studies to be done prior to next rate case); Re Washington Water Power Company, 95 Pur 4th 213 (reports used in subsequent rate proceeding).

[1] The Federal Trade Commission issued an order requiring the company to file a special report pursuant to 15 U.S.C. § 46 (1960) in connection with its anti-trust investigation. Section 66 of that act provides in relevant part:

> The commission shall also have the power -- (b) to require, by general or special orders, corporations engaged in commerce, ... to file with the commission in such form as the com-mission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, con-duct, practices, management, and relation to other corporations, partnerships, and individ-uals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

WTI next contends that §§ 40-3-110, 40-6-106, and 107, C.R.S., apply only to public utilities and were never intended to cover motor carriers such as WTI. WTI reaches this conclusion based upon two arguments. First, it argues that because Articles 10 and 11 contain more specific and more narrow provisions (production of books and records), the provisions in Articles 3 and 6 do not apply. Second, WTI argues that even if §§ 40-3-110, 40-6-106, and 107, C.R.S., did apply to common carriers as public utilities[2], the focus of the Staff's investigation is primarily on its contract carrier permit. A contract carrier, WTI argues, is not a public utility and therefore, not subject to these provisions.

WTI's interpretation of §§ 40-10-107 and 40-11-106, C.R.S., is unduly restrictive, contrary to the provisions of Articles 10 and 11, and contrary to well-established principles of statutory con-struction. First, we note that §§ 40-10-107 and 40-11-106, C.R.S., are stated expansively and not as limitations on this Commissi-on's authority. For example, § 40-10-107, C.R.S.,[3] states:

> The commission has the power to administer and enforce all of this article including the right to inspect books and documents of motor vehicle carriers and operators involved.

The Commission finds that this language is illustrative and does not contain words of limitation. Moreover, if the Legislature intended to depart from the Commission's general investigatory authority and limit that authority here, such an intent would have been clearly expressed. No such intent is expressed.

Indeed, the Legislature clearly intended that the Commission incorporate and apply its procedures to motor carriers. WTI's restrictive interpretation of these sections is further belied by §§ 40-10-102, 40-10-118, and 40-11-116, C.R.S., which specifically incorporate Articles 1 to 7 of Title 40 and states that all provi-sions thereto apply to all motor vehicle carriers subject to Arti-cles 10 and 11, including contract carriers.[4] Articles 1 to 7 obviously include §§ 40-3-110, 40-6-106, and 107, C.R.S.

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[2] Common carriers are public utilities, §§ 40-1-103(1)(a) and 40-1-102(3), C.R.S. (1993).

[3] Section 40-11-106, C.R.S., contains identical language.

[4] Section 40-10-118, C.R.S., provides, in full,

> All provisions of articles 1 to 7 of this title and all acts amendatory thereof or supplemental thereto shall, insofar as applicable, apply to all motor vehicle carriers subject to the provisions of this article.

WTI argues that this incorporation of Articles 1 through 7 applies only to the extent that provisions in Articles 1 to 7 do not concern public utilities. This, according to WTI, would exclude §§ 40-3-110, 40-6-106, and 107, C.R.S. However, under WTI's interpretation, it is difficult to see what, if anything, in Articles 1 to 7 would be incorporated under §§ 40-10-118 or 40-11-106, C.R.S., to apply to WTI as a contract carrier. In effect, WTI's interpretation effectively repeals §§ 40-10-118 and 40-11-116, C.R.S., so that they are without any force or effect. Such an interpretation is contrary not only to the express terms of the statute, but contrary also to well established principles of statu-tory construction. State Board of Equalization v. American Air-lines, 773 P.2d 1033, 1040 (Colo. 1989).

