

ORIGINAL

Decision No. 63549

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
BILL W. SMITH, an individual, doing)
business as SMITH TRANSFER, and)
JOSEPH BIETH, an individual, doing)
business as JOE BIETH TRUCKING)
COMPANY, for the transfer of a)
certificate of public convenience)
and necessity from BILL W. SMITH to)
JOSEPH BIETH.)

Application No. 44233
(Filed March 2, 1962)

O P I N I O N

Bill W. Smith requests authority to sell and transfer and Joseph Bieth requests authority to purchase and acquire certain highway common carrier operative rights.

The rights were granted by Decision No. 53567 in Application No. 36508 and were acquired by applicant Smith by Decision No. 58961, dated September 1, 1959, in Application No. 41258. Said rights in general authorize the transportation of canned goods; caps, covers or tops; fibreboard boxes and pallets between Manteca, on the one hand, and San Francisco, Oakland, Alameda and Stockton, on the other hand, serving no intermediate points. Because of applicant's illness the Commission by Decision No. 62282, dated July 18, 1961, in Application No. 43514 authorized suspension of such service for one year. Since that time applicant Smith disposed of his equipment and desires to retire from business.

Applicant Bieth is presently engaged in the transportation of milk under a contractual arrangement. He owns and operates eleven pieces of equipment. As of December 31, 1961, applicant Bieth indicated a net worth in the amount of \$26,577.97.

The agreed consideration for the operating authority and good will is \$1,000 payable as follows: \$200 in cash and the balance in the form of a six months' promissory note.

After consideration, the Commission finds and concludes that the proposed transfer will not be adverse to the public interest and that applicant Bieth has the necessary experience and financial ability to provide service pursuant to the authority herein considered. A public hearing is not necessary.

Joseph Bieth 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

Application having been filed and the Commission being informed in the premises,

IT IS ORDERED that:

1. On or before August 1, 1962, Bill W. Smith may sell and transfer and Joseph Bieth may purchase and acquire the operative authority granted in Decision No. 53567 in Application No. 36508.
2. Within thirty days after the consummation of the transfer herein authorized, Joseph Bieth shall notify the Commission, in

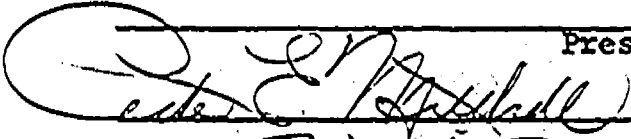
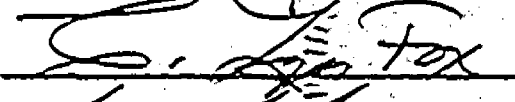
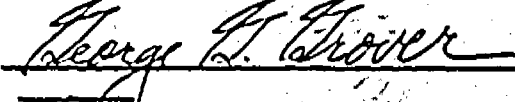
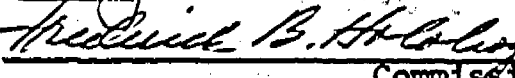
writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. On not less than thirty days' notice to the Commission and 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 Bill W. Smith has withdrawn or canceled and Joseph Bieth has adopted or established, as his 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. Decision No. 62282, dated July 18, 1961, in Application No. 43514, is hereby vacated and set aside effective concurrently with the effective date of tariff filings required by paragraph 3 hereof.

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

Dated at San Francisco, California, this 10th day of APRIL, 1962.

 President


 Commissioners

Commissioner Everett C. McKeage, being necessarily absent, did not participate in the disposition of this proceeding.