

ORIGINAL

Decision No. 73758

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
 EDWIN H. GRIFFITHS, as Court Commis-)
 sioner, and of CARLYLE MICHELMAN, as)
 Receiver of the Estate of Siefert)
 Truck Service, Inc., a bankrupt, for)
 authority to sell and transfer a)
 Certificate of Public Convenience and)
 Necessity to PACIFIC INTERMOUNTAIN)
 EXPRESS CO., a corporation, and of)
 Pacific Intermountain Express Co. to)
 acquire such Certificate of Public)
 Convenience and Necessity.)

Application No. 49973

O P I N I O N

This is an application by Pacific Intermountain Express Co. (hereinafter referred to as P.I.E.), and the Receiver in Bankruptcy, together with a Court Commissioner of Siefert Truck Service, Inc. (hereinafter referred to as Siefert), in which the parties seek authority for Siefert to transfer its highway common carrier operating rights to P.I.E. and for P.I.E. to be temporarily authorized to lease and operate these operating rights, pending final determination of a similar application which deals with Siefert's interstate operating authority, which is before the Interstate Commerce Commission.

Siefert's operating authority was originally granted to two partners, doing business under that name, on December 28, 1960, in Decision No. 61289 (Application No. 42260). Thereafter, the I.C.C. issued Certificate of Registration No. 121322 (Sub. No. 1) for said operating authority. Siefert, the present corporation, acquired the operating authority pursuant to Decision No. 63584 (Application No. 44285), dated April 28, 1962. Siefert's certificate of public convenience and necessity may generally be described as authorizing it

to transport general commodities, with certain exceptions, between all points and places in the Counties of Contra Costa, Merced, Monterey, Sacramento, San Joaquin and Stanislaus, and between the San Francisco Territory and the Los Angeles Basin Territory, including all intermediate points and lateral points within 25 miles, along specified highways.

In addition to authorizing the aforesaid transfer of operating rights, Decision No. 63584 also authorized Siefert to execute a promissory note which was to be secured by a mortgage of certain pieces of operating equipment and the certificate of public convenience and necessity. Siefert defaulted on certain of its obligations on the note. On November 17, 1967, the Superior Court for San Joaquin County (Action No. 91623) entered an Amended Decree of Foreclosure and Order For Sale by Commissioner. On November 11, 1967, an involuntary petition in bankruptcy was filed against Siefert (U.S.D.C., Central Dist., Cal. No. 25625-EC), the Court adjudicated it a bankrupt on December 5, 1967, and the Receiver in Bankruptcy qualified on December 19, 1967. On December 13, 1967, the Superior Court Commissioner conducted a public auction sale of Siefert's operating rights and sold them, subject to the approval of this Commission and the I.C.C., to P.I.E. for \$110,000 in cash. On January 22, 1968, the Referee in Bankruptcy entered an order authorizing the proposed sale and authorizing the leasing of Siefert's operating rights pending approval of the sale by this Commission and the I.C.C. The petition of the Receiver in Bankruptcy upon which the order was based indicates that there was substantial competitive bidding at the auction conducted by the Superior Court Commissioner.

P.I.E. holds highway common carrier operating authority granted by this Commission. In general, this authority authorizes

it to transport general commodities, with certain exceptions, between all points and places in the Los Angeles Basin Area; between the Los Angeles Basin Area and Sacramento, including all intermediate points and points within 5 miles of U. S. Highway 99; between the Los Angeles Territory and named cities in the San Francisco Bay Area; between San Francisco and Sacramento and between Los Angeles and San Diego. The verified application indicates that as of November 30, 1967, P.I.E. had total assets of \$55,315,594, a total surplus of \$13,495,701 and a total net worth of \$21,502,422. In the circumstances, the Commission is of the opinion that the application should be granted. The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Siefert has been adjudicated to be a bankrupt by the United States District Court, Central District of California.
3. The Commission in Decision No. 63584 authorized Siefert to execute a promissory note secured by a mortgage of certain pieces of operating equipment and its certificate of public convenience and necessity.
4. Siefert defaulted on the aforesaid promissory note and a judgment creditor caused the sale, subject to the approval of this Commission and the I.C.C., of Siefert's certificate of public convenience and necessity.
5. A Court Commissioner appointed by the Superior Court for the County of San Joaquin conducted a public auction to sell Siefert's certificate of public convenience and necessity. After substantial competitive bidding, said certificate was sold to P.I.E. The Referee in Bankruptcy has approved said sale and the temporary leasing of Siefert's operating rights pending approval of said sale by appropriate regulatory agencies.

6. P.I.E. holds a certificate of public convenience and necessity, authorizing it to operate as a highway common carrier, issued by this Commission. As of November 30, 1967, it had total assets of \$55,315,594, a total surplus of \$13,495,701, and a total net worth of \$21,502,422.

7. Granting P.I.E. temporary authority to lease and operate Siefert's intrastate operating rights would not be adverse to the public interest.

8. The transfer and sale of Siefert's California intrastate operating authority to P.I.E. would not be adverse to the public interest.

Conclusions of Law

1. P.I.E. should be granted temporary authority to lease and operate Siefert's California intrastate operating rights.

2. Siefert should be authorized to sell and transfer and P.I.E. to purchase and acquire Siefert's California intrastate operating authority.

O R D E R

IT IS ORDERED that:

1. On or before January 1, 1969, Siefert Truck Service, Inc., acting through the Court Commissioner of the Superior Court for the County of San Joaquin and the Receiver in Bankruptcy appointed by the United States District Court, Central District of California, or such other officers as said Courts may appoint, may sell and transfer and Pacific Intermountain Express Co. may purchase and acquire the operative rights referred to in the application. To the extent this transfer results in the duplication of any operating rights, such rights shall be merged and may not be separated to permit a later separate transfer or sale.

2. Within thirty days after the consummation of the transfer herein authorized, Pacific Intermountain Express 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. Pacific Intermountain Express Co. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations referred to herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order or 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. Pacific Intermountain Express Co. is authorized to lease and operate the California intrastate operating rights of Siefert Truck Service, Inc., in accordance with the terms of an exhibit designated A which is attached to Exhibit B (Application to and

Order of the Bankruptcy Court) of this application, until January 1, 1969, unless sooner terminated by the consummation of the transfer herein authorized.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 20th day of FEBRUARY, 1968.

[Signature]
President

[Signature]
William Lyons Jr.
[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.