

ORIGINAL

Decision No. 46233

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of )  
GILROY COMMERCIAL COMPANY, a )  
corporation, )  
and )  
NORMAN E. ROSS and RALPH ROSS, )  
to transfer and sell public )  
warehouse property of )  
GILROY COMMERCIAL COMPANY, a )  
corporation. )  
----- )

Application  
No. 32740

O P I N I O N

This is an application for an order of the Commission authorizing the transfer of the properties of Gilroy Commercial Company to Norman E. Ross and Ralph Ross.

Gilroy Commercial Company for many years owned certain real property and improvements in Gilroy used in the operation of a hay, grain and feed business and in the conduct of a public utility warehousing business, the utility operations constituting but a small part of the total. The application shows that the corporation had been owned and controlled by W. B. Stuart, that said Stuart desired to retire from the operation of the business, and that he caused arrangements to be made for the transfer on or about March 1, 1947, of the properties and business of the corporation to Norman E. Ross and Ralph Ross, who subsequently have continued the operations, although they have never filed tariffs with the Commission in their own names.

The purchase price for the properties was \$30,000, of which \$7,250 was paid in cash and the balance was represented by a note for

\$22,750 payable at the rate of \$3,333 a year with interest at the rate of 5% per annum on deferred balances. The payment of the note was secured by a deed of trust.

The transfer of the properties and the execution of the deed of trust and note were not authorized by the Commission, although it appears that the failure of the parties to obtain such authorization was through inadvertence and with no intent to evade the provisions of the Public Utilities Act. When the requirements of the law were called to their attention they filed the present application for an order of the Commission.

Section 851 of the Public Utilities Code, (formerly Section 51(a) of the Public Utilities Act), reads in part as follows:

"No public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void."

The Commission is of the opinion that it cannot by a later order approve or ratify a transfer or encumbrance of public utility properties made without authorization from the Commission, and that it will be necessary for the parties to execute a new deed conveying the public utility properties and also a new deed of trust and note. Our investigation of this application shows that the principal amount of the note had been reduced to \$10,918 on July 31, 1951.

O R D E R

The Commission having considered the above entitled matter, and being of the opinion that a public hearing thereon is not necessary; that the application should be granted, as herein provided; that the transfer is not adverse to the public interest; that the money, property or labor to be procured or paid for through the issue of the note herein authorized is reasonably required by Norman E. Ross and Ralph Ross for the purpose specified herein; and that such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income; therefore,

IT IS HEREBY ORDERED as follows:

1. Gilroy Commercial Company, after the effective date hereof and on or before December 15, 1951, may transfer its warehouse business and property to Norman E. Ross and Ralph Ross.

2. Norman E. Ross and Ralph Ross may execute a deed of trust in substantially the same form as that filed in this proceeding, and may issue a note in the principal amount of not exceeding \$10,918 for the purpose indicated herein.

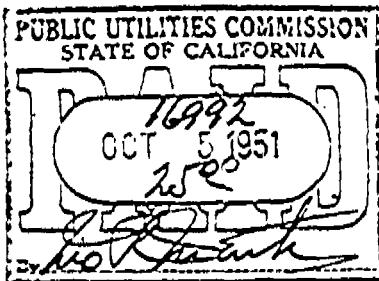
3. On not less than five (5) days' notice to the Commission and to the public, the tariffs now on file with the Commission, insofar as they name rates, rules and regulations governing warehouse operations formerly conducted by Gilroy Commercial Company, shall be supplemented or reissued to show that said Gilroy Commercial Company has withdrawn or canceled and that Norman E. Ross and Ralph Ross concurrently have adopted or established as their own said rates, rules and regulations. The tariff filings made pursuant to this order in all respects shall comply with the regulations governing

the construction and filing of warehouse tariffs set forth in the Commission's General Order No. 61.

4. Applicants shall file with the Commission, on or before December 31, 1951, a statement showing the action taken by them under this order.

5. The authority herein granted will become effective when Norman E. Ross and Ralph Ross have paid the minimum fee prescribed by Section 1904 of the Public Utilities Code (formerly Section 57 of the Public Utilities Act), which fee is twenty-five (\$25.00) dollars.

Dated at San Francisco, California, this 2<sup>nd</sup> day of October, 1951.



A. J. ...  
President  
Justice F. ...  
Harold ...  
W. J. Mitchell  
Commissioners