

ORIGINAL

Decision No. 47089

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 O. J. BOEDEKER and A. T. RAWLINS, a)
 partnership, doing business as)
 SACRAMENTO FREIGHT LINES, to buy,) Application No. 33209
 and RALPH A. HAGOPIAN, an individual,)
 doing business as HAGCO MOTOR LINES,)
 to sell operative rights and equip-)
 ment.)

Glanz & Russell, by Theodore W. Russell, for Ralph A. Hagopian doing business as Hagco Motor Lines, applicant.
Bertram S. Silver and Edward M. Berol, for Sacramento Freight Lines, applicant.
Gordon, Knapp & Gill, by Joseph Gill, for Pacific Freight Lines Express, protestants.
Turcotte & Goldsmith, by F. W. Turcotte, for Thompson Truck Lines, protestant.
H. J. Bischoff, for Southern California Freight Lines, protestant.
E. L. H. Bissinger, for Southern Pacific Company and Pacific Motor Trucking Company, protestants.

O P I N I O N

By the above entitled application Ralph A. Hagopian, an individual doing business as Hagco Motor Lines seeks authority to sell, pursuant to Section 851 of the Public Utilities Code, his operative rights as a highway common carrier, his trade name, his operating property and good will, and O. J. Boedeker and A. T. Rawlins, a partnership doing business as Sacramento Freight Lines, requests permission to acquire and operate said property, name and good will, and highway common carrier rights and assume the obligation now existing against the equipment to be transferred as follows:

Conditional Sales Contracts and Promissory Notes:

Payable to: Utility Trailer Sales Co., 4073 So. Alameda Street, Los Angeles

1. Date incurred:	October 12, 1950
Original Amount:	\$14,904.56
Unpaid: (3-15-52)	\$ 8,175.81
Original Contract	36 months
Rate of Interest:	5 per cent per annum
Payments Remaining:	23

Issued on 3 Vans Model No. SWX12

2. Date incurred:	March 1, 1951
Original Amount:	\$16,635.40
Unpaid: (3-15-52)	\$10,980.23
Original Contract:	36 months
Rate of Interest:	5 per cent per annum
Payments Remaining:	28

Issued on 2 Vans Model No. SWX12

3. Date incurred:	July 30, 1951
Original Amount:	\$5,642.52
Unpaid: (3-15-52)	\$3,076.52
Original Contract:	36 months
Rate of Interest:	5 per cent per annum
Payments Remaining:	33

Issued on 1 Stake Rack Model No. SWX12

4. Date incurred:	September 6, 1951
Original Amount:	\$4,238.20
Unpaid: (3-15-52)	\$2,293.26
Original Contract:	36 months
Rate of Interest:	5 per cent per annum
Payments Remaining:	34

Issued on 1 Stake Rack Model No. SWX12

Hagco at the present time has seven pieces of automotive equipment mortgaged under the following terms and conditions:

Chattel Mortgage and Promissory Note - Payable to Bank of America, Vernon Branch

Date incurred:	May 28, 1951
Original Amount:	\$14,532.88
Unpaid:	\$10,652.88
Original Contract:	30 months
Rate of Interest:	8 per cent per annum
Payments Remaining:	22

Security:

1947 Kenworth Tractor	Motor No. HS600592
1947 Kenworth Tractor	Motor No. HS600444
1941 Mack Tractor	Motor No. DR94118
1946 Chevrolet Stake	Motor No. DEA91242
1945 GMC Tractor	Motor No. 3086164
1938 International Flat Rack	Motor No. FAB24114119
1941 Chevrolet Stake	Motor No. 2AF1751281

The application alleges that the latter five pieces of automotive equipment are among those intended to be transferred. Applicant Hagopian will pay to the Bank of America, Vernon Branch,

the sum of approximately \$4,652.88 on said latter obligation which will leave a net unpaid balance of \$6,000. The two Kenworth Tractors, which are not to be transferred to applicant Sacramento Freight Lines, will then be withdrawn as security for said obligation, so that the latter company will assume \$6,000 of such obligation which will then be secured solely by the latter five pieces of equipment.

Public hearing was held on April 8, 1952, in Los Angeles before Examiner Rowe at which time oral and documentary evidence was adduced and the matter submitted for decision.

The Commission finds from the evidence of record that applicant Hagopian has during the years 1951 and 1952 been operating at a loss; that both applicants have been maintaining terminals and pickup and delivery equipment in Los Angeles and El Centro; that the load factor in applicant Sacramento Freight Lines' equipment has been such that it can carry the freight now carried by applicant Hagopian as well as handle its present business without a material increase in personnel and with the equipment it presently operates and the equipment now being acquired. The purchasing applicant can carry on both operations with its present terminal facilities without continuing the terminals now maintained by applicant Hagopian. This will enable the purchaser to effect economies not possible with the seller acting alone. The result of the transaction sought to be approved will be that a larger portion of the public can be better served by the purchaser and it will be able to continue to serve the portion of the public now served by said Hagopian. The Commission finds that the public interest will not be adversely affected by its approval

of the proposed transfer of highway common carrier rights, and the operative equipment, and properties with which we are here concerned.

