

ORIGINALDecision No. 65633

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 REILLEY TRUCK LINE, a corporation,)
 by HARRISON FREDERICK, Trustee, to)
 sell and transfer a certificate of)
 public convenience and necessity to)
 AMERICAN TRANSFER CO., a corpora-)
 tion, and for AMERICAN TRANSFER CO.)
 to operate under a lease.)

Application No. 45407

O P I N I O N

Reilley Truck Line, a corporation, by Harrison Frederick, Trustee, requests authority to sell and transfer and American Transfer Co., a corporation, requests authority to purchase operating rights authorizing the transportation of general commodities between various points within the State. Authority is further sought to lease said rights pending the authorization of this Commission and the Interstate Commerce Commission.

The rights herein considered were granted by Decisions Nos. 60572, 60876 and 63241. The agreed consideration is \$34,100 with \$3,410 cash payable upon the signing of an order confirming the private sale of personal property by the District Court of the United States with the balance payable upon the approval of this Commission and the Interstate Commerce Commission. Applicant purchaser is presently engaged as a certificated and permitted carrier and as of December 31, 1961, indicated a net worth in the amount of \$360,549.08.

It is alleged that on September 18, 1962, Reilley Truck Line was adjudged bankrupt and Harrison Frederick was appointed the trustee of the bankrupt estate; that the operations

were suspended at the request of the trustee; that applicant purchaser has many gaps in its operating authority which permit only limited or no service to points on routes it regularly traverses, resulting in operating inefficiencies and that acquisition of the authority would permit applicant purchaser to provide a more complete and better rounded service.

Pending the approval of this Commission and the Interstate Commerce Commission applicants request that a temporary lease be approved providing for a rental fee of \$500. If the transfer is authorized the rental fee will be waived, but if it is not the down payment of \$3,410 will be returned less the \$500.

By letter dated May 22, 1963, the Commission was informed by counsel representing California Motor Transport Co.; Constructors Transport Company; Delta Lines, Inc.; Di Salvo Trucking Company; Fortier Transportation Company; Merchants Express of California; Southern California Freight Lines; Pacific Motors Trucking Company; Shippers Express; Sterling Transit Co., Inc.; Valley Express Co. and Valley Motor Lines, Inc.; and Willig Freight Lines that said carriers wished to protest the proposed transfer. Their protest is based upon the assertion that the area is already more than adequately served and that granting of the application will result in a condition of over capacity, which would be injurious both to protestants and to the public.

By Decision No. 63300, dated February 20, 1962, in Application No. 43901, and by Decision No. 65427, dated May 21, 1963, in Application No. 45291, the Commission held that in a transfer proceeding it was primarily concerned with whether the proposed transfer would be adverse to the public interest. The Commission further held that the issue of public convenience and necessity would constitute a collateral attack upon the decisions heretofore

rendered by the Commission. For the same reasons the Commission will not require a public hearing in the instant application.

The highway common carrier certificate of public convenience and necessity held by Reilley Truck Line has been suspended under the provisions of General Order No. 100-B since October 7, 1962, for failure to have on file requisite evidence of liability insurance, and by Decision No. 64755, dated January 8, 1963, in Application No. 43948, for failure to have tariffs on file with the Commission as required by Sections 486, 489 and 493 of the Public Utilities Code. The suspension pursuant to General Order No. 100-B was removed on April 23, 1963, due to a certificate of insurance having been filed in the name of Reilley Truck Line. American Transfer Co. will be authorized to temporarily lease the highway common carrier certificate and the suspension on such certificate will be vacated when highway common carrier tariffs are filed with the Commission in the name of Reilley Truck Line naming rates on the same level, subject to outstanding minimum rate orders, as rates previously published by Reilley Truck Line.

There is presently pending before the Commission Case No. 7323, an investigation on the Commission's own motion into the operations, rates and practices of American Transfer Co., a corporation, American Transfer Co. of Stockton, Inc., a corporation, and Central Cal Freight Lines, a corporation. The operating authority to be leased and transferred to American Transfer Co. by this decision will be subject to any penalty which might be provided by decision to be rendered in Case No. 7323.

After consideration the Commission finds that the proposed lease and sale would not be adverse to the public interest.

O R D E R

IT IS ORDERED that:

1. On or before March 1, 1964, Reilley Truck Line, a corporation, by Harrison Frederick, Trustee, may sell ~~and~~ transfer, and American Transfer Co., a corporation, may purchase and acquire, the operative right referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, American Transfer 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. American Transfer Co. shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that it 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. 80-A.

4. Pending the consummation of the transfer authorized by paragraph 1 hereof, applicants may temporarily lease the highway common carrier operative rights referred to herein. Such operating authority will be subject to any penalty which might be provided by decision to be rendered in Case No. 7323.

5. Effective concurrently with the effective date of highway common carrier tariffs satisfactory to the Commission which Reilley

Truck Line may cause to be filed, the suspension of the highway common carrier certificate ordered by paragraph 1 of Decision No. 64755, dated January 8, 1963, in Application No. 43948, is hereby vacated and set aside.

6. To the extent that the existing operating authority of American Transfer Co. duplicates that herein acquired, said operating authority is hereby revoked.

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

Dated at San Francisco, California, this 2nd day of JULY, 1963.

George F. Trover
President

Richard L. Mitchell

Charles W. Page

Fredrick B. Hilseluff

William W. Bennett
Commissioners