

Decision No. 39188

**ORIGINAL**

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
J. NELSON KAGARISE, doing business under  
the firm name of PUBLIC FREIGHT SERVICE,  
to sell, and PUBLIC FREIGHT SYSTEM, a Cali-  
fornia corporation to purchase, an auto-  
mobile freight line operated between Los  
Angeles and Los Angeles Harbor, California,

Application  
No. 27599

and,

Application of PUBLIC FREIGHT SYSTEM for  
Authority to Issue shares of stock.

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In the Matter of the Application of  
J. NELSON KAGARISE, doing business under  
the firm name of Public Freight Service  
to sell and PUBLIC FREIGHT SERVICE, a  
California Corporation to purchase, an  
express corporation and freight forwarder  
business with its principal offices in  
Los Angeles, California

Application  
No. 27600

and

Application of PUBLIC FREIGHT SERVICE for  
authority to issue shares of stock.

O P I N I O N

In these two applications the Railroad Commission is asked to make its orders as follows: (1) authorizing J. Nelson Kagarise to sell and transfer certain automobile freight line operative rights and property to Public Freight System, a corporation, hereinafter referred to as Truck Company; (2) authorizing J. Nelson Kagarise to sell and transfer certain express corporation and freight forwarder rights and properties to

Public Freight Service, a corporation, hereinafter referred to as Express Company; (3) authorizing Public Freight System to issue 454 shares of its common capital stock of the aggregate par value of \$22,700, and (4) authorizing Public Freight Service to issue and sell 72 shares of its common capital stock of the aggregate par value of \$3,600.

The applications show that J. Nelson Kagarise, doing business under the firm name and style of Public Freight Service, at the present time is engaged in the operation of an automobile freight line for the transportation of property between Los Angeles and Los Angeles Harbor, operating under a prescriptive right heretofore acquired by him by purchase under authority granted by Decision No. 38162, dated August 28, 1945, and in the operation of an express corporation and freight forwarder business, as the terms are defined in Sections 2 (k) and 2 (ka), respectively, of the Public Utilities Act, generally in the Los Angeles metropolitan area and points in Los Angeles, San Bernardino, Riverside and Orange Counties. Applicant Kagarise alleges that the rights to such business exist by reason of the conduct thereof on and prior to August 1, 1933, and continuously thereafter. The scope and extent of said express corporation and freight forwarder rights have not been passed upon by the Railroad Commission. (1)

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(1) Decision No. 38130 dated August 28, 1945, in Application No. 26597.

It appears that Kagarise now desires to separate his two classes of operations so that each may be conducted as a separate and independent business. To this end he has caused the organization, under the laws of the State of California, of two separate corporations. To one of them, namely, Truck Company, he proposes to transfer his automobile freight line operative rights and properties, and to the other, namely, Express Company, he proposes to transfer his express and freight forwarder rights and business. Concurrently therewith, said Truck Company and Express Company will issue their shares of stock in payment for such rights and properties. Upon the completion of the transaction, all the outstanding shares of stock of Express Company will be owned by Truck Company, and all the outstanding shares of stock of Truck Company will be owned by Kagarise.

In support of this program, Kagarise reports that he desires to register the operations presently conducted by him as a motor highway common carrier with the Interstate Commerce Commission, pursuant to the Interstate Commerce Act, Part II, Section 206. He reports that he is advised that the Interstate Commerce Commission will not permit the registration of motor highway common carrier operative rights under Section 206 of Part II in the situation where one individual owns both a motor highway common carrier operation and a freight forwarder business as an individual and in his individual capacity. It is believed, by him, that the proposed plan providing for the separation of the ownership will meet the requirements of the Interstate Commerce Commission.

