

Decision No. 55428

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
PENINSULA MOTOR EXPRESS, a California)	
corporation, for authority to pur-)	
chase, and RICHARD D. POPOVICH, an)	Application No. 39332
individual doing business as DICK'S)	
TRANSPORTATION, to sell his highway)	
common carrier certificate and)	
properties.)	

O P I N I O N

Richard D. Popovich requests authority to sell and transfer to Peninsula Motor Express the certificate of public convenience and necessity which was granted to him by Decision No. 52757 as supplemented by Decision No. 53587. The operating right generally authorizes the transportation of specified commodities generally between San Francisco, Bakersfield, Maricopa and intermediate and off-route points.

The consideration to be paid on account of the transfer of said certificate and assets including motor vehicle equipment is the sum of \$10,000.00 to be paid as follows: The sum of \$1,500.00 in escrow following the filing hereof, and the balance of \$8,500.00 at the rate of \$500.00 per month, without interest, commencing six months after the date of consummation. Buyer is to assume all liabilities of seller as shown on balance sheet attached to the application as Exhibit 1. The sum of \$500.00 represents the value of the operative right involved.

Buyer is now engaged in the transportation business pursuant to certificates of public convenience and necessity granted by this Commission. Such certificates (Decisions Nos. 29438, 46714, 49684 and 51329) authorize service between San Francisco Bay

points, San Jose and intermediate points.

Applicants allege that the reasons for the transfer are:

- (1) That seller is in desperate financial condition as is revealed by his balance sheet.
- (2) That pressing demands of the creditors and the government must be satisfied by Tuesday, August 20, or seller's operations will cease.
- (3) That seller is performing a service responsive to public convenience and necessity and substantial shippers rely upon the service for the efficient distribution of their products.
- (4) That should operations terminate, the creditors, particularly general creditors, could not possibly receive payment of the amounts owing to them. The United States Government has threatened to levy a lien upon seller's properties within the next few days and in any event not later than Wednesday morning, August 21, in which event, general creditors would probably receive nothing on their total obligations of approximately \$20,000.00.
- (5) That in the event this application is not granted by this Commission on August 20, 1957, seller will lose his entire business, creditors will be left unpaid, the United States Government will be required to attempt collection through liquidation of the assets remaining and the public will lose an existing and dependable transportation service.
- (6) That should this application be granted on said date, Peninsula is prepared to take over the operation and its liabilities, effect payment of creditors' claims, and maintain and even improve existing service.

The operative rights sought to be transferred were granted pursuant to Decision No. 50448 in Case No. 5478, sometimes referred to as the "policy decision". The Commission has held

that those to whom certificates have been granted pursuant to said "policy decision" will not be permitted to divest themselves of such rights and obligations without a clear and convincing showing that to do so would not be adverse to the public interest.

The Commission having considered the allegations of the application and the exhibits attached thereto is of the opinion and finds that the proposed sale and transfer of said certificate is not adverse to public interest. The application will be granted. A public hearing is not deemed necessary.

The action taken herein shall not be construed to be a finding of value of the properties hereinabove described.

Peninsula Motor Express is 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. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

Application having been made, the Commission being fully advised in the premises and having found as hereinabove set forth,
IT IS ORDERED:

(1) That Richard D. Popovich may sell and transfer, on or before sixty days after the effective date of this order, to

Peninsula Motor Express the operative rights and equipment referred to in the foregoing opinion, said sale to be made substantially upon the terms and conditions of the agreement of sale filed as Exhibit A with the application, and said buyer may acquire said rights and equipment and shall continue to operate a transportation service as heretofore authorized by this Commission.

(2) That within sixty days after the effective date hereof, concurrently with the consummation of the transfer herein authorized, and on not less than five days' notice to the Commission and to the public, applicants shall amend tariffs on file with the Commission naming rates, rules and regulations governing the operations here involved to show that Richard D. Popovich has withdrawn and Peninsula Motor Express has adopted as its own said rates, rules and regulations.


(3) That in the event the authority herein granted is exercised, Peninsula Motor Express shall notify the Commission in writing of the fact within thirty days after the date of transfer.

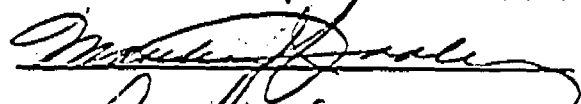
(4) That Peninsula Motor Express may execute and enter into an agreement providing for the payment of \$8,500.00 as set forth in Exhibit A filed with this application, it being the opinion of the Commission that the money, property or labor to be procured or paid for is reasonably required for the purpose specified herein and that such purpose, except as otherwise

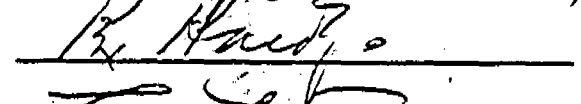
authorized, is not in whole or in part, reasonably chargeable to operating expenses or to income.

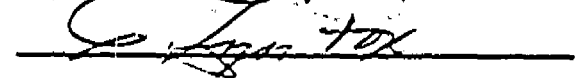
(5) The effective date of this order shall be when Peninsula Motor Express has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.00.

Dated at San Francisco, California, this 20th day of AUGUST, 1957.



President






Commissioners