In construing the relationships of various parts of a compre-hensive statutory scheme, it is a basic rule of statutory construc-tion to read the parts *in pari materia*. Thus, for example, the court in Raivles v. Hartman, 527 N.E.2d 680, *appealed denied*, 535 N.E.2d 410 (Ill. App. 2d 1988), held that where a statutory provi-sion contains terms omitted from the other, the omitted terms will be applied in proceedings under the act not containing such provi-sions. See also In re Marriage of Williams, 262 Cal. Rptr. 317, 213 Cal. App. 3d 239 (Cal. App. 3d 1989); Altaville Drug Store, Inc. v. Employment Development Department, 746 P.2d 871, 242 Cal. Rptr. 732, 44 Cal. 3rd 231 (Cal. 1988).

Title 40, C.R.S. (1993), is a comprehensive statutory scheme which encompasses energy utilities, telephones, motor carriers, and railroads. The Commission finds that Articles 10 and 11 are part of a comprehensive statutory scheme and should be read *in pari materia*. The provisions of §§ 40-3-110, 40-6-106, and 107, C.R.S., are applicable to motor carriers not only because on their incor-poration by reference by §§ 40-10-118 and 40-11-116, C.R.S., but also because they are part of the comprehensive statutory scheme of Title 40. This conclusion is consistent with the expansive lan-guage of §§ 40-10-107 and 40-11-106, C.R.S., that was discussed above.

It is also a basic rule of statutory construction that reme-dial legislation should be construed liberally to give effect to its purpose. Mills v. Guido's, 800 P.2d 1370 (Colo. 1990). Reme-dial statutes are those which introduce new legislation for the public good and provide a remedy for the enforcement of those stat-utory requirements. State ex rel Webster v. Myers, 779 S.W.2d 286 (Mo. App. 1989). See also United States v. Jordan, 915 Fed. 2d 622, *cert. denied* , 111 S. Ct. 1629, 113 L. Ed. 2d 725 (11th Cir. 1990). We find here that the public utilities law in general, and specifically the provisions at issue in this case, are remedial legislation which

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Section 40-11-116, C.R.S., has identical language.

should be liberally construed to give effect to the purpose. City of Montrose v. Public Utilities Commission, 629 P.2d 619 (Colo. 1981) (Commission has broad mandate to protect the public interest). This broad mandate is also expressed in the statute.

> [The Commission is authorized] to generally supervise and regulate every public utility in this state and to do all things, whether spe-cifically designated in Articles 1 to 7 of this title or in addition thereto, which are necessary or convenient for the exercise of such power.

§ 40-3-102, C.R.S. (1993).

The enforcement provisions of Article 7 similarly reflect the remedial nature of the Commission's authority.

> It is the duty of the Commission to see that the provisions of the constitution and stat-utes of this state affecting public utilities . . . are enforced and that violations thereof are promptly prosecuted and penalties due the state are recovered . . .

§ 40-7-101, C.R.S. (1993). Sections 40-10-107 and 40-11-106, C.R.S., when properly construed in light of the remedial purposes of Title 40, and particularly in light of §§ 40-10-118 and 40-11-116, C.R.S., do not set forth the limits of the Commission's authority to obtain the information necessary to carry-out its responsibilities over motor carriers.

We decline to accept WTI's interpretation that the phrase, "insofar as applicable", means that §§ 40-6-106 and 107, C.R.S., do not apply because they relate to public utilities and not to motor carriers or at least not contract carriers. WTI's interpretation effectively repeals §§ 40-10-118 and 40-11-116, C.R.S. Rather, the obvious import of this phrase is to refer to those portions of Articles 1 through 7 that are clearly inapplicable to motor vehicle carriers. For example, but not by way of limitation, Article 3.4 addresses emergency telephone access; § 40-3-104(1)(b), C.R.S., relates to rail carriers; § 40-3-104.3, C.R.S., deals specifically with special contract arrangements between electric, natural gas, or steam utilities; § 40-3-104.5, C.R.S., contains special provi-sions relating to rail carrier rate review; and Article 3.5 which relates to the regulation of rates and charges by municipal utili-ties.

