

Decision No.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of)
INTER-URBAN EXPRESS CORPORATION, a corpor-)
ation, DRAYAGE SERVICE CORPORATION, a)
corporation, and R. H. RASMUSSEN and J. C.)
SVANE, doing business under the name and)
style of SANTA FE EXPRESS & DRAYAGE CO.,)
for permission for the transfer to Inter-)
Urban Express Corporation by Drayage Serv-)
ice Corporation and Santa Fe Express &)
Drayage Co. of operative rights and prop-)
erty in return for stock of Inter-Urban)
Express Corporation, and for permission)
for Inter-Urban Express Corporation to)
operate between points.)

) Application No.
) 12677
) (Supplemental)

In the Matter of the Application of FRED)
LUDEKENS, operating under the name of)
MARTINEZ-SAN FRANCISCO EXPRESS COMPANY,)
for permission to sell and transfer all)
of his right, title and interest in the)
above named business and his operative)
rights to INTER-URBAN EXPRESS CORPORATION,)
and application of Inter-Urban Express)
Corporation for an order granting permis-)
sion to purchase all of the right, title)
and interest in the above mentioned busi-)
ness and its operative rights and to be)
permitted to operate between points.)

) Application No.
) 13551
) (Supplemental)

ORIGINAL

BY THE COMMISSION:

 O P I N I O N

By supplemental applications in the above-entitled proceedings, the Inter-Urban Express Corporation seeks an order of the Commission declaring that it possesses a right to conduct through service as a highway common carrier for the transportation of property between San Francisco, on the one hand, and

points between San Pablo and Martinez, both inclusive, on the
(1)
other hand.

Applicant is a highway common carrier operating under certificates of public convenience and necessity heretofore granted by this Commission, authorizing highway common carrier transportation service (1) between Oakland, Emeryville, Berkeley, Piedmont, Albany, and Alameda, (2) between San Francisco, on the one hand, and Oakland, Berkeley, Albany, Alameda, Piedmont, and Emeryville, on the other hand, and (3) between Oakland, on the one hand, and points between Albany and Martinez, both inclusive, on the other hand. In addition, applicant has on file with the Commission a tariff naming local rates for the transportation of property as a highway common carrier between San Francisco, on the one hand, and points between San Pablo to Martinez, both inclusive, on the other hand. Whether or not applicant possesses authority to publish and file this tariff, is the question here at issue.

The records of the Commission disclose a chronological history of the operative rights enjoyed by applicant's predecessors in interest, from which it appears that said predecessors were authorized to establish and maintain the joint rates here

(1) Applicant alleges that it now possesses this right by virtue of authority heretofore granted by the Commission to certain predecessors of applicant, authorizing them to establish joint rates between said points, which authority, applicant asserts, was transferred to it when it purchased the operative rights of said predecessors in interest.

(2)
involved, between the points named.

(2) The following operative rights are pertinent to this proceeding:

APPLICANT	APPL. NO.	DECISION		AUTHORITY GRANTED
		NO.	DATE	
Ludekens	9360	13091	1/28/24	To operate between San Francisco and Oakland, on the one hand, and Crockett, Port Costa and Martinez, on the other hand.
Rasmussen & Svane	9360	13091	1/28/24	To operate between San Francisco, Oakland, Berkeley, Alameda, Piedmont, and Emeryville.
Ludekens	10376	14067	9/16/24	To abandon service between San Francisco, on the one hand, and Crockett, Port Costa and Martinez, on the other. Granted a new franchise to operate between Oakland and Crockett, Port Costa and Martinez, and authorized to publish joint class and commodity rates with Rasmussen & Svane, on traffic between San Francisco and Crockett, Port Costa and Martinez.
Ludekens	10629	15578	10/29/25	To operate between Oakland, on the one hand, and San Pablo, Hercules, Rodeo, Pinole, Oleum, Tormey and Selby, on the other hand. Authorized to establish through routes and joint class and commodity rates with Rasmussen and Svane on traffic between San Francisco and points between San Pablo and Selby.
Rasmussen & Svane	12677	16339	3/30/26	Authorized to transfer operative rights between San Francisco and East Bay points to Inter-Urban Express Corporation.
Ludekens	13551	18293	4/29/27	Authorized to transfer operative rights between Oakland, on the one hand, and points between San Pablo and Martinez, on the other hand, to Inter-Urban Express Corporation.

