

**ORIGINAL**

Decision No. 72434

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of NEWTON S. DAVIS for authority under Section 454 of the Public Utilities Code, to increase passenger bus fares and express charges, between San Jose and Mt. Hamilton.

Application No. 49083  
Filed January 16, 1967

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432  
Petition for Modification  
No. 441  
Filed January 16, 1967

O P I N I O N

Newton S. Davis, doing business as Mt. Hamilton Stage Line, operates a passenger stage and freight service between San Jose and Mt. Hamilton (Lick Observatory of the University of California) and intermediate points. Davis operates one round trip each day using a combination freight and passenger vehicle.

Copies of the application and petition were served in accordance with the Commission's procedural rules. No protests have been received.

Davis, applicant and petitioner herein (hereinafter called applicant), seeks authority from the Commission to completely revise and to bring up-to-date his passenger fares and charges for freight (express) service. Applicant requests that the sought authority be

granted without hearing and that he be authorized to publish and file the sought rates and fares on 10 days' notice. Specifically, applicant seeks the following:

1. To construct one-way fares on the basis of 4.177 cents per constructive mile, as such constructive mileages are determined by the Commission's Distance Table No. 4. Such request results in fare increases ranging up to 10 percent.

2. To cancel the present round-trip fare between San Jose and Mt. Hamilton, applicable when two persons travel together; and, in lieu thereof, to establish round-trip fares between all points based on 180 percent of the applicable one-way fare. Said request results in fare reductions, except between San Jose and Mt. Hamilton. The sought round-trip fare between San Jose and Mt. Hamilton would result in an increase.

3. To establish reduced children's fares and 10-ride family books.

4. To cancel participation in Minimum Rate Tariff No. 2,<sup>1</sup> with respect to shipments in excess of 100 pounds, and to publish in lieu thereof, a grasshopper scale of charges per shipment applicable to all commodities based on the current minimum charges in Minimum Rate Tariff No. 2 for shipments up to 300 pounds, and charges determined by applying second-class rates in said tariff for shipments over 300 pounds, but not over 500 pounds. The latter charges would be less than the minimum rates insofar as shipments contain articles rated higher than second class. (Shipments over 500 pounds would not be taken.)

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<sup>1</sup> Smaller common carriers of property were permitted during World War II to adopt Highway Carriers' Tariff No. 2 (the predecessor to Minimum Rate Tariff No. 2) as a wartime expedient to save the cost of publishing their own tariffs. Several carriers did so, including applicant. Such method of tariff publication subsequently was discontinued by other carriers. Applicant is the last remaining carrier whose tariff publication is made in such manner.

5. With respect to shipments under 100 pounds, to publish a grasshopper scale of charges constructed on the basis of 36 cents per shipment plus 4 cents per pound on the highest weight in each bracket; and to establish rates on groceries and related articles transported from grocery stores in San Jose, based on 26 cents per shipment plus 2-1/2 cents per pound, to Halls Valley and intermediate points, and 26 cents per shipment plus 3 cents per pound for Smith Creek and Mt. Hamilton. Said rates would replace current rates of 2 cents per pound.

6. Authorization of a special governmental rate quotation made to the State of California (University of California, as operator of Lick Observatory) under Section 530 of the Public Utilities Code, under which applicant proposes to assess a flat charge of \$281 per month for all express shipments delivered to Lick Observatory.

The application states that the sought authority is part of an overall program to raise rates to a compensatory level.

According to the application, passenger traffic never has been heavy. Table 1 (set forth hereinafter) indicates that passenger revenues are less than one percent of total revenues. The principal use of applicant's passenger service is between Lick Observatory and San Jose. The establishment of the sought round-trip and 10-ride family fares is to encourage greater usage of applicant's service at Lick Observatory. From the application it appears that the overall effect of applicant's proposal will be a reduction in the level of passenger fares.

With respect to rates for freight shipments, applicant is now authorized to depart from minimum rates for shipments of 100 pounds or less, under a general exemption granted to passenger stage

corporations. (Decision No. 58804, dated July 28, 1959, in Case No. 5432 et al., unreported.)

