

Decision No. 71663**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the rates, rules, regulations, tariff schedules, contracts, charges, operations and practices of DI SALVO TRUCKING COMPANY.

Case No. 8293

Investigation on the Commission's own motion into the rates, rules, regulations, tariff schedules, contracts, charges, operations and practices of PACIFIC MOTOR TRUCKING COMPANY, a corporation, and PACIFIC MOTOR TRANSPORT COMPANY, a corporation.

Case No. 8294

Investigation on the Commission's own motion into the rates, rules, regulations, tariff schedules, contracts, charges, operations and practices of VALLEY MOTOR LINES, INC., a corporation, and VALLEY EXPRESS CO., a corporation.

Case No. 8295

Frank Loughran, for Di Salvo Trucking Co.;  
John MacDonald Smith, for Pacific Motor Trucking Co. and Pacific Motor Transport Co.; Russell & Schureman, by Theodore W. Russell, for Valley Express Co. and Valley Motor Lines, Inc.; respondents.  
B. A. Peeters and Frank J. O'Leary, for the Commission staff.

O P I N I O N

By orders dated November 2, 1965, the Commission instituted these investigations into the operations, rates and practices of Di Salvo Trucking Company, a corporation (hereinafter sometimes referred to as Di Salvo); Pacific Motor Trucking Company, a corporation, and Pacific Motor Transport Company, a corporation (hereinafter sometimes referred to collectively as P.M.T.); and Valley Motor Lines, Inc., a corporation, and Valley Express Co., a corporation (hereinafter sometimes referred to collectively as Valley); respectively.

The three cases were consolidated for hearing before Examiner Mooney on March 30, 1966, at Los Angeles. The facts, circumstances and issues in each of the three cases are substantially identical.

Di Salvo Trucking Company, Pacific Motor Trucking Company and Valley Motor Lines conduct operations as highway common carriers. In addition each has various types of permit authority which are not involved here. Pacific Motor Transport Company and Valley Express Co. operate as express corporations. All have appropriate tariffs on file with the Commission.

The purpose of the three investigations is to determine whether Di Salvo, Valley and P.M.T. violated Sections 494 and 453 of the Public Utilities Code by refunding or remitting to Price-Pfister Brass Manufacturing Company, a corporation which manufactures plumbing supplies, any portion of the rates and charges specified in their common carrier tariffs and thereby extending to said Price-Pfister any privilege, facility, preference or advantage not regularly and uniformly extended to all corporations and persons.

The Commission staff presented evidence which establishes the following facts: Di Salvo, P.M.T. and Valley transport property for Price-Pfister, which is located in Pacoima (near San Fernando); the applicable tariff rates for this transportation include pickup service from Price-Pfister's Pacoima plant; the tariff of each of the respondents contains a provision that when the shipper tenders freight at the carrier's established depot for transportation, a deduction of five cents per 100 pounds shall be made from the applicable transportation rate (subject to certain exceptions); Di Salvo, P.M.T. and Valley have so-called

"drayage agreements" or contracts with ITC Company, Inc. (ITC), a permitted carrier in the Los Angeles area; said contracts provide that ITC will, when requested, perform pickup and delivery service for the contracting carrier within the Los Angeles Basin Territory as described in Minimum Rate Tariff No. 2 and that the contracting carrier will compensate ITC for such service at the rates prescribed in the contract; pursuant to said contracts, ITC has picked up freight from the Pacoima plant of Price-Pfister for each of the three contracting carriers and delivered it to the terminals of said carriers in the Los Angeles area; for this service ITC has been compensated in accordance with the rates prescribed in said contracts; in each instance the compensation received by ITC for such service exceeds the allowance provided in the respective tariffs of the contracting carriers for delivery of freight to their terminals by the shipper.

The president and chief executive officer of Price-Pfister, and the assistant secretary and controller of Price-Pfister, who is also the assistant secretary of ITC, were subpoenaed by the Commission staff. The following evidence regarding the officers, directors and shareholders of Price-Pfister and ITC was developed through the two witnesses: A vice president of Price-Pfister is the president of ITC; the secretary and treasurer of Price-Pfister is the vice president of ITC; as indicated above, the assistant secretary of Price-Pfister is also the assistant secretary of ITC; three of the four directors of ITC are on the board of directors of Price-Pfister, which consists of six members; all of the shares of ITC are held by four individuals who also hold 3.12 percent of the shares of Price-Pfister; all of the shareholders of ITC are related to the shareholders of Price-Pfister by either blood or marriage. A motion was made by

respondents to strike this evidence because it had not previously been brought to their attention by the staff. The motion is denied.

The traffic manager of Price-Pfister was also subpoenaed by the staff and the following facts were developed through him: ITC was formed in early 1963; he is the general manager of ITC and retains copies of all of the records of ITC; he receives a salary from Price-Pfister only; the only employees on the payroll of ITC are an office girl and a truck driver; the traffic department of Price-Pfister and ITC share the same office, but there are separate desks for each company; ITC performs local drayage service for Price-Pfister and for Dan Lee Manufacturing, and pickup service for the common carriers with whom it has contracts; in addition to the respondents herein, ITC also has a "drayage agreement" with California Motor Express; Price-Pfister also has equipment of its own with which it performs some of its local drayage.

Evidence was presented by Di Salvo, P.M.T. and Valley to show that each has "drayage agreements", similar to those here in issue, with numerous drayage companies in the Los Angeles area covering pickup and delivery service for other customers; that they did not know of any relationship between ITC and Price-Pfister until the orders of investigation were issued; and that immediately upon being served with the order of investigation, each terminated its agreement with ITC.

