

Decision No. 10938

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
HIGHWAY TRANSPORT COMPANY to con-
solidate routes and establish through
joint rates between San Francisco
on the one hand, and Soledad, Pacific
Grove, Hollister and intermediate
points on the other hand.

ORIGINAL

Application No. 10938

Gwyn E. Baker for applicant;
Harry A. Encell for Gilroy Express Company
and Riccomini & Tunzi, protestants;
L. E. Bradshaw for Southern Pacific Company,
protestant.

BY THE COMMISSION:

O P I N I O N

In this proceeding Highway Transport Company, a cor-
poration, has applied for a certificate of public convenience
and necessity permitting it to consolidate and operate as one
unified system an automotive service for the transportation of
freight over the following routes: (a) between San Francisco
and San Jose and intermediate points; (b) between San Jose,
Soledad and intermediate points; (c) between San Jose, Pacific
Grove and intermediate points; and (d) between San Jose, Hol-
lister and intermediate points. Applicant owns two distinct
operative rights, viz.- between San Francisco and San Jose;
and between San Jose and Soledad, Pacific Grove, Hollister

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and intermediate points. At present all freight from points on one operative right to points on another must be transferred at San Jose. Applicant proposes to eliminate this transfer on through freight in truck loads, handling such shipments from origin to destination without change. On less than truckload shipments moving between points on the different operative rights, the freight will still be transferred at San Jose but applicant desires permission to publish through rates applicable to such shipments, which will be lower than the existing combination-of-local rates. Accompanying the application is the tariff of rates proposed to be established. In connection with the proposed service applicant will follow the existing time schedules, and will use the equipment now devoted to its present operations.

Public hearings were held before Examiner Austin at San Francisco on May 5, and at Salinas on May 9, 1925, when evidence was offered, the matter was duly submitted, and it is now ready for decision.

The operative rights sought to be consolidated are as follows:

(1) The right to maintain a common carrier automotive freight service between San Francisco and San Jose, and intermediate points.

A certificate for this service was granted to Highway Transport Company, applicant herein, by this Commission's Decision No. 7944, dated August 2, 1920, in Application No. 5628.

(2) The right to operate an automobile freight truck line between San Jose and Soledad, Pacific Grove, Hollister

and intermediate points.

By this Commission's Decision No. 7371, dated April 5, 1920, in Application No. 5272, a certificate authorizing this service was granted to J. G. Shaw and G. F. Beard, co-partners, operating under the fictitious name of Service-Motor Transportation Company. By Decision No. 12057, dated May 8, 1923, in Application No. 8972, the Commission authorized the transfer of this operative right to F. Hennessey and M. Brodel, co-partners doing business under the fictitious name of F. Hennessey & Company; and by Decision No. 14319, dated December 2, 1924, in Application No. 10582, authority was granted to transfer this operative right to Highway Transport Company, applicant herein.

From the testimony of three of applicant's representatives, it appears that freight passing through San Jose, between points north and south of that city, must be transferred there. Applicant seeks to eliminate this transfer on truck-load lots, transporting them through San Jose without change. As to less than truck-load shipments, the freight will still be transferred at San Jose, there being no necessity, it was stated, for the operation of through trucks for this class of traffic.

Between San Francisco and San Jose, three round trips daily will be operated; between San Francisco and points intermediate to Hollister a daily service is proposed; between San Francisco and Salinas, Monterey and Pacific Grove, a bi-weekly service will be maintained; between San Francisco and points south of Salinas, including Soledad, the service will be weekly. To operate this line applicant will use its present equipment consisting of 21

trucks and 16 trailers. Of these trucks seven are used for making pick-ups at San Francisco, Palo Alto and San Jose. The pick-up trucks have a capacity of one to five tons; the road trucks, five to seven tons; and the trailers, three to seven tons.

At present a minimum charge of 50 cents is applicable on each of the routes converging at San Jose, making a total minimum charge of \$1.00 on shipments moving through San Jose between points on the different operative rights. It is proposed to reduce this minimum to 50 cents on through shipments. The proposed through commodity rates comprise two classes, viz.- pick-up and terminal rates. With the exception of a few instances where the rates are on a unit basis, the terminal rates are 5 cents per 100 pounds lower than the pick-up rates, the latter including certain pick-up and delivery services within defined zones in San Francisco and San Jose, not accorded under the terminal rates. The proposed through rates are 10 cents per 100 pounds lower than the existing combination rates. Each factor of the present combination rates includes a terminal charge of 5 cents per 100 pounds covering pick-up or delivery services at San Jose, but since neither of these services will be performed in respect to through traffic, this reduction has been made in the proposed through rates.

