

ORIGINAL

Decision No. 61265

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on Commission's )  
own motion of mixed operations )  
of certificated and permitted )  
highway carriers. )

Case No. 6186

Appearances are Listed in Appendix A

O P I N I O N

Proceedings

On October 7, 1958, the Commission issued an order instituting an investigation on its own motion of mixed operations of certificated and permitted highway carriers. That order set forth that the investigation was instituted for the purpose of determining whether and to what extent, if at all, any highway carrier operating as a highway common carrier of some commodities between certain points, as a highway permit carrier of the same or other commodities between the same or other points, when tendered a shipment (or a split pickup shipment, or a split delivery shipment) at any point of origin or to any point of destination which is beyond the scope of the certificated operation of such carrier may, or shall, apply to such shipment the tariff rates filed by such carrier as a highway common carrier. The investigation was also instituted for the purpose of determining any other related question.

A public hearing was held in San Francisco on May 20, 1959, before Commissioner Theodore H. Jenner and Examiner William L. Cole. Public hearings were also held in Los Angeles on August 11, 1959, and in San Francisco on December 14, 1959, before Examiner Cole. On December 14, 1959, the matter was taken under submission subject to the

filing of briefs by the various parties. These briefs have now been filed and the matter is ready for decision.

Problem Presented

The problem presented by this investigation, in essence, is the determination by the Commission of the proper method to rate certain types of transportation performed by certain types of carriers. The types of carriers in question are those having multiple operating authorities consisting of both so-called certificated authority and permitted authority.

While numerous transportation situations were mentioned at the hearings, there are essentially only three types involved which create the problem in question. One type involves property tendered by a shipper, a portion of which is to be transported between points of origin and destination, both of which are located within the area covered by the carrier's certificated authority. The remaining portion of the property is to be transported from a second point of origin located outside of the area covered by the carrier's certificated authority to the same point of destination.

The second type of transportation involved consists of property tendered by a shipper, a portion of which is to be transported between points of origin and destination, both of which are located within the area covered by the carrier's certificated authority. The remaining portion of the property is to be transported from the same point of origin to a second point of destination located outside of the area covered by the carrier's certificated authority.

If the carrier had only permitted operating authority these types of transportation could be handled and rated by it as single split pickup or split delivery shipments pursuant to the Commission's Minimum Rate Tariffs<sup>1</sup>. Similarly, if the carrier had certificated operating authority covering all of the points involved, it could

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<sup>1</sup> Assuming of course that the other requirements for rating such shipments were met.

likewise rate these types of transportation as single split pickup or split delivery shipments under its applicable filed tariffs.<sup>2</sup> As previously pointed out, however, the problem arises where the carrier has multiple operating authority, as was first described above.

The third type of transportation creating the problem in question involves property tendered by a shipper, all of which is to be transported between the same points of origin and destination. However, a portion of such property consists of commodities which the carrier is authorized, pursuant to its certificated authority, to transport between these points; and the other portion of such property consists of commodities which the carrier is not so authorized to transport. Again, if the carrier had only permitted operating authority, this type of transportation could be rated by it as a single mixed shipment pursuant to the Commission's Minimum Rate Tariffs. Likewise, if the carrier had certificated operating authority covering both types of commodities, it could rate this type of transportation as a single mixed shipment pursuant to its tariffs. Again, however, the problem arises as to how this transportation should be rated where the carrier's operating authority is such as was first described.

#### Proper Method of Rating Such Transportation

A rate expert of the Commission staff who testified at the hearings in this matter took the position that a carrier holding the types of authorities involved must rate each of the three types of transportation as two or more separate shipments<sup>3</sup>. It is the staff's position that for the first type of transportation hereinabove

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<sup>2</sup> Assuming of course that its tariff provided for such rating and that the other requirements for rating such shipments were met.

<sup>3</sup> The evidence shows that normally a greater total transportation charge will result if the transportation in question must be rated as two separate shipments instead of a single split-pickup, split delivery, or mixed shipment.

referred to, the transportation of that portion of the property between the points of origin and destination, both located within the carrier's certificated area, must be rated as one single shipment and must be rated pursuant to the carrier's filed tariff. That portion of the property transported between the second point of origin and the common point of destination must be rated as a second single shipment and must be rated in accordance with the Commission's Minimum Rate Tariff.

With respect to the second type of transportation referred to, it is the staff's position that the transportation of that portion of the property which is transported between the common point of origin and the point of destination, both located within the carrier's certificated area, must again be rated as a single shipment pursuant to the carrier's filed tariff. That portion of the property transported between the common point of origin and the point of destination, which latter point is located outside of the certificated area, must be rated as a second single shipment pursuant to Commission's Minimum Rate Tariff.

