

**ORIGINAL**

Decision No. 60013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MERCHANTS EXPRESS OF CALIFORNIA, a corporation,  
 CALLISON TRUCK LINES, INC., a corporation,  
 ALFRED F. ANTONI, doing business as ANTONI  
 TRUCK LINES, and NIELSEN FREIGHT LINES, a  
 corporation,  
 Complainants,  
 vs.  
 INTER-CITY FAST FREIGHT, a corporation, INTER-  
 CITY MOTOR LINES, a corporation, and INTERCITY  
 TRANSPORT LINES, INC., a corporation,  
 Defendants.

Case No. 6237

In the Matter of the Application of INTERCITY  
 TRANSPORT LINES, INC., and HAROLD M. HAYS and  
 ALAN G. McLENEGAN, a partnership doing business  
 as INTERCITY TRANSPORT LINES, for authority to  
 enter into a lease of certain operative rights.

Application No. 34023  
(First Supplemental)

In the Matter of the Application of INTERCITY  
 MOTOR LINES, a corporation, to sell and INTER-  
 CITY FAST FREIGHT, a corporation, to buy high-  
 way common carrier operating rights, and of  
 INTER-CITY FAST FREIGHT for approval of  
 conditional sale contract and to issue stock.

Application No. 38938  
(First Supplemental)

In the Matter of the Application of CALLISON  
 TRUCK LINES, INC., a corporation, for a certi-  
 ficate of public convenience and necessity to  
 extend operations as a highway common carrier  
 for the transportation of property; and for  
 authority to temporarily operate.

Application No. 40745

In the Matter of the Application of INTER-CITY  
 FAST FREIGHT, INTERCITY MOTOR LINES and INTER-  
 CITY TRANSPORT LINES, INC., for an Order  
 Authorizing Suspension of Operations.

Application No. 40751

In the Matter of the Application of INTERCITY  
 MOTOR LINES, a corporation, to sell and BAY  
 FREIGHT LINES, a corporation, to buy Highway  
 Common Carrier Operating Rights.

Application No. 41637

(Appearances are listed in Appendix B)

O P I N I O N

A public hearing of the above matters was held before  
 Examiner Thomas E. Daly at San Francisco on December 10, 1959. On

February 23, 1960, submission was set aside and further hearing was held before Commissioner C. Lyn Fox and Examiner Thomas E. Daly on March 28, 1960, at San Francisco. The matters were submitted upon the receipt of late-filed Exhibit No. 11 since filed and considered.

The record indicates the following:

Harold M. Hays and Alan G. McLenegan and their respective wives through stock ownership controlled two corporations, i.e., Intercity Motor Lines (hereinafter at times referred to as Motor Lines) and Intercity Transport Lines, Inc., (hereinafter at times referred to as Transport Lines, Inc.). Motor Lines was certificated as a highway common carrier primarily as an underlying carrier for Transport Lines, Inc., which was authorized to operate as an express corporation of general commodities between San Francisco Bay points and Arcata and certain intermediate points. Harold M. Hays and Alan G. McLenegan were also copartners doing business as Intercity Transport Lines (hereinafter at times referred to as Transport Lines). The partnership operated the express service under a lease agreement with Transport Lines, Inc.

By Decision No. 54915 dated April 30, 1957, in Applications Nos. 34023 (First Supplemental) and 38928, the Commission, among other things, authorized the following:

1. Motor Lines to transfer its operative rights as a highway common carrier to Inter-City Fast Freight (hereinafter at times referred to as Fast Freight), a new corporation formed by E. W. Elliott, for the sum of \$125,000 by means of a conditional sales contract providing for a down payment of \$30,000 and for deferred payments of the remaining \$95,000 over a period of 120 months with interest at the rate of 5% per annum.

2. Harold M. Hays and Alan G. McLenegan to sell the outstanding shares of Transport Lines, Inc., the express corporation, to E. W. Elliott for the sum of \$65,000 and to terminate the lease agreement with the partnership Transport Lines.

By Decision No. 57599 dated November 10, 1958, the Commission found that Fast Freight and Transport Lines, Inc., failed to remit C. O. D. amounts totaling \$12,893.50 and that said companies handled C. O. D. shipments without having a good and sufficient surety bond on file with the Commission.

On January 16, 1959, Fast Freight, Motor Lines and Transport Lines, Inc., by Application No. 40751, petitioned the Commission to suspend their operative rights, alleging that on December 26, 1958, Fast Freight became financially unable to continue operating as a highway common carrier; that Motor Lines was without operating equipment or personnel and likewise was not in a position to immediately recommence and carry on operations under the operating rights; and that Transport Lines, Inc., on or about December 2, 1958, also became financially unable to continue its express operations.

