

Decision No. 79842

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 Distribution Systems, Inc., a
 California Corporation, Imperial
 Truck Lines, Inc., a California
 Corporation, and Shippers-Encinal
 Express, Inc., a California
 Corporation, for an order authorizing
 Distribution Systems, Inc., to acquire
 control of Imperial Truck Lines, Inc.,
 and for Imperial Truck Lines Inc., to
 purchase all assets and to assume
 substantially all liabilities of
 Shippers-Encinal Express, Inc., and
 for Imperial Truck Lines, Inc., and
 the existing shareholders thereof to
 exchange and enter into a lease
 respecting certain terminal properties.

Application No. 53120
 (Filed February 1, 1972)

ORDER OF DISMISSAL

This application seeks an order authorizing the following:

1. Distribution Systems, Inc. to acquire control of Imperial Truck Lines, Inc.
2. Imperial Truck Lines, Inc. to purchase the assets and assume the liabilities of Shippers-Encinal Express, Inc.
3. Imperial Truck Lines, Inc., and its shareholders to exchange and enter into a lease with respect to certain terminal properties.

Concurrent with the filing of the application, applicants filed a Motion To Dismiss. The motion is based on the ground that the Commission lacks jurisdiction in the matter because the applicants are seeking approval of the Interstate Commerce Commission for the aforesaid transactions, and Section 5 of the Interstate Commerce Act grants exclusive jurisdiction to the ICC in the circumstances. It appears that the application and motion were filed out of an abundance of caution to receive a ruling on the jurisdictional point.

The verified application indicates that Imperial Truck Lines, Inc. operates under authority granted by this Commission as a highway

common carrier, radial highway common carrier and highway contract carrier. It also operates pursuant to a certificate of public convenience and necessity issued by the ICC (MC-99745 Sub.4). Shippers-Encinal Express, Inc. operates as a highway common carrier under authority granted by this Commission. It also operates pursuant to certificates of public convenience and necessity granted by the ICC (MC-99127 and MC-120119). Distribution Systems, Inc. is not a carrier. It controls, by 100 percent stock ownership, the following carriers:

1. Shippers-Encinal Express Inc.
2. Willis-Shaw Frozen Express, Inc., an I.C.C.-certificated irregular route carrier (MC-117119) of refrigerated and other commodities operating in 48 states.
3. Needham's Motor Service, Inc., an I.C.C.-certificated regular route common carrier (MC-38921) of general commodities operating between the New York City area on the north and the Philadelphia area on the south.
4. Fairchild General Freight, Inc., an I.C.C.-certificated contract and common carrier (MC-127361, MC-33919, and MC-123766) operating in the Pacific Northwest, principally in the State of Washington.
5. Fritz-Way Messenger Service, Inc., an I.C.C.-certificated contract carrier (MC-134433 TA) of commodities between Chicago and points in certain Great Lakes states.
6. Paddison Truck Lines Inc., a motor carrier operating pursuant to radial and contract carrier permits issued by this Commission.
7. Oak Grove Trucking Company, a motor carrier operating pursuant to radial and contract carrier permits issued by this Commission.

Exhibits accompanying the application indicate that Imperial Truck Lines, Inc. and Shippers-Encinal Express, Inc. had aggregate gross revenues exceeding \$300,000 for a period of 12 months. The application alleges that a similar application was filed with the ICC under Section 5 of the Interstate Commerce Act seeking authorization for the transactions in question.

The Commission is of the opinion that the transactions described in the application are subject to Section 5 of the Interstate Commerce Act and that the ICC has exclusive and plenary jurisdiction

in the matter. The Commission makes the following findings and conclusion:

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Applicants have filed with the ICC a similar application under Section 5 of the Interstate Commerce Act seeking authorization for the transactions described in this application.
3. Imperial Truck Lines, Inc. and Shippers-Encinal Express, Inc. hold operating authority from this Commission and the ICC. Distribution Systems, Inc. is a holding company which owns the stock of various carriers, many of which operate under authority issued by the ICC.
4. Imperial Truck Lines, Inc. and Shippers-Encinal Express, Inc. had aggregate gross revenues exceeding \$300,000 for a period of 12 months.
5. The Commission is without jurisdiction over the proposed transactions.

Conclusion of Law

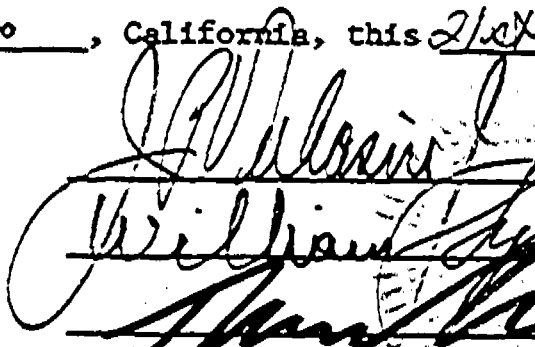
The application should be dismissed without prejudice.

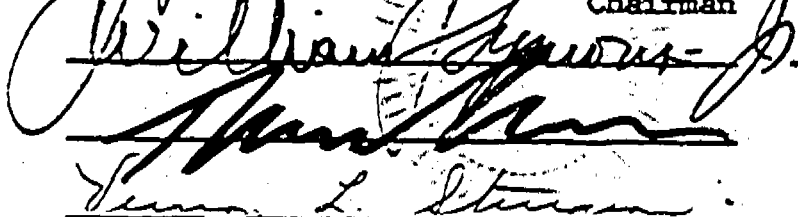
O R D E R


IT IS ORDERED that Application No. 53120 is hereby dismissed without prejudice.

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

Dated at San Francisco, California, this 21st day
of MARCH, 1972.



Chairman


William L. Stinson


Commissioners