

ORIGINAL

60495

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion and suspension of all operating rights of HIGHWAY TRANSPORT EXPRESS, a corporation, and HIGHWAY TRANSPORT, INC., a corporation.

Case No. 6428

In the Matter of the Application of HIGHWAY TRANSPORT, INC., a corporation, for authority to suspend operations as a highway common carrier.

Application No. 42013

In the Matter of the Application of HIGHWAY TRANSPORT EXPRESS, a corporation, for authority to suspend operations as an express corporation.

Application No. 42014

In the Matter of the Application of: INTERSTATE MOTOR LINES, INC., a corporation, HIGHWAY TRANSPORT, INC., a corporation, HIGHWAY TRANSPORT EXPRESS, a corporation, and WALTER J. KEMPY as Assignee for the benefit of creditors of Highway Transport, Inc. and Highway Transport Express, for authority of Interstate Motor Lines, Inc., to purchase the operative rights of Highway Transport, Inc. and Highway Transport Express.

Application No. 42265

Berol and Geernaert, by Edward M. Berol, for Interstate Motor Lines, Inc., applicant in Application No. 42265; for Highway Transport, Inc., applicant in Applications Nos. 42013 and 42265 and respondent in Case No. 6428; and for Highway Transport Express, applicant in Applications Nos. 42014 and 42265 and respondent in Case No. 6428.
James M. Connors, for Walter J. Kempy, Assignee for the benefit of creditors of Highway Transport, Inc., and Highway Transport Express, applicant in Application No. 42265.
Martin J. Porter, for the Commission staff.

O P I N I O N

On March 7, 1960, applicant Highway Transport, Inc., filed Application No. 42013 requesting the Commission to issue its ex parte order suspending the operating authority of said applicant until

further order of the Commission, and on the same day Highway Transport Express filed Application No. 42014 requesting the Commission to issue its ex parte order suspending the operating authority of said applicant until further order of the Commission.

On March 8, 1960, the Commission on its own motion, in Case No. 6428, issued an order instituting an investigation and suspending the operative rights of respondents Highway Transport Express and Highway Transport, Inc., pending further order of the Commission. The investigation was instituted for the purpose of determining whether any and all operative rights of respondents should be revoked because of unauthorized discontinuance of service, failure to remit C.O.D. collections, and failure to maintain C.O.D. bonds and required insurance. The order further provided that (1) said respondents should forthwith remit to the parties entitled thereto any unremitted monies collected on C.O.D. shipments, (2) said respondents should report to the Commission in writing when all C.O.D. monies they have collected have been remitted to the parties entitled thereto, (3) in the event any C.O.D. monies remain unremitted on April 1, 1960, said respondents should report to the Commission in writing the amount of money due on each C.O.D. shipment for which remittance has not been made, the name and address of each person to whom such an amount is due, and the reason remittance has not been made in each case, and thereafter make on the first and fifteenth day of each month, a similar report to the Commission until all C.O.D. monies have been remitted, (4) disposition of the C.O.D. obligations to the satisfaction of the Commission would be a condition precedent to reinstatement of the suspended operating authorities. In view of the order in Case No. 6428 no further action is necessary with respect to Applications Nos. 42013 and 42014.

On May 19, 1960, applicants Interstate Motor Lines, Inc., Highway Transport, Inc., Highway Transport Express and Walter J. Hempy, as Assignee for the benefit of creditors of Highway Transport, Inc., and Highway Transport Express filed Application No. 42265 herein for authority of Interstate Motor Lines, Inc., as lessee temporarily to lease and subsequently to purchase the operative rights, both intrastate and interstate, of Highway Transport, Inc., and the operative rights, intrastate, of Highway Transport Express for the sum of \$127,000, as provided in the Agreement, Exhibit A attached to Application No. 42265.

Public hearing in these matters was held before Examiner Wilson E. Cline in San Francisco on June 2, 1960. At the conclusion of the hearing the matters were taken under submission.

At the hearing the parties stipulated that Highway Transport Express has operative rights as an express corporation and as a city carrier and that Highway Transport, Inc., has operative rights as a highway common carrier, city carrier and household goods carrier; that both such corporations, respondents herein, ceased all transportation operations on or about February 24, 1960; that Maryland Casualty Company has filed with this Commission notices that C.O.D. bonds issued by that company to respondents would be canceled effective March 24, 1960; that at the time of cessation of transportation operations respondents had and now have outstanding C.O.D. claims which have not been remitted to consignors; that the Commission has been notified that public liability and property damage insurance required to be maintained by respondents has been canceled effective March 24, 1960; that on March 4, 1960, respondents transmitted Applications Nos. 42013 and 42014 to the Commission for filing, and on March 8, 1960, the Commission issued its order in Case No. 6428 herein suspending respondents' operations.

Exhibit No. 1 shows that the total unpaid freight accounts, which include C.O.D. claims and advances, amounts to \$32,965.63.

