

**ORIGINAL**

Decision No. 41059

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 WALTER C. ROFF, RICHARD ERNST and )  
 MARSHALL GILL, a co-partnership, )  
 doing business as THE BURNEY TRANS- )  
 PORTATION CO., for authority to )  
 transfer and sell, and WALTER C. )  
 ROFF and R. C. LYMAN, a partnership, )  
 doing business as THE BURNEY TRANS- )  
 PORTATION CO., to acquire the opera- )  
 tive rights, and the equipment used )  
 in connection with an automobile )  
 freight line for the transportation )  
 of lumber and forest products as a )  
 common carrier for compensation from )  
 Canyon Creek and Burney, California, )  
 to Pondosa Upper Yard and Nubieber, )  
 California, Application No. 24110, )  
 Decision No. 34185, Cal. P.U.C. )

Application No. 28877

OPINION AND ORDER

Marshall Gill, Walter C. Roff and Richard Ernst, copart-  
 ners doing business as The Burney Transportation Co., were authorized  
 by Decision No. 39654, dated November 26, 1946, in Application No.  
 27989 to acquire (a) a certificate of public convenience and  
 necessity to operate an automobile freight line for the trans-  
 portation of lumber and forest products from Canyon Creek and Burney  
 to Pondosa Upper Yard and Nubieber and (b) operative property used  
 in connection therewith. By this application, they seek authority  
 to transfer the operative rights covered by the certificate, certain  
 operating equipment and the business conducted as The Burney Trans-  
 portation Co. to Walter C. Roff and R. C. Lyman.

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(1) The certificate was originally granted to one F. C. Schott by  
 Decision No. 34185, dated May 13, 1941, in Application No.  
 24110.

The proposed consideration under which Lyman is to acquire a one-half interest in the enterprise as a copartner with Roff is \$19,000, to be paid in cash. It is stated that the properties to be transferred are valued at \$28,500, of which amount \$1,000 is claimed as the value of the operative rights. The application indicates that both Roff and Lyman are experienced operators in transporting property for hire over the public highways. They represent that the same standard of service as is now being rendered will be continued in the event that the proposed transfer is consummated. No change in the present tariffs or time schedules is proposed.

Walter C. Roff and R. C. Lyman 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 to the number of rights which may be given. The action taken herein shall not be construed to be a finding of the value of the properties authorized to be transferred.

The Commission is of the opinion that a public hearing is not necessary in this matter and that the application should be granted, as herein provided. Therefore,

IT IS HEREBY ORDERED as follows:

(1) That Marshall Gill, Walter C. Roff and Richard Ernst, copartners, may, after the effective date hereof and on or before January 31, 1948, sell and transfer, and Walter C. Roff and R. C. Lyman, copartners, may purchase and acquire the operative rights, property and business to which reference is made in this decision. Such sale and transfer shall be made pursuant to the terms and conditions set forth herein.

(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 tables within 60 days from the date hereof and on not less than one day's notice to the Commission and the public.

(3) That the authority herein granted shall become effective 20 days from the date hereof.

Dated at San Francisco, California, this 22nd day of December, 1947.

Karol A. Kula  
Justin J. Palmer  
Wesley K. Kull  
R. J. [unclear]

COMMISSIONERS