B:AM A. No. 29657

ORIGINAL

Decision No. 42193

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of E. O. HURLBERT and V. G. KEYES, a partnership, doing business as GENERAL TRANSFER COMPANY, and PACIFIC FREIGHT LINES, a corporation, for (1) approval of a lease of operative rights under a lease and option to purchase agreement; (2) authority to effect a sale of real and personal property; and (3) of Pacific Freight Lines to issue notes.	Application No. 29657

Gordon, Knapp & Hennessy by Wyman C. Knapp, for Pacific Freight Lines; and Fleharty, Guntner and Thompson by John E. Fleharty, for E. O. Hurlbert and V. G. Keyes, applicants.

Lafayette J. Smallpage, for Lillie Transportation Company; and Phil Jacobson by Lafayette J. Smallpage for Western Truck Lines, protestants.

Joseph Araiza, for The Atchison, Topeka and Santa Fe Railway Company and Santa Fe Transportation Company; and Charles A. Miller for Valley Motor Lines, Inc., and Valley Express Co., interested parties.

OPINION

This proceeding involves the acquisition by Pacific Freight Lines, hereinafter called Pacific, of the operative rights and property of E. O. Hurlbert and V. G. Keyes, copartners doing business as General Transfer Company, hereinafter called General.

By application, filed September 1, 1948, (1) Hurlbert and Keyes seek authority to let and Pacific seeks authority to lease, subject to an option to purchase, the highway common carrier operative right granted to the former by Decision No. 40485, dated June 28, 1947, in Application No. 24202; (2) Hurlbert and Keyes seek authority to sell and Pacific seeks authority to purchase certain motor vehicle equipment, real estate and miscellaneous personal property; and (3) Pacific seeks authority to issue to Hurlbert and Keyes, in consummating the proposed purchase, 28 promissory notes in the principal sum of $6,663.40 each, plus interest at 5 per cent per annum. A public hearing was held before Commissioner Potter and Examiner Bradshaw at Fresno on September 30, 1948. Briefs have been filed.

Applicants operate as highway common carriers of general commodities, with certain exceptions, in intrastate and interstate commerce, pursuant to certificates of public convenience and necessity. General's operations are between Selma and Fresno, on the one hand, and, on the other hand, San Francisco, Oakland, Emeryville, San Leandro, Alameda, Berkeley, El Cerrito, Richmond, Hayward, South San Francisco, San Bruno, Palo Alto, Sunnyvale, Santa Clara and San Jose. Pacific operates from San Luis Obispo and Fresno south to numerous points in Southern California and Arizona.

The proposed lease of operative rights is for a term of 7 years, for which Pacific is to pay as rental $39,900, at the rate of $475 per month. In consideration of an additional $100, Pacific will have the exclusive option to purchase General's operative rights at any time (prior to the expiration of the lease) after 13 months following approval of the lease arrangement by this Commission and the Interstate Commerce Commission. Pacific's rights thereunder to purchase the operative rights, however, are contingent upon its satisfying the terms and conditions of the proposed contract to purchase General's equipment, other personal property and real estate. The proposed purchase price of the operative rights is the difference between (a) the monthly payments made under the lease plus the $100 consideration and (b) $40,000.

During the period the proposed lease is in effect, Pacific is to keep accounting records of shipments having both point of origin and destination within the service area covered by the leased operative rights. The General Transfer Company segment of Pacific's operations is to be maintained as a separate division. It is stipulated that during the life of the agreement or for 5 years, should the provisions of the agreement be satisfied at an earlier date, General and its copartners shall refrain from engaging in for-hire transportation in competition with Pacific in the counties in which General now operates. The lease-and-option arrangement, according to Pacific's general manager, was decided upon in order to afford General better security. It was believed that if Pacific should undertake to purchase the operative rights at this time and defaulted in its payments General might not be able to reacquire operating authority. A copy of the lease and option to purchase is filed in this application as Exhibit "A".

The property which Pacific seeks to purchase from General consists of (a) 13 trucks, 14 tractors, 20 semi-trailers, 10 trailers and 17 dollies; (b) 2 lots in Fresno with improvements, consisting of an office, shop, shed and storeroom now used by General as a terminal; and (c) miscellaneous personal property, including office and shop equipment, automotive parts and tires. The proposed consideration is $220,000, of which $162,457 is for the motor vehicle equipment, $45,000 for the real property and improvements thereon and $12,525 for the miscellaneous personal property. Pacific also proposes to assume certain unpaid equipment obligations of General covered by conditional sales contracts, which, it was testified, amounted to about $13,000 or $14,000 at the time the hearing was held. The property is more specifically described in the agreement filed in this application as Exhibit "B".

It is contemplated that, upon the approval of these transactions by this Commission and the Interstate Commerce Commission (including the lease of General's interstate operative right), Pacific will pay to General $33,425 in cash and deliver the 28 promissory notes which the former seeks authority to issue. The first of the promissory notes is to become due January 1, 1949. One each of the succeeding 26 notes is to become due on the first day of the first month of each quarter-year following January 1, 1949, while the twenty-eighth note is to become due October 1, 1955. In the event that necessary approval is not obtained by January 1, 1949, the first of the notes is to become due January 1, 1950, and the others on the first day of the first month of each quarter-year thereafter.