Frequent inquiries are received by applicant as to through rates between points on its different operative rights, and shippers have complained that the existing combination rates are excessive. Inquiries and requests for through truck-load shipments between points north and south of San Jose are received occasionally, but there is a considerable demand for less than truck load shipments between these points. Between

San Francisco and points south of San Jose it was estimated that the traffic would average one ton a week; and between San Jose and Soledad, about nine tons a week, consisting largely of general merchandise, groceries, building material, grain and meats. As the present time schedule has proved satisfactory, it will be continued, but the service will be increased to meet traffic requirements.

In order to establish public convenience and necessity for the unification of its lines and the publication of through rates, applicant called eight witnesses, comprising merchants and dealers in San Francisco and Salinas. Summarized, their testimony was in substance that they desired the truck line for the convenience of store door delivery, and in one instance, because of the more expeditious settlement of damage claims by the truck line. Another favored the applicant because of its ability to handle emergency shipments promptly. All were interested in lower rates, some to enable them to extend competitive markets and others to escape cartage charges from the railroad terminal to their respective stores. But where the combined rail and cartage charges were lower than the truck rates, some stated they would continue to use the railroad. Substantially all of them testified they would favor the truck line charging the lowest rates.

Applicant also introduced without objection a petition (Applicant's Exhibit No. 1) in support of its application, signed by 53 individuals and companies engaged in business at various points along its routes.

The granting of the application was protested by Southern Pacific Company, Gilroy Express and Riccomini & Tunzi.

In behalf of protestant, Southern Pacific Company, it was shown that from San Francisco to points south of San Jose as far as Hollister and Soledad, it operated a rail freight service daily except Sundays. Using the month of March, 1925, as a typical period, it appears that freight was available for delivery at destinations along applicant's route south of San Jose at intervals ranging from 15 hours to 22 hours 55 minutes after the closing hour at San Francisco, viz., 4:00 p.m. of the preceding day. For example, freight was available for delivery, after leaving San Francisco, at Gilroy, 15 hours; at Hollister, 19 hours; at Salinas, 17 hours, 12 minutes; at Monterey, 19 hours, 30 minutes; at Pacific Grove, 22 hours, 55 minutes; and at Soledad, 21 hours.

This protestant called in its behalf seven witnesses who were engaged in business at Monterey, Salinas, Hollister, Gilroy, and Gonzales.

In general they testified that the rail service was satisfactory, expeditious and dependable, and that no additional transportation facilities were required to meet their needs. One witness from Hollister stated the railroad freight arrives earlier than applicant's truck from San Francisco; another witness from the same place testified that the railroad freight service was nearly as expeditious as the railway express service. A witness from Gonzales stated that a weekly truck service from San Francisco would not be convenient, since he sometimes needs merchandise delivered within 24 hours after it has been ordered.

This protestant also introduced without objection (Southern Pacific Exhibit No. 2) letters from seven merchants

of Gilroy, Monterey and Hollister, who had been interviewed by protestant's representative, but were unable to attend the hearing. These letters expressed approval of the rail service and stated that so far as their business was concerned no additional service was needed. None of these merchants, it was stated, patronized applicant's truck line. Since applicant had no opportunity for cross-examination, we believe that hearsay evidence of this character in cases such as this is entitled to but little weight. The same may be said of the petition offered by applicant. Public convenience and necessity can hardly be established or disproved by the ex parte statements of absent persons. In such applications witnesses should be called who can be subjected to the test of cross examination. The public utilities Act (Sec. 55) prescribes adequate means for compelling the attendance of witnesses, and for taking their depositions in any proper case.

A statement was introduced (Southern Pacific Exhibit No. 3) showing the drayage rates charged at some of the points involved in this application. Substantially, it shows the following information:

<u>Place</u>	<u>Rate per 100 lbs. Cents.</u>	<u>Minimum Charge - Cents</u>
Monterey	7½	(25 50*
Pacific Grove	7½)25)50*
Gilroy	5	25
Hollister	5	50
Salinas (Under 500 lbs.		50
(500 lbs. to 1000 "		55
(1000 " " 2000 "		\$1.00
(per ton in excess.		
(of 2000 lbs.		1.00

* Large bulky shipments.

