

Decision No. 38213

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of ROBERT GARDEN to sell and Pacific Freight Lines, a corporation, to purchase the highway common carrier operations of the seller located in Kern County and to consolidate operations of seller with those of buyer.

ORIGINAL

Application No. 26990

BY THE COMMISSION:

O P I N I O N

This is an application joined in by Robert Garden and Pacific Freight Lines, the former to sell and the latter to purchase certain highway common carrier operative rights and equipment used by the seller in the conduct of his operation.

The operative rights owned by Garden were acquired by him through purchase authorized by Decision No. 37219, and involve transportation in general between Bakersfield and the territory east thereof, including Taft and McKittrick, and intermediate points, all in Kern County. Garden also acquired, and is operating, a right between Bakersfield and Wasco and intermediate points, which right was created by Decision No. 19976. These are the operative rights which the seller proposes to dispose of in this proceeding.

The buyer, Pacific Freight Lines, among other things, conducts a common carrier operation between Los Angeles and Fresno, with certain lateral rights to serve the adjacent territory. The operating rights sought to be acquired herein are to become a part of this transportation system. It also transports property in interstate commerce between points in Kern County along the routes and in the territory served by the intrastate operations of Garden, the seller herein.

The applicants allege that if the proposed transfer is authorized, shippers and receivers of freight located in Kern County will be able to have property moving in intrastate and interstate commerce handled on the same equipment and by one carrier, to wit, the buyer, Pacific Freight Lines.

Attached to the application is an agreement of sale between the parties which sets forth that the consideration is \$20,000, of which amount \$1,555 is alleged to represent the value of the equipment and \$18,445 the value of the operative rights.

As required by law, \$350 in filing fees has been paid to the State in connection with the filing of applications relating to the operative rights involved herein. If the Pacific Freight Lines acquires said operative rights and properties, and pays therefor \$20,000, it may charge to tangible property accounts \$1,555, and to Account 1511 - Franchises - not more than \$350. The remainder, \$18,095, should be charged to Account 1550 - Other Intangible Property - and written off on or before December 31, 1946, by a charge or charges to Account 2946 - Debits to Surplus.

We are of the opinion, and so find, that the sale and transfer of operative rights and equipment as proposed is not adverse to the public interest and the application will be granted. A public hearing is not necessary.

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

Pacific Freight Lines is hereby 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 the 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

Application having been made in the above entitled matter and the Commission being duly advised and hereby finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That Robert Garden is authorized to sell and transfer and Pacific Freight Lines to acquire, the operative rights and equipments referred to in the foregoing opinion and to consolidate said operative rights with the remainder of its system and thereafter to operate thereunder.

(2) That applicants shall comply with the provisions of 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 schedules within sixty (60) days from the effective date hereof, and on not less than one (1) day's notice to the Commission and the public.

(3) That if Pacific Freight Lines acquires said operative rights and pays therefor the amount indicated in the

foregoing opinion, it shall charge to Account 1550 - Other Intangible Property - the sum of \$18,095, and write off such amount, on or before December 31, 1946, by a charge or charges to Account 2946- Debits to Surplus.

(4) That in the event such authority to transfer is exercised, Pacific Freight Lines shall notify the Commission thereof within 10 days after the actual date of such transfer.

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

Dated at San Francisco, California, this 19th day of October, 1945.

[Signature]

Justus F. Cooney

[Signature]

[Signature]
COMMISSIONERS