The operating authorities of Highway Transport, Inc., proposed to be transferred herein are listed in Exhibit No. 2 as follows:

OPERATING AUTHORITIES OF HIGHWAY TRANSPORT, INC.
PROPOSED TO BE TRANSFERRED

<u>Decision No.</u>	<u>Date of Decision</u>	<u>Application No.</u>
13091	Jan. 23, 1924	9150
14067	Sept. 16, 1924	10376
15578	Oct. 29, 1925	10629
21981	Jan. 3, 1930	16175
29446	Jan. 11, 1937	20626
35161	Mar. 24, 1942	24830
35912	Nov. 5, 1942	25180
38466	Dec. 10, 1945	24476
40016	Mar. 4, 1947	27618
40934	Nov. 19, 1947	28333
42798	Apr. 26, 1949	29780
43731	Jan. 24, 1950	30322
43779	Feb. 7, 1950	30322
44626	Aug. 8, 1950	31269
45330	May 6, 1951	31657
46100	Aug. 20, 1951	32253
46242	Oct. 2, 1951	32190
47311	June 24, 1952	33137-38, 33351
48008	Dec. 2, 1952	32506
49369	Nov. 24, 1953	32927
51287	Apr. 5, 1955	32456
51323	Apr. 12, 1955	34643
53097	May 22, 1956	37804
53438	July 16, 1956	35083
54910	Apr. 22, 1957	38526
55112	June 11, 1957	38783
58654	June 23, 1959	41116

The operating authority issued to Highway Transport Express by Decision No. 56437, dated April 1, 1958, in Application No. 39437 is also proposed to be transferred. The applicants also propose that any other California intrastate operating authority which Highway Transport, Inc., and Highway Transport Express may have should be transferred to Interstate Motor Lines, Inc.

Highway Transport, Inc., has been operating for many years as a highway common carrier under certificates of public convenience

and necessity issued by this Commission, and as a common carrier by motor vehicle under certificates of public convenience and necessity issued by the Interstate Commerce Commission. Highway Transport Express has been operating for many years as an express corporation exclusively in intrastate commerce under certificates issued by this Commission. In view of the fact that the companies incurred losses in 1957 and 1958 and suffered from the crippling effect of a strike in 1959, from which they never recovered, on March 7, 1960, they made a voluntary assignment for the benefit of creditors to Walter J. Hempy, who is the Secretary of the Board of Trade of San Francisco. Exhibit No. 4 which is a balance sheet as of December 31, 1959, of the two companies shows total assets of \$321,783.85 and a deficit net worth of \$326,159.06. The operating statement for the period January 1, 1959 to December 31, 1959, shows a net loss of \$145,345.24.

Interstate Motor Lines, Inc., operates as a common carrier by motor vehicle under certificates of public convenience and necessity issued to it by the Interstate Commerce Commission. Its operations extend from Chicago and Kansas City on the east to Denver, Salt Lake City, Portland, San Francisco and Los Angeles on the west, serving numerous intermediate and off-route points. Interstate has been a connecting carrier and feeder line to Highway Transport, Inc., and Highway Transport Express. It has been operating since August 15, 1959, and now has over 1,000 employees and 680 pieces of equipment. Exhibit C attached to Application No. 42265 herein shows that Interstate Motor Lines, Inc., has qualified in California as a foreign corporation to transact intrastate business in California. A copy of its Articles of Incorporation, with all amendments thereto, is attached to Application No. 42265 herein.

Exhibit No. 10 which is the balance sheet of Interstate Motor Lines, Inc., as of December 31, 1959, shows total assets of

\$8,573,771, liabilities and reserve of \$4,820,988 and capital of \$3,752,783. Exhibit No. 11 which is the income statement of Interstate Motor Lines, Inc., for the year ended December 31, 1959, shows net income after income taxes of \$1,252,949.

The total purchase price of \$127,000 for the operating rights is allocated as follows:

Operating Rights of Highway Transport, Inc.:

Intrastate	\$37,000	
Interstate	<u>75,000</u>	\$112,000

Operating Rights of Highway Transport Express:

Intrastate	<u>15,000</u>	
		\$127,000

By telegram on May 24, 1960, the Interstate Commerce Commission granted temporary operating authority to Interstate Motor Lines, Inc., upon the terms set forth in the application filed with the Interstate Commerce Commission.

Counsel for the applicants and respondents suggested that any order of this Commission authorizing the transfer of the intrastate operating rights might provide that the monies to be paid therefor should be held by the Board of Trade for a period of six months before disbursing the same to give the C.O.D. creditors full opportunity to exert such rights as they might have against such funds.

In this connection attention is called to the following provision of General Order No. 84C:

"IT IS HEREBY FURTHER ORDERED that each express corporation, each freight forwarder, each highway common carrier, each petroleum irregular route carrier and each passenger stage corporation electing to handle C.O.D. shipments shall establish in its tariffs on file with this Commission either the following rule or a rule of like meaning and effect:

'In the handling of C.O.D. shipments this carrier will, promptly upon collection of any and all moneys, and in no event later than ten (10) days after delivery to the consignee, unless consignor instructs otherwise in writing, remit to the consignor all moneys collected by it on such shipments.'

