

ORIGINALDecision No. 53575

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 HUMBOLDT MOTOR STAGES, INC., and)
 GEORGE S. BUTLER, INC., for authority) Application No. 37991
 for the former to transfer, and the)
 latter to acquire, certain operative)
rights and equipment.)

J. Richard Townsend for applicants.
Alan Silvius for the Commission staff.

O P I N I O N

Humboldt Motor Stages, Inc., hereinafter sometimes called Humboldt, holds a certificate of public convenience and necessity issued by Decision No. 44353 dated June 20, 1950, in Application No. 31175, authorizing it to operate as a petroleum irregular route carrier between all points and places in California. This applicant wishes to entirely withdraw from its business of transporting petroleum and restrict itself to the performance of local garbage collection in the city of Eureka. This applicant requests authority for the transfer of all its automotive equipment used in transporting bulk petroleum together with the above-described operative rights to applicant George S. Butler, Inc., hereinafter sometimes called Butler, for a total consideration of \$60,000 payable \$17,500 at the time of transfer and one third of the balance, or \$14,666.66, on or before the end of each of the three succeeding periods of twelve months with interest at the rate of six per cent per annum payable when payments of principal are due.

The rates, rules and regulations to be assessed and applied by applicant Butler in connection with this operation if transfer is authorized will be the same as those presently assessed and applied by applicant Humboldt pursuant to tariffs currently on file with the Commission. The operation is an unscheduled, on-call

service. Humboldt Motor Stages, Inc., has no through routes or joint rates with any other carrier.

Public hearing was held in San Francisco on July 19, 1956, before Examiner Rowe, at which time evidence was adduced and the matter submitted for decision.

As justification for the request, it was shown that applicant Humboldt was formerly engaged in operations as a highway common carrier and as a passenger stage corporation under rights granted by this Commission, in addition to its bulk petroleum transportation business. All of these other rights have now been disposed of with Commission approval.¹ In addition to the transportation of petroleum Humboldt performs the local garbage collection service in Eureka.

The vice president and general manager of Humboldt testified that Humboldt has found it is not economically feasible to conduct only such bulk petroleum operation in conjunction with the garbage service. For this reason Humboldt desires to dispose of its bulk petroleum operation. Applicant Butler, on the other hand, is in a position to handle this petroleum operation efficiently and economically. The latter corporation is engaged in transporting lumber and forest products as a highway common carrier pursuant to authority granted by Decision No. 43424 of this Commission, dated October 18, 1949, in Application No. 29936 and acquired by this applicant pursuant to Decision No. 51882 dated August 30, 1955, in Application No. 37124.

The president and owner of Butler testified that Butler presently has a terminal including an office, storage yard and repair shop in Eureka used in connection with its lumber and forest

¹ Decision No. 50959 dated January 10, 1955, in Application No. 35909.

products transportation operation. These facilities, as well as its office staff, can be used in connection with the bulk petroleum operation involved.

Applicants allege that the motor vehicle equipment proposed to be transferred has a present value of \$44,000. George S. Butler, Inc., submitted with the application a balance sheet showing net assets of roughly \$130,000 as of March 1, 1956. Humboldt agrees not to compete with Butler after the transfer so long as the latter is not in default. The Butler freight service showed a net profit of \$37,323.28 for the year of 1955. During the first three months of 1956 this company experienced a net loss of \$1,366.95 which it alleges was a result of the serious flood conditions last winter in that area.

The payment of the purchase price of \$60,000 for the operative equipment and operative rights is not so excessive as to justify a finding that the purchaser will as a result be handicapped in carrying on its present operation or in operations under the rights to be acquired from Humboldt.

As additional justification for price to be paid for the operative rights and equipment the seller addressed a letter to the Commission under date of May 28, 1956, containing the following statement:

"The petroleum operation in question is a very profitable one. It involves a long haul with very substantial revenue per mile operated. The operation can be performed with generally two drivers, except during the heavy summer season, and the loading and unloading is a simple operation.

"We have kept accurate records of the mileage operated by our equipment in this service, and consequently have accurate figures on the gross revenue per mile, including both loaded and empty miles. Exhibit G attached to the application shows total revenue of \$63,211.16 for the year 1955 from this service. The total miles run by the equipment operated in this service were 85,715 for the year 1955. This produces an average revenue of 73.75 cents per mile for the year 1955, which is a substantial amount.

"Our experience has been that our over-all costs do not exceed 50 cents per mile in this operation. On this basis, the operation produced an average profit of 23.75 cents per mile for the year 1955. On the basis of 85,715 miles, the total profit for the year 1955, therefore, was \$20,357.31.

