

Decision No. 51842**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 PACIFIC INTERMOUNTAIN EXPRESS CO.)
 for authority to lease for a period)
 ending September 19, 1955, certifi-)
 cates of public convenience and)
 necessity and certain carrier oper-)
 ating property of (a) PUBLIC FREIGHT)
 SYSTEM, and (b) PUBLIC FREIGHT SERV-)
 ICE, pursuant to Sections 851-863)
 of the Public Utilities Code.)

Application No. 36843

- A. S. Glikberg and Edward M. Berol, for Pacific Intermountain Express Co.; Glanz & Russell, by Arthur Glanz, for Public Freight Service and Public Freight System, applicants.
 H. J. Bischoff, for Southern California Freight Lines and Southern California Freight Forwarders, protestant.

O P I N I O N

The applicant, Pacific Intermountain Express Co., is a common carrier by motor vehicle operating under certificates of convenience and necessity granted by the Interstate Commerce Commission, between Los Angeles and San Francisco, California, on the one hand, and Chicago, Illinois, on the other, with numerous intermediate points including St. Louis, Missouri, Kansas City, Missouri, Denver, Colorado, and Salt Lake City, Utah, as well as various off-route points, as specified in the certificates. In addition it is the owner of West Coast Fast Freight, Inc., a subsidiary corporation conducting operations generally in a northerly and southerly direction along the West Coast between Los Angeles, San Francisco, Portland, Oregon, Seattle, Washington, and various other intermediate and off-route points: Pacific Intermountain

Express Co, is a Nevada corporation, with its principal offices in California at 299 Adeline Street, Oakland, California. The subsidiary, West Coast Fast Freight, Inc. is a California corporation, with offices in Los Angeles, San Francisco, Sacramento and Oakland.

The interests of the other applicants herein are held by three corporations. Public Freight Service is a California corporation operating as an express company and a freight forwarder generally in the Los Angeles metropolitan area and points in Los Angeles, San Bernardino, Riverside and Orange Counties.¹ Public Freight System is a highway common carrier operating under certificates granted by this Commission, between points and places in the Los Angeles metropolitan area, and points and places in the San Gabriel and Pomona Valley areas, as described in the certificates.² The authority is to transport general commodities with certain exceptions such as household goods, motion picture films, petroleum products in tank trucks, livestock, and others as named in the certificates.

The third corporation involved in these interests is Keystone Properties Corporation which owns all of the stock of Public Freight System and Public Freight Service. Keystone Properties Corporation might be termed an equipment holding corporation since its principal function is to purchase and own the equipment operated by the other two corporations. All three of these companies are California corporations.

¹ Decision No. 39188, dated July 9, 1946, in Applications Nos. 27599 and 27600.

² Decision No. 48042, dated December 9, 1952, in Application No. 32187.

In the instant application authority is requested to lease for a period not exceeding 180 days and ending no later than September 19, 1955, the operating rights and properties of Public Freight System, Public Freight Service, and Keystone Properties Corporation. A copy of the proposed lease is attached to the application, designated as Exhibit "A".

On or about November 16, 1954, Keystone Properties Corporation, which, as has been pointed out, owns all of the stock of Public Freight System and Public Freight Service, granted an option to Pacific Intermountain Express to purchase the stock of said companies, such option being subject to the approval of the Interstate Commerce Commission and other regulatory agencies involved. On January 10, 1955 the option was exercised and an application for authority to temporarily lease the operating rights was made to the Interstate Commerce Commission. Under date of March 24, 1955, by Order No. MC-F-5912, the Interstate Commerce Commission approved this application and authorized a temporary lease for a period of 180 days. Under the terms of this order the lease was to commence within 30 days from the date thereof, and did commence on April 1, 1955, when Pacific Intermountain Express took over the operations. Application for a permanent transfer is now pending before the Interstate Commerce Commission. The instant application seeks the approval of this Commission of the temporary lease. ✓

A public hearing was held before Examiner Grant E. Syphers on May 23, 1955, in Los Angeles, at which time evidence was adduced and the matter submitted.

Testimony was presented by the president and principal stockholder of Keystone Properties Corporation, pointing out the

service areas of Public Freight System and Public Freight Service, both under intrastate and interstate authorities.

The principal reason advanced for this lease was the financial condition of the applicants, Keystone Properties Corporation, Public Freight System and Public Freight Service. Exhibits Nos. 10 to 19, inclusive, are financial statements relative to these companies.

