A.30795-30796-30824-IB

ORIGINAL

Decision No. 45136

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of E. J. WILLIG TRUCK TRANSPORTATION CO., a corporation, for authority to establish joint rates with HIGHWAY TRANSPORT, INC., a corporation, DELTA LINES, INC., a corporation, JOHNSON TRUCK LINES, OREGON NEVADA CALIFORNIA FAST FREIGHT, INC., a corporation, CALLISON TRUCK LINES, WILLIG FREIGHT LINES, a corporation, M & W TRUCK LINE, AND INTERCITY TRANSPORT LINES.	Application No. 30795
In the Matter of the Application of SAVAGE TRANSPORTATION CO., INC., a corporation, for authority to establish joint rates with MERCHANTS EXPRESS CORP., a corporation, HIGHWAY TRANSPORT, INC., a corporation, DELTA LINES, INC., a corporation, JOHNSON TRUCK LINES, OREGON NEVADA CALIFORNIA FAST FREIGHT, INC., a corporation, CALLISON TRUCK LINES, WILLIG FREIGHT LINES, a corporation, DICKMAN OVERNITE CAR SERVICE, AND INTERCITY TRANSPORT LINES.	Application No. 30796
In the Matter of the Application of SAVAGE TRANSPORTATION CO., INC., a corporation, and E. J. WILLIG TRUCK TRANSPORTATION CO., a corporation, for authority to establish joint rates with PACIFIC FREIGHT LINES EXPRESS, a corporation.	Application No. 30824

Appearances

Edward M. Berol, for applicants.
Douglas Brookman, for California Motor Express, Ltd., Valley Express Company, California Motor Transport Company, Ltd., and Valley Motor Lines, Inc., protestants.
William Meinhold, for Southern Pacific Company and Pacific Motor Trucking Company, protestants.
Reginald L. Vaughan, Varnum Paul and John G. Lyons, by John G. Lyons, for Coast Line Truck Service, Inc., protestant.
Willard S. Johnson, for Hills Transportation Company, intervenor in support of the applications.
T. A. L. Loretz, for Charles P. Hart Transportation Company, intervenor in support of the applications.
H. J. Bischoff, for Southern California Freight Lines and Southern California Freight Forwarders, interested parties.
J. M. Souby, Jr., for Atchison, Topeka and Santa Fe Railway Company, and Santa Fe Transportation Company, interested parties.

O P I N I O N

E. J. Willig Truck Transportation Company and Savage Transportation Company, Inc., are highway common carriers of general commodities. They are among the applicants granted certificates of public convenience and necessity by Decision No. 43003 (48 Cal.P.U.C. 712 (1949)). Their operative rights and their tariff rates are limited to transportation between the San Francisco and Los Angeles metropolitan areas.[1] They now seek authority to establish joint rates with various other highway common carriers and with certain express corporations. The proposed rates would be applicable to through transportation between the San Francisco area and points generally south and east of the Los Angeles area, and between the Los Angeles area and points generally north and east of the San Francisco area.[2]

Public hearings were had at San Francisco before Examiner Mulgrew.

Under the provisions of Section 50-3/4(c) of the Public Utilities Act joint rates may not be established by two or more highway common carriers without the express approval of the Commission. Highway common carriers and express corporations may establish joint rates without such authorization. However, Decision No. 43003, supra, specifically prohibited Willig and Savage from establishing joint rates with express corporations without first obtaining Commission approval.

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[1] The areas within which service may be provided are described in Appendices "B" and "C" of Decision No. 43003.

[2] The other carriers involved are: Highway Transport, Inc., Delta Lines, Inc., Johnson Truck Lines, Oregon Nevada California Fast Freight, Inc., Callison Truck Lines, Willig Freight Lines, Intercity Transport Lines, Merchants Express Corporation, Dickman Overnite Car Service and Pacific Freight Lines Express. Applications Nos. 30795 and 30796 have been amended by substituting Merchants Express Corporation for M & W Truck Lines and Robertson Drayage Co., Inc., doing business as Dickman Overnite Car Service, for C. L. Dickman, an individual, doing business as Dickman Overnite Car Service. These amendments correspond with changes in ownership subsequent to the filing of the original applications.

The territorial coverage of the applications is broad. Shipments moving from or to points beyond the Los Angeles area would be handled by Pacific Freight Lines Express; shipments moving from or to points beyond the San Francisco area would be handled by the various northern California applicants.

Applicants' witnesses testified that the present basis of charges for the transportation in question over their lines is Willig's or Savage's local rates between the metropolitan areas plus the rates of the other applicants from or to the points beyond those areas. These combination rates, the witnesses pointed out, exceed the local or joint rates applicable to the through transportation over the lines of competing common carriers. The witnesses also pointed out that applicants' combination rates exceed the minimum rates established by the Commission for through transportation by radial highway carriers and highway contract carriers, and that the proposed joint rates, the rates of competing common carriers and the minimum rates of permitted carriers are generally on the same level.

Applicants' witnesses testified further that shippers utilizing the services of Willig or Savage between the metropolitan areas likewise require service from and to points beyond those areas. They explained that tonnage moving between the metropolitan areas may be combined with tonnage moving to points beyond and shipped under lower bases of charges over the lines of other common carriers or via permitted carriers. They asserted that this placed Willig and Savage at a disadvantage in competing for traffic between the two metropolitan areas.