By its petition filed January 23, 1959, in Application No. 38928 (First Supplemental), Motor Lines through its president, Harold M. Hays, alleged that events of default within the meaning of paragraph 8 of the conditional sales contract occurred on the part of the buyer, Fast Freight. It further alleged that pursuant to the contract it had retaken and resumed possession of said highway common carrier operating authority and requested an order of the Commission approving such repossession.

On January 13, 1959, Callison Truck Lines, Inc., filed Application No. 40745 requesting authority to extend its service as a highway common carrier between Garberville and Laytonville and between said points, on the one hand, and points that it was then authorized to serve, on the other hand. It alleged that the only authorized common carrier between said points was Fast Freight; that as of December 1958, Fast Freight ceased operating and the area was then without service. On January 20, 1959, by Decision No. 57885, Callison was authorized to provide the proposed extended service until further order of the Commission.

On March 11, 1959, Merchants Express of California, Callison Truck Lines, Inc., Alfred F. Antoni, doing business as Antoni Truck Lines, and Nielsen Freight Lines, filed a petition in Applications Nos. 38928 (First Supplemental) and 40751, requesting that the operating authority of Motor Lines and/or Fast Freight and Transport Lines, Inc., be revoked. Also on March 11, 1959, the same petitioners filed a complaint in Case No. 6237, requesting the revocation of the aforesaid operative rights on the ground of abandonment.

By Decision No. 59199 dated October 27, 1959, the Commission suspended the subject highway common carrier authority and express corporation authority for failing to comply with Decision No. 57599 which required the remittance of all money collected on C. O. D. shipments. On November 12, 1959, Motor Lines petitioned the Commission and requested that the opinion portion of Decision No. 59199 be modified by including recitals to show that Motor Lines had repossessed said operating authority pursuant to the conditional sales contract.

By Application No. 41637 filed November 4, 1959, Motor Lines requests authority to sell and transfer and Bay Freight Lines requests authority to purchase and acquire the repossessed highway common carrier operative rights for a cash consideration of \$20,000.

Bay Freight Lines is presently operating as a permitted carrier between the San Francisco Bay area, on the one hand, and, on the other hand, points located on U. S. Highway 101 between Scotia and Arcata, including both Scotia and Arcata. It does not presently engage in serving intermediate points on U. S. Highway 101 between San Rafael and Scotia, and, therefore, requests that the operative rights if transferred be restricted so as to exclude service at points along U. S. Highway 101 between San Rafael and Scotia. As of September 30, 1959, Bay Freight Lines indicated a net worth of \$168,998.14. For the period January 1, 1959 through September 30, 1959, it showed a net profit of \$17,303.34.

No appearance was made on behalf of Fast Freight or Transport Lines, Inc., although they were mailed notices of the hearing and they filed an answer in Case No. 6237. Exhibits 2a and 3a introduced by the Commission's staff indicate that as of January 15, 1959, a total amount of \$12,776.96 in C. O. D.s collected by Transport Lines, Inc. remained unremitted. At the time of the hearing, this amount had been reduced by \$2,287. The staff argued that an alter ego relationship existed between Fast Freight, Motor Lines and Transport Lines, Inc., and therefore the authority to transfer, if granted, should be conditioned upon the payment by Motor Lines of the unremitted C. O. D.s.

Without attempting to determine the contractual rights and obligations of the parties it appears that Motor Lines negotiated with Fast Freight at arm's length and no alter ego relationship existed between them. As a result of such negotiations they executed a conditional sales agreement with the approval of this Commission to sell the aforementioned highway common carrier operative rights. It also appears that the sale of stock of Transport Lines, Inc., from Hays and McLenegan to Elliott was also conducted at arm's length and with the approval of this Commission. It further appears that subsequent to the authorized transfers Transport Lines, Inc., while under the control and management of Elliott, failed to remit C. O. D. amounts as set forth above. It appears further that Motor Lines pursuant to the terms of the conditional sales agreement and acting in good faith repossessed the highway common carrier rights which it here requests authority to transfer to Bay Freight Lines.

After consideration the Commission is of the opinion and finds:

(1) That the express rights of Transport Lines, Inc., should be revoked for its discontinuance and abandonment of service without prior authority of this Commission and for its failure to remit C. O. D.s.

(2) That Motor Lines in good faith repossessed the highway common carrier operative rights in question pursuant to a conditional sales contract approved by this Commission.

(3) That the suspension of said highway common carrier operative rights should be set aside.

(4) That the proposed transfer of the highway common carrier operative rights to Bay Freight Lines would not be adverse to the public interest.

(5) That the certificate of public convenience and necessity granted to Callison Truck Lines by Decision No. 57885 should be made permanent.

