

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California

Date: April 23, 1998

Resolution No. I-269*

RESOLUTION

BACKGROUND

On March 25, 1998, the Commission was served a criminal subpoena seeking all forms filed pursuant to Public Utilities Code Section 3575, former Section 3710, Section 3711, and all quarterly reports filed pursuant to Section 5003.1 for Golden Eagle Express, Inc. ("Golden Eagle") and American Eagle Transport Services, Inc. ("American Eagle") for the period from 1992 through 1995. Golden Eagle and American Eagle held highway contract carrier permits issued by the Commission. Under Commission regulations, they are required to file quarterly reports with the Commission. The Commission has a record of six quarterly reports for American Eagle, for the period from July 1, 1994 through December 31, 1995. For Golden Eagle, the Commission has eight quarterly reports, covering for the years of 1994 and 1995.

DISCUSSION

The quarterly reports in question are "public records," as defined by the California Public Records Act, Government Code, Section 6250 *et seq.* The general policy of the Public Records Act favors disclosure, unless the records fall under specified exemptions enumerated in the Public Records Act, or a showing is made that the public interest in confidentiality outweighs the public interest in disclosure.

The requested quarterly financial reports are confidential under the Commission's General Order No. 66-C, and may not be released without an order by the Commission, or an order from a court of competent jurisdiction. On September 30, 1996, jurisdiction over highway carriers was transferred from the Commission to the Department of Motor Vehicles. Accordingly, Section 3710, among other provisions of the P.U. Code, was repealed. Nonetheless, when the reports in question were received by the Commission, they were subject to the nondisclosure provisions of Section 3709. The repeal of this section does not change the confidential nature of these reports. This view is consistent with Evidence Code Section 1040, which provides that a public agency may refuse to disclose information acquired in confidence by a public employee in the course of his

duties. The confidential nature of the reports thus attaches at the time the reports are acquired by the agency, not when the reports are requested for release by subpoena. The fact that these documents have been requested subsequent to the transfer of jurisdiction over highway carriers from this agency to another does not automatically remove the cloak of confidentiality that these reports have enjoyed.

Although the reports are confidential, the Commission may determine whether good cause exists to permit their release. The general policy of the Public Records Act favors disclosure. Unless there is a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure, the requested report should be publicly released. In this case, the Commission has on file for American Eagle quarterly reports for the third and fourth quarters of 1994, and for the entire year of 1995. For Golden Eagle, the Commission has on file eight quarterly reports, covering the years of 1994 and 1995. Documents for 1992 and 1993 have been purged in accordance with the Commission's document retention policy. Documents for 1994 have not been completely purged, and thus the Commission still has American Eagle quarterly reports for the last half of 1994, and all of 1995. The most current financial information contained in these reports is more than two and a half years old, and is therefore unlikely to be commercially sensitive. Given these facts, there does not appear to be any public policy basis for withholding disclosure of the requested reports. Accordingly, these reports should be released.

FINDINGS OF FACT

1. A criminal subpoena for production of copies of quarterly financial reports of Golden Eagle Express, Inc. and American Eagle Transport Services, Inc. for the 1992, 1993, 1994 and 1995 was served on the Commission on March 25, 1998.
2. For American Eagle, the Commission has a record of six quarterly reports, beginning July 1, 1994 and ending December 31, 1995, for the period requested by the subpoena for 1992 through 1995.
3. For Golden Eagle, the Commission has a record of eight quarterly reports, beginning January 1, 1994 and ending December 31, 1995, for the period requested by the subpoena for the years 1992 through 1995.
4. The public interest in confidentiality of the requested quarterly reports fails to outweigh the public interest in disclosure.

CONCLUSIONS OF LAW

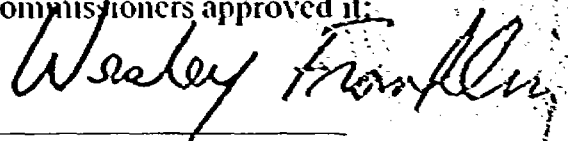
1. The quarterly financial reports at issue are "public records," as defined by Government Code Section 6252(d).

2. At the time the quarterly reports were filed with and acquired by the Commission, Section 3709 of the Public Utilities Code and General Order No. 66-C prohibited disclosure of the reports absent an order by the Commission or a court of competent jurisdiction.
3. Although Section 3709 was repealed as of September 30, 1996, the confidential nature of the reports attached at the time they were acquired by the Commission.
4. The general policy of the California Public Records Act favors disclosure of records.
5. The withholding of a public record must be found among specified exemptions in the Public Records Act or upon a showing that the public interest in confidentiality clearly outweighs the public interest in disclosure.
6. The quarterly reports in question do not fall within the specified exemptions contained in the Public Records Act.
7. Under the facts of this case, the public interest served by withholding the quarterly reports fails to clearly outweigh the public interest served by the disclosure of the reports.

ORDER

1. The criminal subpoena for release of the quarterly reports of American Eagle, beginning July 1, 1994 through December 31, 1995, and for the quarterly reports of Golden Eagle, beginning January 1, 1994 and ending December 31, 1995, is granted.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of April 23, 1998. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

I abstain.
/s/ JOSIAH L. NEEPER
Commissioner