

ORIGINAL

Decision No. 85366

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of WARN BROS., INC. doing business)
 as CRESCENT TRUCK LINES, a)
 California corporation, for)
 authority to acquire the highway)
 common carrier certificate of)
 GOLDEN WEST FREIGHT LINES, a Cali-) Application No. 56114
 fornia corporation, its equipment) (Filed December 8, 1975)
 subject to the assumption of the)
 equipment obligations, and good-)
 will; and for approval of the)
 security agreement executed by)
 Golden West Freight Lines in favor)
 of Crescent Truck Lines.)

I N T E R I M O P I N I O N

Golden West Freight Lines, a California corporation, (seller) requests authority to sell and transfer, and Warn Bros., Inc., a California corporation, doing business as Crescent Truck Lines, (purchaser) requests authority to purchase and acquire certain equipment and a certificate of public convenience and necessity authorizing operations as a highway common carrier, and to encumber the equipment by security agreement.

The certificate was granted by Decision No. 78633, dated May 4, 1971 in Application No. 52030 and authorizes the transportation of general commodities, with certain exceptions, generally between San Diego on the south and Santa Rosa on the north over various routes and within named territories and areas. The certificate was registered with the Interstate Commerce Commission in Docket No. MC 88310 (Sub No. 4).

Purchaser presently holds a certificate issued by this Commission by Decision No. 84224, dated March 25, 1975, in Application No. 55154 and registered with the Interstate Commerce Commission in Docket No. MC 48205 (Sub No. 8). The sale also includes

the transfer of corresponding interstate authority; and pursuant to Section 5 of the Interstate Commerce Act, the entire transaction is subject to the exclusive jurisdiction of the Interstate Commerce Commission. On May 15, 1975 the Interstate Commerce Commission granted the parties authority to enter into a temporary lease arrangement authorizing applicant purchaser to conduct operations under the certificate pending a final order of said Commission.

Pursuant to the Agreement of Purchase and Sale entered into by the parties on April 10, 1975, as amended by Lease Agreement and Amendment to Purchase Agreement, dated May 29, 1975, consideration for the transaction is \$237,500, allocated \$7,500 for operating rights, \$2,500 for business goodwill, and \$227,500 for operating and other incidental equipment, of which \$227,500 of the total purchase price is to be paid in cash concurrently with takeover of temporary operations and the unpaid balance to be payable from operations in 12 equal monthly installments with interest at the rate of 8 percent per annum, plus the assumption by purchaser of the equipment obligations of seller in the amount of \$1,013,745.98 as of June 1, 1975, plus a covenant not to compete for a consideration of \$103,399.20 of which \$22,500 is payable in cash on takeover of temporary operations and the unpaid balance to be payable in 12 equal monthly installments of \$6,741.60.

Concurrently with takeover of temporary operations, purchaser shall advance to seller the rental payments for 6 months at a rate of \$37,916.66 per month; to wit, \$227,500. All rental payments shall be applied against the purchase price and in no event shall such rental payments exceed the purchase price. In addition, concurrently with takeover of temporary operations, purchaser shall pay to seller the sum of \$32,500 constituting one month's rental of the equipment sought to be acquired herein. Said rental payment shall be applied to the equipment obligations of seller for the month of June 1975, and each following monthly

rental payment, in same amount, shall similarly be applied to such obligations so that there will be no delinquencies with respect to the equipment obligations.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. It is alleged that a copy of the application was served on the California Trucking Association. Notice of the filing of the application was made in the Commission's Daily Calendar of December 10, 1975. No protests to the application have been received.

Both applicants are parties to Western Motor Tariff Bureau, Inc., Agent, tariffs as are necessary for publication of rates to cover their respective operating rights, including intra-state, interstate and foreign commerce operations. Purchaser will be required to adopt or establish such tariffs as its own.

The Commission finds:

1. The proposed sale and transfer and matters related thereto as set forth in the application are subject to the exclusive jurisdiction of the Interstate Commerce Commission which by its orders in Docket No. MC-F-12509 of May 15, 1975 and July 30, 1975 approved the temporary lease and sale and transfer, respectively.
2. The requested deviation from its Rules of Practice and Procedure should be authorized.
3. The proposed sale and transfer and the transactions attendant thereto would not be adverse to the public interest.
4. The highway and other equipment proposed to be obtained from applicant seller will no longer be necessary or useful in the performance of seller's duty to the public as a public utility.

The Commission concludes that the proposed transactions should be authorized. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the issuance by subsequent Commission order, of an in-lieu

certificate in appendix form to Warn Bros., Inc., and the revocation of the certificates granted by Decision No. 78633 and Decision No. 84224. The new certificate issued to Warn Bros., Inc., will not broaden or change the interstate or foreign commerce rights held by the carriers.

Purchaser is 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. This monopoly feature may be modified or cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of value of the rights and equipment authorized to be transferred.

I N T E R I M O R D E R

IT IS ORDERED that:

1. On or before June 1, 1976, Golden West Freight Lines, a corporation, may sell and transfer the operating rights and equipment referred to in the application to Warn Bros., Inc., a corporation.
2. Purchaser may execute and deliver a Security Agreement in substantially the same form as that attached to the application as Exhibit E.
3. Purchaser may assume the equipment obligations as proposed in the application.
4. Within thirty days after the transfer, purchaser shall file with the Commission written acceptance of the certificate and shall file with the Commission a true copy of the bill of

sale or other instrument of transfer.

5. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff filing shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filings of tariffs set forth in the Commission's General Order No. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in a cancellation of the operating authority granted by this decision.

6. In the event the transfer authorized in paragraph 1 is completed, the Commission will by subsequent order, issue an in-lieu certificate to Warn Bros., Inc. which shall supersede the certificates granted by Decision No. 78633 and Decision No. 84224 and shall revoke such certificates.

7. To the extent any duplication of operative rights may exist by reason of the transfer herein authorized such operative rights may not be separated to permit Warn Bros., Inc., to sell or transfer one certificate authority and retain another certificate authority to perform the same service.

8. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

9. Purchaser shall maintain its 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

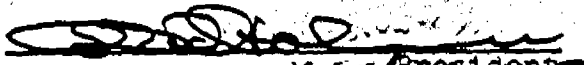
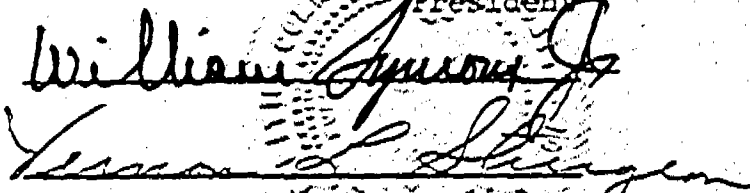
March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

10. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

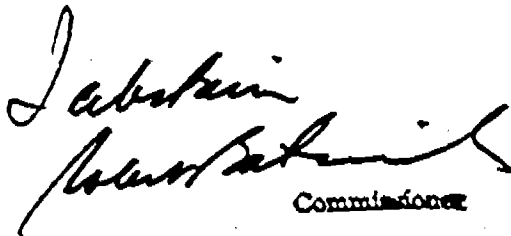
11. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 20th day of January, 1976.


President

Vernon L. Stangen

Commissioners


Sebastian
Commissioner

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.