With respect to the third type of transportation hereinabove referred to, it is the staff's position that the transportation of that portion of the property transported between the point of origin and the point of destination which comprises the commodities the carrier is authorized to transport under his certificate must be rated as a single shipment and must be rated pursuant to its filed tariff. The staff maintains that the portion of the property which comprises the commodities which the carrier may not transport under his certificate must be rated as a second single shipment and must be rated in accordance with the Commission's Minimum Rate Tariff.

The position of the staff in this regard is consistent with an informal ruling which it has heretofore issued<sup>4</sup>.

It is the position of one group of carriers who were represented at the hearings in this matter that the Commission staff's position is incorrect. This group maintains that a highway common carrier holding highway permit carrier authority may transport as a single shipment the property transported under each of the three types of transportation hereinabove described. It appears to be the

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<sup>4</sup> The Transportation Division of the Commission issued its Informal Ruling No. 24, on April 30, 1957, which provides, as follows:

"A carrier holds a certificate as a highway common carrier to operate between two points but is not authorized under its certificate to operate from, to or between points intermediate thereto. The same carrier also holds a radial highway common carrier permit which covers the intermediate points.

"The question has been asked whether such a carrier may transport, as a single split delivery shipment, property shipped from one point on its certificated highway common carrier operation and delivered in part to one or more of the intermediate points not covered by its certificate and the balance to a point on its certificate.

"A carrier may not handle property as a single shipment, part of which is for delivery at a point authorized to be served under its common carrier certificate and part at a point or points not authorized to be served under such certificate. While all of the lots may be transported on the same vehicle, those handled between points on the certificate must be transported on a shipping document (or documents) and rated as a shipment (or shipments) separate from those transported to the points, intermediate, beyond, or otherwise, not covered by the certificate."

position of this group that all of the property tendered with respect to each of the three types of transportation referred to, was tendered by the shipper as a single shipment. This group maintains that since the carrier could not transport all the property tendered under its certificated authority, it follows that the carrier is authorized to transport the entire amount of such property as a highway permit carrier under its permitted authority. This group maintains that for this reason each of the three types of transportation in question can be rated as a single split delivery, split pickup, or mixed shipment.

It is the position of another group of carriers represented at these hearings that a highway common carrier may not transport split delivery or split pickup shipments, portions of which are not covered by its certificate, except in conjunction with another highway common carrier over an established through route and under a joint rate. It is also the position of this group that a highway common carrier which holds a certificate authorizing the transportation of specified commodities may not transport between two certificated points shipments which consist of certificated and non-certificated commodities, except as two separate shipments rated as such.

The position of Fibreboard Paper Products Corporation, a shipper represented at these hearings, agrees with that of the first group of carriers, which is that the Commission staff's position is in error and that the transportation described in each of the foregoing situations should be rated as single split-delivery, split-pickup or mixed shipments.

In making the determination as to the proper method of rating the various types of transportation in question, it must first be determined under which of the carrier's operating authorities the various portions of property tendered are being transported. In this regard it must be kept in mind that the word "shipment" is not used

in the definition of a highway common carrier, a highway permit carrier, or a highway carrier. It follows, therefore, that the fact that a so-called "shipment" is composed of various types of commodities or involves numerous points of origin or destination, is not determinative of the operating authority under which certain property is transported between certain points. The authority with which a carrier transports property tendered to it by a shipper to be transported from a given point of origin to a given point of destination is not affected by the fact that at the same time that same shipper tenders other property to be transported from the same point of origin to a different point of destination.

Referring, then, to the first type of transportation described above, it must be determined under what authority the carrier transports property between the point of origin and point of destination, both of which are located within its certificated area. There can be no question but that the property is transported under its certificated carrier operating authority<sup>5</sup>. With respect to the transportation of the property from the point of origin located outside of the certificated area to the point of destination within the certificated area, again there can be no question but that this property is transported by the carrier under his highway permit carrier authority. The fact that the shipper tenders to the carrier all of the property at one time cannot alter this conclusion.

With respect to the second type of transportation described above, there can be no question but that the transportation of the property between the point of origin and the point of destination,

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<sup>5</sup> Assuming of course, that the property transported is of the type authorized to be transported under the carrier's certificated authority.

both of which are located within the carrier's certificated area, is transported by the carrier pursuant to its certificated operating authority. Conversely, the property transported between the point of origin located within the certificated area and the point of destination located outside of the certificated area, is transported by the carrier under its highway permit carrier authority.

