

Decision No: 56339**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of EDWARD J. FOURNIER of)
 P. O. Box 72, Downieville, California,))
 and Frank A. Misner of P. O. Box 47,)
 Downieville, California, to transfer)
 from Edward J. Fournier to Frank A.)
 Misner, all of Edward J. Fournier's)
 right, title and interest in Decision)
 No. 39570 and all of Edward J.)
 Fournier's right, title and interest)
 in Decision No. 39661 of the Public)
 Utilities Commission of the State of)
 California.)

Application No. 39252

W. J. O'Leary, Ures & O'Leary, attorneys
 at law, for applicant.

O P I N I O N

This matter is on rehearing. The application here involved was filed on July 16, 1957. It sought Commission approval of a contract which provided in part for the transfer from Edward J. Fournier to Frank A. Misner of two certificates of public convenience and necessity together with certain operating equipment. The application also sought approval for the incurring of an indebtedness, provided for under the terms of the contract, to secure payment of the purchase price. The Commission in ex parte Decision No. 55507 denied without prejudice the application on the ground that the purchase price was excessive and the payment thereof would seriously impede continued operation under the operative rights involved. Prior to Decision No. 55507 the Commission allowed the transfer of

certain permits from Fournier to Misner pursuant to the terms of said contract. Applicants filed a timely petition for a rehearing which was granted.

A duly noticed public hearing was held in this matter on January 23, 1958 at Downieville before Examiner Donald B. Jarvis. At the hearing evidence was produced in behalf of the application. There were no protestants.

From the evidence, it appears that applicant Frank A. Misner has been conducting operations under the permits heretofore transferred to him in a manner so as to merit the praise of many of the local residents. The evidence further discloses that Misner is prepared to render a service to the residents of Downieville and its environs which in most instances would provide service from Sacramento to the area one to two days earlier than by any other carrier.

Frank G. Tabor, Lewis L. Huelsdonk, and Robert W. Hostetler, three Downieville residents, each testified that if the operating rights here involved were transferred to Misner he could be expected to render the same high caliber of service now given in his permitted operations which would benefit them and the community as a whole. Each stated that he would be willing to co-sign a promissory note to guarantee a portion of the payments provided for in the contract in order to help effectuate the proposed transfer of operating rights and thereby gain for himself and the community the benefit of the service Misner proposes to render.

From the record, it appears to the Commission that the transfer of the operating rights here involved to Misner would be of benefit to the public. Although Misner, in the contract, has agreed to pay a premium price for the business it appears that he will be able to make the payments provided for therein without endangering the continued operation of the operative rights here involved.

The Commission finds that the proposed transfer is not adverse to the public interest and that permission to transfer the operating rights and equipment should be granted. The action taken herein shall not be construed to be a finding of the value of the property or properties herein authorized to be transferred. Applicant Frank A. Misner is hereby placed on notice that the operative rights here involved, 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, such rights 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.

IT IS ORDERED that:

(1) The certificates of public convenience and necessity granted to Edward J. Fournier in Decision No. 39570 on October 29, 1946, and Decision No. 39661 on November 26, 1946, authorizing him

to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points and over the routes as more particularly set forth in said decisions, may be transferred to applicant Frank A. Misner upon compliance with the terms of this order.

(2) Edward J. Fournier is authorized to transfer to Frank A. Misner, pursuant to the terms of the agreement between the parties dated April 15, 1957 and as amended on August 3, 1957, all of the operating equipment used in connection with the certificates of public convenience and necessity granted in Decision No. 39570 and Decision No. 39661.

(3) Within sixty days after the effective date hereof, and on not less than five days' notice to the Commission and to the public, applicants shall supplement or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations here involved to show that Edward J. Fournier has withdrawn or cancelled and that Frank A. Misner has concurrently adopted or established as his own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the

construction and filing of tariffs set forth in the Commission's
General Order No. 80.

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

Dated at San Francisco, California, this 11th
day of MARCH, 1958.

W. E. Mitchell President
Paul L. Lintner
Michael J. Deal
E. L. Fox
Commissioners