The properties to be acquired by Truck Company include the operative right acquired by Kagarise under said Decision No. 38162 and other assets, subject to certain liabilities, as follows:

Assets

Revenue Equipment	\$34,779.45	
Plant and Furniture	563.79	
Deferred Assets	3,805.32	
Stock of Public Freight Service	3,600.00	
Cash	<u>9.31</u>	
Total Assets		\$42,757.87

Liabilities

Miscellaneous Accounts Payable	\$ 5,776.54	
Term Liabilities	2,400.00	
Equipment Obligations	<u>12,931.33</u>	
Total Liabilities		<u>22,107.87</u>
Net Worth of Assets to be Transferred		<u>\$20,650.00</u>

In payment therefor Truck Company proposes to issue 413 shares of its stock at its par value of \$50 per share, and in addition to sell 41 shares of stock of the aggregate par value of \$2,050 at par for cash for the purpose of obtaining funds to provide working capital.

The properties to be acquired by Express Company include certain assets, subject to certain liabilities, as follows:

<u>Assets</u>	
Cash	\$ 978.90
Office Furniture and Fixtures	1,554.08
Office Machines	504.00
Accounts Receivable	3,033.16
Advances, Deposits Prepayments	654.85
Operative Rights	<u>No Value</u>
Total Assets	\$6,724.99
<u>Liabilities</u>	
Current Liabilities	\$1,479.49
Term Liabilities	<u>1,645.50</u>
Total Liabilities	<u>3,124.99</u>
Net Worth	<u>\$3,600.00</u>

As stated, Express Company proposes to issue 72 shares of its stock in full payment for such properties.

The Commission has given consideration to these two applications and is of the opinion that a public hearing is not necessary, and that the requests should be granted. In authorizing the transfer of the properties and the issue of stock, we are making no finding of the value of the properties and rights herein authorized to be transferred. The order merely authorizes Kagarise to transfer whatever rights he may hold. Public Freight System and Public Freight Service are 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 in the number of rights which may be given.

O R D E R

Applications having been made to the Railroad Commission for permission to transfer properties and to issue stock, and the Commission having fully considered the matters, and being of the opinion that the money, property or labor to be procured or paid for through the issue of such stock is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, therefore,

IT IS HEREBY ORDERED as follows:

1. J. Nelson Kagarise, after the effective date hereof and on or before October 31, 1946, may transfer to Public Freight System the operative rights heretofore acquired by him pursuant to Decision No. 38162, dated August 28, 1945, and the properties referred to in Application No. 27599, and may transfer to Public Freight Service whatever express and freight forwarder rights he may hold and the properties referred to in Application No. 27600, which corporations may acquire said rights and properties and assume the payment of the indebtedness referred to in the preceding opinion.

2. Public Freight System, after the effective date hereof and on or before October 31, 1946, may issue \$22,700 par value of its common capital stock and deliver \$20,650 thereof

in payment for the rights and properties and other assets referred to in the preceding opinion, and issue and sell \$2,050 par value thereof at par for cash and use the proceeds to provide working capital.

3. Public Freight Service, after the effective date hereof and on or before October 31, 1946, may issue \$3,600 par value of its common capital stock in payment for the assets as referred to in the preceding opinion.

4. Public Freight System, after the effective date hereof, may acquire and hold the outstanding \$3,600 of stock of Public Freight Service.

5. J. Nelson Kagarise and Public Freight Service shall comply with the provisions of Tariff Circular #2 by filing, in triplicate, and concurrently making effective, appropriate tariff withdrawal and adoption supplements satisfactory to the Commission, within Sixty (60) days from the effective date hereof and on not less than One (1) day's notice to the Commission and to the public.

6. Public Freight Service shall file with the Commission, in triplicate, within Thirty (30) days after the execution thereof, copies of any contract entered into by it as an express corporation and any common carrier relating to the performance of any service by the latter as an underlying common carrier.

7. J. Nelson Kagarise and Public Freight System 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 tables within Sixty (60) days from the effective date hereof and on not less than One (1) day's notice to the Commission and to the public.

8. Public Freight System and Public Freight Service shall file with the Commission a report, or reports, of the issue of the stock herein authorized and of the disposition of the proceeds as required by the terms of the Commission's General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

9. The authority herein granted will become effective Twenty (20) days from the date hereof.

Dated at San Francisco, California, this 9<sup>th</sup> day of July, 1946.

Harold C. Huber  
James F. Greener  
Francis E. Clark  
Samuel J. Dwyer  
Harold C. Huber  
Commissioners