Finally, the Commission's conclusion here that the Legislature intended Articles 1 to 7, including §§ 40-3-110, 40-6-106, and 40-6-107, C.R.S., apply to common carriers and contract carriers is further supported by Article 16, Title 40, C.R.S. (1993). Under Article 16, the Legislature identified motor vehicle carriers that are exempt from Commission regulation.[5] These include, charter or scenic buses, children activity buses, couriers, luxury limousines, and off-road scenic charters. *See* §§ 40-16-101(4) and 102, C.R.S. (1993). Common and contract carriers are not exempted.

D. Access to Confidential, Privileged, or Relevant Information

WTI argues that Decision No. C93-913 violates its rights to Due Process because it requires the production of confidential documents, privileged documents, irrelevant documents, or produc-tion regardless of the cost. Again, WTI's contentions here are premature. No request has been made by the Staff at this time. We will consider WTI's contentions if and when there has been a request for a special report.

Moreover, we note that this Commission has the rights to *subpoena* documents that are relevant to its investigation regard-less of their claims of confidentiality. This Commission routinely requires the production of confidential, commercial, and financial information from entities it regulates, including motor carriers. If there are documents which WTI claims are privileged, such as documents that fall within the attorney/client privilege, WTI may assert this privi-lege, or any other claim it has with respect to production of those documents, at the time the request is made. If after informal discussions the dispute cannot be resolved, WTI may raise the issue

[5] If any motor vehicle operators could make the claim that §§ 40-3-110, 40-6-106, and 40-6-107, C.R.S. (1993), do not apply, it would be these exempt carriers. However, the Commission makes no determination here that these provisions do not apply to these exempt carriers.

with this Commission. We decline, however, to decide these issues in the abstract.

E. Interference with WTI's Business

WTI argues that the Staff's authority under C93-913 consti-tutes interference with WTI's right to run its business. WTI argues that it has supplied hundreds, if not thousands, of docu-ments to the Staff under the prior show cause. The company points out that the Staff has previously dismissed a show cause proceeding against WTI and that it began this investigation thereafter. On the basis of these facts, WTI concludes that the Staff is on a vendetta to interfere with its business.

WTI's allegations here are flatly rejected. First, as we have noted above, no discovery requests to produce documents have been made under this docket and, therefore, the company's claims are, at best, premature. Moreover, the documents produced under the prior show cause order may or may not be relevant to its investigation here.

But more importantly, WTI's ability to conduct business is based upon a state-issued authority. By requesting that authority and the attendant benefits that are bestowed on it by virtue of that authority, WTI agrees to comply with the restrictions and obligations that are placed on that authority. One of the obliga-tions that comes with this authority is the fact that investiga-tions of business transactions are typically a matter of recreating a paper trail. If the transactions are many, as they typically are in motor carrier cases, and if the investigation covers any signif-icant period of time, that means that the carrier may be required to produce a substantial number of documents. Courts correctly recognized this obligation and have repeatedly rejected claims that investigations unlawfully disrupt or interfere with a regulated entity's right to conduct its business.

> [An] entrepreneur embarking upon such business accepts the burden with the benefits and voluntarily subjects himself to plenary and intrusive governmental regulations.

Florida v. Showcase Products, Inc., 501 So. 2d 11 (Fla. Dist. Ct. App. 1986).

Moreover, the fact that the Staff dismissed a prior show cause proceeding and began this new investigation suggests nothing more than that Staff found that the charges set forth in the show cause order could not be proven by the preponderance of the evidence, but that other charges may be supportable by the preponderance of the evidence. If anything, the Staff's decision to dismiss the show cause proceeding rather than continuing on with a proceeding which should not continue, demonstrates respect not only for WTI but also of the process.

The final argument raised by WTI regarding excessive investi-gation of its business is that the Staff's authority to request

special reports is open ended and excessive. This claim is also premature in our view. The Staff has not requested at this point any special report under this provision. If and when the Staff does request such a report and WTI continues to believe that the report is beyond the Staff's authority, and WTI cannot reach a reasonable resolution of the dispute with the Staff as to this issue, WTI may raise this issue with this Commission for a deter-mination of the issue.