Applicant contends that as a result of its purchase of the operative rights of Ludekens, Rasmussen and Svane in 1926 and 1927, it acquired their authority to conduct through service between San Francisco, on the one hand, and points between San Pablo and Martinez, both inclusive, on the other hand. To support this contention, the applicant refers to the official tariff files of the Commission from which it appears that the applicant adopted the joint rates formerly maintained by said predecessors, by filing the usual adoption notice in said tariffs. Applicant avers that thereafter, and continuously up to the present time, it has rendered through service under said joint rates. Applicant takes the position that this joint rate authority formed an integral part of the operative rights of said predecessors, having been created upon a finding by the Commission that public convenience and necessity justified and required the rendition of through service at joint rates between the points named.

It is well settled that a highway common carrier may not publish or maintain joint rates between two separate operative rights without the express authority of this Commission, (Section 50-3/4 (c), Public Utilities Act). However, where the

(3) The joint rates so adopted by applicant were published in a so-called "agency" tariff at that time (1927), and said tariff contained rates published for the account of other carriers also, and between numerous other points than those here involved. Effective April 1, 1938, however, the applicant withdrew from the agency tariff and published and filed its own tariff (Local Freight Tariff No. 5, of Inter-Urban Express Corporation). Shortly thereafter applicant was informally advised by the Commission that there appeared to be no express authority for the publication of the former "joint rates" as "local rates" in the said tariff. Applicant then pointed out for the first time that it had maintained said rates since 1927, upon the assumption that it possessed authority therefor by virtue of the purchase of the operative rights of Ludekens, Rasmussen and Svane, and that the only change brought about by the publication of the rates on April 1, 1938, was the transfer of said rates from one tariff to another.

Commission has found, as it did by Decisions Nos. 14067 and 15578, that public convenience and necessity justified and required the establishment and filing of joint rates between two carriers, when operating independently of each other, and when the two operative rights containing said joint rate authority are transferred to a third party, a different situation is presented. When the shipping public has proved a need for through service and the Commission has authorized the establishment of joint rates to apply thereon, and when both the service and rates have been maintained in effect continuously for upwards of fifteen years by the grantee and its successor, it would appear to be to the public advantage that the arrangement be ratified and approved for the future.

The position taken by the Commission in questioning applicant's authority to carry the joint rates in its own tariff is technically sound, inasmuch as no specific authority was ever granted to the applicant to publish through rates between the points involved. Through oversight or inadvertence, the Commission's decisions authorizing the transfer of operative rights from Ludekens, Rasmussen and Svane to the applicant, made no specific reference to the joint rate authority possessed by the latter carriers. On the other hand, although there was restrictive language in the said decisions prohibiting applicant from linking up or merging the two separate operative rights (as a physical operation), there was no language to convey the impression that the Commission had revoked the joint rate authority. The absence of any such revocation would lead to the reasonable assumption that the Commission authorized the sale and transfer of all of the operative rights possessed by Ludekens, Rasmussen and Svane, including the right to publish joint rates and maintain through

service between the affected points.

Upon a review of the evidence before us, we are of the opinion and find that the joint rate authority was transferred to the applicant by Decisions Nos. 16339 and 18293, and since the authority originally granted was predicated upon the requirement that through traffic be interchanged at Oakland, such arrangement should be continued by the applicant. This appears to be a matter in which a public hearing is not necessary, and an ex parte order will be issued.

O R D E R

Inter-Urban Express Corporation, a corporation, having made application as above entitled, the matter being before the Commission for consideration, and the Commission being fully advised:

IT IS HEREBY ORDERED that Inter-Urban Express Corporation be and it is hereby authorized to establish and maintain for the future, through rates and through routes for the transportation of property as a highway common carrier between San Francisco, on the one hand, and the following named points, on the other hand: San Pablo, Pinole, Hercules, Rodeo, Oleum, Tormey, Selby, Crockett, Port Costa, and Martinez, and that shipments moving under said rate and via said route be interchanged at Oakland.

IT IS HEREBY FURTHER ORDERED that in all other respects the provisions of Decision No. 16339, of March 30, 1926, in Application No. 12677, and Decision No. 18293, of April 29, 1927, in Application No. 13551, be and they are hereby continued in full.

force and effect, and this order shall not be construed as granting Inter-Urban Express Corporation any authority to link up or to merge the operating rights authorized to be transferred under those decisions, with each other, or with other existing operating rights of the Inter-Urban Express Corporation.

The effective date of this order shall be ten (10) days from the date hereof.

Dated at San Francisco, California, this 21st day of January, 1941.

[Signature]
[Signature]
[Signature]
Justin J. Coe
Francis R. Havenner
COMMISSIONERS