

ORIGINAL

Decision No. 79269

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Willig Freight Lines,)
a California corporation, for a re-)
fund of penalty paid in connection)
with 2nd Quarter 1970 Quarterly)
Report of Gross Operating Revenue.)

Application No. 52442
(Filed February 11, 1971)

Robert L. LaVine, Attorney at Law, for Willig Freight Lines, applicant. ✓
Scott K. Carter, Attorney at Law, for the Commission staff.

O P I N I O N

On November 13, 1970 applicant Willig Freight Lines paid a penalty assessed by the Commission in the amount of \$933.87 because of the Commission's insistence that the fee due in connection with applicant's second 1970 Quarterly Report of Gross Operating Revenue was not paid in time to avoid the assessment of a 25 percent penalty thereon. Applicant contends that such 25 percent penalty should not have been assessed and collected by the Commission from applicant and requests the Commission to refund to applicant the sum of \$933.87 plus interest at the maximum legal rate from November 13, 1970 to the date of repayment of said sum.

A public hearing was held in San Francisco before Examiner Cline on April 26, 1971. The matter was taken under submission on the filing of the closing and reply brief of applicant on July 15, 1971.

The following Code sections are applicable to this proceeding:

Sections 5003.1 and 5007 of the Public Utilities Code provide, in pertinent part, as follows:

"5003.1. Every railroad corporation, express corporation, freight forwarder, and every person or corporation operating vessels, as these terms are defined in Part 1 (commencing with Section 201) of Division 1, and every motor transportation broker, as the term is defined in the Motor Transportation Brokers' Act, and every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, between the first and fifteenth days of January, April, July, and October of each year, file with the commission a statement showing the gross operating revenue derived by such person or corporation from the transportation of property for the preceding three calendar months, and shall at the time of filing such report pay to the commission a fee of four dollars (\$4) for each quarter. Every express corporation, freight forwarder, motor transportation broker, and every person or corporation owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, at the time of filing such report, pay to the commission a fee equal to one-third of 1 percent of the amount of such gross operating revenue; provided, however, that for any particular fiscal year the commission, with the approval of the Department of Finance, may fix said fee at less than one-third of 1 percent of said amount."

"5007. If any transportation agency referred to in this chapter is in default in the payment of the fees prescribed, other than filing fees, for a period of 30 days or more, the commission may suspend or revoke any certificate of public convenience and necessity, permit, or license of such agency, and shall estimate from all available information the gross operating revenue of such agency, and shall add to such estimate a penalty of 25 percent for failure, neglect, or refusal to report. The transportation agency shall be estopped from complaining of the amount of such estimate. In no event shall such penalty be less than one dollar (\$1). Upon payment of the amount estimated and the penalty thereon, the certificate, permit, or license of such agency theretofore suspended in accordance with the provisions of this section shall be reinstated"

Section 6707 of the Government Code provides, in pertinent part, as follows:

"When the last day for filing any instrument or other document with a State agency falls upon a Saturday or a Holiday, such action may be performed upon the next business day with the same effect as if it had been performed on the date appointed." (Emphasis added.)

Section 12(a) of the Code of Civil Procedure provides, in pertinent part, as follows:

"If the last day for the performance of any act provided or required by law to be performed within a specified period of time shall be a holiday, then such period is hereby extended to and including the next day which is not a holiday" (Emphasis added.)

Section 12 of the Code of Civil Procedure and Section 6800 of the Government Code identically provide that:

"The time in which any act provided by law is to be done is computed by excluding the first day and including the last"

Section 11002 of the Government Code in part provides:

"If a remittance to cover a payment required by law to be made to the state or to a state agency on or before a specified date is sent through the United States mail properly addressed with the postage prepaid, it shall be deemed received on the date shown by the post office cancellation mark stamped upon the envelope containing the remittance"

The court cases cited by the Commission staff in its brief to support a conclusion that Section 11002 of the Government Code is not applicable to this proceeding are not in point. All but one of these cases were decided before 1939 when said Section 11002 was enacted. Gage v. Jordan, 23 C.2d 794, 806 (1944) does not involve a remittance of funds under said Section 11002 but pertains to the filing of an initiative with the Secretary of State.

Section 5010 of the Public Utilities Code provides:

"The commission may make refunds out of money in its possession of the fees provided for in this chapter [Chapter 6. Transportation Rate Fund and Fees] when it appears that such fees were paid in error."