Applicant's present rates for shipments under 100 pounds have remained unchanged since 1953. Applicant proposes to raise said rates to a more compensatory level.

For shipments over 100 pounds, applicant has adopted the rates set forth in Minimum Rate Tariff No. 2. Such form of tariff publication was intended to be a temporary wartime expedient and was not intended by the Commission to continue permanently. Cancellation of applicant's participation in Minimum Rate Tariff No. 2 is necessary to meet tariff filing requirements of General Orders Nos. 79 and 80-A. The levels of rates which applicant proposes to assess for shipments over 100 pounds are related to the current minimum rates and charges set forth in Minimum Rate Tariff No. 2.

A staff member of the Commission's Transportation Division has prepared a report concerning applicant's operations and rate structure. Said report is incorporated in the record herein as Exhibit 1. It indicates that applicant's operations are marginal, and that applicant is in urgent need of additional revenues in order to continue operations. The report recommends that the application and petition be granted.

The application contains an income and expense statement for the year 1965, which reflects data similar to that set forth in applicant's annual report filed with the Commission. Said statement is set forth in Table 1 below:

TABLE 1

Mt. Hamilton Stage Lines  
Income and Expense Statement - Year 1965

<u>Revenue from Motor Carrier Operations</u>	
Freight Revenue .....	\$10,185.63
Passenger Revenue .....	115.50
Total .....	<u>10,301.13</u>
<u>Motor Carrier Operating Expenses</u>	
Repairs, Servicing Equipment, Tires and Tubes .....	882.43
Drivers' and Helpers' Wages .....	-
Fuel and Lubricating Oil .....	1,131.14
Other Transportation Expenses .....	186.32
Station and Terminal Expenses .....	60.00
Insurance .....	386.60
Office Salaries and Expenses .....	-
Depreciation Expense .....	538.75
Operating Taxes and Licenses .....	224.58
Total .....	<u>3,391.82</u>
Net Operating Income before Income Taxes	6,909.31

Applicant's annual report for the year 1966 is incorporated in the record herein by this reference. Table 2, below, sets forth revenues and expenses for the year 1966, as set forth in applicant's annual report filed with the Commission.

TABLE 2

Mt. Hamilton Stage Lines  
Income and Expense Statement - Year 1966

<u>Revenue from Motor Carrier Operations</u>	
Freight Revenue .....	\$3,626.72
Passenger Revenue .....	99.00
Other Operating Revenue - Freight ..	6,226.70
Total .....	<u>9,952.42</u>
<u>Motor Carrier Operating Expenses</u>	
Repairs, Servicing Equipment, Tires and Tubes .....	693.52
Drivers' and Helpers' Wages .....	120.00
Fuel and Lubricating Oil .....	1,213.27
Other Transportation Expenses .....	251.06
Station and Terminal Expenses .....	60.00
Insurance, Injuries and Damages ....	711.40
Office Salaries and Expenses .....	-
Depreciation Expense .....	643.25
Operating Taxes and Licenses .....	235.11
Total .....	<u>3,927.70</u>
Net Operating Income before Income Taxes	6,024.72

Applicant drives the vehicle. No salary for this service is included in Tables 1 and 2. Applicant has no full time employees, but is assisted by his family. A portion of the family residence is used as an office. No charges for these services are included in Tables 1 and 2. We find that the following sums of \$6,000 per annum (\$500 per month) for the services of driving the vehicle, and \$900 per annum (\$75 per month) for office help and office rent would reasonably represent the value of the services performed by applicant and his family, which amounts were not included in the figures submitted in applicant's annual reports for 1965 and 1966. With said adjustments, applicant's motor carrier operation was conducted near the break-even point, leaving no provision for return on investment.

Applicant's operative right was granted to a predecessor prior to 1920. Applicant's present tariff contains no restriction as to the amount of weight which may be transported in a single shipment. Applicant proposes herein to limit shipments to 500 pounds or less. Applicant's present operative right is not in certificate form, as it antedates the issuance of operative rights in this manner. Applicant's certificate should be revised to conform to the operations he intends to perform and should be restated in certificate form.