Various shipper witnesses testified in support of the application. They said that for the transportation between the San Francisco

and Los Angeles metropolitan areas they preferred the service of Willig or Savage to that of other carriers. Some of them stated that they had satisfactorily patronized the carriers now providing through service and rates between the points involved in these applications. All of the witnesses indicated that the proposed joint rate arrangements would be convenient. None of them indicated that they would be deprived of essential for-hire carrier service if the proposed joint rates are not authorized.

California Motor Express, Ltd., Valley Express Company, and Southern Pacific Company, and their affiliates California Motor Transport Company, Ltd., Valley Motor Lines, Inc., and Pacific Motor Trucking Company, respectively, and Coast Line Truck Service, Inc., protested the granting of the joint rate applications. They are among the common carriers which collectively maintain local and joint rates between the points in issue. Protestants contend that highway common carriers seeking authority to establish joint rates must establish that the joint rates are justified by a showing of public convenience and necessity, relying upon In Re Anderson (42 C.R.C. 15 (1939)). They argue that no such showing has been made here.

With respect to the proposed joint rates of Willig and Savage and the express corporation applicants, protestants claim that the restrictions in the Willig and Savage operative authority affecting such rates may be revoked or modified only by amendment of the certificates of public convenience and necessity involved.

In Re Anderson, supra, the Commission, treating specifically with the matter of highway common carrier joint rate proposals under Section 50-3/4(c) of the Public Utilities Act, held:

> "No certificate may be granted except after a showing of public convenience and necessity. In the past we have held

> that consolidation may not be accomplished except upon a similar showing of public convenience and necessity. The establishment of joint rates is one of the clearest manifestations of a consolidation of certificates or operative rights, within the meaning attributed by our decisions to that term. It would seem, therefore, that the obligation resting upon an applicant to establish public convenience and necessity conditions and permeates the entire subdivision. If this is not true, it would follow that in determining whether or not its approval should be extended to the establishment of joint rates, the Commission would be left without a guide. No standard having been prescribed, the matter would be relegated to the arbitrary discretion of the Commission. To avoid any possible claim of unconstitutionality resulting from such an interpretation, this provision should be construed so as to adopt, as the standard to be observed by the Commission in giving effect to its directions, that of public convenience and necessity. Such, accordingly, is the construction we shall give it."

Because of changed conditions since the Anderson case was decided, we believe that the equities rest with the applicants, and to deny them the right to establish joint rates would not only impede the free flow of commerce but place upon applicants an artificial barrier to meet the competition of other carriers. In light of these facts we hold that In Re Anderson is no longer controlling in a case of this nature and, therefore, should not be followed.

By Decision No. 43003, 48 C.R.C. 725, 726, Savage Transportation Company, et al., we restricted the certificates of Savage and Willig as follows:

> "Said carrier shall not, without the approval of this Commission, operate as an underlying carrier for an express corporation or transport property for a freight forwarder, nor shall said carrier publish joint rates with an express corporation or freight forwarder."

Under the provisions of Highway Carriers' Tariff No. 2 we permit radial highway common carriers and highway contract carriers to establish through routes and joint rates.[3] Moreover, under Sections 22 and 33 of the Public Utilities Act, the right is given to common carriers, other than two or more highway common carriers, to establish joint rates without express approval of the Commission, and confers upon the Commission the power to prescribe the division of such rates when the carriers cannot agree.

Without express approval of the Commission, any common carrier or permitted carrier under our jurisdiction may establish joint rates and through routes, except two or more highway common carriers separately owned.

Savage and Willig are now accepting shipments to points beyond those covered by their certificates, but transferring the lading at the termini of the certificated points and assessing the shipper the combination of local rates of applicants and the connecting highway common carriers.

The record shows that the lack of joint rates and through routes by Savage and Willig and their connecting carriers has prevented these two carriers from performing a satisfactory service to

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[3] Item 20-A of Highway Carriers' Tariff No. 2 reads as follows: "Rates provided in this tariff are minimum rates, established pursuant to the Highway Carriers' Act (Chapter 223, Statutes of 1935, as amended) and apply for transportation of property by radial highway common carriers and highway contract carriers, as defined in said Act.
"When property in continuous through movement is transported by two or more such carriers, the rates (including minimum charges) provided herein shall be the minimum rates for the combined transportation."

those shippers who prefer to use these two applicants. Moreover, the shippers, when using Savage and Willig, are penalized to the extent of paying higher charges than those applicable via other highway common carriers and permitted carriers.

We are of the opinion, and so find, that the evidence in this proceeding amply justifies the granting of the applications.

We further find on this record that Decision No. 43003, supra, should be amended by removing the restriction placed upon the certificates of Savage and Willig, quoted above.

O R D E R

Based upon the evidence of record and upon the conclusions and findings set forth in the preceding opinion,

IT IS HEREBY ORDERED that applicants be and they are hereby authorized, within sixty (60) days after the effective date of this order and on not less than ten (10) days' notice to the Commission and the public, to establish joint through highway common carrier rates, as requested, and that tariff filings made pursuant to this order shall in all other respects comply with the provisions of General Order No. 80.

This order shall become effective twenty (20) days after the date hereof.

Dated at San Francisco, California, this 12th day of December, 1950.

Commissioners