

Decision No. 48356**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 B & H TRUCKAWAY CO., a Partnership,)
 for Authority to Sell and H. LYNN)
 GRAHAM to Purchase that Certificate) Application No. 33914
 of Public Convenience and Necessity)
 as a Highway Common Carrier for the)
 Transportation of Motor and Other)
 Vehicles Granted B & H TRUCKAWAY CO.,)
 a Partnership, by Decision No. 45990.)

Getz, Aikens & Manning by De Witt Morgan Manning,
 for applicants.

Douglas Brookman, for Carl August Wigholm dba
 Civic Center Transport Service, H. E. Wentz
 dba Automobile Transport Co., California
 Truckaway Co., Robertson Truck-A-Way, Inc.,
 and Hadley Auto Transport Co., protestants.

Reginald L. Vaughan, for Insured Transporters,
 Inc., protestant.

E.L.H. Bissinger, for Southern Pacific Company
 and Pacific Motor Trucking Company, protestants.

Joseph Alti, for Dealer's Transport Co.,
 interested party.

O P I N I O N

This application filed December 1, 1952 alleges that B & H Truckaway Co. presently is engaged in operating as a radial highway common carrier and as a contract carrier under permits granted by this Commission, although it was granted a certificate of public convenience and necessity as a highway common carrier to transport motor vehicles by Decision No. 45990, dated July 24, 1951, in Application No. 29885, that this certificate is not yet effective because not accepted by said applicant, and that this Commission has from time to time extended the time for accepting the certificate and for filing tariffs. Applicant Graham is described as an individual not presently operating as a motor carrier but having had experience in this type of operation.

The application further alleges that B & H Truckaway Co. wishes to sell and Mr. Graham wishes to purchase said certificate for \$3,000 cash, a price which is said to coincide with its cost to the seller. It is also stated that since the granting of the highway common carrier operative rights to it, B & H Truckaway Co. has tentatively reached the conclusion that it desires to operate as a contract carrier rather than as a highway common carrier, provided the instant transaction be authorized. If not authorized, B & H Truckaway Co. says it will then review its decision and determine whether it will operate as a highway common carrier.

Public hearings were held in Los Angeles before Examiner Rowe on January 9 and February 11, 1953 at which time oral and documentary evidence was adduced and after argument by counsel the matter was duly submitted for decision.

In the opinion portion of said Decision No. 45990, discussing the evidence produced by said B & H Truckaway Co., the Commission states that five public witnesses testified on behalf of said applicant. Three of these witnesses were therein referred to as used car dealers and two were described as manufacturers of new automobiles and trucks. These witnesses testified that the service rendered by this applicant was essential to their continued operation. All these witnesses indicated that they had used B & H, found the service satisfactory, and would use the service if certificated. These witnesses or the firms they represented at the time of the hearings accounted for a substantial volume of such traffic available for transportation within this state.

The testimony of these five witnesses constituted the sole public witness evidence supporting the finding in said Decision No. 45990 that public convenience and necessity required the issuance to B & H Truckaway Co. of highway common carrier operative rights.

One of the partners of applicant B & H Truckaway Co. testified in the present proceeding in Application No. 33914 that because there were now more new cars to be transported the firm's equipment for some time had been used exclusively in carrying new cars for the two manufacturers referred to in Application No. 29885 and as a result the three used car dealers who had testified in support of said Application No. 29885 are not now receiving any service from applicant B & H Truckaway Co. This witness further stated that if the sale were consummated, the two manufacturers of new automobiles would continue to be served by applicant B & H under contract.

On this record it appears and the Commission finds as a fact that if operative rights authorized by this certificate of public convenience and necessity be transferred as requested, the beneficial effect of certifying the existing operation of B & H Truckaway Co. in effect will be nullified. The movement would continue under contracts and not as highway common carriage. The Commission further finds that it would be detrimental to the public interest to permit the requested transfer without sale of the business, which Decision No. 45990 determined should be carried by a highway common carrier. Consequently, the application herein will be denied.

ORDER

Application therefor having been filed, public hearings having been held and the matter being duly submitted for decision,

IT IS ORDERED that Application No. 33914 be, and it is, denied.

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

Dated at San Francisco, California, this 10th day of March, 1953.

R. J. Zimmerman
President

Harold P. Lusk

Kenneth L. Patton

Justus E. Craomer

Commissioners

Commissioner Justus E. Craomer, being necessarily absent, did not participate in the disposition of this proceeding.