

ORIGINAL

Decision No. 72591

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SIERRA DISTRIBUTING, LTD., a California
corporation, to Sell and Transfer,

and of

G & J FREIGHT, INC., a California
corporation, to Purchase and Acquire
certain Operative Rights of SIERRA
DISTRIBUTING, LTD.,

and of

G & J FREIGHT, INC., for Authority to
Issue 6,000 Shares of its Common
Capital Stock.

Application No. 49015
(Filed December 9, 1966)

Marshall G. Berol, for Sierra Distributing,
Ltd., applicant.
William H. Kessler, for G & J Freight, Inc.,
applicant.

O P I N I O N

Sierra Distributing, Ltd., requests authority to sell and transfer and G & J Freight, Inc., requests authority to purchase and acquire certain operating authority as a highway common carrier. In addition G & J Freight, Inc., requests authority to issue 1500 shares of its capital stock at a par value of \$10 per share.

A public hearing was held before Examiner Daly on May 4, 1967, at San Francisco and the matter was submitted.

Subsequent to the filing of the application a protest was filed on behalf of certain existing carriers. At the outset of the hearing the attorney for Sierra Distributing, Ltd., indicated that after consulting with the attorney for protestants and informing him

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more fully on certain aspects of the application it was decided that the protest be withdrawn. In any event no appearance was made in protest to the application.

The operating authority to be transferred was granted by the following decisions:

- (1) Decision No. 52512, dated January 23, 1956, in Application No. 35493.
- (2) Decision No. 53166, dated May 28, 1956, in Application No. 35493.
- (3) Decision No. 52237, as modified by Decision No. 59499, dated January 12, 1960, in Application No. 41434.

Said operative rights authorize transportation of iron, steel, tin plate, roofing, building and paving equipment, machinery and parts, chemicals, insecticides, alloys and aluminum and other specified commodities, on or within 25 miles of Highway 101 from Santa Rosa to Santa Ana; Highway 99 from North Sacramento to Colton and along portions of State Highways 1, 4, 152, 198 and U. S. Highways 40, 50 and 466, and canned goods, caps, covers, paper, waste material, and other specified commodities between Sacramento and other specified northern California points.

Applicant seller acquired said rights and corresponding interstate rights as the result of a bankruptcy proceeding in 1963. The acquisition was authorized by Decision No. 66186, dated October 22, 1963, in Application No. 45639 as amended by Decision No. 71456, dated October 25, 1966, in Application No. 48784. Extended hearings on the transfer were held before the Interstate Commerce Commission and during the interim applicant seller conducted operations in interstate commerce pursuant to temporary authority issued by said agency.

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The agreed cash consideration for the transfer is \$50,000. The following is a breakdown of applicant seller's costs in acquiring and perfecting the rights herein considered.

Acquisition cost in bankruptcy	\$16,717.18
Tariff & Schedule expenses including updating	9,777.12
Hearings before this Commission and Interstate Commerce Commission	5,836.00
Tariff Consultant	<u>3,672.00</u>
Total cost	\$36,002.30

According to applicant seller the difference between said costs and the agreed sales price is represented in the goodwill developed in the past two years of operation and the indeterminable cost in the time spent by company personnel to perfect said authority.

Applicant purchaser is a newly formed corporation, but its proposed shareholders have been engaged for many years as permitted carriers. The 1500 shares of stock are to be issued to Joseph Pistacchio, George Pistacchio and Frank Montevacchi, President, Vice-President and Secretary-Treasurer of applicant purchaser, respectively. The \$15,000 cash to be paid for said stock is to be used by applicant purchaser as working capital. The \$50,000 cash purchase price is to be contributed by the shareholders.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and that the money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein, and such purpose is not in whole or in part, reasonably chargeable to operating expense or to income.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

In issuing our order herein, we place G & J Freight, Inc. and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return it should be allowed to earn on its investment in plant and that the authorization herein given is not to be construed as a finding of value of the corporation's stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

G & J Freight, Inc., a California corporation, 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.

By its application as amended G & J Freight, Inc. requested temporary authority pending final disposition. During the course of hearing it was requested that this aspect of the application be disregarded.

O R D E R

IT IS ORDERED that:

1. On or before December 1, 1967, Sierra Distributing, Ltd., may sell and transfer, and G & J Freight, Inc., may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, G & J Freight, 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.

3. G & J Freight, 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 thirty days after the effective date of this order on not less than thirty 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.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, G & J Freight, 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.

5. On or after the effective date hereof and on or before December 31, 1967, G & J Freight, Inc., for the purpose specified in this proceeding, may issue and sell, at par for cash, not exceeding 1,500 shares of its \$10 par value capital stock.

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6. G & J Freight, Inc. shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is made a part of this order.

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

Dated at San Francisco, California, this 9th
day of JUNE, 1967.

Robert E. Pittell
President

Augustus

Fred P. Monusief
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.