Likewise, the Commission finds that with a net worth of \$173,259.45 plus a net earning during 1951 of \$38,269.39 applicant Sacramento Freight Lines has the financial resources to make the additional cash payment for the operating rights, equipment and other rights as previously described as required by the purchase agreement consisting of \$10,000, in addition to the sum of \$5,000 heretofore paid and to assume the encumbrances now outstanding against the equipment to be acquired without, to any material degree, impairing said applicants' ability to properly carry on its present and future obligations to the public. The authority requested will, therefore, be granted. The action taken herein shall not be construed to be a finding of the value of the operative rights or properties herein authorized to be transferred.

Some discussion of the contentions and claims of the protestants seems to be required. At the hearing protestants sought and offered to prove that applicant Hagopian had not accepted the certificate granted by Commission Decision No. 46186, dated September 18, 1951, in Application No. 31398, within the thirty-day period provided by said decision after its effective date but that said certificate was accepted in writing a few days thereafter on November 17, 1951.

Likewise protestants offered to prove that applicant Hagopian's tariffs were filed several days after the period prescribed in said decision, and he did not begin operations within the period so required. In addition said protestants offered to prove that during the period between the date of said

decision and the time said applicant accepted said certificate in writing he attempted to sell his operating rights thereunder to others and said applicant during said period stated to several persons that he could not operate under said certificate profitably and would accept said certificate only in the event he could find a purchaser therefor.

This offer of proof was properly refused at the hearing and evidence of such matters was excluded. The requirement that the certificate of public convenience and necessity be accepted in writing within thirty days after the effective date of said Decision No. 46186 and the similar provision as to filing and making effective tariffs and the commencement of service are service regulations and not conditions subsequent as contended by protestants. Likewise, protestants were properly refused the right to collaterally attack the certificate in this proceeding by showing any asserted improper conduct of applicant Hagopian in seeking to sell his operative rights before he accepted said certificate issued to him or of accepting such certificate after first having procured a purchaser thereof.

Protestants requested that the decision in this proceeding be deferred until such reasonable time as they may require to prepare and file with the Commission a petition to revoke and rescind the operative rights of applicant Hagopian because of the fact as they claimed that he had stated and intended only to accept said certificate of public convenience and necessity in the event he should find a purchaser thereof. This petition has now been filed in Application No. 31398 and denied. The Commission is of the opinion that the public convenience and necessity found to require the operation of the rights granted by said Decision No. 46186 should not be thwarted by the mere

claimed improper actions and intentions of Mr. Hagopian. Even in a direct attack upon said certificate of public convenience and necessity the private interests of protestants in showing a claimed improper conduct of Mr. Hagopian cannot properly be permitted to deprive the public of this needed service which the record in this proceeding shows will be adequately performed by applicant, Sacramento Freight Lines. Applicant Hagopian will, therefore, be authorized to carry out the proposed contract to sell and applicant Sacramento Freight Lines will be authorized to acquire said operative rights and to exercise said rights as required by public convenience and necessity.

O R D E R

An application therefor having been filed, public hearing having been held and the Commission having found, that the public interest will not be adversely affected,

IT IS ORDERED:

(1) That Ralph A. Hagopian, doing business as Hageo Motor Lines, after the effective date hereof and on or before July 15, 1952, may sell and transfer to O. J. Boedeker and A. R. Rawlins, as partners doing business as Sacramento Freight Lines the highway common carrier operative rights and properties referred to herein, and said partners may acquire and operate the same pursuant to the agreement, a copy of which is attached to the application herein as Exhibit "A", and may assume the obligations of said Hagopian and make the payments to him as provided in said agreement and thereafter exercise all rights under the certificate of public convenience and necessity so transferred by said Hagopian.

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

(a) With 30 days after the consummation of the transfer herein authorized the applicants Boedeker and Rawlins as partners, shall notify the Commission in writing of that fact, and shall, within said period, file with the Commission a true copy of any bill of sale or other instruments of transfer, if any, which may have been executed to effect such transfer and the assumption of obligations.

(b) The purchasing applicants shall file in triplicate, and concurrently make effective, appropriate tariffs, on not less than five days' notice to the Commission and the public.

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

Dated at San Francisco, California, this 29th day of April, 1952.

R. J. [Signature]
 PRESIDENT
Harold P. Kula
Kenneth Trotter
John E. [Signature]
 COMMISSIONERS

Commissioner JUSTUS F. CRAEMER, being necessarily absent, did not participate in the disposition of this proceeding.