Protestant also introduced a tabulation (Southern Pacific Exhibit No. 4) comparing its rates with those proposed by appli-

cant between the principal points involved herein. With few exceptions protestant's rates are substantially lower than those of the applicant. But in considering the combined rail and cartage charges, this disparity in the rates to a large extent disappears. In many instances applicant's rates are lower than the rail rates and cartage charges. It is apparent that the public is interested in the total volume of the transportation charge, including delivery; this fact should be considered in determining the relative cost to the shipper of using the two methods of transportation.

It is admitted by the applicant that its proposed through rates are on the whole about seven cents per 100 lbs. higher than the fourth class rail rates.

The protestant, Gilroy Express, is a co-partnership consisting of James Bell and Charles Griffin, transacting business under that name. Pursuant to this Commission's Decision No. 14388, dated December 22, 1924, in Application No. 10296, protestant operates an automobile freight truck service between San Francisco, on the one hand, and Coyote, Hollister and intermediate points on the other, but not locally between San Francisco and Coyote and intermediate points, inclusive.

Protestants Pietro Ricconini and Ricardi Tunzi, as co-partners, have applied to this Commission (Application No. 10504) for authority to operate a motor truck freight service between San Francisco and Salinas, Chualar, Gonzales, Soledad, Greenfield and King City. This application has been heard but not yet decided.

Both of these protestants joined in opposing the granting of the instant application. Testifying on behalf

of these protestants, Mr. Louis G. Markel, whose qualifications as a traffic expert were admitted, stated that in most instances the rates of Gilroy Express and those proposed by Riccomini & Tunzi were substantially lower than those proposed by applicant. He stated that 85½ items shown in applicant's proposed tariff were lower than their basic rate, which he assumed to be Merchandise, N.O.S. Under this item he testified 98 per cent of commodities in number and less than 50 per cent in volume, moved.

These protestants also introduced a table of rate comparisons showing that out of 173 items specified in applicant's proposed tariff the rates on but 14 items were less than or equalled those of protestants. This witness, however, admitted that the Gilroy Express had reduced its rates when its certificate was granted and later reduced them still further. He conceded that about 50 per cent of its traffic moves under the rates so reduced.

In answer to this showing applicant introduced as its Exhibit No. 2 a copy of an application of Gilroy Express Company to the Commission, seeking permission to increase the rates shown in the schedule accompanying its application No. 10296, supra. Exhibit No. 2 is dated August 8, 1924, the date of the hearing in Application No. 10296, and over four months before the certificate in that matter was granted. This exhibit shows that according to the balance sheet of Gilroy Express of December 31, 1923, its loss, including non-operating expense, was \$3,913.65. (Gilroy Express had been operating since April, 1921, under a limited certificate). This evidence was designed to show that the rates of Gilroy Express were not remunerative. Applicant also introduced by reference the petition for rehearing filed by certain protestants in Application No. 10296, and not yet acted

upon, wherein it is contended, among other things, that the evidence introduced at the hearing of that application indicated that the rates of Gilroy Express were so low that it would be unable to pay operating expenses. We cannot, of course, undertake in this case to pass upon the sufficiency of the petition for rehearing in another application. Its status in this matter, in so far as it has any weight at all is argumentative rather than evidentiary. The sufficiency of its allegations cannot be tested without reviewing the record in Application No. 10296, and this we shall not undertake to do in the instant proceeding. But we can consider Applicant's Exhibit 2 as in the nature of an admission against interest. If the rates of Gilroy Express have been reduced, since its certificate was granted, below those shown in its application for an increase, (and this fact appears from the evidence), then the low rates offered by way of comparison with those of applicant lose much of their evidentiary weight.

Although applicant has sought permission to publish through rates between points on distinct operative rights which it holds, it contends nevertheless that this Commission cannot prevent the establishment of such rates, and that applicant has the right to publish the same at will.

By Section 4, Auto Stage and Truck Transportation Act, (Stats. 1917, Ch. 213, as amended) the Railroad Commission is clothed with power to supervise transportation companies, fix their rates and charges, and regulate them in their relationship with the travelling and shipping public. This section deals only with the regulatory powers of the Commission, not with the rights of transportation companies to publish rates.

The act contains no other provisions relating to the publication of rates.

The last clause of Section 33, Public Utilities Act, provides:

"***** The Commission shall have the power to establish and fix through routes and joint rates, fares or charges over common carriers and stage or auto stage lines and to fix the divisions of such joint rates, fares or charges."

