

ORIGINAL

Decision No. 70944

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)
))
FRED L. MATT, an individual)
doing business as MATT TRANSFER)
AND STORAGE, for authority to)
transfer assets, and SPEAR)
ENTERPRISES, INC., a California)
corporation, doing business as)
UNITED TRUCK LINE, for authority)
to acquire assets, assume)
liabilities, and execute)
promissory notes.)

Application No. 48333
Filed March 23, 1966
and Amendment
Filed June 9, 1966

O P I N I O N

This is an application for an order of the Commission
(1) authorizing Fred L. Matt, doing business as Matt Transfer
and Storage, to sell and transfer a highway common carrier
certificate of public convenience and necessity and certain
related assets to Spear Enterprises, Inc., doing business as
United Truck Line, and (2) authorizing the latter, in acquiring
said certificate and assets, to assume certain liabilities, to
issue promissory notes in the aggregate principal amount of not
to exceed \$64,676.50 and to execute a Security Agreement.

By Decision No. 61615, dated March 7, 1961, in
Application No. 42883, the Commission granted Fred L. Matt a
certificate of public convenience and necessity authorizing
him to conduct operations as a highway common carrier of
general commodities, with certain exceptions, between various

points and places in central California. In the present proceeding, the owner proposes to sell and transfer said certificate, together with related tangible and intangible properties, to Spear Enterprises, Inc., doing business as United Truck Line, for the sum of not to exceed \$73,620.

Spear Enterprises, Inc., doing business as United Truck Line, operates as a highway common carrier of general commodities, with certain exceptions, between various points and places in central California under a certificate of public convenience and necessity acquired pursuant to Decision No. 62264, dated July 18, 1961, in Application No. 43476.

The corporation has agreed to purchase the assets described herein in accordance with the terms of an Agreement entered into with Fred L. Matt on October 25, 1965. A copy of said Agreement, attached to the application as part of Exhibit B, discloses that Spear Enterprises, Inc., in acquiring the assets for said price, has consented to pay an additional \$10,000 in consideration for seller's covenant not to compete.

The aggregate price of \$83,620 is segregated in the application in some detail between tangible and intangible properties in amounts of \$48,620 and \$35,000, respectively. The transferee proposes to capitalize a total sum of not more than \$2,000 in connection with the intrastate certificate of public convenience and necessity and attendant good will.

On the basis of the maximum price of \$83,620, Spear Enterprises, Inc. would pay \$13,000 cash and would assume outstanding automotive equipment obligations which amounted to \$18,943.50 as of September 15, 1965. The remainder of \$46,676.50 would be represented by a promissory note to be issued to Fred L. Matt. Said note would be secured by a Security Agreement and would bear interest at the rate of 6% per annum. Principal in the amount of \$10,000 would be repayable in quarterly installments of \$500, with the balance repayable in monthly installments of \$1,000, together with interest in each instance. In addition, the transferee would issue an \$18,000 promissory note to its sole shareholder, Glenn Spear, in order to obtain funds for the required cash payment, which note would bear interest at the rate of 5% per annum and would mature in five years.

A pro forma balance sheet of the transferee, as of October 1, 1965, giving effect to the proposed transactions, as set forth in Exhibit B attached to the application, is summarized as follows:

<u>Assets</u>	
Current assets	\$ 99,004
Tangible property	154,253
Intangible property	<u>38,720</u>
Total	<u>\$291,977</u>
<u>Liabilities and Capital</u>	
Current liabilities	\$ 79,592
Long-term liabilities	99,460
Capital stock	39,000
Earned surplus	<u>73,925</u>
Total	<u>\$291,977</u>

On May 10, 1966, in its Docket No. MC-F-9313, the Interstate Commerce Commission through its Finance Board No. 1, granted the application constituting Exhibit B of this proceeding, subject to our approval of the transfer to Spear Enterprises, Inc. of the intrastate rights which support the corresponding certificate of registration issued by such Commission.

The Commission has considered this matter and finds that: (1) the proposed sale and transfer of assets, assumption of liabilities, and execution of a Security Agreement will not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the notes herein authorized is reasonably required for the purposes specified herein; and (3) such purposes are 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, as amended, should be granted. A public hearing is not necessary.

The action taken herein shall not be construed as 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 of the highway common carrier certificate of public convenience and necessity only. Any transfer of permitted operative rights must be the subject of a separate application or applications.

The acquisition of the highway common carrier certificate of public convenience and necessity being authorized herein shall not be deemed to authorize separate operative rights to transport the same commodities between the same points and over the same routes.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1966, Fred L. Matt, doing business as Matt Transfer and Storage, may sell and transfer, and Spear Enterprises, Inc., doing business as United Truck Line, may purchase and acquire, the highway common carrier certificate of public convenience and necessity and other assets referred to in the preceding opinion.
2. To the extent of any duplication, the highway common carrier operative rights acquired by Spear Enterprises, Inc., upon the consummation of the transfer herein authorized, shall be deemed to be merged so that such operative rights may not later be separated to permit Spear Enterprises, Inc. to sell or transfer one certificate authority and retain another certificate authority to perform the same service.
3. On or before December 31, 1966, Spear Enterprises, Inc. may assume the liabilities set forth in the application and, for the purposes specified in this proceeding, may issue its promissory notes in the aggregate principal amount of not to exceed \$64,676.50, and may execute a Security Agreement. Such

documents shall be in the same form, or in substantially the same form, as those filed in this proceeding.

4. Spear Enterprises, 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.

5. Within thirty days after the consummation of the transfer herein authorized, Spear Enterprises, 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.

6. Spear Enterprises, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the highway 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.

7. On or before the end of the third month after the consummation of the transfer as herein authorized, Spear Enterprises, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

8. This order shall become effective when Spear Enterprises, Inc. has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$65.

Dated at San Francisco, California, this 12th day of JULY, 1966.

[Signature]
President

George T. [Signature]

Fredrick B. [Signature]

[Signature]

[Signature]
Commissioners

