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Decision No. 82360

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation  
on the Commission's own motion  
into the lawfulness of rates  
assessed when a highway common  
carrier has dual operating  
authority and is a participant  
in joint rates.

Case No. 9472  
(Filed November 21, 1972)

(Appearances are listed in Appendix A)

O P I N I O N

By its order dated November 21, 1972, the Commission instituted an investigation into the operations, rates, and practices of all highway common carriers, which possess a permit as a highway contract carrier or a permit as a radial highway common carrier and which also publish joint rates and routes with another highway common carrier in tariff schedules on file with the Commission, for the purpose of determining the lawful rates to be assessed and the operating authority to be utilized in such circumstances. Copies of the order were served upon all highway common carriers serving within the State.

Public hearing was held before Examiner Daly on March 20, 1973 and May 15, 1973, and the matter was submitted on opening and closing briefs, the latter having been filed on October 15, 1973.

The issue was first raised in a letter from the California Trucking Association dated April 17, 1970. Following an interchange of letters between the Association and the Commission staff, the Transportation Division of the Commission on September 14, 1972 issued Informal Ruling No. 205, which provided that a highway carrier

possessing operating authority both as a highway common carrier and as a permitted carrier "cannot use its permit authority as a means to avoid charging the required published joint rates. Any other construction would raise the possibility of the carrier discriminating between its public utility and permit service."

Copies of the letters and Informal Ruling No. 205 were introduced by the Commission staff as Exhibit No. 1. The parties decided to brief the issue and no additional evidence was offered.

The opening brief filed on behalf of certain affected carriers<sup>1/</sup> raised issues as to whether existing joint rates filed with this Commission are in compliance with statutory requirements and whether adoption of Informal Ruling No. 205 would be in compliance with the provisions of the Environmental Quality Act of 1970. These are matters that have no relevancy to the issue in this proceeding, which is whether a carrier having a joint rate arrangement with another carrier can also operate as a permitted carrier between points within its certificated area, on the one hand, and points within the certificated area of the other carrier, on the other hand.

The staff takes the position that a highway common carrier must charge the rates published in its filed tariff, whether these be individual rates of the carrier or joint rates with another highway common carrier. As authority for this position the staff relies on Article XII, Section 22 of the California Constitution and Sections 494 and 532 of the Public Utilities Code. The staff further asserts that use of other than the filed rates permits the potential of discrimination between shippers.

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<sup>1/</sup> Alco Transportation Company, Auto Fast, Freight, Inc., California Cartage Co., Inc., G.I. Trucking Company, G & H Transportation, Inc., Kerner Trucking Service, Inc., LDS Truck Lines, Inc., La Salle Trucking Company, Law Express, Inc., Pacific Motor Trucking Company, Presto Delivery Service, Inc., Rams Express, Royal Transportation Co., Inc., Slates Warehouses, Inc., Sterling Transit Company, Inc., and Williams Transportation, Inc.

Section 3542<sup>2/</sup> of the Public Utilities Code, which prohibits ✓  
a carrier from transporting the same commodities between the same  
points both as a highway common carrier and as a highway contract  
carrier, is claimed to support the staff position. In response  
thereto the affected carriers argue that Section 3542 prohibits only  
those permitted operations performed within a carrier's own certifi-  
cated area.

Although a certificated carrier may, unless prohibited  
by the terms and conditions of its certificate, establish through  
routes and joint rates between all points served by it without  
approval of the Commission (Section 1066 of the Public Utilities  
Code),<sup>3/</sup> no certificate issued to one carrier can be united with  
the certificate issued to another carrier without the Commission's

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2/ "3542. No person or corporation shall engage or be permitted  
by the Commission to engage in the transportation of  
property on any public highway, both as a highway common  
carrier and as a highway contract carrier or as a highway  
common carrier and a petroleum contract carrier of the  
same commodities between the same points, except as  
provided in Section 1066.2."

3/ "1066. Unless prohibited by the terms and conditions of any  
certificate that may be involved, any one highway common  
carrier, or petroleum irregular route carrier, may  
establish through routes and joint rates, charges, and  
classifications between any and all points served by it  
under any and all certificates or operative rights issued  
to or possessed by it."

express approval (Section 1065 of the Public Utilities Code).<sup>4/</sup> The mere filing of joint rates does not in itself constitute an extension of the carriers' certificated authorities within the meaning of Section 1065 unless the carriers also intend to combine their certificates so as to provide a unified operation, in which case, the prior approval of the Commission would have to be obtained and, if granted, would, as the staff contends, make such operation subject to the dual operating authority restriction contained in Section 3542.