In our opinion the term "common carrier" as used in Section 33 is limited to the definition expressed in Section 2, sub. (1) which specifies the meaning of that term when used in the Act. This provision does not include motor freight truck nor passenger stage lines. As we interpret this provision, it relates only to the establishment by the Commission of through routes and joint rates, fares or charges and the fixing of divisions between railroads and other common carriers named in Section 2 (1), on the one hand, and stage or auto stage lines, on the other hand.

Clearly, no power has been expressly conferred by statute upon transportation companies to establish and publish joint or through rates, either between different companies over their respective lines, or over two or more distinct operative rights owned and operated by one company.

It is true that Section 4, Auto Stage and Truck Transportation Act, impliedly recognizes and assumes the right and the duty of transportation companies to establish rates and file tariffs. But construing the Act as a whole, with its many restrictive provisions not imposed upon other types of

carriers by the Public Utilities Act, we conclude that the Legislature intended to confine this right so that a transportation company could publish rates only within the field included in its certificate.

It is claimed that the right to publish joint or through rates is inherent in all transportation companies to the same extent as in railroad carriers, which freely publish such rates over their several lines. But there is a substantial difference between the two types of carriers in respect to their methods of operation. Since transportation over a public highway can be expanded or reduced with greater facility than over steel rails, a restrictive policy has been adopted with regard to transportation companies, requiring that their rights be expressly defined by a certificate granted by this Commission. These rights are measured by the certificate, and cannot be extended without permission from the Commission.

We have held that a transportation company owning two separate connecting operative rights cannot lawfully operate a through service over such operative rights without first securing an additional certificate authorizing such through service. Quoting from the opinion, p. 1042;

"We think it is clear from what has been shown that operative rights under certificates separately granted cannot be lawfully combined for the establishment of a through service without first obtaining from the Railroad Commission a certificate of public convenience and necessity authorizing the through service."

In re Western Motor Transfer Co., et al., Decision No. 9892, 20 C.R.C. Rep. 1038.

We have also held that an automobile stage line operating between certain termini can not lawfully serve intermediate

points unless by operation conducted in good faith on or prior to May 1, 1917, or by a certificate granted subsequent to that date it had acquired the right to do so. In other words, it can not expand its operative rights without the consent of the Commission.

Watson v. White Bus Line, Dec. No. 9065, 20 C.R.C. Rep. 18.

On certiorari, this decision was sustained by the Supreme Court.

Motor Transit Co. v. Railroad Commission, 189 Cal., 573; 209 Pac. 586.

Following this decision, we have recently held that there can be no enlargement of operative rights either as to routes served or the inclusion of additional stations, unless authorized by a certificate from this Commission.

In re Motor Transit Co., Dec. 13,454, 24 C.R.C., Rep. 807, 821, 827.

The unauthorized extension of service amounting in effect to a unification of operative rights, was condemned in:

Blair v. Coast Truck Line, Inc. Dec. No. 10338, 21 C.R.C., Rep. 530.

The Supreme Court affirmed this decision on certiorari:

Coast Truck Line v. Railroad Commission, 191 Cal. 257; 215 Pac. 898.

And we have also held that through routes and joint rates between connecting motor freight truck lines can not lawfully be established without permission from the Commission.

In re Oakland-San Jose Transportation Co., et al., Dec. No. 13321, 24 C.R.C., Rep. 660.

In that decision we also authorized the publication of through rates between points served by two distinct connecting operative rights of Consolidated Motor Freight Lines, Inc. (App. No. 8077). The question of the inherent right of the carrier to publish such through rates was not discussed, nor was the point raised in that case.

There appears to be no substantial difference between establishing joint rates over separate connecting lines operated by different transportation companies, and publishing through rates over distinct connecting operative rights maintained by one company. In either event there is an enlargement of the rights originally conferred by the certificates creating the separate operative rights; in both cases a through route is created, entirely distinct from each of the constituent routes which are covered by separate certificates. All the reasons underlying our decision in the Western Motor Transport Co. case supra, apply with equal force here. We therefore conclude that the permission of the Commission is a necessary prerequisite to the establishment of through rates between points on applicant's separate operative rights. We shall proceed to a determination of the application on its merits.

The record shows that applicant is now and for some time has been actually engaged in serving points on its routes both north and south of San Jose, and in handling traffic from points on one operative right to another under combination rates, and transferring all shipments at San Jose. Under the proposed consolidation applicant will be enabled to perform this service more effectively, through the elimination of the transfer at San Jose now necessary, and by the publication of reduced rates. Undoubtedly the public will profit from the resulting operating

economies and rate reductions. The evidence shows a demand for this service not met by the existing rail, or truck facilities. It is true that a number of merchants testified that the rail facilities were adequate for their needs, but notwithstanding this fact, there appears to be a substantial public demand for applicant's proposed through service.

