

**ORIGINAL**Decision No. 64051

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of QWIKWAY TRUCKING CO., a corporation, to purchase, and MERLYN F. TESKEY and FRANK TESKEY, copartners doing business under the fictitious firm name of TESKEY TRANSPORTATION COMPANY, to sell, a prescriptive operative right as a public utility warehouseman, in Los Angeles County, pursuant to Sections 851-853 of the Public Utilities Code.

Application No. 43740

In the Matter of the Application of WATER-LAND TRUCK LINES, a corporation, and of WATER-LAND TRUCK LINES, a corporation, by WILLIS T. NORMAN, its Assignee for the Benefit of Creditors, for Suspension of Prescriptive Operative Right as a Public Utility Warehouseman in an unincorporated area of Los Angeles County, pursuant to Section 1053 of the Public Utilities Code.

Application No. 43756

Russell and Schureman, by R. Y. Schureman, for applicants.

Knapp, Gill, Hibbert and Stevens, by Karl K. Roos, for Los Angeles Warehousemen's Association, protestant.

O P I N I O N

By Application No. 43740 filed on September 8, 1961, Merlyn F. Teskey and Frank Teskey, copartners doing business under the fictitious firm name of Teskey Transportation Company, hereinafter referred to as "Teskey", request authority to sell and Qwikway Trucking Co., a corporation, hereinafter referred to as "Qwikway", requests authority to purchase for \$3,000 the prescriptive operative right as a public utility warehouseman recognized by the Commission in its Order of September 1, 1960, in Case No. 6947. By Application No. 43756, filed on September 14, 1961, Water-Land Truck Lines, a

corporation, hereinafter referred to as "Water-Land", and Water-Land Truck Lines, a corporation, by Willis T. Norman, its Assignee for the benefit of creditors, seek an order of the Commission suspending for a period of one year the prescriptive operative right as a public utility warehouseman recognized by the Commission in its Order issued on September 1, 1960, in Case No. 6943.

The applications were heard on a consolidated record before Examiner John K. Power at Los Angeles on December 15, 1961. The consolidated proceedings were submitted subject to the filing of briefs. Briefs have been filed and the matters are ready for decision.

In 1959 the Legislature enacted a law to require a certificate of public convenience and necessity for all warehouse operations of a public utility character. Previously, only warehousemen in cities of 150,000 population or more had been required to possess such certificates. The legislation of 1959 contained a "grandfather" clause and fixed the "grandfather" date as September 1, 1959.

After September 1, 1959, the Commission staff made a survey and mailed questionnaires to various warehousemen who were required to and did return verified answers. Included in their number were Water-Land and Teskey. Frank Teskey, vice-president of Water-Land and a partner of Teskey, verified the answers for those two concerns. The Commission made findings that each of these concerns had a "grandfather" right as a public utility warehouseman.

From the evidence received at the hearings it appears as follows:

On or about March 1, 1961, both the Teskey partnership and Water-Land Truck Lines were operating as public utility warehousemen in an unincorporated area of Los Angeles County. Qwikway Trucking Co. has a terminal in the same unincorporated area about 2½ miles from Teskey Transportation Company. Frank Teskey and Merlyn F. Teskey are equal partners in Teskey Transportation Company. Merlyn F. Teskey owns 75 percent, more or less, of the stock and is president of Water-Land Truck Lines, and his wife is secretary-treasurer of said company. Frank Teskey owns the balance of the stock of said company and is vice-president thereof. On or before March 7, 1961, Water-Land Truck Lines became insolvent whereupon an auction sale of the properties of Water-Land Truck Lines was held on March 7, 1961. The properties of Teskey Transportation Company and Water-Land Truck Lines were contiguous and were the property of Frank Teskey, Mabel Teskey, his wife, and Merlyn F. Teskey as individuals. Mabel Teskey is now deceased and Frank Teskey has succeeded to her interest. In the sale on March 7 only the parcel of land held by Teskey Transportation Company was sold. The Water-Land parcel was retained and Teskey Transportation moved its business there. On or about April 4, 1961, Water-Land Truck Lines made an assignment for the benefit of creditors to Willis T. Norman, an applicant in Application No. 43756. Sometime early in May, 1961, the exact date being unknown to the Commission, the last goods stored by Water-Land were removed or placed in other custody and storage operations of Water-Land came to an end. Teskey Transportation Company continued to have goods in storage until on or about November 24, 1961, two months and thirteen days, more or less, after the filing of Application No. 43740. Neither the Commission

nor protestant herein, nor its members, nor anyone else, instituted any proceeding looking toward the cancellation of either of these certificates. At no time did the Teskeys endeavor to conceal from the Commission the ownership of Water-Land. The questionnaires returned to the Commission in connection with the "grandfather" warehouse inquiries were signed by one and the same person, namely, Frank Teskey.

Based upon the evidence, the Commission finds and concludes:

1. Teskey Transportation Company and Water-Land Truck Lines have not been shown to be the alter egos of one another. Abandonment of the Teskey Transportation Company's operating right has not been shown. There is nothing, therefore, in the public interest to prevent the proposed transfer from Teskey to Qwikway and Application No. 43740 will be granted.

2. Application No. 43756 presents more difficulty, chiefly due to the question of possible abandonment. Whenever abandonment is alleged decision will depend upon the facts of the particular case. In this case there was a delay of 5 months after assignment before the application was filed. Such a delay might indicate abandonment in some cases. However, in the case of Water-Land Truck Lines there appear to be extenuating circumstances. In the first place, cessation of service was involuntary. The assignee was not shown to be a person particularly versed in transportation or regulatory matters. Since the failure of a business creates an emergency situation, the assignee understandably could be preoccupied with his responsibility of conserving assets and therefore be excused for omissions which would not be excusable under other circumstances. Under all the circumstances of this particular case,

the Commission concludes that abandonment has not been shown. Nothing in this result is to be interpreted to mean that the Commission will necessarily tolerate interruptions of public utility service in other cases without prior Commission authority. Application No. 43756 will also be granted.

Qwikway Trucking Co. 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 in a particular area. 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.


Water-Land Truck Lines, a corporation, Willis T. Norman, its assignee for the benefit of creditors, and the creditors of said corporation are, and each of them is, placed on notice that certificates of public convenience and necessity are instrumentalities for the procurement of necessary services by the public; that failure to render the service authorized is contrary to their purpose; that failure to restore the service heretofore rendered by Water-Land either by Water-Land or another may result in cancellation of the authority to render such service.

The authorization granted in Application No. 43740 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

Public hearing having been 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 <sup>December</sup> ~~September~~ 1, 1962, Merlyn F. Teskey and  Frank Teskey, copartners, may sell and transfer, and Qwikway Trucking Co., a corporation, may purchase and acquire, the operative rights referred to in Application No. 43740.

2. Within thirty days after the consummation of the transfer herein authorized, Qwikway Trucking Co. 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 warehouse operations here involved to show that Merlyn F. Teskey and Frank Teskey, copartners, have withdrawn or canceled, and Qwikway Trucking Co. has adopted or established, as its 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 to 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. 61.

4. The warehouse operative right confirmed to Water-Land Truck Lines, a corporation, on September 1, 1960, in Case No. 6943, and the tariff or tariffs filed thereunder are suspended for one year from the effective date of this order.

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.

[Signature] President  
[Signature]  
[Signature]  
[Signature]  
[Signature] Commissioner