Pacific proposes to execute a deed of trust covering the real property and improvements thereon as security for the payment of the first 8 of the proposed notes. It is also proposed to execute a chattel mortgage or chattel mortagages on the motor vehicle equipment to secure payment of the remaining notes. Copies of the forms upon which these proposed instruments will be prepared are on file in this proceeding. According to the testimony, the proposed purchase prices of the real estate, motor vehicle equipment and other property were arrived at as a result of independent appraisals. Although the proposed purchase prices exceed the book value of the properties as carried in General's accounts, the general manager of Pacific regards the prices as reasonable based upon the appraisals and his experience in the acquisition of property and equipment used in highway transportation operations.

It is stated that General's income is more than sufficient to enable Pacific to pay the proposed indebtedness. An exhibit of record purporting to disclose the financial results of General's operations indicates an average annual net income before Federal income taxes of $32,808 during the period from 1940 to 1947, inclusive. The net income before income taxes for the first half of 1948 is reported as $31,666. The payments to be made upon the proposed promissory notes will approximate $26,650 per year, plus interest.

A consolidated balance sheet of Pacific, Pacific Freight Lines Express and Pacific Tank Lines, affiliated companies, as of June 30, 1948, was received in evidence. The figures are summarized in the following tabulation:

Assets

Current assets	$ 582,871
Tangible property	2,607,729
Intangible property	22,702
Investments and advances	33,400
Prepayments and deferred charges	130,105
TOTAL	$3,376,807

Liabilities

Current liabilities	$ 808,694
Long-term obligations	574,915
Reserves	112,521
Deferred credits	155,500
Capital stock	640,900
Capital surplus	415,845
Earned surplus	668,433
TOTAL	$3,376,807

According to another exhibit of record, the consolidated income of the same 3 carriers for the first half of 1948 discloses the following: Operating revenues, $3,022,213; operating expenses, $2,966,409; net operating income $55,804; and net income before Federal income taxes, $63,257.

Pacific, its general manager testified, now serves numerous points north of Fresno through an interchange arrangement with Valley Motor Lines, Inc., and Valley Express Co., at Fresno. It is asserted that a substantial daily movement of northbound traffic is transported under this arrangement, but as a result of the acquisition by Valley Motor Lines, Inc., of the operative rights of Reader Truck Lines (authorized by Decision No. 41237, dated February 17, 1948, in Application No. 28864), the volume of southbound traffic originating north of Fresno in which Pacific now participates is much lighter. Pacific claims that it is, therefore, required to move considerable empty equipment southbound and that its revenues have been reduced.

An exhibit indicates that during 3 selected weeks prior to the transfer of the Reader operative rights from 42 to 53 per cent of the semi-trailers transporting northbound traffic beyond Fresno were used in hauling southbound traffic which originated north of that point, whereas during the 3 weeks commencing March 15, 1948, less than 12 per cent of the northbound semi-trailers were used in transporting southbound traffic. It appears that the volume of traffic to points north of Fresno is about the same as prior to the transfer of the Reader rights, being approximately 765 tons weekly. On the other hand, the traffic from points north of Fresno during the periods cited before the transfer ranged from 240 to 350 tons a week as contrasted with from 39 to 74 tons weekly subsequent thereto.

The acquisition of General's operative rights and physical properties is desired by Pacific as a means of recouping southbound traffic it formerly enjoyed and to restore the balance of north and southbound movements which previously existed. Pacific's general manager also declared that if the proposed arrangement is consummated an improved service would be rendered from points served by Pacific to the territory north of Fresno by eliminating delays which occur when different carriers participate in the transportation. It is proposed to continue the operations presently conducted by General.

While Pacific now owns a terminal at Fresno, its present facilities are claimed to be inadequate to take care of General's equipment. The real property to be acquired from General will, therefore, be used by Pacific for the time being. Pacific's witness anticipates that ultimately it will be necessary to obtain a larger terminal and dispose of both the present one and that now used by General. It was testified that, from an operating standpoint, General's trucking equipment is necessary in conducting the proposed operations. Some of this equipment is said to be of a type which can be used interchangeably with Pacific's present equipment. It is represented that such of it as cannot be so utilized will be used in maintaining General's present operations. An undisclosed, but apparently small, number of tank trucks is also included in General's fleet. Pacific states that this equipment will be placed in the service of its affiliate, Pacific Tank Lines.

Lillie Transportation Company and Western Truck Lines, — highway carriers which, among a number of others, are applicants for certificates of public convenience and necessity authorizing operations between points in southern and northern California — protested the granting of the application. On brief, the first-named protestant contends that, in the absence of a showing of public convenience and necessity, Pacific should not be permitted to establish a through service between Los Angeles and Stockton, unless and until protestant is granted the same right. It is, therefore, urged that in view of the other pending proceedings — in which Pacific is also an applicant — an order authorizing the lease and transfer should not be made at this time. Other contentions advanced in opposition to the granting of the application are that General has not performed any service as a common carrier under its certificate and the record is inadequate to show the reasonableness of the proposed considerations.

