

64029

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of N.E.M. Lines, Inc.,)
a corporation, to sell, and Manuel S.)
Mancebo, Manuel Mancebo, Jr., John E.)
Mancebo, and Joe Coelho, Jr., a)
partnership, doing business as C & M)
Truck Lines, to buy, highway common)
carrier operating authority.)

Application No. 44410

In the Matter of the Application of)
Cliff H. Northam and Burnice Reid)
Northam, husband and wife, doing)
business as Coast Counties Refriger-)
ated Trucks to sell and N.E.M. Lines,)
Inc., a corporation, to purchase)
highway common carrier operative)
rights.)

Application No. 35515

E. H. Griffiths, for applicants.
Willard Johnson, for J. Christenson Co.,
protestant.

Graham, James & Rolph, by Boris H. Lakusta and
Raymond A. Greene, Jr., appearing for: California
Motor Transport Co., and California Motor
Express Ltd., Callison Truck Lines, Delta Lines,
Di Salvo Trucking Co., Fortier Transportation Co.,
Merchants Express of California, Oregon-Nevada-
California Fast Freight and Southern California
Freight Lines, Pacific Intermountain Express,
Pacific Motor Trucking Company, Valley Express
Co., and Valley Motor Lines, Willig Freight
Lines, protestants.

Robert A. Lane, for the Commission staff.

O P I N I O N

N.E.M. Lines, Inc., requests authority to sell and trans-
fer and Manuel S. Mancebo, Manuel Mancebo, Jr., John E. Mancebo,
and Joe Coelho, Jr., as partners doing business as C & M Truck
Lines, request authority to purchase and acquire certain highway
common carrier operative rights.

A public hearing was held before Examiner Thomas E. Daly
on May 29, 1962, at San Francisco, and the matter was submitted.

The operative rights were granted by Decision No. 47469 dated July 15, 1952, in Application No. 31681, and authorize the transportation of perishable commodities requiring refrigeration between various points in California. The agreed consideration is \$1,000 payable at the rate of \$200 a month.

The buyers have been engaged in the transportation of commodities requiring refrigeration since 1954, pursuant to permitted authority. They own and operate 22 units of equipment. As of December 31, 1961, they indicated a net worth in the amount of \$82,424.16 and for the year 1961 realized a net profit in the amount of \$32,469.86.

Protestants make the following contentions:

1. That the operative rights were revoked by Decision No. 61708 and no longer exist.
2. That the operative rights if not revoked were abandoned by applicant seller.
3. That no service has been performed pursuant to said rights since 1960, and the transfer would in effect constitute a new service without a proper showing of public convenience and necessity.

As previously stated the rights were granted in 1952 by Decision No. 47469. On November 10, 1959, they were suspended because applicant seller failed to have on file with the Commission evidence of liability insurance, which lapsed on October 14, 1959. By Decision No. 59417, dated December 21, 1959, the rights were reinstated as the result of applicant seller having filed evidence of insurance. On April 19, 1960, the Commission by Decision No. 59951 suspended the rights because applicant seller again had allowed its insurance to lapse. On February 20, 1961, applicant

seller filed evidence of insurance effective from February 17, 1961, to March 19, 1961. On March 21, 1961, the Commission by Decision No. 61708 revoked the rights for applicant seller's failure to file tariff amendments pursuant to Commission orders and failure to respond to Commission correspondence. The effective date of the order of revocation was thirty days after service upon applicant seller, unless before such effective date applicant seller filed with the Commission a written response denying the facts set forth, in which case the effective date would be stayed until further order of the Commission. A copy of the order was mailed to applicant seller on March 23, 1961. On April 21, 1961, applicant seller responded to the Commission's order of revocation. In its response applicant stated that it had liability insurance in effect at all times, and that its insurance carrier had apparently failed to file a certificate. Applicant seller further stated that it had suffered financial reverses and was in the process of reorganization and that upon the completion of reorganization a tariff complying in full with the Commission's orders and regulations would be filed. It requested that its rights merely be suspended pending reorganization.

Protestants claim that the response to the order of revocation, although timely filed, did not stay the effective date of the order of revocation because it did not deny the fact that applicant failed to file required tariff amendments. Protestants further contend that notwithstanding the order of revocation applicant seller has performed no service pursuant to its certificate since April 30, 1960, and has therefore abandoned its rights. They also assert that operations by the buyers would in effect constitute a new service without a showing that there is a public need for it.

After consideration the Commission finds and concludes (1) that the response to Decision No. 61708 filed by applicant seller on April 21, 1961, while not denying each and every fact set forth in said decision, did deny material facts bearing on the revocation and did stay the effective date of the order; (2) that the operative rights here in question have not been revoked but are presently under suspension; (3) that said rights were not abandoned; and (4) that the proposed transfer would not be adverse to the public interest. The transfer will be authorized, subject to the payment of unpaid fees.

Manuel S. Mancebo, Manuel Mancebo, Jr., John E. Mancebo, and Joe Coelho, Jr., are 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 and the Commission being informed in the premises,

IT IS ORDERED that:

1. On or before November 1, 1962, N.E.M. Lines, Inc., may sell and transfer and Manuel S. Mancebo, Manuel Mancebo, Jr., John E. Mancebo, and Joe Coelho, Jr., may purchase and acquire the operative rights granted by Decision No. 47469 and said rights are hereby reinstated provided, however, that either N.E.M. Lines, Inc., or applicant buyers shall amend the tariffs published by N.E.M. Lines, Inc., to the extent necessary to bring such tariffs into

compliance with outstanding Commission minimum rate orders that affect such tariffs, and provided that N.E.M. Lines, Inc., shall file all quarterly reports and make all payments due from it under Section 5003 of the Public Utilities Code.

2. Within thirty days after the consummation of the transfer herein authorized, Manuel S. Mancebo, Manuel Mancebo, Jr., John E. Mancebo, and Joe Coelho, Jr., 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. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations here involved to show that N.E.M. Lines, Inc., has withdrawn or canceled, and Manuel S. Mancebo, Manuel Mancebo, Jr., John E. Mancebo, and Joe Coelho, Jr., have adopted or established, as their own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. 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 Order No. 80-A. ✓

4. Effective concurrently with the effective date of tariff filings required by paragraph 3 hereof, Decision No. 59951 dated April 19, 1960, and Decision No. 61708 dated March 21, 1961, in Application No. 35515 are hereby vacated and set aside. However, if applicants should fail to consummate the transfer authorized by

paragraph 1 hereof or comply with tariff filings and other requirements of paragraphs 1 and 3 hereof, the order herein authorizing the transfer shall become rescinded and the Order Revoking Operative Rights in Decision No. 61708 shall become effective on the date set forth in paragraph 1 hereof.

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

Dated at San Francisco, California, this 31st day of JULY, 1962.

George G. Grover
President
Frederic B. Hallock
Commissioners