

ORIGINAL

Decision No. 45517

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CLAUDE A. BEAGLE and)
 KATHERINE C. BEAGLE, / co-partners)
 doing business as Julian-Warner)
 Truck Line, as Lessors, and HARRY)
 W. RAE and LILLIAN EILEEN RAE, (co-)
 partners doing business as Bisher)
 Truck Line, as Lessees, to lease)
 Certificate (of Public Convenience)
 and Necessity) as a highway common)
 carrier between San Diego, Mesa)
 Grande, Oak Grove, Montezuma Valley,)
 Julian, Cuyamaca and intermediate)
 points.)

Application No. 31996

O P I N I O N

Applicants Claude A. Beagle and Katherine C. Beagle, copartners doing business as the Julian-Warner Truck Line, presently conduct highway common carrier operations under authority of this Commission, between San Diego on the one hand, and Cuyamaca, Montezuma, Oak Grove and Mesa Grande, over designated routes and including intermediate points.

Applicants Harry W. Rae and Lillian Eileen Rae, copartners doing business as Bisher Truck Line, are highway common carriers of freight between San Diego and Ramona, over certain designated routes serving intermediate points.

It is proposed in this application to lease to the Bisher Truck Line the operative rights presently held by the Julian-Warner Truck Line. Attached to the application is a copy of the proposed lease, which, under its terms, provides

that it shall be for a term of ten years, and the lessee agrees to pay a monthly rental of \$150.00 per month. It is further provided that the lessee shall have the option to purchase at any time during the ten-year period, and, in case such option is exercised, the moneys theretofore paid by the lessee to the lessor shall apply on the purchase price.

A public hearing was held in this matter before Commissioner Craemer and Examiner Syphers, on February 15, 1951, at San Diego.

During the course of this hearing an amendment to the application was filed, which, in effect, amends the proposed lease so as to provide that the parties thereto agree that, in the event this Commission does not now approve of a future contemplated transfer, the parties will join in making the necessary application to this Commission at the time it is desired to actually complete the transfer.

Testimony was presented by a partner of the lessor company to the effect that there is not sufficient business to justify the continued existence of two truck lines in the area between San Diego and Ramona. He further pointed out that the area north of Ramona is sparsely settled, and in and of itself would not justify continued operations by his company. Likewise, testimony was presented by a partner of the proposed lessee to the effect that that company is willing to enter into the lease agreement, and is willing to merge the rights at the end of the lease so as to constitute one authority rather than two. This witness also testified that his company has not obtained

sufficient business in the territory now served, but it was his opinion that by merging the two rights there would be sufficient business to sustain one profitable operation. There was no opposition to the proposed lease.

Financial statements of both parties are attached to the application, and tend to support the testimony presented at the hearing. As a matter of fact, the financial statements for the proposed lessor show that that company has been operating at a loss.

A thorough consideration of this matter justifies the conclusion, and we now find, that it is in the public interest to approve the proposed lease. However, we do not believe that the proposed sale should be approved so that it can be consummated at some indefinite time in the future, depending upon the desires of the parties. Therefore, that part of the application will be denied. If, at some future time, it is desired to complete the sale of these rights, the parties must necessarily again present the matter to this Commission.

Harry W. Rae and Lillian Eileen Rae, copartners doing business as Bisher Truck Line, 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.

O R D E R

Application as above entitled having been filed, a public hearing having been held thereon and the Commission being fully advised in the premises,

IT IS HEREBY ORDERED:

(1) That Claude A. Beagle and Katherine C. Beagle, co-partners doing business as Julian-Warner Truck Line, do, and they hereby are, authorized to lease to Harry W. Rae and Lillian Eileen Rae, copartners doing business as Bisher Truck Line, the operating rights presently held by Claude A. Beagle and Katherine C. Beagle under a certificate of public convenience and necessity granted by this Commission in Decision No. 43580, dated December 6, 1949, on Application No. 30685.

(2) That, pursuant to the authority herein granted, the lease agreement attached to the application herein, as amended, do, and it hereby is, approved, with the exception that the parties hereto shall not be authorized to effect a transfer of the operating authority here involved unless and until the permission of this Commission is secured.

(3) That the authority herein granted shall be subject to the following service regulations:

(a) Within thirty (30) days after the effective date hereof, applicants shall file a written acceptance of the authority herein granted.

(b) Within sixty (60) days after the effective date hereof, and upon not less than five (5) days' notice to the Commission and the public, Harry W. Rae and Lillian Eileen Rae, co-partners doing business as Bisher Truck Line, shall establish the service herein authorized and 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, tariffs and time schedules satisfactory to the Commission.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 31st day of April, 1951.

R. T. Davidson
Justice F. Craven
Harold A. Kule
Thomsett Tatten
John E. Mitchell
COMMISSIONERS