

ORIGINAL

Decision No. 88899 MAY 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RITEWAY TRANSPORT)
Inc. of California d/b/a PADRE)
FREIGHT LINES for ex parte ap-)
proval of transfer of 100% of the)
capital stock therein.)

Application No. 57273
(Filed May 2, 1977)

O P I N I O N

F. H. Allen, an individual, seeks authority to control Riteway Transport, Inc. of California, a California corporation (Riteway), under Section 854 of the Public Utilities Code, by purchase of all of its 40,000 issued and outstanding shares of capital stock.

Riteway, doing business as Padre Freight Lines, holds a highway common carrier certificate of public convenience and necessity. The certificate was granted by Decision 63131, dated January 18, 1962 in Application 43023, transferred to Padre Freight Lines by Decision 65046, dated March 8, 1963 in Application 45091 and amended by Decision 74082, dated May 7, 1968 in Application 45091. The certificate authorizes transportation of general commodities, with the usual exclusions, over specified routes generally between the San Diego Territory and the Los Angeles Territory, between such territories and the Los Angeles Basin Territory, and between San Diego Territory and Winterhaven. Padre Freight Lines changed its corporate name to Riteway Transport, Inc. of California in 1973.

The application in this proceeding indicates the following events have occurred.

1. In September 1971, a petition was filed by Padre Freight Lines in the United States District Court, Central District of California, No. 93640 under Chapter XI of the Bankruptcy Act. At that time, it appeared that all of the stock of the carrier was held by Mr. E. E. Padilla, Jr.

2. In June 1972, an agreement was entered into between Mr. E. E. Padilla, Jr. and the Malcolm Trust Co., a corporation, whereby the latter agreed to purchase all of the issued and outstanding 40,000 shares of the stock of Padre Freight Lines.

3. On September 5, 1972, pursuant to an Order Confirming Plan of Arrangement issued by the Referee in Bankruptcy, the debtor was vested with all operating authority it held.

4. Pursuant to the Purchase Contract dated September 5, 1972, the Malcolm Trust Co. sold all of the outstanding shares of stock of Padre Freight Lines to Mr. Robert R. Digby, an individual.

5. By amendment to its Articles of Incorporation, the corporate name of Padre Freight Lines was changed on November 1, 1973 to Riteway Transport, Inc. of California.

6. The entire 40,000 shares of stock of Riteway Transport, Inc. of California (formerly Padre Freight Lines) held by Mr. Robert R. Digby were sold to F. H. Allen, pursuant to Purchase and Sale of Stock Agreement dated February 21, 1975. The purchase price of the stock was \$250,000 of which \$5,000 was paid upon execution of the stock purchase agreement, and the balance of \$245,000 was to be evidenced by a promissory note and paid at 9% interest per annum, in monthly installments in varying amounts. F. H. Allen, since then, has operated Riteway as its President and its sole stockholder.

Applicant requests relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. A copy of the application was mailed to the California Trucking Association. Notice of the filing of the application appeared in the Commission's Daily Calendar of May 4, 1977. No protests to the application have been received.

After consideration, the Commission finds that acquisition of 100% of the capital stock of Riteway Transport, Inc. of California by F. H. Allen would not be adverse to the public interest.

The Commission concludes that the acquisition of 100% of the capital stock of Riteway Transport, Inc. of California by F. H. Allen as requested in the application should be authorized. A public hearing is not necessary. The action taken herein shall not be construed as a finding of value of the capital stock of Riteway Transport, Inc. of California.

This application was filed on May 2, 1977 and the long delay in the disposition of this proceeding stems from the failure of the various parties referred to above to comply with the provisions contained in Section 854 of the Public Utilities Code and the representation made that the corporate name of Riteway will be changed back to Padre Freight Lines. Moreover, this application was filed at the insistence of the Commission staff. Section 854, which became effective on March 4, 1972, requires Commission approval before any person or corporation acquires or controls any public utility entirely regulated by the Commission. In the most recent stock transaction, we observe that Mr. Allen unlawfully acquired and took control of Riteway on February 21, 1975 and has since operated that company as its president. We do not lightly view nor do we condone non-observance of a mandatory provision of the law involving control of a public utility entity. We wish to take this opportunity to inform the industry that we will in the future, where warranted, impose sanctions pursuant to lawful procedure where violations of Section 854 are found.

O R D E R

IT IS ORDERED that:

1. F. H. Allen may acquire 100% of the capital stock of Riteway Transport, Inc. of California, a California corporation.
2. Within ninety days of the date hereof, F. H. Allen and Riteway Transport, Inc. of California shall file reports informing the Commission whether or not the acquisition of stock authorized herein has been completed.

3. The applicant is granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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

Dated at San Francisco, California, this 31st day of MAY, 1978.

Robert Bateman
President
William Simon
Vernon L. Sturgeon
Richard D. Howell

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.