

ORIGINAL

Decision No. 67711

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JACK C. HEMSATH, an individual, doing business as JACK HEMSATH DRAYAGE, to transfer a certificate of public convenience and necessity and property to JACK HEMSATH DRAYAGE, INC., and to issue stock and assume certain obligations.

Application No. 46781
Filed July 7, 1964

O P I N I O N

This is an application for an order of the Commission (1) authorizing Jack C. Hemsath, an individual doing business as Jack Hemsath Drayage, to sell and transfer a highway common carrier certificate of public convenience and necessity, together with certain related motor vehicle equipment and other assets, to Jack Hemsath Drayage, Inc., and (2) authorizing Jack Hemsath Drayage, Inc., in acquiring said assets, to issue \$25,000 par value of its common stock and a promissory note in the principal amount of not to exceed \$15,000.

By Decision No. 50907, dated December 28, 1954, in Application No. 34889, the Commission granted Jack C. Hemsath, doing business as Jack Hemsath Drayage, a certificate of public convenience and necessity authorizing him to operate as a highway common carrier of general commodities, with certain exceptions, between various points and places in the San Francisco-East Bay Cartage Zone. The application shows that the owner desires to

carry on the business under a corporate form of organization. To accomplish such objective, he seeks authority to sell and transfer his operating rights and certain related assets to Jack Hemsath Drayage, Inc., in exchange for common stock and a promissory note. As of May 31, 1964, the net book value of the properties to be transferred totaled \$37,526.26; however, the contemplated sale price will be based on net book value adjusted to reflect increases between May 31, 1964 and June 30, 1964.

Jack Hemsath Drayage, Inc., a California corporation organized on or about June 15, 1964, proposes to purchase said assets, subject to existing liabilities, and to issue 2,500 shares of its common stock having an aggregate par value of \$25,000 in part payment therefor. The corporation also requests permission to issue a 5% promissory note payable to the seller not earlier than one year from date of issue in the principal amount of not to exceed \$15,000. The amount of the note will be equal to the difference, as of July 1, 1964, between the net book value of the properties being acquired and the \$25,000 par value of the stock. In the event that the net book value should exceed \$40,000, the remainder of the consideration will be carried in the corporate records as paid-in surplus.

The Commission has considered this matter and finds that: (1) no changes in rates or service to the public would result from the proposed transfer; (2) the proposed sale and transfer would not be adverse to the public interest; (3) the money, property or labor to be procured or paid for by the issues

of the stock and note herein authorized is reasonably required for the purpose specified herein; and (4) such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income. On the basis of these findings we conclude that the application should be granted. A public hearing is not necessary.

Jack Hemsath Drayage, Inc. is hereby 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 over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

The action taken herein shall not be construed to be a finding of the value of the operative rights and other assets to be transferred. So far as the rights are concerned, the authorization herein granted is for the transfer only of the highway common carrier certificate of public convenience and necessity. The transfer of permitted operative rights must be the subject of a separate application, or applications.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1964, Jack C. Hemsath, doing business as Jack Hemsath Drayage, may sell and transfer, and Jack Hemsath Drayage, Inc. may purchase and acquire, the highway common carrier certificate of public convenience and necessity and other assets referred to in this application. Said sale and transfer may be made effective as of July 1, 1964 for accounting purposes.

2. Jack Hemsath Drayage, Inc., in consideration for said assets, may assume payment of the seller's outstanding liabilities, may issue not to exceed \$25,000 par value of its common stock, and may issue a promissory note in the principal amount equal to the balance of the purchase price, or \$15,000, whichever is the lesser. Said note shall be in the same form, or in substantially the same form, as that attached to the application.

3. Jack Hemsath Drayage, Inc. shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the consummation of the transfer herein authorized, Jack Hemsath Drayage, Inc. shall notify the Commission, in writing, of that fact and within said

period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

5. Jack Hemsath Drayage, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it has adopted or established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.

6. On or before the end of the third month after the consummation of the transfer as herein authorized, Jack Hemsath Drayage, Inc. shall cause to be filed with the Commission, in such form as it may prescribe, an annual report, or reports, covering the period commencing with the first day of the current year to and including the effective date of the transfer.

7. This order shall become effective when Jack Hemsath Drayage, Inc. has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$25.

Dated at San Francisco, California,
this 18th day of AUGUST, 1964.

Frederick B. Holbrook
President

George H. Crover
Commissioners

William L. Smith
Commissioners

