

ORIGINAL

Decision No. 47234

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation and Suspension by the Commission on its own motion of routing provisions published in Pacific Freight Lines Local Freight Tariff No. 1, Cal. P.U.C. No. 1 (Series of E. O. Hurlbert and V. G. Keyes) and the Investigation of related rates, rules, regulations, charges, services, operations and practices of Pacific Freight Lines.

Case No. 5309

Delta Lines, Inc., a corporation, Merchants Express Corporation, a corporation, Valley Motor Lines, Inc., a corporation,

Complainants,

v.

Case No. 5335

Pacific Freight Lines, a corporation,

Defendant.

Gordon, Knapp & Gill, by Hugh Gordon, for respondent and defendant.

Boris H. Lakusta, for the Transportation Department, Public Utilities Commission.

Frederick W. Mielke, for Delta Lines, Inc.; Douglas Brookman, for Merchants Express Corporation;

C. A. Millen, for Valley Motor Lines, Inc., complainants in Case No. 5335 and intervenors in support of the Commission in Case No. 5309.

William Meinhold, for Southern Pacific Company and Pacific Motor Trucking Company, intervenors in both cases in support of complainants and the Commission.

O P I N I O N

These proceedings involve the lawfulness of a direct highway common carrier service by Pacific Freight Lines between San Francisco Bay points and U. S. Highway 99 points north of Fresno to and including Sacramento.

C-5309 SL  
C-5335

In Case No. 5309, the Commission questions whether respondent has authority to operate between these areas on a direct route over U. S. Highways 50 and 99, and if not, whether respondent should be relieved from the long-and-short-haul provisions of Section 460 of the Public Utilities Code. The order of investigation suspended the routing page (1st Revised Page 3-A Cancels Original Page 3-A, Pacific Freight Lines Local Freight Tariff No. 1, Cal. P.U.C. No. 1 [Series of E. O. Hurlbert and V. G. Keyes]) between these areas until October 10, 1951, and subsequent orders have extended such suspension to and including May 7, 1952.

In Case No. 5335, it is alleged that on December 18, 1950, defendant filed rates for the transportation of property between San Francisco and Oakland, on the one hand, and Sacramento, Stockton and intermediate points, on the other, and that ever since January 18, 1951, defendant has been transporting property as a highway common carrier between such points, without any highway common carrier authority therefor. It is also alleged that complainants operate between such points as highway common carriers, and this allegation is admitted in the answer. The answer also admits that property is being transported between such points, but alleges defendant has authority therefor under Decision Nos. 42980 and 43003, both dated June 14, 1949.

The two cases were consolidated and a public hearing was held in San Francisco before Examiner Gillard on February 25, 1952. The matter was submitted for decision upon the filing of briefs on April 10, 1952. Respondent and defendant will be referred to hereinafter as Pacific Freight Lines.

No oral testimony was produced herein, and the matters stand submitted upon documents received in evidence by reference.

C-5309 SL  
C-5335

These consist of all tariff filings of Pacific Freight Lines since January 1, 1949, the tariff of General Transfer Company (E. O. Hurlbert and V. G. Keyes) and the adoption thereof by Pacific Freight Lines on July 1, 1949, and eight decisions of this Commission: No. 40485, granting General Transfer Company a certificate; Nos. 42193, 42457, 42728, 42980 and 43028, pertaining to the lease and sale of the General Transfer rights to Pacific Freight Lines; No. 43003 (Savage Case) granting Pacific Freight Lines extended rights, and No. 43274 denying rehearing therein.

The order of the Commission (Decision No. 43003, 48 Cal. P.U.C. 712 at pages 725, 730) which is the subject of controversy herein, reads as follows:

"IT IS ORDERED:

(1) That a certificate of public convenience and necessity authorizing operation as a highway common carrier, as defined in Section 2-3/4 of the Public Utilities Act, be and it hereby is, granted to each of the following, for the transportation of the commodities and between the points hereinafter specified:

\* \* \* \* \*

(k) Pacific Freight Lines, between all points it is now authorized to serve, on the one hand, and, on the other, points and places located on and along U. S. Highway 99 north of Fresno to and including Sacramento; and between all points it is now authorized to serve south of Tulare and San Luis Obispo, on the one hand, and San Francisco territory, as defined in Appendix 'B' attached hereto, on the other hand, over any and all routes for the transportation of general commodities with the following exceptions:

- (1) Uncrated household goods and other commodities for which the Commission has prescribed minimum rates in Appendix 'A', Decision No. 32325, City Carriers' Tariff No. 3 - Highway Carrier's Tariff No. 4.
- (2) Livestock.
- (3) Commodities in bulk.
- (4) Articles of extraordinary value.
- (5) Commodities injurious or contaminating to other lading.
- (6) Dangerous explosives.

except that no service will be provided between Tulare and Fresno, both inclusive, and points intermediate thereto located on U. S. Highway 99, on the one hand, and points located on and along U. S. Highway 99 north of Fresno to and including Sacramento, on the other."