With respect to the third type of transportation referred to above, the carrier transports those commodities authorized to be transported under its certificated operating authority as a certificated common carrier and those commodities not so authorized, as a highway permit carrier.

Inasmuch as the carrier in each of the three enumerated situations transports a portion of the property under his certificated authority, such portion must be rated through the use of its certificated common carrier tariffs on file with the Commission. Conversely, inasmuch as the carrier transports the remaining portion of the property, in each of the three enumerated situations, as a highway permit carrier, such portion of the property must be rated by reference to the Commission's Minimum Rate Tariff. Such being the case, it follows that in each of the three enumerated situations the carrier must rate the transportation in question as two separate shipments. In view of this, it is the Commission's conclusion that the position of its staff, as set forth in this proceeding and as set forth in the staff's Informal Ruling No. 24, is correct.

The Commission's conclusion that the transportation in question must, in each instance, be rated as two separate shipments is, of course, based upon existing statutes. The only way in which this situation can be altered is through legislative changes in the existing statutes.



Remedy Advanced

During the course of the hearings and in its brief, the group of carriers which took a position contrary to that of the Commission staff stressed alleged inequities which result from requiring the carrier, in the situations referred to above, to rate the transportation, in each instance, as two separate shipments, rather than as a single split delivery, split pickup, or mixed shipment.

In order to remedy this alleged inequitable situation, it was proposed that the Commission's Minimum Rate Tariffs include a provision comparable to one that exists at the present time in the Commission's Minimum Rate Tariff No. 2. This latter provision relates to shipments in both interstate and intrastate commerce, and authorizes a carrier, in rating the shipment transported in intrastate commerce, to consider the weight of the property transported in interstate commerce.

It is the Commission's conclusion that there is not sufficient evidence in this record relative to a definitive proposal of the type referred to above, which would allow the Commission to pass upon its reasonableness or desirability as applied to the transportation involved in the present proceeding. In this regard, however, it is to be noted that any party who wishes to have such a provision inserted in the Commission's Minimum Rate Tariffs may file with the Commission a petition for modification in an appropriate continuing minimum rate proceeding, requesting such a result.

In view of the conclusions set forth above, this investigation will be discontinued. Notwithstanding this action, however, the Commission expresses its appreciation to the various parties for their diligent efforts in presenting to the Commission the respective points of view of the various carriers and shippers.

O R D E R

Public hearings having been held in the above-mentioned matter and the Commission being fully informed therein, now therefore,

IT IS HEREBY ORDERED that Case No. 6186 is discontinued.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 28<sup>th</sup> day of DECEMBER, 1960.

*Lucretia H. Leary*  
 President

*W. H. Mitchell*

*W. H. Mitchell*

*E. J. Fox*

*Theodore J. J. J. J.*  
 Commissioners

APPENDIX A

LIST OF APPEARANCES

Respondents: Willard S. Johnson, for Hills Transportation Co., J. Christenson Co., and Karlson Bros. Trucking Service; Philip A. Winter, for Delivery Service Co.; Scott Elder, for Aetna Freight Lines, Trans-Bay Motor Express Co. and B-Line Express; Lloyd Rasmussen, for Trans-Bay Motor Express; Norman R. Moon, for Highway Transport, Inc., and M & L Trucking Company; Armand Karp, for Callison Truck Lines, Inc.; Handler & Baker, by Daniel W. Baker, for Pozas Bros. Trucking Company, Doudell Trucking Company, Security Truck Lines, Associated Transportation Company, Inc., Lodi Truck Services, and F. J. Burns Drayage; Frank Loughran, for Di Salvo Truck Lines, Inc.; W. S. Pilling, for Pacific Intermountain Express Co.; E. J. Muzio, for Miles Motor Transport System; Berol & Silver, by Edward M. Berol, for California Motor Express, Ltd., California Motor Transport Company, Ltd., Coast Line Truck Service, Inc., Delta Lines, Inc., Merchants Express of California, Oregon-Nevada California Fast Freight, Inc., Southern California Freight Lines, Valley Express Company, and Valley Motor Lines, Inc.; William Meinhold, for Pacific Motor Trucking Company; William M. Edwards, for Paxton Trucking Company; and W. J. and V. W. Pope, for Aetna Freight Lines.

Interested Parties: Ralph Hubbard, for California Farm Bureau Federation; J. C. Kaspar, A. D. Poe, J. X. Quintrall, Lawrence R. Exley, and R. D. Toll, for California Trucking Associations, Inc.; Milton A. Walker for Fibreboard Paper Products Corporation; D. J. McCracken, for Consolidated Freightways Corp. of Delaware; and Harold M. Brake, for Brake Delivery Service.

For the Commission Staff: William C. Bricca.