

ORIGINAL

Decision No. 44519

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HILLS TRANSPORTATION CO. for a)
certificate of public convenience)
and necessity to operate as a high-)
way common carrier for the trans-) Application No. 27226
portation of commodities generally)
between San Francisco and Los Angeles)
territories.)

Willard S. Johnson and Orla St. Clair, for Hills
Transportation Co.
Gordon and Knapp, by Joseph C. Gill, for Pacific
Freight Lines and Pacific Freight Lines Express.

OPINION ON FURTHER HEARING

Pacific Freight Lines and Pacific Freight Lines Express, hereinafter referred to as petitioners, filed a petition to reopen, take further evidence, and reconsider that portion of Decision No. 43003, dated June 14, 1949, wherein Hills Transportation Co., hereinafter called applicant, was granted a certificate of public convenience and necessity to operate as a highway common carrier between San Francisco and Los Angeles. The prayer of the petition is that the certificate be revoked.

A reply to the petition was filed by applicant, and, based upon the issues thus raised, the Commission on December 27, 1949, ordered that this proceeding be reopened. Public hearings were held in San Francisco before Examiner Bradshaw on April 26 and 27, 1950, and the matter submitted on briefs, since filed.

In 1944, applicant purchased from the Snowden Transportation Co. a certificate of public convenience and necessity, issued by the Interstate Commerce Commission, authorizing operations between

Los Angeles and San Francisco. Applicant also operated intrastate under permits issued by this Commission, and became one of the applicants receiving certificates from this Commission by said Decision No. 43003. In that consolidated proceeding, hearings were completed on December 29, 1948, and all briefs were filed by March 24, 1949. Certain petitions for rehearing were denied by Decision No. 43274, dated August 29, 1949, and the applicants were authorized to file tariffs and commence operations ninety days thereafter. Applicant filed its tariff effective November 25, and commenced operations under its certificate on that date.

It is the contention of petitioners that on and prior to May 17, 1949, (after submission of the consolidated proceedings and before issuance of the decision therein) applicant was negotiating for the sale of both its interstate and prospective intrastate operative rights with Consolidated Freightways, Inc. (hereinafter referred to as Consolidated), an interstate common carrier of general commodities by motor vehicle with principal offices at Portland, Oregon; that on July 12, 1949, applicant actually sold its interstate authority to Consolidated (for \$50,000 according to the evidence received herein) and joined with the latter in an application filed with the Interstate Commerce Commission on July 29, 1949, seeking approval of such sale; that applicant gave Consolidated an option to purchase whatever operative rights it would receive from this Commission, and thus disqualified itself from conducting future intrastate common carrier operations in the manner in which it had represented to this Commission the same would be conducted.

Applicant denied all of the allegations of the petition, except those concerning the sale of its interstate operative

authority and the petition for approval thereof, and further alleged that on November 15, 1949, it agreed to sell its intra-state operative authority to Consolidated for \$80,000, plus cash for the appraised value of its equipment, in the event the Interstate Commerce Commission would not approve the transfer of the interstate certificate unless the intrastate certificate were also sold.

E. A. Hills, president of applicant, was called by petitioners as an adverse witness under Section 2055, Code of Civil Procedure, and testified that for six months or a year prior to May 17, 1949, he had tried to interest various carriers in the purchase of applicant's interstate certificate. On that date he talked with Leland James, president of Consolidated, in Sacramento, and offered to sell that certificate for \$50,000. James was interested, and after returning to Portland, there followed an exchange of letters and approval by the boards of directors of the two corporations involved, as preliminary steps to execution of the formal contract of July 12, 1949. Hills also testified that he did not at any time during this period tell James, or any other person connected with Consolidated, that applicant had a matter pending before this Commission for an intrastate certificate - although other evidence disclosed that James had knowledge of it. He further stated that he did not want to sell his intrastate certificate, but agreed to do so in November only in order to facilitate the sale of the interstate right.

Willard S. Johnson, secretary-treasurer of applicant, testified as to the chronological events between August 29, 1949, the date applicant's certificate from this Commission became final,

and November 25, 1949, when applicant's tariffs became effective and it commenced operations thereunder. The gist of this testimony is that applicant proceeded with all possible dispatch to convert to highway common carrier status and operate as such. Johnson admitted that he was familiar with decisions of the Interstate Commerce Commission refusing to allow the sale of an interstate certificate while at the same time retaining an intrastate certificate over the same route, but stated he thought he could secure approval of the sale of the interstate certificate alone, by producing witnesses to establish public convenience and necessity.

In our opinion, the evidence does not support the result sought by petitioners. They charge in effect that applicant was trafficking in operative rights in applying for and securing a certificate with the intention of selling the same instead of operating thereunder. At the present time, applicant is operating under its certificate, and has executed only a contingent contract for its sale. Under the circumstances, our prior decision granting applicant a certificate should be affirmed.

ORDER ON FURTHER HEARING

A further hearing having been held, and based upon the evidence adduced and the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that the portion of Decision No. 43003, dated June 14, 1949, granting Hills Transportation Co. a certificate of public convenience and necessity to operate as a highway common carrier be and it is hereby affirmed.

This order shall become effective twenty (20) days after
the date hereof.

Dated at San Francisco, California, this 11th
day of July, 1950.

R. E. Indurana
Justus J. Galtner
Ernest Powell
Harold A. Kula
Kenneth Potter
COMMISSIONERS