The pivotal question is the meaning of the words "between all points it is now authorized to serve, on the one hand" as used in the foregoing order. The quoted words only become apparently obscure because the sale of the General Transfer certificate to Pacific Freight Lines was authorized by the Commission on the same day it signed the Savage decision. A background resume is necessary to a proper understanding of the problem.

Pacific Freight Lines filed its Application No. 27573 on June 6, 1946, asking for authority to serve between San Francisco territory, as defined in Highway Carriers' Tariff No. 2, and all points served by Pacific Freight Lines south of Tulare and San Luis Obispo. A supplemental application was filed by Pacific Freight Lines on July 16, 1947, seeking the additional right to serve between Fresno and San Luis Obispo and all points south thereof, on the one hand, and U. S. Highway 99 points Fresno to Sacramento, on the other, and alleging that Fresno and San Luis Obispo were the present northern termini of Pacific Freight Lines' existing operations. Certain lateral and radial rights were also asked for, but no service was proposed between Tulare and Fresno and intermediate points, on the one hand, and points north of Fresno to and including Sacramento, on the other hand. Both of these applications alleged Pacific Freight Lines and Valley Motor Lines interchanged equipment at Fresno and San Luis Obispo and that this arrangement was not entirely satisfactory. Pacific Freight Lines was therefore seeking to establish a single line service to the northern California areas mentioned.

Valley Motor Lines filed its application to extend its northern California rights to Los Angeles (Decision No. 43003, 48 Cal. P.U.C. 712, at page 717). However, on February 17, 1948, by Decision No. 41237, Valley was authorized to buy the Reader Truck Lines' rights into Los Angeles, giving Valley Motor a through right between

San Francisco and Los Angeles. Valley Motor then amended its application in the Savage proceeding and asked only for certain authority implementing the Reader rights.

Pacific Freight Lines was by these circumstances deprived of its interchange revenue with Valley Motor on shipments originating in northern California and destined to southern California. As a consequence, and to protect itself, Pacific Freight Lines on September 1, 1948, filed its Application No. 29657 to lease, with an option to buy, the rights of General Transfer Company. Acquisition of these rights would give Pacific Freight Lines a through service from Los Angeles to Stockton and San Francisco Bay points. The authority requested was granted on November 3, 1948, by Decision No. 42193.

Unlike Valley Motor, however, Pacific Freight Lines did not, as the result of this decision, amend its application in the Savage proceeding to eliminate the request for operative authority covered by the General Transfer rights.

The time specified in Decision No. 42193 for consummation of the General Transfer lease was extended from time to time while the parties sought similar authority from the Interstate Commerce Commission relative to the interstate rights. On May 28, 1949, these parties filed a supplemental application, alleging the examiner's proposed report in the Interstate Commerce Commission proceeding recommended denial of a lease, and requesting this Commission to approve an outright sale of the General Transfer rights. On June 14, 1949, by Decision No. 42980, the sale was approved, and the prior Decision No. 42193, authorizing the lease, was vacated.

Likewise, on June 14, 1949, the Commission signed Decision No. 43003 in the Savage proceeding.

The effective date of Decision No. 42980 was advanced to July 1, 1949, by Decision No. 43028 dated June 21, 1949. The effective date of Decision No. 43003 was established when rehearing was denied on August 29, 1949, by Decision No. 43274. Pacific Freight Lines filed its adoption notice of the General Transfer tariff on June 24, 1949, effective July 1, 1949, and commenced operations thereunder on the latter date. Not until December 18, 1950, did Pacific Freight Lines file rates for service between San Francisco Bay points and U. S. Highway 99 points Sacramento to Fresno under authority claimed to exist in Decision No. 43003.