The question presented for decision in this proceeding is whether the proposed lease and transfer will be injurious to the rights of the public (Re So. Calif. Freight Lines, 42 C.R.C. 41, 44, citing Hanlon vs. Eshleman, 169 Cal. 200, 203), rather than whether public convenience and necessity require the establishment of a new operation. To impose a restriction prohibiting Pacific from operating a through service would, in our opinion, be contrary to the policy adopted by the Legislature in enacting the following clause in Section 50-3/4 (c) of the Public Utilities Act:

> "Any one highway common carrier may establish through routes and joint rates, charges, and classifications between any and all points served by such highway common carrier under any and all certificates or operative rights issued to or possessed by such highway common carrier."

A contention that action in a transfer proceeding should be deferred until the pending certificate proceedings are disposed of was rejected in the Reader Case, supra. The record does not support the allegation that General has not or is not conducting operations pursuant to the certificate granted to it; nor does it appear that the proposed rental and purchase prices are unreasonable.

In view of all of the facts of record in this proceeding, the Commission is of the opinion and finds that the public interest would not be adversely affected by the approval of the lease of the operative right, with which we are here concerned, and of the proposed transfer of operative property.

However, the action taken herein shall not be construed to be a finding of the value of the properties herein authorized to be transferred. Should Pacific elect to exercise its option to purchase General's operative right, applicants should join in a supplemental application seeking authority to consummate the purchase and sale thereof.

We further find, upon the record in this proceeding, that the property to be procured and paid for by Pacific through the issue of promissory notes, as proposed, is reasonably required by it for the purposes herein stated.

The application will, accordingly, be granted.

O R D E R

Application as above entitled having been filed, a public hearing having been held thereon and, based upon the evidence adduced and the conclusions and findings set forth in the preceding opinion,

IT IS ORDERED:

(1) That E. O. Hurlbert and V. G. Keyes, copartners, are hereby authorized, on or before January 31, 1949, to let to Pacific Freight Lines, a corporation, and the latter is hereby authorized to acquire, as lessee with option to purchase for a term of 7 years, the certificate of public convenience and necessity granted to E. O. Hurlbert and V. G. Keyes by Decision No. 40485, in Application No. 24202, all in accordance with the terms of the lease and option

agreement on file in this application as Exhibit "A".

(2) That E. O. Hurlbert and V. G. Keyes, copartners, are hereby authorized, on or before January 31, 1949, to sell and transfer, and Pacific Freight Lines, a corporation, is hereby authorized to purchase and acquire, the real property, automotive equipment and other personal property, to which reference is made in this decision. Such sale and transfer shall be subject to the terms and conditions set forth in a purchase contract executed by the parties on August 30, 1948, a copy of which appears as Exhibit "B" attached to the application on file herein.

(3) That Pacific Freight Lines, a corporation, is hereby authorized, on or before January 31, 1949, to issue 28 negotiable promissory notes payable to E. O. Hurlbert and V. G. Keyes, copartners, each in the principal sum of $6,663.40, with interest at the rate of 5 per cent per annum, for the purpose of acquiring the real property, automotive equipment and other personal property, to which reference is made in paragraph (2) of this order, the first of said notes to become due January 1, 1949, one each of the succeeding 26 notes to become due on the first day of the first month of each quarter-year following January 1, 1949, and the last, or twenty-eighth, note to become due October 1, 1955; provided that in the event the transactions here involved, including the acquisition by Pacific Freight Lines of interstate operating authority, are not approved by the Interstate Commerce Commission until after January 1, 1949, the first of said notes shall become due January 1, 1950, one each of the succeeding 26 notes shall become due on the first day of the first month of each quarter-year following January 1, 1950, and the last, or twenty-eighth, note shall become due October 1, 1956.

(4) That Pacific Freight Lines, a corporation, is hereby authorized to execute, to secure the payment of the promissory notes authorized in paragraph (3) of this order, a deed of trust and chattel mortgage or chattel mortgages substantially in the same form as the form of deed of trust and chattel mortgage filed in this proceeding as a part of Exhibit No. 6.

(5) That the authority herein granted is subject to the following conditions:

(a) The authority herein granted to issue notes will become effective when Pacific Freight Lines has paid the fee prescribed by Section 57 of the Public Utilities Act, which fee is $187.

(b) Within 30 days after the execution of the lease and purchase contract herein authorized, Pacific Freight Lines shall file a copy thereof and of any deed of trust or chattel mortgages executed pursuant thereto.

(c) Applicant 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 on not less than 5 days' notice to the Commission and the public.

Except as herein otherwise expressly provided, the effective date of this order shall be 20 days from the date hereof.

Dated at San Francisco, California, this 3rd day of November, 1948.

R. F. Trumman

Justus F. Craemer

Ira H. Rowell

Harold P. Huls

Kenneth Potter

COMMISSIONERS

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA
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W. C. Klipp