F. Issuance of Subpoenas

WTI argues that Decision No. C93-913 authorizes the issuance of subpoenas by the director without a request being made under the appropriate statutes and upon a showing of good cause. The deci-sion does not, and could not, authorize the issuance of subpoenas without compliance with appropriate statutes and Commission rules. Again, this Commission declines to decide disputes in the abstract. No subpoenas have been issued by the Staff to WTI. If a subpoena is issued in this proceeding that WTI believes is not in confor-mance with the statutes and rules of this Commission, it may at that time and after attempting to resolve its differences with the Staff, bring the dispute to this Commission for review.

G.Right to Counsel, Fourth Amendment Rights Regarding Search and Seizure, and the Right to Have the Proper Official Decide its Case

WTI argues somewhat cryptically that it has been denied the right to counsel, its Fourth Amendment rights against unreasonable searches and seizures, and the judgment of officials who have the power to decide. No explanation is given in the Application or the Supplement which explains how and under what circumstances its right to counsel or its Fourth Amendment rights against unreason-able searches and seizure have been infringed upon by Decision No. C93-913 or any action of the Staff under this decision.

WTI is again reminded that this is an investigation by the Staff to determine whether or not WTI has violated any law or order. As the court noted in Genuine Parts Company, supra the right to counsel is more restricted in an investigation than it is in an adjudication. Moreover, the Fourth Amendment as it applies to administrative matters generally only requires that the investi-gation be authorized and the evidence sought be relevant to the investigation. Oklahoma Press Publishing Co. v. Walling, 327 U.S. 186, 66 S.Ct. 494, 90 L.Ed. 614 (1946). Because WTI offers no authority or argument which explains its position here, the argu-ment must be rejected.

Nor does WTI provide any explanation of why it believes that it has been deprived of the right to have officials with power to decide, their case. This contention appears to stem from WTI's blurring of the investigatory and adjudicatory process. Certainly, when this matter, if at all, becomes an adjudication, WTI has the right to have the appropriate official consider and determine the matter. However, there are no charges that have been filed against WTI and, therefore, there is nothing for an official to adjudicate.

H.Delineation of Charges to Afford the Opportunity to Challenge Them

WTI argues that the Staff is equitably *estopped* to proceed until it specifies the violations against it so that it can respond to and challenge any such charges. Again, this proceeding is only at the investigatory stages during which the Staff gathers together and reviews the evidence to determine what, if any, charges can be established by the preponderance of the evidence. Once that deter-mination has been made and the Staff proceeds to an adjudication either through a show cause order, notice of assessment, or other proceeding, WTI will be fully informed of the charges being alleged against it. Until such time, WTI cannot convert the investigation into a trial-like proceeding where it conducts discovery and pro-duces rebuttal evidence. See, Genuine Parts Company, supra.

I. WTI Motions Filed in Docket No. 93C-120

WTI requests that we consider a number of motions that it filed in Docket No. 93C-120. We have reviewed these motion and find that they are relevant only if and when an adjudication should be commenced. Moreover, we find that under the circumstances of this case it is confusing and, therefore, inappropriate to simply reassert motions made in a prior show cause proceeding without explaining specifically how those prior motions relate to this par-ticular proceeding.

J. Rule 9(d) Disclosures

WTI asserts that Rule 9(d) of the Commission's Rules of Prac-tice and Procedure, 4 CCR 723-1, have not been complied with because there has been no specific designation of the Trial and Advisory Staff. As the Staff correctly points out, Rule 9(d) relates only to adjudica-tions and not to investigations. Never-theless, and in an effort to fully allay any concerns WTI has, we will request that the Staff designate an Investigatory Staff and an Advisory Staff in this proceeding.

K. Preservation of Business Records

On August 24, 1993, an audit order was issued to WTI requiring the company to preserve its books and records pending the outcome of this investigation. WTI objects to this audit request on the grounds that it is contrary to the Retention of Business Records Act (§ 6-17-101, C.R.S.), and contrary to Rule 14 (for common car-riers) and Rule 13 (for contract carriers) of the Commission's reg-ulations (4 CCR 723-8 and 23, respectively). We disagree.

