

**ORIGINAL**

Decision No. 61052

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of CHARLES L. HESS, doing business as McCUTCHEN TANK LINE; to sell; and SYSTEM TRANSPORT, a corporation, to purchase, a certificate of public convenience and necessity pursuant to Sections 851-853 of the California Public Utilities Code.

Application No. 42671

O P I N I O N

In this application, filed September 12, 1960, Charles L. Hess, doing business as McCutchen Tank Line, seller, requests authority to sell and transfer his operative rights to System Transport, a California corporation, buyer, having its principal place of business at the same address, to wit, 14400 South San Pedro Street, Gardena, California, and a certified copy of its articles of incorporation is alleged to be on file with this Commission on or about September 28, 1959, in file No. T-66,547.

The rights to be transferred consist of a certificate from this Commission to render service as a petroleum irregular route carrier, issued on June 20, 1950, Decision No. 44375, and thereafter transferred to this seller, authority dated August 5, 1957, Decision No. 55379.

The buyer owns operating rights as a common carrier transferred to it pursuant to Decision No. 59643 dated February 9, 1960, and operating rights as a radial highway common carrier, highway contract carrier and city carrier, issued by the Commission.

Exhibits attached to the application allege service of the application upon a list of 105 competitors; that the total liabilities and capital of the buyer amount to the sum of \$26,605.28; and that a list of available equipment sets forth 45 pieces. The application alleges that the buyer proposes to continue said highway common carrier operations throughout the territory described in said certificated authority, and on the same schedules and at the same rates and charges as the same are now operated by applicant seller. Buyer further intends to and will lease and/or purchase such additional equipment necessary to perform the services now being performed under seller's authority, and finally, buyer has the financial ability to acquire by lease or purchase such additional equipment as may be necessary to perform service under the transfer of authority herein contemplated.

The reasons given by the parties for the transfer allege that it is for the purpose of reducing cost of operation, to eliminate duplication in handling business affairs, to enable the buyer to expand its operation and to render a more efficient service to the general shipping and receiving public, and to enable the buyer to take advantage of savings in its transportation operations under a corporate entity.

That applicant alleges that the purchase price consideration of \$300 for transfer of the certificate represents the actual cost to applicant seller in the acquisition of said authority and that the individuals conducting operation of McCutchen Tank Line are identical with the individuals that are actively engaged in System Transport.

From a review of the application the Commission finds and concludes that the proposed transfer will not be adverse to the public interest, that there will be no change in the rates to be charged to the public as a result of the transfer and that the proposed transfer should be approved.

System Transport, a corporation, 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.

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

O R D E R

The Commission having considered the above-entitled matters and being of the opinion that a public hearing is not necessary, therefore,

IT IS HEREBY ORDERED as follows:

1. That, on or before February 1, 1961, Charles L. Hess, may sell and transfer, and System Transport, a corporation, may purchase and acquire, the operative rights referred to in the application.

2. That within thirty days after the consummation of the transfer herein authorized, System Transport, a corporation, 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.

3. That on not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, 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 Charles L. Hess, an individual doing business as McCutchen Tank Line, has withdrawn or cancelled, and System Transport, a corporation, 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.

4. System Transport, a corporation, shall file with the Commission a report, or reports, as required by General Order No. 24-A, which order, insofar as applicable, is made a part of this order.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of NOVEMBER, 1960.

*Charles L. Hess*  
 President

*John E. Quinn*

*Michael J. Gable*

*E. Lynn Fox*

*Theodore Jensen*  
 Commissioners