

62450

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of Vincent L. Gritsch, doing)
 business as Peavine Transfer and)
 Warehouse Company, and Delta)
 Lines, Inc., for authority for)
 Gritsch to sell and Delta to)
 purchase the operating authority)
 held by Gritsch.)

Application No. 43193

Berol and Geernaert by Bruce R. Geernaert,
 for applicants.
 Lambert and Lemmon by James W. Winchell,
 for Joe Saia Trucking Company, protestant.

O P I N I O N

This proceeding was commenced on March 2, 1961. Public hearing was held before Examiner Power at San Francisco on June 19, 1961 and the matter was submitted.

Gritsch is the owner of a number of operating rights both inter- and intra-state. He here proposes to sell to Delta Lines, Inc. for the sum of \$1,000, certain intrastate rights authorizing service between Auburn and Lake Tahoe points via Truckee with Squaw Valley as an off-route point. An agreement attached to the application recites that \$500 has been paid and provides for payment of the balance upon consummation of the transfer.

Prior to hearing, protestant alleged abandonment and enlargement as reasons for opposing the proposed transfer.

The evidence shows that there has been no abandonment of the Gritsch right. An exhibit (No. 13) indicates that an average of about thirty shipments per month were carried over a one-year period (June, 1960 through May, 1961).

The issue relating to an enlargement of rights was urged on two grounds. First, there was a contention that to unite Peavine with Delta, a carrier having rights throughout the major portion of California, would make available to shippers a service far superior to that which Peavine could render alone. To some extent this is true. However, in the legal sense such a service could always have been rendered by interlining.

The second phase of this contention arises out of a request in the application that Delta be authorized to serve in the Gritsch area free of any limitation heretofore imposed on Gritsch. This request raises an issue of public convenience and necessity and no evidence has been received on that issue in this proceeding. Evidence on that issue had been received in another proceeding (Delta Lines, Inc., Application No. 42431) now pending. In the instant proceeding the request will not be granted. The question of operating limitations will be considered in connection with Application No. 42431.

After consideration the Commission is of the opinion and so finds that the proposed transfer would not be adverse to the public interest.

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.

Applicant 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

Application having been filed, a public hearing held and the Commission basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. On or before October 1, 1961, Vincent L. Gritsch may sell and transfer, and Delta Lines, Inc. may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, Delta 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.

3. 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 Vincent L. Gritsch has withdrawn or canceled, and Delta 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.

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

Dated at San Francisco, California, this 22nd day of August, 1961.

Geoffrey R. Fox
President
John E. Dwyer
E. Fox
George H. Brown
Fredrick B. Holbrook
Commissioners