In an effort to effect compliance by respondents with this provision of General Order No. 84C and respondents' own tariff rules this Commission in its Order Instituting Investigation and Suspending Operative Rights ordered that the disposition of the C.O.D. obligations to the satisfaction of this Commission will be a condition precedent to reinstatement of the suspended operating authorities.

The Commission takes notice of the fact that the transportation rate fund fees and penalties due to the Commission from Highway Transport, Inc., amount to \$2,072.15 and those due to the Commission from Highway Transport Express amount to \$2,486.49.

After consideration the Commission finds and concludes that the proposed temporary lease and subsequent transfer would not be adverse to the public interest and should be authorized and that the order of this Commission suspending the operative rights of Highway Transport, Inc., and Highway Transport Express should be vacated, provided the Agreement, Exhibit A to Application No. 42265, is modified to provide that 52/127 of the amounts paid pursuant to said agreement by Interstate Motor Lines, Inc., to Walter J. Kempy, Secretary of the Board of Trade of San Francisco, Assignee for the benefit of creditors of Highway Transport, Inc., and Highway Transport Express, shall be applied first toward payment of amounts due to this Commission for transportation rate fund fees and penalties from Highway Transport, Inc., and Highway Transport Express and amounts due to C.O.D. creditors of Highway Transport, Inc., and Highway Transport Express, before any payments are made to other creditors

and stockholders of Highway Transport, Inc., and Highway Transport Express.

The authorization herein granted shall not be construed as a finding of the value of the rights and equipment nor as a determination that the amounts referred to herein will be accepted as proper bases for an order authorizing the issue of securities.

Interstate Motor Lines, 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. 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.

ORDER

A public hearing having been held and the Commission being informed in the premises,

IT IS ORDERED that:

1. In the event that the Agreement, Exhibit A to Application No. 42265, is modified to provide that 52/127 of the amounts paid pursuant to said agreement by Interstate Motor Lines, Inc., to Walter J. Kempy, Secretary of the Board of Trade of San Francisco, Assignee for the benefit of creditors of Highway Transport, Inc., and Highway Transport Express shall be applied first toward payment of amounts due to this Commission for transportation rate fund fees and penalties from Highway Transport, Inc., and Highway Transport Express and amounts due to C.O.D. creditors of Highway Transport, Inc.,

and Highway Transport Express, before any payments are made to other creditors and stockholders of Highway Transport Inc., and Highway Transport Express, and a copy of such modified agreement is filed with this Commission, Interstate Motor Lines, Inc., as lessee temporarily may lease and subsequently may purchase and Highway Transport, Inc., and Highway Transport Express as lessors temporarily may lease and subsequently may sell and transfer pursuant to the provision of said modified agreement all of the California intrastate operative rights held by Highway Transport, Inc., to operate as a highway common carrier and all of the California intrastate operative rights held by Highway Transport Express to operate as an express corporation, including without limitation all the operative rights referred to in Application No. 42265, and the operative rights granted by the following decisions of this Commission:

<u>Decision No.</u>	<u>Date of Decision</u>	<u>Application No.</u>
16339	March 30, 1926	12677
18293	April 29, 1927	13551
29196	October 19, 1936	19838
41595	May 18, 1948	29277
41613	May 19, 1948	29276
47129	May 13, 1952	33294.

2. Concurrently with the commencement of the exercise of said operative rights by Interstate Motor Lines, Inc., pursuant to said Exhibit A, modified as provided in paragraph 1 of this order, the second and sixth ordering paragraphs of Case No. 6428 pertaining to the suspension of the operative rights of Highway Transport, Inc., and Highway Transport Express shall be vacated.

3. Within thirty days after the consummation of the transfer herein authorized, Interstate Motor Lines, Inc., 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 transfer.

4. That on not less than five days' notice to the Commission and to the public, effective concurrently with the commencement of the exercise of said operative rights by Interstate Motor Lines, Inc., pursuant to the Agreement, Exhibit A to Application No. 42265, as required to be modified herein, applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the operations here involved to show that Highway Transport, Inc., and Highway Transport Express have withdrawn or canceled, and Interstate Motor Lines, Inc., has adopted or established as its own, said rates, rules and regulations. The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80.

5. Respondents and applicant Walter J. Hempy, as Assignee for the benefit of creditors of respondents, Highway Transport, Inc., and Highway Transport Express, on the fifteenth day of each month until all C.O.D. claims against Highway Transport, Inc., and Highway Transport Express have been paid shall report to the Commission in writing the amount of money due on each C.O.D. claim which has not been paid and the name and address of each person to whom such amount is due.

6. The provisions of this order shall supersede and replace the ordering paragraphs of the Order Instituting Investigation and Suspending Operative Rights issued March 8, 1960, in Case No. 6423.

7. Any authority herein granted which is not exercised on or before December 31, 1961, shall thereupon expire.

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

Dated at San Francisco, California, this 2nd day of August, 1960.

Ernest B. Royce
President
W. H. ...
...
Theodore Jensen
Commissioners