(Decision No. C93-1362)**{**PRIVATE **}**

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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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
	)	ORDER DENYING PETITION FOR REHEARING, REARGUMENT, AND RECONSIDERATION OF DECISION NO. C93-1176

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Mailed Date: November 4, 1993
Adopted Date: October 21, 1993
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STATEMENT

BY THE COMMISSION:

This matter comes before the Colorado Public Utilities Commission ("Commission") on the Petition for Rehearing, Reargument or Reconsideration of Decision No. C93-1176 filed by Western Transportation, Inc. ("Western"). For the reasons stated below, the petition will be denied.

In Decision No. C93-1176, this Commission held that Western's petition for Rehearing, Reargument and Reconsideration of Decision No. C93-913 was incorrectly captioned because the decision was an interim order, not a final order. Western's current petition takes issue with that conclusion.

Decision No. C93-913 is not a final, appealable order. Rather, the decision merely opened a docket and authorized certain

investigative measures. As an analogy, courts have generally held that orders concerning the production of documents and other related discovery matters are not final, appealable orders, stating: "An appeal will not ordinarily lie from an order requiring production or inspection of books and papers or from an order refusing to vacate, set aside, or quash such an order." 4 Am. Jur. 2d., Appeal & Error, sec. 80, pg. 596. See also, *Oak Grove School District of Santa Clara County v. City Title Insurance Co.*, 32 Cal. Rptr. 288 (Cal. 1963): *Barnes v. Molino*, 162 Cal. Rptr 786 (Cal. 1980).

The Commission also notes that several of Western's objections to Decision No. C93-913 were deemed premature and not ripe for decision. For example, Western's objection regarding special reports, subpoenas, excessive discovery, among others are not ripe for review. At the close of this investigation, the Commission will issue an order closing the docket. At that time, the interim orders issued throughout this proceeding can be reviewed as a part of an appeal involving the final order.

For the reasons set forth herein and in Decision No. C93-1176, Western's current petition for reconsideration, as well as all previous petitions for reconsideration, are improperly characterized as petitions for reargument, rehearing, and reconsideration. Rather, they are properly characterized as motions to set aside an interim decision.

Having otherwise reviewed the petition, the Commission concludes that the arguments therein are without merit and that the petition should be denied.

THEREFORE THE COMMISSION ORDERS THAT:

Western Transportation Inc.'s Petition For Rehearing, Reargument, and Reconsideration of Decision No. C93-1176 filed on October 5, 1993, which is, in fact, a motion to set aside or modify an interim order, is denied.

This Order is effective on its Mailed Date.

ADOPTED IN SPECIAL OPEN MEETING October 21, 1993.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners

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