

Decision No. 78007

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of YELLOW FREIGHT SYSTEM,)
 INC. and SCOTT TRANSPORTATION CO. for)
 authority for former to acquire stock)
 of latter and thereafter to acquire)
 its properties and certificates.)

Application No. 52267
 Filed October 29, 1970

O P I N I O N

Yellow Freight System, Inc., an Indiana corporation, requests an order of this Commission authorizing it to acquire all of the outstanding capital stock of Scott Transportation Co., a California corporation, and the latter seeks authority to transfer its properties and certificates of public convenience and necessity to the former. In addition, Yellow Freight System, Inc. requests this Commission to grant it a certificate of public convenience and necessity which would alter the boundaries applicable to certain operations in the Los Angeles area.

Scott Transportation Co. operates under the jurisdiction of this Commission under certificates of public convenience and necessity authorizing highway common carrier operations in portions of southern California. In addition, the company operates under the jurisdiction of the Interstate Commerce Commission as a common carrier by motor vehicle pursuant to registration of said certificates of public convenience and necessity.

Yellow Freight System, Inc. is the surviving corporation through merger of Watson-Wilson Transportation System, Inc., a Nebraska corporation, into Yellow Transit Freight Lines, Inc., an Indiana corporation. Said surviving corporation operates as a common carrier by motor vehicle under the jurisdiction of the Interstate Commerce Commission in a number of States including California. In addition, the company operates as a highway common carrier pursuant to certificates of public convenience and necessity granted by this Commission.

The application shows that in Interstate Commerce Commission Docket No. MC-F-10830 applicants are seeking authority under Section 5 of the Interstate Commerce Act for Yellow Freight System, Inc. to acquire the stock of Scott Transportation Co., and for the merger of the properties, operating rights and assets of the latter into the former.

By Decision No. 71775, dated December 29, 1966, this Commission dismissed Application No. 48993 wherein said Watson-Wilson Transportation System, Inc. had sought authority to transfer all of its California intrastate operative rights to said Yellow Transit Freight Lines, Inc. in connection with a merger subject to the jurisdiction of the Interstate Commerce Commission. Said Decision No. 71775 comments on Section 5 of the Interstate Commerce Act by stating the following:

"Section 5 of the Interstate Commerce Act relates to combinations and consolidations of carriers, and provides, in part, that the authority conferred by such section shall be exclusive and plenary, and that any carrier or corporation participating in, or resulting from, any transaction approved by the Interstate Commerce Commission thereunder shall have full power to carry such transaction into effect, and to own and operate any properties and exercise any control or franchises acquired through such transaction, without invoking any approval under State authority."

In County of Marin v. United States, 356 U.S. 412 (1958), the United States Supreme Court affirmed the exclusive and plenary nature of Interstate Commerce Commission jurisdiction in transactions subject to Section 5 of the Interstate Commerce Act.

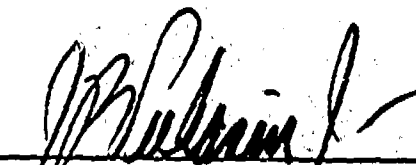
After consideration this Commission finds that it is without jurisdiction over the proposed transactions. On the basis of this finding we conclude that the application should be dismissed without prejudice to the filing of an application for a California intrastate certificate of public convenience and necessity in lieu of those presently held by the applicants. A public hearing is not necessary.

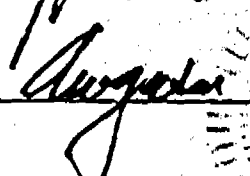
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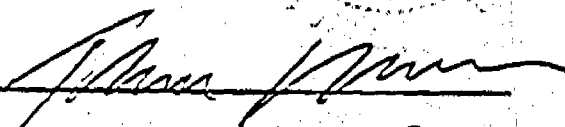
IT IS ORDERED that Application No. 52267 is hereby dismissed without prejudice.


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

Dated at Los Angeles, California,
this 1st day of DECEMBER, 1970.



Chairman





Commissioners

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