

ORIGINAL

Decision No. 63241

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

THOMAS A. REILLEY, as Executor of the Estate of H. F. Reilley, deceased, dba REILLEY TRUCK LINE and CALIFORNIA FIREPROOF STORAGE & TRANSFER CO. and REILLEY TRUCK LINE, a corporation,

for authority of REILLEY TRUCK LINE, a corporation, to purchase REILLEY TRUCK LINE, a proprietorship, and CALIFORNIA FIREPROOF STORAGE & TRANSFER CO.; and

for authority of REILLEY TRUCK LINE, a corporation, to issue stock.

Application No. 43948
Filed November 22, 1961
and
First Amendment
Filed December 18, 1961
Second Amendment
Filed January 17, 1962

O P I N I O N

In this proceeding the Commission is asked to make its order, or orders, authorizing Thomas A. Reilley, Executor of the Estate of H. F. Reilley, deceased, to sell and transfer operative rights, equipment and other assets to Reilley Truck Line, a corporation, and authorizing said corporation to assume indebtedness, to issue \$25,000 par value of its common stock, and to operate as a public utility warehouseman in San Joaquin County outside of the corporate limits of the City of Stockton.

Thomas A. Reilley, Executor of the Estate of H. F. Reilley, deceased, has been operating as a public utility, subject to the jurisdiction of this Commission, (1) doing business as Reilley Truck Line, as a highway common carrier

of general commodities, with certain exceptions, in the central portion of California as defined in the certificate of public convenience and necessity granted by Decision No. 60572, dated August 16, 1960, as amended by Decision No. 60876, dated October 11, 1960, in Application No. 41511; and (2) doing business as California Fireproof Storage & Transfer Co., as a public utility warehouseman in the City of Stockton pursuant to a prescriptive operative right determined on August 1, 1960, in Case No. 6707. Reilley Truck Line is a California corporation organized on or about October 9, 1961 to engage in transportation and warehousing activities.

The application shows that following the death of H. F. Reilley in 1958, Thomas A. Reilley, as executor of the estate, undertook to continue the operations, that he encountered financial reverses due to lack of adequate capital, and that as of October 31, 1961, he had outstanding current liabilities of \$105,133.85 and long-term liabilities of \$73,235.24. The executor has made arrangements to dispose of the operations and, under date of October 23, 1961, received an order from the Superior Court of the State of California in and for the County of San Joaquin approving the sale of all the assets, operative rights and real and personal property of the two businesses to Reilley Truck Line, a corporation, under the terms of an agreement whereby said corporation, as consideration, agreed to pay all existing and known debts of the two businesses.

It is asserted that the transfer, as proposed, will preserve the long-standing service to the public and will insure creditors of payment of their claims. The new corporation has been formed by Harold F. Culy and Donald O. Culy who have had many years experience in trucking operations under the jurisdiction of the Commission and who appear to be in a satisfactory financial condition to enter upon the operations. At the outset, they propose to put \$25,000 in cash into the business for working capital in exchange for a like amount of common stock.

The application further shows, among other things, C.O.D.s unremitted by the executor in the estimated amount of \$5,400 as of October 31, 1961. An examination by our staff shows that the Culy's took over the management of the operations in October of 1961; that they installed a C.O.D. register; and that they have paid all claims presented. In the first amendment to the application, the new corporation suggests that, in any order in this proceeding, the Commission provide that the corporation shall cause to be paid all unremitted C.O.D. collections prior to consummating the transaction.

Subsequent to the filing of the application the warehouse operations were moved from the premises in the City of Stockton to 1600 Report Street which is approximately five blocks outside the city limits and is in the County of San Joaquin. The Commission is asked to authorize the warehouse operations in the new location.

Upon considering this matter now before us we find and conclude that -

1. The proposed transfer will not be adverse to the public interest;
2. Public convenience and necessity require that the prescriptive warehouse operative rights described in Case No. 6707 be canceled and a certificate of public convenience and necessity be granted permitting the removal of the warehouse operations to that location in the County of San Joaquin described in the application; and
3. The money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of these findings we will enter an order granting the application. We place Reilley Truck Line, a corporation, 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. 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 action taken herein shall not be construed to be a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

The Commission having considered the above-entitled matter and being of the opinion that a public hearing is not necessary, and that the application should be granted, therefore,

IT IS ORDERED that -

1. Thomas A. Reilley, Executor of the Estate of H. F. Reilley, deceased, on or after the effective date hereof and on or before June 30, 1962, may sell and transfer to Reilley Truck Line, a corporation, the highway common carrier certificate of public convenience and necessity, the public utility warehouse prescriptive operative rights, the equipment and other assets, as described in this application and under the terms set forth therein, provided, however, that said Reilley Truck Line shall pay, or cause to be paid, all unremitted C.O.D. collections prior to consummating said sale and transfer and shall report to the Commission, in writing, when all unremitted C.O.D. collections have been paid. If any C.O.D. collections remain unremitted 10 days after the effective date of this order, Reilley Truck Line, a corporation, shall report to the Commission, in writing, every 15 days the amount of such C.O.D. collections remaining to be paid and the action being taken to pay them.

2. Within 30 days after the consummation of the transfer herein authorized, Reilley Truck Line, 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. Reilley Truck Line, a corporation, on or after the effective date hereof and on or before June 30, 1962, in acquiring said operative rights, equipment and other assets, shall assume the payment of outstanding indebtedness, as set forth in this application, and may issue and sell at par, for cash, not to exceed \$25,000 par value of its common stock for working capital.

4. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the operations here involved to show that Thomas A. Reilley, Executor of the Estate of H. F. Reilley, deceased, has withdrawn or canceled and Reilley Truck Line, a corporation, has adopted or established as its 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 Orders Nos. 61 and 80.

5. Reilley Truck Line, 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.

6. Effective concurrently with the tariff filings required by Paragraph 4 hereof, the prescriptive warehouse operative rights set forth in Case No. 6707 on August 1, 1960, are hereby revoked and Reilley Truck Line, a corporation, hereby is granted a certificate of public convenience and necessity authorizing the establishment and operation as a public utility warehouseman, as defined in Section 239(b) of the Public Utilities Code, in the County of San Joaquin as more particularly described in Appendix A attached hereto and made a part hereof.

7. The authority herein granted shall become effective 20 days after the date hereof.

Dated at San Francisco, California,
this 13th day of FEBRUARY, 1962.

George W. Page
President

W. E. M. Schell

S. J. Fox

Frederic B. Hallock

Commissioners

Commissioner George G. Grover being necessarily absent, did not participate in the disposition of this proceeding.

Reilley Truck Line, a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a public utility warehouseman for the operation of storage or warehouse floor space as follows:

<u>Location</u>	<u>No. of Square Feet of Floor Space</u>
County of San Joaquin in the vicinity of Stockton	15,000

(The floor space shown above is exclusive of the 50,000 square feet of expansion permissible under Section 1051 of the Public Utilities Code.)

End of Appendix A

Issued by California Public Utilities Commission.

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