Bay Freight Lines 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. 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 modified or canceled 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

The above matters having been filed, a public hearing having been held and the Commission being informed in the premises,

IT IS ORDERED:

1. That the certificate of public convenience and necessity acquired by Intercity Transport Lines, Inc., by Decision No. 37763, dated March 27, 1945, in Application No. 20138, and all prescriptive operating authority held by Intercity Transport Lines, Inc., are hereby revoked and the tariffs presently on file with this Commission in the name of said carrier are hereby canceled.

2. That the repossession by Intercity Motor Lines of the operative rights from Inter-City Fast Freight pursuant to the terms

of the conditional sales agreement referred to in Decision No. 54915 is hereby approved and the suspension imposed by Decision No. 59199 is hereby set aside.

3. That on or before July 1, 1960, Intercity Motor Lines may sell and transfer and Bay Freight Lines may purchase and acquire all of the former's operating authority as a highway common carrier according to the terms of the agreement attached to Application No. 41637.

4. That within thirty days after the consummation of the transfer herein authorized, the purchaser shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said sale.

5. That concurrently with the transfer authorized in ordering paragraph 3 hereof said operating authority is hereby revoked and the tariffs presently on file with this Commission in the name of Inter-City Fast Freight and/or Intercity Motor Lines are hereby canceled. That M. A. Nelson, Tariff Publishing Officer for Pacific Southcoast Freight Bureau, is hereby authorized and directed to cancel within thirty days from the effective date of this order on not less than two days' notice to the Commission and to the public, the participation of Intercity Motor Lines from his tariffs and Exception Sheet on file with this Commission.

6. That concurrently with the revocation of the operative rights referred to in ordering paragraph 5 hereof and in the place and stead thereof, a certificate of public convenience and necessity is hereby granted to Bay Freight Lines authorizing the transportation of property between the points and over the routes set forth in Appendix A attached hereto.

7. That in providing service pursuant to the certificate herein granted Bay Freight Lines shall observe and comply with the following service regulations:

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that it will be required, among other things, to file annual reports of its operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-A. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.
- (b) Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and the public, applicant shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.

8. That the certificate of public convenience and necessity granted to Callison Truck Lines, Inc., by Decision No. 57885 dated January 20, 1959, is hereby made permanent.

The Secretary is directed to mail a copy of this order to M. A. Nelson, Tariff Publishing Officer for Pacific Southcoast Freight Bureau, Agent.

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

Dated at San Francisco, California, this 26th day of April, 1960.

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President

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Commissioners

4/15/60

C-6237, et al.

McKEAGE, President, dissenting.

I dissent.

In my opinion, the special facts of this case do not warrant the vacation of the existing suspension of the operative right here concerned. In the circumstances, this operative right should not be transferred until these outstanding C.O.D.'s have been remitted.

The conditional vendor of this operative right placed said right in the hands of the conditional vendee with all the indicia of ownership and control thereof. In my judgment, equity demands that said vendor bear some of the responsibility for the condition which now surrounds this operative right. This is not to say that there exists a liability at law against this conditional vendor for the payment of these unremitted C.O.D.'s. That is not necessary to support the view that equity and the public interest require the continued suspension of said operative right until these C.O.D.'s are remitted.

It must be remembered that an operative right constitutes a privilege. While it is a species of property, it does not have the constitutional protection that general property does. The state has a much greater control over an operative right which it has granted than it does over general property.

Therefore, I would deny the request to vacate the suspension of this operative right until these C.O.D.'s have been remitted.

*I dissent.*  
*McKeage*  
McKEAGE  
*John L. Mitchell*

Bay Freight Lines, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities, except used household goods and personal effects not packed in accordance with crated property requirements as set forth in Paragraph (d) of Item 10-C Minimum Rate Tariff No. 4-A, livestock, and articles of extraordinary value, between points located on U. S. Highway 101 between San Francisco and San Rafael, inclusive, on the one hand, and on the other hand, points located on U. S. Highway 101 between Scotia and Arcata, inclusive.

Issued by California Public Utilities Commission.

Decision No. 60013, Application No. 41637.

Appendix B

LIST OF APPEARANCES

Scott Elder, for Intercity Motor Lines, applicant in Applications Nos. 38928 (First Supplemental) and 41637, and respondent in Case No. 6237.

Frank Loughran, for Bay Freight Lines, applicant in Application No. 41637.

Berol & Silver, by Edward M. Berol and Bruce R. Geernaert, for Callison Truck Lines, Inc., applicant in Application No. 40745 and interested party in Application No. 41637; and for Merchants Express of California, Callison Truck Lines, Inc., Alfred F. Antoni, dba Antoni Truck Lines and Nielsen Freight Lines, complainant in Case No. 6237, petitioners in Applications Nos. 38928 (First Supplemental), and 40751, and interested parties in Application No. 40745.

Hugh N. Orr, for the Commission staff.