The Retention of Business Records Act, and specifically § 6-17-104, C.R.S., states that business records should be retained for three years. It also has an exception: "unless such law or regu-lation establishes a specific retention period." We held in this regard that the Commission's orders have the force and effect of law. Hamm v. So. Carolina Public Service Commission, 422 S.E.2d 118 (S.C. 1992) ("The [Commission's] order . . . has the force and effect of law.") We conclude that this Commission can issue through its Staff an audit order directing WTI to preserve its records for the pendency of this investigation and that such an order falls within the provisions of § 6-17-104, C.R.S.

A contrary conclusion would be clearly unreasonable. A con-trary interpretation would mean that, for example, a criminal investigation of a business could be thwarted if the business were permitted to destroy relevant documents even though a court order directs the business to preserve those records beyond the period required under § 6-17-104, C.R.S. Rather, the Retention of Busi-ness Records Act is intended to give guidance to businesses in the ordinary course of their business. However, if an enforcement agency directs a business to retain the records pending the outcome of an investigation of that business by the agency, that business must retain and preserve those documents for the review of the enforcing agency. Rules 13 and 14 are similarly interpreted.

L. Petition for Rehearing, Reargument, and Reconsideration of Decision No. C93-1097

In Decision No. C93-1097, we considered WTI's request for a stay of the investigation pending the Commission's review of WTI's Application for Reconsideration. The Staff objected to the request and advised the Commission that an audit order had been issued directing WTI to preserve its business records during the pendency of the investigation to preserve the *status quo*. The Commission considered the motion in open meeting on September 7, 1993, along with other pending motions. Decision No. C93-1097 states that WTI's Motion for a Stay is granted, but that the pending audit order to preserve the *status quo* continues to have effect.

WTI filed a Petition of Decision No. C93-109713 [sic]. In that petition, WTI states that the Commission did not specifically discuss the disposition of the audit order in open meeting.[6] It also reasserted in that petition that the retention of records requested in the audit order was contrary to the Retention of Busi-ness Records Act. The only request in its prayer for relief is that we modify the Decision so that it complies with the Act. For the reasons set forth above in subsection K of this decision, the request will be denied.

M. Motion to Stay

Given the Commission's decision here to deny WTI's Applica-tion, as supplemented, and deny its subsequent Petition For Recon-sideration, discussed above, the Commission will vacate the stay previously granted in Decision No. C93-1097.

N. Docket Numbering

WTI argues in support of its contention that this is an "adversarial" proceeding that the docket number designation is a "C" which denotes a show cause proceeding.

The docket numbering is a clerical matter which the Commission does not specifically review. The "C" designation is incorrect and will be amended to reflect an "I" to denote this as an investiga-tion. The fact that the docket numbering incorrectly characterized the proceeding is of no legal significance. The substantive text of that decision clearly states in the beginning paragraph that this is an investigation.

THEREFORE THE COMMISSION ORDERS THAT:

1. Western Transportation, Inc.'s Motion for Leave to File Reply is granted.

2. Western Transportation, Inc.'s Application for Rehearing Reargument, and Reconsideration, as supplemented, and its Petition for Rehearing, Reargument, and Reconsideration are denied, except as otherwise stated herein.

3. Decision No. C93-1097 is hereby modified to the extent that the stay previously granted therein is hereby vacated.

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[6]. Decision No. C93-1097 reflects our decision made at the September 7, 1993, open meeting which was to preserve the *status quo* pending the outcome of the Commission's review of WTI's appli-cation. Cf. Common Cause v. Nuclear Regulatory Commission, 674 F.2d 921 (D.Col. Cir. 1982); Railroad Commission of Texas v. U.S., 765 F.2d 221 (D.Col. Cir. 1985).

4. The Staff shall issue a Rule 9(d) designation.

5. The docketing numbering for this docket shall be amended as follows: Docket No. 93I-429CY.

This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING October 13, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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_____
Commissioners

COMMISSIONER CHRISTINE E. M. ALVAREZ
ABSENT BUT CONCURRING.

NT:srs