In all instances where a common carrier enters into a joint rate arrangement with another common carrier it is necessary that a tariff schedule be filed with the Commission setting forth the rates, charges, and classifications for the transportation of property from each point in its certificated area to each point in the other carrier's certificated area. (Section 486 of the Public

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<sup>4/</sup> "1065. Without the express approval of the Commission, no certificate of public convenience and necessity issued to one highway common carrier, or petroleum irregular route carrier, under the provisions of this article, or heretofore issued by the commission to one highway common carrier, or petroleum irregular route carrier, for the transportation of property by auto truck or self-propelled vehicle, nor any operative right of one highway common carrier, or petroleum irregular route carrier, founded upon operations actually conducted in good faith on July 26, 1917, shall be combined, united, or consolidated with another such certificate or operative right issued to or possessed by another such carrier, so as to permit through service between any point or points served by one highway common carrier, or petroleum irregular route carrier, on the one hand, and any point or points served by another such carrier, on the other hand."

Utilities Code.)<sup>5/</sup> Once such a schedule has been filed with the Commission neither carrier can thereafter charge or collect a different compensation for the transportation of property than the applicable rates and charges specified in the schedule, except upon order of the Commission. (Section 494 of the Public Utilities Code.)<sup>6/</sup> As a result no carrier having a joint rate arrangement with another carrier may circumvent the requirements of Section 494 by using its permitted authority as a subterfuge for the purpose of providing a

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- <sup>5/</sup> "486. Every common carrier shall file with the commission and shall print and keep open to the public inspection schedule showing the rates, fares, charges, and classifications for the transportation between termini within this State of persons and property from each point upon its route to all other points thereon; and from each point upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate has been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through routes shall show the separately established rates, fares, charges, and classifications applicable to the through transportation."
- <sup>6/</sup> "494. No common carrier shall charge, demand, collect, or receive a different compensation for the transportation of persons or property, or for any service in connection therewith, than the applicable rates, fares, and charges specified in its schedules filed and in effect at the time, nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, except upon order of the commission as provided in this part, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons."

direct service between points covered by the joint rate arrangement at rates different than those specified in the joint rate schedule. To permit otherwise would be contrary to Article XII, Section 21 of the California Constitution, which prohibits a common carrier from discriminating in its charges for the transportation of the same classes of freight within the State.<sup>7/</sup> Once a joint rate schedule has been filed all subsequent operations of the carriers between the points involved are necessarily subject to the provisions of the published tariff.

After consideration the Commission finds and concludes that although a carrier having a joint rate arrangement with another carrier may also operate as a permitted carrier between points within its certificated area, on the one hand, and points within the certificated area of the other carrier, on the other hand, it cannot use its permitted authority as a means to avoid charging rates different than those set forth in the published joint rates.

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<sup>7/</sup> Article XII, Section 21 of the California Constitution.

"No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State. . . ."

O R D E R

IT IS ORDERED that that portion of the Informal Ruling No. 205 which reads as follows is affirmed and hereby adopted:

Thus, a carrier cannot use its permit authority as a means to avoid charging the required published joint rates. Any other construction would raise the possibility of the carrier discriminating between its public utility and permit service.

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

Dated at San Francisco, California, this 22<sup>nd</sup> day of JANUARY, 1974.

Vernon L. Sturgeon  
President  
William J. Hughes, Jr.  
H. D. Brown  
John A. Mc  
Edo  
Commissioners

APPENDIX A

LIST OF APPEARANCES

Respondents: Lee Pfister, for Willig Freight Lines; Joe MacDonald, for California Motor Express; John Odoxta, for Shippers Imperial, Inc; R. D. Stokes, for Haslett Company; Armand Karp, for Rogers Motor Express; Murchison & Davis, by Donald Murchison, Attorney at Law, for G. I. Trucking Co., Alco Transportation Co., Auto Fast Freight, Inc., LDS Truck Lines, States Warehouses, Inc., Presto Delivery Services, Inc., G & H Transportation, Inc., Rams Express, California Cartage, Inc., Williams Transportation, Inc., Kerner Trucking Services, Inc., Sterling Transit Service, Inc., Royal Transportation Co., Inc., Law Express, Inc., La Salle Trucking Company, and Pacific Motor Trucking Company; David G. Carter, for Peters Truck Lines; Ray J. Mitchell, for System 99; John McSweeney and T. R. Dwyer, for Delta Lines; Robert L. Rodgers, for Fresno-Bass Lake Freight Lines, Inc.

Protestant: William Applegate, for Applegate Drayage Company.

Interested Parties: M. J. Nicolaus, for Western Motor Tariff Bureau, Inc.; R. W. Smith, Attorney at Law, for California Trucking Association; Loughran, Berol & Hegarty, by Marshall G. Berol, Attorney at Law, for himself; J. C. Kaspar, for California Trucking Association.

Commission Staff: Lionel B. Wilson, Attorney at Law.