Pacific Freight Lines maintains it has authority to serve between the areas in question, whether the language "between all points it is now authorized to serve" be construed as of the date of issuance, or as of the effective date, of Decision No. 43003. On the issuing date, June 14, 1949, Pacific Freight Lines was likewise authorized to serve San Francisco Bay area points under the General Transfer decision (No. 42980) which preceded Decision No. 43003 in point of numbering sequence by 23 decisions. On the effective date, August 29, 1949, Pacific Freight Lines was actually operating under the General Transfer rights.

We do not deem it necessary to decide the issues raised in this argument, but in passing might note without elaboration that it is our opinion (1) that all decisions signed on a given day should be considered as having been issued simultaneously, unless specific language in a particular decision indicates to the contrary, and (2) that in relation to time, a decision should be construed as of the date of issuance.

We do not go more deeply into these questions raised by Pacific Freight Lines, because in our opinion a decision cannot be construed only by the clock or the calendar. An order of the

Commission also must be construed in the light of the findings contained in the opinion which precedes it. No construction of a phrase employed in an order can be supported if it is contrary to the findings contained in the opinion. Stated another way, an order of the Commission must be supported by the findings, and if the order is subject to two different interpretations, that one which is consistent with the findings must prevail.

In the Savage decision, it is related that 14 carriers were involved. All of them were seeking north-south rights. Santa Fe Transportation Company was, in addition, seeking an intermediate east-west right between Stockton and San Francisco Bay points. Delta Lines, Inc., protested this portion of that application. None of the other carriers was seeking any rights between San Francisco Bay points and Stockton or Sacramento, so Delta had no other protest to file. Santa Fe's application, for reasons not material here, was not disposed of in the Savage decision. That decision, therefore, involved the disposition of 13 applications seeking only north-south rights.

With reference to Pacific Freight Lines, the decision (No. 43003, 48 Cal. P.U.C. 712) states:

"Savage . . . and Pacific Freight Lines have presented evidence to show that each of them can and will establish a service between the San Francisco and Los Angeles metropolitan areas providing transportation facilities and services for which there is at present a public need." (Page 720)

"Lillie . . . Pacific Freight Lines . . . all propose to operate between Sacramento and Los Angeles and various intermediate points . . . (and) from this record we believe that available traffic would support at least two additional carriers . . . .

"Pacific Freight Lines is also in a favorable position to provide service between the points involved. Under its interchange arrangement with Valley Motor, Pacific Freight Lines provides the area in southern California that it presently serves with transportation to commercial centers in northern California. The points located on U. S. Highway 99 north of Fresno, to and including Sacramento, are a part of that transportation service. Valley Motor has not protested the application of Pacific Freight Lines. As previously noted, the interchange arrangement does not result in the efficient and rapid service desired. It has been indicated that the arrangement is unsatisfactory to both parties and may be discontinued. A service to this area should not be discontinued and, if a more rapid and efficient operation is offered, the public should not be deprived of it.

"In addition to the authority to serve the points located on U. S. Highway 99, Lillie and Pacific Freight Lines sought certain lateral rights. We believe that neither carrier produced sufficient evidence to justify granting them." (Pages 722, 723)

The foregoing disposes of all of the authority requested by Pacific Freight Lines in that proceeding, and it is clear that the Commission would not, in the order, grant operative rights in excess of those findings and relative to a matter that was not before it, that was not requested, that was not subject to any right of protest, and that was not found to be required by public convenience and necessity.

The use of the term "between all points it now serves" stems from the applications filed by Pacific Freight Lines in the Savage proceeding. In Application No. 27573 filed June 6, 1946, the authority requested was between San Francisco territory, on the one



hand, and, on the other hand, "all points now served by applicant south of Tulare on the Valley Route and the City of San Luis Obispo and points south thereof on the Coast Route." In a supplemental application filed July 16, 1947, a further request was made for authority "between points, Fresno and San Luis Obispo and south thereof, on and along the regularly established routes and service line of applicant, on the one hand, and, on the other, points and places on and along U. S. Highway 99, Fresno to Sacramento, inclusive, . . . Fresno and San Luis Obispo being the present northern termini of applicant's existing operations."

Under these pleadings, the term "Fresno and San Luis Obispo and points south thereof" is synonymous with "all points now served by applicant." In summarizing the scope of these applications on page 716 of the decision, the Commission compressed all of these thoughts in one sentence, thus: "Pacific Freight Lines seeks authority to extend its present operative rights from San Luis Obispo and Fresno to San Francisco and Sacramento . . . so that it may transport traffic between all points it now serves and San Francisco Bay territory . . . and points and places on and along U. S. Highway 99, Fresno to Sacramento . . ." Again we see the thought that "all points it now serves" is synonymous with "Fresno and San Luis Obispo and south."

