

Decision No. 37319

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 LOUIS ERICKSON, doing business under)
 the name and style of WEST BERKELEY)
 EXPRESS AND DRAYING CO., to sell, and)
 CLYDE GLAESER and EVELYN OTILIA GLAESER,)
 as co-partners, to purchase the business,)
 assets and good will of the West Berkeley)
 Express and Draying Co., operating as a) Application No. 26043
 transportation company inter-city between)
 Berkeley, Emeryville, Albany, Oakland,)
 Piedmont, Alameda, El Cerrito, Richmond,)
 San Pablo and Stege, and trans-bay between)
 San Francisco and Berkeley, Albany and)
 Emeryville.)

BY THE COMMISSION:

O P I N I O N

In this application, Louis Erickson and Alma Erickson, his wife, doing business as West Berkeley Express and Draying Co., request authority from the Commission to sell and transfer, and Clyde Glaeser and Evelyn Otilia Glaeser, his wife, co-partners, request authority to acquire certain physical property and highway common carrier operative rights between Berkeley, Oakland, Richmond and San Francisco as more particularly described in the Commission's Decision No. 26540 and Decision No. 29196. The physical property involved consists of shop and garage equipment, furniture and office equipment and supplies, and approximately forty-one units of automotive equipment including trucks, tractors, semi-trailers, full-trailers and automobiles. Current assets, except cash, and current liabilities as of February 1, 1944 are also to be transferred. A copy of the agreement of sale is on file in this application. This agreement is, in our opinion, an evidence of indebtedness under Section 52 of the Public Utilities Act and its execution should be

authorized by the Commission.

The agreement after describing the properties which are being transferred recites that the Buyer will pay for the properties \$40,000, payable at the rate of \$500 per month, beginning March 1, 1944, and a like amount on the first day of each succeeding month thereafter, until the full amount of the purchased price has been paid. It further provides that if, upon the final payment of the \$40,000, the Seller is still alive, the Buyer will continue to pay the Seller \$500 a month so long as the Seller lives. No interest is included in the monthly payments. It will be observed that the agreement carries a contingent liability of \$500 per month. We do not regard this contingent liability as a part of the cost of the properties. If the contingent payment becomes an actuality, it should be made out of net income and should not be added to operating expenses or to the cost of the properties.

Subject to the Commission's approval the title to the properties will pass to the Buyers as of February 1, 1944.

The cost of the properties to be transferred from the Sellers to the Buyers and the liabilities to be assumed by the Buyers as of January 31, 1944 are reported as follows:

<u>Current Assets</u>		
Receivable Accounts	\$ 11,902.66	
Materials and Supplies	1,000.00	
Total		\$12,902.66
Tangible Property	121,489.99	
Less Depreciation	71,201.80	
Total		<u>\$50,288.19</u>
Total Assets		\$63,190.85
<u>Current Liabilities</u>		
Payable Accounts	\$ 795.56	
Accrued Taxes		
Accrued Insurance	2,304.40	
Others		
Total		<u>\$ 3,099.96</u>
<u>Net Worth</u>		\$60,090.89

The Commission is informed that Louis Erickson has reached the age at which he desires to retire from the transportation business. Clyde Glaeser is his son-in-law and has been in the transportation business for a number of years. He is general manager of the business to be acquired.

In our opinion the authority requested should be granted and such will be the order. A public hearing is not necessary.

Clyde Glaeser and Evelyn Otilia Glaeser are placed upon 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 a consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State which is not in any respect limited to the number of rights which may be given.

O R D E R

Good cause appearing,

IT IS ORDERED as follows:

(1) That Louis Erickson and Alma Erickson, his wife, are hereby authorized to sell and transfer the highway common carrier operative right defined in the Commission's Decision No. 26540 and granted by Decision No. 29196 and the property referred to in the agreement of sale on file in this application to Clyde Glaeser and Evelyn Otilia Glaeser, his wife, as partners. Clyde Glaeser and Evelyn Otilia Glaeser, his wife, as partners are hereby authorized

to acquire the foregoing described operative right and property and hereafter to operate under said operative right.

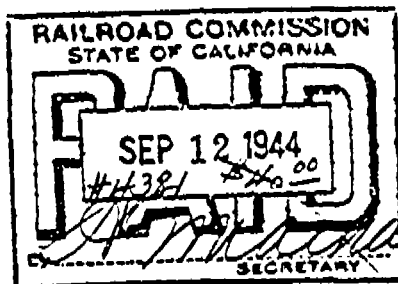
(2) That Clyde Glaeser and Evelyn Otilia Glaeser shall comply with the rules of the Commission's General Order No. 80 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time tables within 60 days from the effective date hereof, and on not less than 5 days' notice to the Commission and the public.

(3) Louis Erickson and Alma Erickson, his wife, and Clyde Glaeser and Evelyn Otilia Glaeser, his wife, as partners may, after the effective date hereof, execute an agreement similar in form to the agreement on file in this application.

(4) The authority herein granted will become effective when Clyde Glaeser and Evelyn Otilia Glaeser, his wife, as partners have paid the fee required by Section 57 of the Public Utilities Act, which fee is Forty dollars (\$40.00).

(5) The action taken herein shall not be construed to be a finding of value for any purpose other than the proceeding herein involved.

Dated at San Francisco, California, this 7th day of September, 1944.



Richard L. Lusk
Justice J. Coe
Francis R. Havenue
Walter L. Lusk
COMMISSIONERS

DISSENTING OPINION

I consider it quite improper for any agreement representing a sale and purchase of any utility business subject to the jurisdiction of this Commission not to have a definite price fixed at the time the agreement is approved and the transfer authorized by this Commission.

This sales agreement calls for \$500 a month with a minimum of \$40,000 and an unknown maximum, the latter being determined by the length of life of the seller since it is understood that he would receive \$500 a month from the buyer until the time of his death.

While it is stated in the opinion that the Commission does not regard this contingent liability as a part of the cost of the properties and that if the contingent payment becomes an actuality it should be made out of net income and should not be added to operating expenses or to the cost of the properties, this in my opinion still does not make it appropriate to include this contingent liability in the sales agreement representing the transfer of this property which is subject to the approval of the Railroad Commission.



Frank W. Clark

Commissioner