The existence of lower rates over protestants' lines between the points which applicant proposes to serve, is not of itself a sufficient reason for denying this application.

We have held that public convenience and necessity is not established merely by a showing that an applicant's rates are lower than those of other carriers serving the same territory. If such rates are excessive, complaint should be made to the Commission for a reduction in the rates.

In re E. H. Steele, et al., Decision No. 7220, 17 C.R.C. Rep. 874.

In re Jose Joaquin, et al., Decision No. 11118, 22 C.R.C. Rep. 422.

For the same reason, a showing of public convenience and necessity by an applicant, otherwise sufficient, cannot be overcome merely by proof of another service conducted over the same route at lower rates. If applicant's rates are subsequently shown to be excessive, the rates can be reduced upon complaint or by an investigation on the Commission's own motion. Moreover, as we have stated, the rail and cartage charges nearly equal applicant's proposed rates; and the circumstances surrounding the rates of protestant truck lines indicate that such rates cannot fairly be used as a measure of the reasonableness of applicant's proposed rates.

In our judgment the application should be granted with respect both to the consolidation of the system and the publication of through rates.

Upon full consideration of the evidence we are of the opinion and hereby find as a fact that public convenience and necessity require the consolidation and unification of the operative rights of Highway Transport Company, hereinabove described, and the operation thereof for the transportation of freight as one unified system, subject to the provisions and conditions of this opinion and order.

Upon full consideration of the evidence we are of the opinion and hereby further find as a fact that public convenience and necessity require the establishment and maintenance by Highway Transport Company, a corporation, of through rates, lower than the existing combinations of local rates, applicable in either direction, between points situated on applicant's line extending from San Francisco to San Jose and intermediate points, on the one hand, and points situated on applicant's lines extending from San Jose to Soledad, Pacific Grove, Hollister and intermediate points, on the other hand.

An order will be entered accordingly.

O R D E R .

A public hearing having been held in the above entitled application, the matter having been duly submitted, the Commission being now fully advised, and basing its order on the findings of fact which appear in the opinion preceding this order,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA hereby declares that public convenience and necessity require the consolidation and unification of the operative rights of Highway Transport Company, a corporation, and the operation, as one unified system, of through service for the transportation of freight between all the termini and intermediate points served by and along its present several routes, which routes are as follows:

(1) Between San Francisco and San Jose and intermediate points, operated pursuant to authority granted by Decision No. 7944, dated August 2, 1920, in Application No. 5628,

(2) Between San Jose and Soledad, Pacific Grove, Hollister, and intermediate points, operated pursuant to authority granted by Decision No. 14319, dated December 2nd - . 1924, in Application No. 10582.

IT IS HEREBY ORDERED, that a certificate of public convenience and necessity be and the same is hereby granted to Highway Transport Company, a corporation, to consolidate the operative rights herein described, and to enable it to render through service under the aforesaid consolidated operative rights.

IT IS HEREBY FURTHER ORDERED that Highway Transport Company, a corporation, be and it is hereby permitted to establish and continue in effect through rates lower than the existing combination of local rates, applicable in either direction, between points on its lines north and south of San Jose, respectively, to-wit: between San Francisco and San Jose and intermediate points, on the one hand, and between San Jose and Soledad, Pacific Grove, Hollister, and intermediate points, on the other hand; and that said Highway Transport Company be and it is hereby

authorized to file within a period of not to exceed twenty (20) days from date hereof, effective within ten (10) days after filing, through rates, and rules and regulations identical with those set forth in Exhibit "A" attached to the application herein.

The authority herein granted to consolidate and unify said operative rights is subject to the following conditions:

1. Applicant shall file its written acceptance of the certificate herein granted within a period of not to exceed ten (10) days from date hereof; shall file, in duplicate, tariff of rates and time schedules within a period of not to exceed twenty (20) days from date hereof, such tariff of rates and time schedules to be identical with those attached to the application herein; and shall commence operation of said service within a period of not to exceed thirty (30) days from date hereof.

2. The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been secured.

3. No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by it under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all purposes, other than hereinabove stated, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 24th day of August, 1925.

P. C. Sealey

George D. Squiers

Leon Whitell
Commissioners.