Counsel for the Commission staff argued that the evidence establishes that the separate corporate identities of ITC and Price-Pfister should be disregarded, and that to the extent respondents remitted, through the medium of "drayage agreements", part of their lawful tariff charges to Price-Pfister, they have violated Sections 494 and 453 of the Public Utilities

Code. He recommended that the respondents each be ordered to cease and desist from further similar violations.

The three counsel who appeared for the various respondents argued that the facts in this proceeding do not establish that an alter ego relationship exists between ITC and Price-Pfister; that it has not been shown that any money received by ITC under the "drayage agreements" passed to Price-Pfister; that in any event, none of the respondents had any knowledge of any relationship between ITC and Price-Pfister; that the facts do not support a cease and desist order or any other order against respondents; and that if respondents are ordered to cease and desist, then ITC could enter into similar contracts with other carriers, and the result would be that respondents would be placed at a discriminatory disadvantage.

#### Discussion

We concur with the staff that insofar as the "drayage agreements" in issue are concerned, ITC was acting as an arm of Price-Pfister. The record clearly establishes common control, management and interest between ITC and Price-Pfister. While the parties who own the stock of ITC own only a small percentage of the stock of Price-Pfister, they are related to the remaining owners through blood or marriage. There is a family relationship running through both corporations. In the circumstances, ITC was in effect the shipper when it delivered Price-Pfister's freight to the terminals of any of the respondents, and as a shipper it was entitled to receive the allowance provided in the tariffs of the respondents for such service and nothing more.

We also concur with the staff that respondents should be directed to cease and desist from paying or allowing any amounts

in excess of the allowances specifically provided for in their tariffs in connection with the delivery of Price-Pfister's freight to their terminals by ITC. No fines or other penalties have been recommended by the staff, and we agree that the facts and circumstances herein do not warrant any. Whether or not the absence of knowledge by the respondents of the relationship between ITC and Price-Pfister is a defense to their past activities with ITC need not be considered herein. They are now knowledgeable of this relationship, and the orders which follow are prospective in their application only. The fact that ITC may have "drayage agreements" with other common carriers is not now before the Commission. If any are brought to our attention, they will be investigated.

Findings and Conclusions

The Commission finds that:

1. Di Salvo Trucking Company, Pacific Motor Trucking Company and Valley Motor Lines operate as highway common carriers pursuant to certificates of public convenience and necessity, and, in addition, each possesses other operating authority not involved herein. Pacific Motor Transport Company and Valley Express Co. operate as express corporations pursuant to certificates of public convenience and necessity.
2. All respondents have appropriate tariffs on file with the Commission.
3. Di Salvo, P.M.T. and Valley have "drayage agreements" with ITC, a permit carrier in the Los Angeles area, whereby ITC has agreed to perform pickup and delivery service for the respective contracting carriers within the Los Angeles Basin Territory when requested, and whereby the respective contracting

carriers agree to compensate ITC for such service at the rates prescribed in the agreements.

4. In each of the "drayage agreements", the agreed compensation exceeds the deduction allowance in the tariffs of the respondents which applies when a shipper tenders freight at the carrier's established depot for transportation.

5. ITC has picked up freight from Price-Pfister for each of the respondents and has delivered it to their respective terminals and has been compensated for such service in accordance with the rates prescribed in the "drayage agreements".

6. The majority of the officers and directors of ITC are also officers and directors of Price-Pfister, and the shareholders of ITC are related by blood or marriage to the shareholders of Price-Pfister.

7. ITC and Price-Pfister are under common control, management and arrangement.

8. ITC is an alter ego of Price-Pfister and is acting as an arm of Price-Pfister when it delivers freight of Price-Pfister to the terminal of any of the respondents and is, in fact, performing such service in the capacity of a shipper.

9. Respondents may not pay or allow any amounts in excess of the deductions specifically provided in their tariffs in connection with the delivery of Price-Pfister's freight to their terminals by ITC.

The Commission concludes that respondents should each be ordered to cease and desist from paying or allowing any amounts in excess of the deductions specifically provided in their respective tariffs in connection with the delivery of Price-Pfister's freight to their terminals by ITC.

The staff of the Commission will make a subsequent field investigation of each of the respondents to determine whether they are complying with the directives herein. If there is reason to believe that any one of them is not, the Commission will reopen the proceeding involving that particular respondent for the purpose of determining whether appropriate sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Di Salvo Trucking Company, a corporation, the respondent in Case No. 8293, shall cease and desist from paying or allowing any amounts in excess of the deductions specifically provided in its tariff in connection with the delivery of freight of Price-Pfister Brass Manufacturing Company, a corporation, to its terminals by ITC Company, Inc.
2. Pacific Motor Trucking Company, a corporation, and Pacific Motor Transport Company, a corporation, the respondents in Case No. 8294, shall cease and desist from paying or allowing any amounts in excess of the deductions specifically provided in their tariffs in connection with the delivery of freight of Price-Pfister Brass Manufacturing Company, a corporation, to their terminals by ITC Company, Inc.
3. Valley Motor Lines, Inc., a corporation, and Valley Express Co., a corporation, the respondents in Case No. 8295, shall cease and desist from paying or allowing any amounts in excess of the deductions specifically provided in their tariffs



in connection with the delivery of freight of Price-Pfister Brass Manufacturing Company, a corporation, to their terminals by ITC Company, Inc.

The Secretary of the Commission is directed to cause personal service of this order to be made upon each of the respondents herein. The effective date of this order as to each respondent shall be twenty days after the completion of such service on that particular respondent.

Dated at San Francisco, California, this 6<sup>th</sup> day of DECEMBER, 1966.

John E. Mitchell  
President

George L. Hoover

Frederick B. Hillhoff

Augustus

William W. Beards  
Commissioners