This testimony indicated that two of these companies, Public Freight System and Public Freight Service, were formed in 1946, and the third, Keystone Properties Corporation, in 1951. The first years of operation were profitable. The operations started on a small scale and gradually expanded. With the expansion came additional expenses which finally forced the operations into a losing position. The reasons for this were ascribed to the costs of new equipment, the increasing costs of personnel, the expense of larger terminals, and other financial problems created by the growth of the companies. The witness testified as to the efforts made to correct this situation, all of which have been to no avail.

At the present time these companies have borrowed from Pacific Intermountain Express approximately \$146,000, which moneys have been used to continue the business. It was testified that if these moneys had not been advanced the companies would probably have had to cease operations.

Witnesses for Pacific Intermountain Express testified that company was willing and able to take over the operations, and in support of this position presented Exhibits Nos. 21 and 22 which are financial statements of the company. An analysis of these

financial statements indicates that Pacific Intermountain Express is in a sound financial position. It expects to reduce lessor's expenses by reducing such overhead items as supervision and general officers' wages, as well as rents and insurance. It has consolidated the terminal operations of the lessor with the existing terminal in Los Angeles of West Coast Fast Freight as of April 1, 1955.

It was testified that Pacific Intermountain Express does not intend to operate under permits, but will confine its operations, so far as this application is concerned, to the certificates of the lessor. Furthermore, it intends to continue in effect all through rate arrangements which have heretofore been authorized for the lessor, and in general to continue the same trucking operations as have been conducted under the certificates of the lessor.

The applicant, Pacific Intermountain Express Co., made a motion to dismiss these proceedings on the grounds that the Interstate Commerce Commission has approved this temporary lease and that the jurisdiction of that Commission under Section 5(11) of Part I of the Interstate Commerce Act is "exclusive and plenary." However, this does not appear to be a matter controlled by Section 5(11). It should be noted that the approval of the Interstate Commerce Commission in this connection was under the authority of Section 210 a (b) of Part II of the Interstate Commerce Act and was so stated in that Commission's authorization. Exhibit No. 20, introduced in this proceeding, is a copy of the I.C.C. order. Therefore, inasmuch as this proposal involves a temporary lease of intrastate rights of the lessor, the motion to dismiss will be denied.

At the hearing the protest of Southern California Freight Lines was withdrawn when it was stipulated by Pacific Intermountain Express Co. that it did not intend to operate or acquire any rights under the permits of the lessor. Therefore, the application as it was submitted was without opposition.

The lease executed by the applicants contained a statement that the agreed valuation of the interstate and intrastate operating rights of Public Freight System and Public Freight Service was \$75,000. A statement subsequently filed with the Commission explained that such sum represented the value of the intangibles involved and that the allocation to intrastate intangibles was \$51,000 for both of such corporations. Attention was called to the fact that "the bulk of the amount which was thus attributable to the intrastate intangibles of the two companies should primarily and substantially have been charged to goodwill rather than to the certificates."

After a consideration of all of the evidence adduced herein, we find that the public interest will not be adversely affected by the approval of this temporary lease. The application will be granted. In taking this action we make no finding as to the value of the operative rights, properties and goodwill involved.

O R D E R

Application as above entitled having been filed, a public hearing having been held in the matter, the Commission being fully advised in the premises and hereby finding that the authority requested should be granted,

IT IS ORDERED:

(1) That Pacific Intermountain Express Co., a Nevada corporation, after the effective date hereof, may lease for a period not

to exceed 180 days and ending on or before September 19, 1955, the operative rights, property and goodwill of Keystone Properties Corporation, Public Freight System and Public Freight Service, in accordance with the terms of the lease dated February 14, 1955, and attached to the application as Exhibit "A".

(2) That within thirty days after the effective date hereof and on not less than five days' notice to the Commission and to the public, applicant shall amend the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations involved, to show that Public Freight System and Public Freight Service have withdrawn, and Pacific Intermountain Express Co., or its subsidiary West Coast Fast Freight has adopted as its own, said rates, rules and regulations.

(3) That within thirty days after the completion of the lease herein authorized, Pacific Intermountain Express Co. shall so notify this Commission in writing, and within said period shall file with this Commission true copies of the instruments executed to effect the transfers.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 16th day of August, 1955.

[Signature]
President
[Signature]
[Signature]
[Signature]
[Signature]
Commissioners