

**ORIGINAL**

Decision No. 71738

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of WILLIG FREIGHT LINES, a California corporation.

Case No. 8392

Bertram S. Silver and Robert L. La Vine, for respondent.  
Elinore C. Morgan and Eugene E. Cahoon, for the Commission staff.

O P I N I O N

By its order dated April 19, 1966, the Commission instituted an investigation into the operations, rates and practices of Willig Freight Lines, a California corporation.

A public hearing was held before Examiner Fraser on June 15, 1966, at San Francisco.

Respondent conducts operations under a certificate of public convenience and necessity granted by Decision No. 59397, dated December 15, 1959, as amended by Decision No. 60148, dated May 24, 1960. Respondent operates out of 10 terminals in California, with its main office in San Francisco. It owns and operates 203 power vehicles, 147 trailers and 30 dollies. It employs 71 office personnel, 23 mechanics and 208 drivers. Its total gross revenue for 1965 was \$4,841,707. Copies of appropriate tariff and distance tables were served upon respondent.

During June and July of 1965, a representative of the Commission's Field Section visited the Los Angeles and San Francisco terminals of Willig Freight Lines, Inc., and reviewed

the records on 700 shipments hauled during the period from July 1 through December 31, 1964. The underlying documents relating to 71 shipments were taken from the respondent's files and photocopied. They were introduced in evidence as Exhibits 1, 1A, 2, 2A, and 3. Said photocopies were submitted to the Rate Analysis Unit of the Transportation Division together with certain supplemental information gathered by the staff representative. Based upon the data taken from the photocopies and the supplemental information, rate studies were prepared and introduced as Exhibits 5 through 10. After modification at the hearing the rate exhibits reflect undercharges of \$5,001.33 and overcharges of \$83.56.

The first 23 parts (Exhibit 5) involve an improper consolidation, wherein several shipments are converted into one shipment by consolidating the weight transported. The commodity was listed as rough (iron) castings. The next 36 parts (Exhibit 6) involve the same violation on shipments of bottle caps and containers. The four parts in Exhibit 7 and the one part in Exhibit 9 resulted in undercharges due to the respondent's use of incorrect rates. On parts 1, 3, 4 and 6 of Exhibit 8 respondent charged and collected a greater sum than the rate specified in its tariff. Parts 2, 5 and 7 of Exhibit 8 result in undercharges due to the improper consolidation of shipments by totaling the weight, then selecting a rate based on the consolidated weight.

Exhibits 4 and 4A consist of a set of documents which show 38 apparent instances in which the respondent provided a free rating service for a shipper. The record shows that respondent's driver signs the shippers manifest on picking up the load, which is hauled to respondent's terminal and left in charge of a rate man, who provides the routing, rating and necessary documentation. No charge

is made for this service. The staff classified this activity as an accessorial rating service which the respondent is not authorized to provide by its tariff.

A witness testified that the respondent was sold to a new owner in April of 1965; the new owner had no prior connection with respondent, although one of the two prior owners is still an employee.

A rate expert employed by respondent testified the undercharges resulted from errors in rating. He stated respondent has only two rate men at the San Francisco terminal and two at the Los Angeles terminal; these men are under considerable pressure and see each set of freight bills only once; also the errors are almost exclusively on split pickup and delivery shipments which are the most difficult of all to rate; in addition, the principal shipper involved frequently calls respondent's terminal to request an immediate pickup, if a truck is near it is dispatched to the shipper by radio and the pickup is completed long before the rate clerk is notified of the transaction; there was never any intent to violate the law and the undercharges resulted from inadvertence. The witness further testified that the staff admitted 9 errors on their original set of rate exhibits. The errors were almost all typographical and have been corrected, but the staff's 9 errors on 71 parts is equivalent in percent of error to the respondent's 71 errors out of 700 freight bills checked.

Exhibits 11 and 12 were placed in evidence by respondent. Exhibit 12 shows that respondent transported 137,055 shipments from July 1, 1964 through December 31, 1964 and that 72 rate violations would constitute a percent of error equivalent to five percent of one percent of the total.

Respondent received an undercharge letter in November of 1957 and collected all of the undercharges noted therein.

Staff counsel suggested a punitive fine of \$1,500 in addition to a fine in the amount of the undercharges. Counsel for respondent replied that all rate witnesses agreed it was impossible to rate for a long period without some errors and the percent of error on the rating by respondent seemed to be within the predicted norm applicable to the work of any rate expert. Counsel noted that respondent is now managed by new owners who had no connection with respondent when the undercharges occurred, and who discontinued providing the accessorial service in question. He requested that no punitive fine be imposed.

After consideration the Commission finds that:

1. Respondent operates pursuant to a certificate of public convenience and necessity granted by Decision No. 59397, dated December 15, 1959, as amended by Decision No. 60148, dated May 24, 1960.
2. Respondent was served with appropriate tariffs and distance tables.
3. Respondent charged less than its lawfully prescribed tariff rate or the prescribed minimum rate in the instances as set forth in Exhibits 5, 6, 7, 8 and 9 resulting in undercharges in the amount of \$5,001.33 as set forth in Exhibit 10.
4. Respondent charged and collected more than its lawfully prescribed tariff rate on Parts 1, 3, 4, and 6 of Exhibit 8.
5. Respondent provided a shipper with an accessorial service, which was not authorized by its filed tariffs. No punitive fine will be imposed, but a cease and desist order will issue and respondent is hereby admonished that strict adherence to tariff provisions must be maintained.

Based upon the foregoing findings of fact, the Commission concludes that respondent violated Section 494 of the Public Utilities Code; that it should pay a fine pursuant to Section 2100 of the Public Utilities Code in the amount of \$5,001.33 and cease and desist from providing a free rating service to shippers.

The Commission expects that respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges and refund the overcharges. The staff of the Commission will make a subsequent field investigation thereof. If there is reason to believe that respondent or its attorney, has not been diligent, or has not taken all reasonable measures to collect all undercharges or refund all overcharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Respondent shall pay a fine of \$5,001.33 to this Commission on or before the twentieth day after the effective date of this order.

2. Respondent shall take such action, including legal action, as may be necessary to collect the amount of undercharges and to refund the amount of overcharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections and refunds.

3. Respondent shall proceed promptly, diligently and in good faith to pursue all reasonable measures to refund all overcharges and to collect the undercharges, and in the event the overcharges to

be refunded or the undercharges ordered to be collected remain unrefunded or uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the overcharges remaining to be refunded or the undercharges remaining to be collected and specifying the action taken to refund such overcharges or to collect such undercharges, and the result of such action, until such overcharges are refunded in full and such undercharges have been collected in full or until further order of the Commission.

4. Respondent shall cease and desist from providing accessorial services not authorized by its filed tariffs and from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser or greater amount, than the rates and charges in its filed tariffs.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 21st day of DECEMBER, 1966.

[Signature]  
President  
George E. Hoover  
[Signature]

Commissioner Frederick B. Holcroft did not participate in the disposition of this proceeding.

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Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.