

**ORIGINAL**

Decision No. 75895

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
JOE HOLYBEE and DALE HOLYBEE, doing )  
business as H. O. W. FAST FREIGHT, )  
for the transfer to them of the )  
Certificate of Public Convenience and )  
Necessity to operate as a highway )  
common carrier for the transportation )  
of property. )

Application No. 51002  
(Filed April 14, 1969)

O P I N I O N

Melvin L. Bonita, as Administrator with the Will Annexed of the estate of Joseph L. Bonita, Deceased, requests authority to sell and transfer, and Joe Holybee and Dale Holybee, doing business as H. O. W. Fast Freight, request authority to purchase and acquire, the highway common carrier rights formerly operated by Joseph L. Bonita, doing business as Avon Express.

The certificate was issued by Decision No. 49325 dated November 10, 1953 in Application No. 33690 and was revised by Decision No. 53654 dated August 28, 1956 and Supplemental Decision No. 54419 dated January 22, 1957, both in Application No. 36445. The certificate provides for transportation of certain specific commodities between Riverside and Indio and certain adjacent towns, and between Riverside and Los Angeles over certain highways with a three-mile lateral along said highways.

The purchasers are engaged in the transportation of property pursuant to highway contract carrier and radial highway common carrier permits issued to them by this Commission, and do not own or operate under any certificate of public convenience and necessity.

The applicants Holybee and Melvin L. Bonita, administrator of decedent's estate have made an agreement for sale of said certificate dated April 4, 1969, and not including any other property, for Three Thousand and No/100 (\$3,000.00) Dollars payable \$1,000.00 in cash and balance to be paid as agreed upon between the parties.

The purchasers have been in the motor carrier business since November 1965, and the seller for a period in excess of 12 years and it is alleged that there is a continuing economic growth in both residential, commercial and manufacturing establishments in this area.

The purchasers propose to provide an on call service on a daily basis, except Sundays and holidays, between all points and places specified, and propose to publish a tariff with rates and charges in conformity with rates and charges published by Western Motor Tariff Bureau, which tariffs are identical to those heretofore published and adhered to by JOSEPH L. BONITA, doing business as AVON EXPRESS.

The purchasers operate fifteen pieces of equipment consisting of ten vans, one tractor, a Chevrolet stake, a 35-foot Strict trailer, 3/4-ton Ford pickup and 1/2-ton Chevrolet, and are handling various types of commodities. These operations are being conducted pursuant to highway contract carrier and radial highway common carrier permits, and it is planned to utilize this equipment in future operations.

The application contains a balance sheet as of December 31, 1968 and a schedule of equipment depreciation which show purchasers total assets to be valued at \$31,370.54.

It appears therefrom that the applicant purchasers possess the experience, equipment, personnel and financial resources to institute, maintain and operate the proposed service authorized herein.

The application has been listed on the Commission's Daily Calendar and applicants have filed proof of service of the application on the California Trucking Association and the Chamber of Commerce of Los Angeles area. No protest has been received.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary.

Joe Holybee and Dale Holybee, doing business as H. O. W. Fast Freight, 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

IT IS ORDERED that:

1. On or before March 1, 1970, Melvin L. Bonita, as Administrator with the Will annexed of the Estate of Joseph L. Bonita, Deceased, may sell and transfer, and Joe Holybee and Dale Holybee,

doing business as H. O. W. Fast Freight, may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, purchasers 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. Purchasers shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that they have adopted or established as their own, said rates and rules. 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. Failure to comply with and observe the provisions of General Order No. 80-A may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchasers shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. Within thirty days after the effective date hereof, purchasers shall file a written acceptance of the certificate, the transfer of which is herein authorized. Purchasers are placed on notice that, if they accept such certificate, they will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-E.

6. Purchasers shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

7. Purchasers shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchasers elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 8th day of JULY, 1969.

William J. ...  
President  
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Commissioners