We find as follows:

1. Applicant is in urgent need of additional revenues in order to continue the services performed by him. Present rates and fares are not just and reasonable.
2. The increases resulting from the establishment of the fares, rates and rules sought herein are justified.

3. Applicant's proposed rates, insofar as they result in charges less than the minimum rates established by this Commission for shipments of 100 pounds and over, will be reasonable for the services to which they apply and are justified by transportation conditions.

4. The special contract with the University of California will result in reduced rates which may be less than rates published by applicant or by other common carriers or authorized to be assessed by highway permit carriers. Said reduced rates will be just and reasonable for services performed by applicant for the University of California (as operator of Lick Observatory).

5. Applicant's present operative right is not stated in appendix form. Applicant's equipment does not permit the handling of shipments in excess of 500 pounds. In order to avoid confusion to the public and to reflect operations actually conducted, applicant's operative right requires revision and restatement as set forth in Appendix A. Public convenience and necessity require such operations.

6. A public hearing is not necessary.

The Commission concludes that Application No. 49083 and Petition No. 441 in Case No. 5432 should be granted; applicant should be authorized to depart from the minimum rates set forth in Minimum Rate Tariff No. 2 to the extent provided in Finding 3 hereof; applicant should file with the Commission his statement of reduced rates for the University of California, as required by Decision No. 51831 in Case No. 5432 (54 Cal. P.U.C. 332); and applicant's operative right should be revised and restated as set forth in Appendix A hereto.

Newton F. Davis is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. Newton F. Davis is authorized to establish the increased rates, fares and rules proposed in Application No. 49083. Applicant is authorized to depart from the minimum rates established in Minimum Rate Tariff No. 2 to the extent necessary to publish said rates and rules. Tariff publications authorized to be made as a result of the order herein may be made effective not earlier than ten days after the effective date hereof on not less than ten days' notice to the Commission and the public. The authority granted in this paragraph shall expire unless exercised within one hundred twenty days after the effective date of this order.

2. In addition to the required posting and filing of tariffs, applicant shall give notice to the public by posting in his buses and terminals a printed explanation of his fares. Such notice shall be posted not less than five days before the effective date of the fare changes and shall remain posted for a period of not less than thirty days.



3. Newton F. Davis is authorized to transport property at a reduced rate for the University of California (as operator of Lick Observatory), but not less than \$281 per month for all transportation of express between San Jose and Mt. Hamilton. The agreement covering said reduced rates shall be filed with the Commission in triplicate as provided by the order in Decision No. 51831.

4. A certificate of public convenience and necessity is granted to Newton F. Davis, authorizing him to operate a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes particularly as set forth in Appendix A attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted in paragraph 4 of this order shall supersede any and all operative rights previously granted to applicant or his predecessors, which operative rights shall be revoked effective concurrently with the effective date of the tariff filings required by paragraph 6(b) hereof.

6. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if he accepts the certificate of public convenience and necessity herein granted, he will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A and insurance requirements of the Commission's General Order No. 101-B. Failure to comply with and observe the safety rules, or the provisions of General Orders Nos. 98-A or 101-B, may result in a cancellation of the operating authority granted by this decision.

- b. Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.
- c. The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.
- d. The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 98-A.
- e. Applicant shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 16th day of MAY, 1967.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
Commissioners

HJH

Appendix A

NEWTON S. DAVIS  
doing business as  
MT. HAMILTON STAGE LINE

Original Page 1

Newton S. Davis, doing business as Mt. Hamilton Stage Line, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers, baggage (not exceeding 100 pounds in weight) and shipments of express (not exceeding 500 pounds in weight) between San Jose and Mt. Hamilton and intermediate points over the following route:

Commencing at the Greyhound Depot in the City of San Jose thence via Almaden Avenue, East Santa Clara Street, Alum Rock Avenue and Mt. Hamilton Road to Mt. Hamilton Lick Observatory.

Restriction: No local passengers with origin and destination both between San Jose and Linda Vista shall be transported.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 72434, Application No. 49083.