In the order that followed, only the one phrase was used, but its meaning had been clearly established prior to that point.

We therefore find that the term "between all points it is now authorized to serve" refers to the operative authority possessed by Pacific Freight Lines at the time it filed its Supplemental Application No. 27573, and does not refer to anything in excess of Fresno and San Luis Obispo and points south thereof.

The foregoing conclusion creates another question: In what fashion, if at all, may Pacific Freight Lines link its operative rights under Section 1066 of the Public Utilities Code?

Under the General Transfer rights, Pacific Freight Lines can serve between San Francisco Bay points and Stockton, on the one hand, and Fresno and Selma, on the other. Pacific Freight Lines' rights under the Savage decision have heretofore been quoted in full. Because of the restriction therein against service between Tulare and Fresno, both inclusive, on the one hand, and U. S. Highway 99 points north of Fresno to and including Sacramento, on the other, we can find no point which is common to these two rights through which service can be rendered from San Francisco Bay points to any U. S. Highway 99 point north of Fresno to and including Sacramento.

However, a link is provided between these two areas, within the terms of the Savage decision alone. To San Francisco Bay points, Pacific Freight Lines was authorized to serve from all points it is now authorized to serve south of Tulare. Pacific Freight Lines' first tariff point south of Tulare is Tipton. Likewise, the service authorized to U. S. Highway 99 points north of Fresno to and including Sacramento, after giving effect to the restriction contained in the order, begins at Tipton. It is thus possible for Pacific Freight Lines to make shipments from San Francisco to Sacramento, for example, by physically transporting the same via Tipton. To do so, the normal route would be to Manteca, then south on U. S. Highway 99 to Tipton, and return on the same highway to Sacramento. The constructive mileage, pursuant to Distance Table No. 4 effective January 1, 1951, between Manteca and Tipton is 170.5 miles. It follows that any shipment from the Bay area destined to Sacramento, Manteca, or intermediate points, would have to be transported an

additional 341 miles round trip to Tipton. The total average constructive mileage to Manteca from San Francisco and Oakland via Manteca and Tipton is 428 miles, and between the same points via Pacheco Pass and Tipton is 432 miles. Whether or not the rates of Pacific Freight Lines between the points herein involved are reasonable, nondiscriminatory, lawful and proper, are matters upon which no evidence was received herein, pending a determination of its operative rights. Such matters will have to be decided upon a further hearing to be held pursuant to the terms of the order to follow.

O R D E R

A public hearing having been held, and based upon the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED:

(1) That Pacific Freight Lines, a corporation, be and it is hereby directed and required to cease and desist from operating, directly or indirectly, or by any subterfuge or device, any auto truck as a highway common carrier (as defined in Section 213 of the Public Utilities Code) for compensation, over the public highways of the State of California, between San Francisco territory, as defined in Appendix "B" of Decision No. 43003 dated June 14, 1949, on the one hand, and any and every point on and along U. S. Highway 99 north of Fresno to and including Sacramento, on the other, except such operations as are physically conducted between such points via Tipton, unless and until said Pacific Freight Lines, a corporation, shall have obtained from this Commission a certificate of public convenience and necessity therefor.

(2) That Pacific Freight Lines immediately cancel any and all provisions of its tariff (Pacific Freight Lines Local Freight Tariff No. 1, Cal. P.U.C. No. 1 [Series of E. O. Hurlbert and V. G. Keyes]) which specify any routing applicable to its highway common carrier service contrary to paragraph (1) of this order, and publish in lieu thereof routing provisions which will be in conformity with the conclusions reached in the preceding opinion.

(3) That the submission of Cases 5309 and 5335 be and it is hereby set aside and the matters reopened for further hearing at a time and place to be designated by the Commission, for the limited purpose of receiving evidence relative to the reasonableness, lawfulness and propriety of the rates of Pacific Freight Lines between San Francisco Bay points, on the one hand, and points on U. S. Highway 99, Sacramento to Biola Junction, inclusive, on the other.

The Secretary is directed to cause a certified copy of this decision to be served upon respondent.

The effective date of this order shall be twenty (20) days after the date of such service.

Dated at Los Angeles, California, this 5<sup>th</sup> day of June, 1952.

[Signature] President  
Justus J. Casares  
Harold H. Kille  
Penelope P. Patten  
[Signature] Commissioners