Based upon a consideration of the record, the Commission finds:

1. The Quarterly Report of Gross Operating Revenue for the Period April 1, 1970 to June 30, 1970, states that the report and fees are due July 15, 1970, and if not paid by August 15, 1970, a penalty of 25 percent of the fee shown on line 8 of the report should be added.

2. August 13, 1970, was a Thursday, August 14, 1970, was a Friday, and August 15, 1970, was a Saturday.

3. Applicant Willig Freight Lines prepared the Quarterly Report of Gross Operating Revenue for the Period April 1, 1970 to June 30, 1970 and a check in payment of the fee shown on line 8 thereof in the amount of \$3,735.47 on Friday, August 14, 1970.

4. Said Quarterly Report and check in payment of the \$3,735.47 fee were mailed to the Commission in an envelope postmarked Monday, August 17, 1970, and were received by the Commission on Wednesday, August 19, 1970.

5. The Commission delivered a Notice of Balance Due dated September 3, 1970, showing a 25 percent penalty in the amount of \$933.87 because the postmark on the envelope in which said fee of \$3,735.47 was enclosed was later than August 15, 1970.

6. A revised Notice of Delinquent Fees dated October 9, 1970, advising that unless payment of said penalty of \$933.87 was received by November 14, 1970, its operating authority would be suspended was sent to Willig Freight Lines by the Commission.

7. To avoid suspension of its operating authority applicant Willig Freight Lines paid to the Commission said penalty of \$933.87 on November 13, 1970.

8. Applicant has filed a claim for refund of said penalty of \$933.87 plus interest with the State Board of Control.

9. The Commission takes official notice that said claim for refund of said penalty of \$933.87 plus interest was denied by the State Board of Control on March 2, 1971.

Based upon the foregoing findings the Commission concludes as follows:

1. Under Section 5007 of the Public Utilities Code, Section 12 of the Code of Civil Procedure and Section 6800 of the Government Code the 29th day after July 15, 1970 or Thursday, August 13, 1970, was the last day on which Willig Freight Lines could have paid the fee of \$3,735.47 as shown on its Quarterly Report of Gross Operating Revenues for the Period April 1, 1970 to June 30, 1970, without the addition of the 25 percent penalty.

2. By administrative construction of said statutes and notice to the public in its quarterly reports the Commission has permitted transportation agencies to pay the fees due on such quarterly reports on or before August 15, 1970, without penalty.

3. As August 15, 1970, the time to which the Commission had administratively extended the date for payment of such quarterly fees without payment of penalty, was a Saturday, under Section 6707 and Section 11002 of the Government Code remittances of fees shown on Quarterly Reports of Gross Operating Revenues for the Period of April 1 to June 30, 1970, in envelopes postmarked no later than Monday, August 17, 1970, could be made by transportation agencies without incurring the 25 percent penalty.

4. Section 5010 of the Public Utilities Code provides for refunds by the Commission out of the Transportation Rate Fund but does not provide for the addition of interest to such refunds.

5. The Commission should refund to applicant Willig Freight Lines out of the Transportation Rate Fund the additional fees in the amount of \$933.87 which were paid as a penalty in error to the

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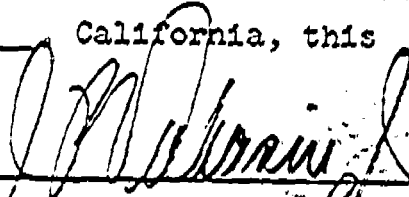
Commission by Willig Freight Lines in connection with its Quarterly Report of Gross Operating Revenue for the Period April 1, 1970 to June 30, 1970.

O R D E R

IT IS ORDERED that the Secretary of the Commission is directed to refund to Willig Freight Lines out of the Transportation Rate Fund the additional fees in the amount of \$933.87 which were paid as a penalty in error to the Commission by Willig Freight Lines in connection with its Quarterly Report of Gross Operating Revenue for the Period April 1, 1970 to June 30, 1970.

The effective date of this order shall be the date hereof.

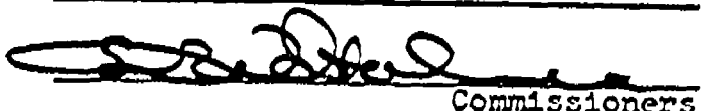
Dated at San Francisco California, this 27th day of OCTOBER, 1971.



Chairman







Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.