

Decision No. 51729

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JAMES D. BONER and DAVID T. HAMILTON,)
copartners doing business as B and H)
TRUCKAWAY CO., to transfer certificate)
of public convenience and necessity)
and property to AUTO SHIPPERS, INC.,)
a corporation, and to issue stock.)

Application No. 35767
(As Amended)

In the Matter of the Application of)
B and H TRUCKAWAY CO., a partnership,)
for a certificate of public convenience)
and necessity to operate an automotive)
service and drive-away service for the)
transportation of motor vehicles, their)
parts and equipment, as a highway common)
carrier, between the California-Mexico)
border, near San Ysidro, California,)
Calexico, California, the Arizona-California)
border near Winterhaven, California,)
on the one hand, and the Oregon-California)
and Nevada-California state lines, on)
the other hand, and points and places)
intermediate thereto and in the vicinity)
thereof.)

Application No. 29885
(Petition requesting
further extension of
time to comply with
ordering paragraph
2(b) of Decision
No. 45990, dated
July 24, 1951.)

Edward M. Berol and Bertram S. Silver, for
applicants.
Phil Jacobsen, for Hadley Auto Transport and
Robertson Truckaways, protestants.
John Donovan, for the Commission staff.

O P I N I O N

By application filed September 8, 1954, James D. Boner and David T. Hamilton, copartners doing business as B and H Truckaway Co., seek authority to sell to Auto Shippers, Inc., a corporation, and said corporation requests authority to purchase certain operating rights and property and thereafter to operate under said rights granted by Decision No. 45990 dated July 24, 1951, in Application No. 29885. The operating rights authorize the carriage of automobiles and other motor vehicles and parts generally throughout

the State over described routes which include all the principal highways.

By petition filed October 20, 1954, in Application No. 29885 said partners request that the time within which to comply with ordering paragraph 2(b) of Decision No. 45990, in so far as initial movements are concerned, be extended.

By petition filed June 22, 1955, the applicants in both the above-entitled proceedings request that the certificate of public convenience and necessity issued to said James D. Boner and David T. Hamilton and sought to be transferred to Auto Shippers, Inc., be restricted against the transportation of vehicles in initial movements.

Public hearing was held before Examiner Rowe in Los Angeles on November 28, 1954, on Application No. 35767 and in San Francisco on June 17, 1955, on that application and also on the request for extension of time in Application No. 29885. Evidence, both oral and documentary, was adduced on Application No. 35767 and on the latter date both matters were submitted for decision. At the hearing counsel for the applicants stated that they wished to have the authority to carry vehicles in initial movements removed from the certificate of public convenience and necessity and would petition the Commission for such relief. Such petition has been filed.

According to the testimony of the partner who manages the partnership business, it is now proposed to transfer to the newly formed corporation, automotive equipment with a present book value of \$4,873.47, the operative rights granted by said Decision No. 45990 and \$1,000 in cash as consideration for the issuance of corporate stock with a par value of \$1.00 per share as follows: 2,250 shares to James D. Boner and 2,250 shares to David T. Hamilton.

The partnership will continue to operate under contract and radial permits issued by this Commission.

This witness stated that it was not feasible to publish rates applicable to the transportation of new automobiles in an initial movement under the certificate of public convenience and necessity. The reason stated is that since there are no minimum rates applicable to the initial movement such publication would enable noncertificated carriers to solicit and procure the business at rates below such published tariff. By reason of extensions of time granted by this Commission the partnership applicant has been able to avoid such tariff publication. In the original hearings in which the sellers requested the authority to carry automobiles protestants insisted that a restriction against carrying automobiles in an initial movement should not be imposed. For the reason that applicants had not then requested that any distinction be made between initial and secondary movements as defined in said Decision No. 45990 they were not so restricted. Circumstances have demonstrated the necessity for, and applicants now request, the elimination of authority to carry automobiles in initial movement from their certificated authority. The carriage of this freight under their highway common carrier operative rights has never been undertaken by these applicants. Their request for an amendment of their operative rights to eliminate authority to transport automobiles in initial movement will be granted. The request for and the granting of this amendment obviates the need for any extension of time to fully comply with ordering paragraph 2(b) of said Decision No. 45990. The petition for extension of time filed in Application No. 29885 will therefore be denied. The

Commission finds that the transfer of operative rights as hereinafter amended from the partnership to the corporate applicant will not be adverse to the public interest. Application No. 35767 will, therefore, be granted.

The action taken herein shall not be construed to be a finding of the value of the property herein authorized to be transferred.

O R D E R

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

IT IS ORDERED:

(1) That ordering paragraph number (1) of Decision No. 45990, dated July 24, 1951, in Application No. 29885 be, and it hereby is, amended by adding to the end thereof the following:

"Provided, however, that applicants James D. Boner and David T. Hamilton shall be and they are hereby restricted against the transportation in initial movement of vehicles."

(2) That James D. Boner and David T. Hamilton, copartners doing business as B and H Truckaway Co., within one hundred twenty days after the effective date hereof may sell and transfer the operative rights granted by Decision No. 45990, dated July 24, 1951, in Application No. 29885, as said operative rights are amended by ordering paragraph (1) above, together with the operative

property described in Exhibits B and C attached to the application herein, and pay \$1,000 in cash to Auto Shippers, Inc., a California corporation, and said corporation may acquire and exercise said operative rights, properties and money and may issue 2,250 shares of its capital stock to James D. Boner and 2,250 shares of its capital stock to David T. Hamilton for the purposes set forth in this application, it being the opinion of the Commission that the money, property or labor to be procured or paid for through such issue is reasonably required for said purposes and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

(3) That within thirty days after the consummation of the transfer herein authorized, said Auto Shippers, Inc. shall notify the Commission thereof in writing and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may have been executed to effect such transfer and shall file with the Commission a report of the issue of said shares of stock as required by General Order No. 24-A.

(4) That within one hundred twenty days after the effective date hereof, provided such transfer is effected, and on not less than five days' notice to the Commission and to the public, applicant Auto Shippers, Inc.. shall institute said service and shall join with said James D. Boner and David T. Hamilton, copartners doing business as B and H Truckaway Co., in supplementing and amending tariffs on file with the Commission

naming rates, rules and regulations governing the operations here involved to show that B and H Truckaway Co., has withdrawn and that Auto Shippers, Inc. has adopted as its own said rates, rules and regulations.

(5) That the petition requesting further extension of time within which to comply fully with ordering paragraph 2(b) of Decision No. 45990 be, and said petition hereby is, denied.

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

Dated at Los Angeles, California, this 18th day of July, 1955.

Matthew J. Casner
 President
Paul S. Lutzgrem
William J. ...
...
 Commissioners

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