"Mr. George S. Butler of George S. Butler, Inc., the proposed purchaser, has had many years experience in operating trucks. He is satisfied that he can show a profit at 50 cents per mile. Mr. George S. Butler operates a large number of trucks and miles and his cost is considerably less than ours.

"As indicated by the application, the purchase price of \$60,000.00 includes equipment having a present value of \$44,000.00. The remaining \$16,000.00 is a very small amount to pay for such a profitable business.

"The shippers for whom we have handled practically all of this business have been contacted about the proposed transfer. They have indicated that they will continue to give the business to George S. Butler, Inc., after the transfer.

"In view of the circumstances surrounding the operation in question, therefore, the purchase price of \$60,000.00 is a very reasonable figure."

At the hearing the general manager of the seller discussed a number of discrepancies between this letter and the annual report of the seller filed with the Commission. These discrepancies generally were shown to have resulted from costs of the seller's local garbage collection business being improperly stated as expenses of the petroleum irregular carrier operation. Also, the letter mistakenly stated the cost of operation per mile as 50¢ rather than the more nearly correct figure of 60¢ per mile.

The discrepancy between the stated value of the equipment and the value as shown on the seller's books was explained as due to the failure of the seller to treat certain replacements of engines and other parts as maintenance expense rather than as a capital outlay. Also due to proper maintenance the equipment has an actual value to the purchaser far in excess of the book value.

The president of the purchaser testified that he had examined the equipment which his company proposed to purchase and that in his opinion the valuation alleged in the application of

\$44,000 was very conservative. The remaining \$16,000 of purchase price was also shown to include payment for \$2,000 of other physical equipment. The remaining \$14,000 allocated to intangibles was considered by both witnesses as being proper consideration for the good will and going value of the seller's petroleum carrier business. The seller's witness testified that all the petroleum shippers had been contacted and had indicated an intention to continue as customers of Butler. The witness for Butler further stated that he felt that the transaction was entirely fair and that as president of the company he wished to consummate the transaction. No part of the purchase price shall be allocated as payment for operative rights.

The Commission is of the opinion and finds that the purposes for which applicant George S. Butler, Inc., proposes to incur an indebtedness of \$42,500 aggregate principal amount are proper and that the money, property, or labor to be procured or paid for by such indebtedness is reasonably required for the purposes specified in the following order and that such purposes are not, in whole or in part, reasonably chargeable to operating expenses or income. The Commission is of the opinion, however, and finds that the seller should be required to amend its annual report of operations for 1955 to correctly state the facts. Subsequent to submission seller filed such an amendment to its annual report.

The Commission finds that the public interest will not be adversely affected by approval of the transfer herein proposed. The application will be granted. The action taken herein shall not be construed to be a finding of the value of the right or property herein authorized to be transferred. George S. Butler, Inc., is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess

of that originally paid to the State as the consideration for the grant of such rights.

O R D E R

An application having been filed, and the Commission being of the opinion that the authority requested should be granted,

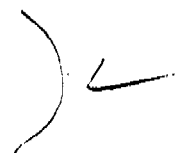
IT IS ORDERED:

(1) That Humboldt Motor Stages, Inc., a corporation, after the effective date hereof and on or before September 1, 1956, may sell and transfer to George S. Butler, Inc., a corporation, and the latter may acquire and purchase the operative rights and property above described in accordance with the contract attached to the application as Exhibit A, and may in addition to the cash payment, incur an indebtedness to the seller in the aggregate principal amount of \$42,500.00, payable more than twelve months after the effective date hereof and bearing interest at 6 per cent per annum.

(2) That within thirty days after the completion of the transfer herein authorized, George S. Butler, Inc., shall so notify the Commission in writing and within said period shall file with it true copies of the instruments executed to effect such transfer.

(3) That applicants shall, effective concurrently with the consummation of such transfer, and on not less than five days' notice to the Commission and the public, amend tariffs on file with the Commission naming rates, rules and regulations governing the operative rights here involved to show that Humboldt Motor Stages, Inc., has withdrawn and George S. Butler, Inc., has adopted as its own said rates, rules and regulations.

collect



This order shall become effective when applicant George S. Butler, Inc., has paid the fee of \$43.00 required by Section 1904 of the Public Utilities Code.

Dated at San Francisco, California, this 7th day of August, 1956.

John E. ...
President
Justin J. ...
...
R. Hardy

Commissioners

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

