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Decision No. 72850

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)
EVELYN O. SIMMONDS, an individual,)
doing business as WEST BERKELEY)
EXPRESS AND DRAYING CO., to sell,)
and CAL-PACIFIC TRUCK LINES, INC.,)
a corporation, to purchase)
Certificates of Public Convenience)
and Necessity to Operate as a Highway)
Common Carrier, for the Transportation)
of Property, pursuant to Sections)
851-853 of the California Public)
Utilities Code.)

Application No. 49244
(Filed March 22, 1967)

O P I N I O N

This is an application for an order of the Commission authorizing Evelyn O. Simmonds, doing business as West Berkeley Express and Draying Co., hereinafter sometimes called Seller, to sell and transfer her operating rights as a highway common carrier authorizing the transportation of general commodities, with certain and usual exceptions, between and about San Francisco, and nearby cities and communities and intermediate points, portions of which are over and along specific routes and alternate routes; and within the San Francisco-East Bay Cartage Zone, to Cal-Pacific Truck Lines, Inc., hereinafter sometimes called Buyer, for the sum of \$15,000 cash.

The application shows that Buyer holds and is presently engaged in highway carrier operations pursuant to Petroleum Contract Carrier Permit No. 41-2342, City Carrier Permit No. 7-3590, Radial Highway Common Carrier Permit No. 7-3588, and Highway Contract Carrier Permit No. 7-3589 issued to it by the Public Utilities Commission.

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Application No. 48913 has been filed with this Commission requesting authority for Buyer to acquire certain public warehouse operating authority at Bell, California.

Exhibit B attached to the application, which is Buyer's Balance Sheet as of September 30, 1966, and Income Statement for the nine months ended September 30, 1966, shows that (1) Buyer had total assets of \$110,055.76, current liabilities of \$28,567.01, and capital and earned surplus of \$81,488.75, and (2) Buyer had operating revenues of \$201,543.07, total operating expenses of \$192,434.46, and net operating income of \$9,108.61. Other income less income taxes resulted in net income of \$10,941.84 for the nine months' period.

Exhibit C attached to the application, which is a list of equipment owned and operated by Buyer, lists nine tractors, eighteen trucks, twenty trailers, three dollies, and five other pieces of equipment including three automobiles, one pickup truck, and a forklift which will be available in the course and conduct of the operations covered by this application. Applicants certify that all vehicles are in good and safe condition and maintained pursuant to all safety standards prescribed by the appropriate regulatory bodies. The application further states that Buyer has the financial ability to acquire such additional equipment as may be necessary to perform proper motor carrier service to the shipping public under the certificates which Buyer is seeking to acquire in this proceeding.

Buyer proposes to adopt the tariffs which Seller has on file with the Commission, and to continue any and all through routes and through rates for the transportation of general commodities.

By reason of the cost and burden which would be incurred in serving some 150 carriers with a copy of the application herein, applicants request relief from the provisions of Rule 29 (a) of the Rules of Procedure which require a listing of the names of all common carriers with which the service is likely to compete and a certification that a copy of the application has been served upon each such carrier named. Said relief is based upon the provisions of Rule 78 (a) which provide for deviation from the Rules and that the Rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. The requested relief from the provisions of Rule 29 (a) is hereby granted.

Buyer's officers and directors are as follows:

William E. Moore, President and Director, who has had in excess of four years' successful experience in the field of motor truck transportation, as well as many years of experience in manufacturing and merchandising, and is also President of Kelly-Moore Paint Company, Inc., San Carlos, California;

Jimmy E. Boleware, Vice President, who has had in excess of five years' successful experience in the field of motor truck transportation and distribution; and

James D. Waters, Secretary-Treasurer and Director, a California Certified Accountant, who has had in excess of five years' experience in the field of bookkeeping and accounting.

The application alleges that no officer, director or stockholder has an interest in or otherwise controls directly or indirectly a certificated carrier in the State of California or elsewhere, and no certificated carrier holds, controls or otherwise has an interest in the business of Buyer, either directly or indirectly.

Buyer has recently completed a new truck terminal in its place of business in San Carlos, and is prepared, if granted the authority sought in this transfer matter, to install and maintain further terminals and vehicle storage depots wherever necessary within the area of the transfer authority being sought, in order to render a prompt, reliable motor carrier service to the shipping public.

Seller represents that her primary reason for the proposed sale of the business, which was commenced in 1904 by her father, is that she is 67 years of age and desires to limit her business activities to the permitted authorities which she possesses, and as a further reason that because of her poor financial condition her revenues as a certificated common carrier have declined and she is desirous of retiring from operating and conducting a certificated highway common carrier transportation business.

Buyer represents that it has been conducting carrier operations under its permitted authority for several years. The acquisition of the operating rights herein proposed to be transferred would enable it to serve the points set forth in Seller's certificates on a regular basis and would enable it to expand its present operations to meet the demands of a rapidly growing number of shippers within the scope-of-service sought to be transferred, and to render a more efficient and satisfactory service.

No protests have been received.

The Commission has considered this matter and finds that the proposed sale and transfer would not be adverse to the public interest. A public hearing is not necessary.

On the basis of the foregoing findings we conclude that the application should be granted. The order which follows will provide, in the event the transfer is consummated, for the revocation of the certificates presently held by Evelyn O. Simmonds and the issuance of a certificate in appendix form to Cal-Pacific Truck Lines, Inc.

The Commission takes official notice that the permitted authorities issued to Cal-Pacific Truck Lines, Inc., are restricted as to the employment of independent subhaul contractor operators. The certificate should similarly be restricted, and said restriction will be included in the appendix.

Cal-Pacific Truck Lines, 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 as a highway common carrier. 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 authorization herein granted shall not be construed as a finding of the value of the rights herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before October 2, 1967, Evelyn O. Simmonds may sell and transfer, and Cal-Pacific Truck Lines, Inc., a corporation, may purchase and acquire, the operative rights referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, Cal-Pacific Truck Lines, 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. Cal-Pacific Truck Lines, 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, Cal-Pacific Truck Lines, 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. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Cal-Pacific Truck Lines, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendices A and B attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificates of public convenience and necessity granted by the following Commission decisions:

<u>Decision No.</u>	<u>Application No.</u>	<u>Date Issued</u>
46966	32113	April 3, 1952
47273	32113	June 17, 1952
47471	32113	July 15, 1952
48724	33974	June 16, 1953
51216	36668	March 15, 1955
52069	36147	October 11, 1955
52328	36147	December 5, 1955
52514	36147	January 23, 1956

which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. In providing service pursuant to the certificate herein granted, Buyer shall comply with and observe the following service regulations:

- (a) Within thirty days after the consummation of the transfer herein authorized, Cal-Pacific Truck Lines, Inc., shall file a written acceptance of the certificate herein granted. Cal-Pacific Truck Lines, Inc., is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety

rules of the California Highway Patrol, and insurance requirements of the Commission's General Order No. 100 series. Failure to comply with and observe the provisions of General Order No. 100 series may result in a cancellation of the operating authority granted by this decision.

- (b) Cal-Pacific Truck Lines, Inc., shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 8th day of AUGUST, 1967.

William W. Bernard President
Augusta
William J. Simon
Jack P. Mansley Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.

Cal-Pacific Truck Lines, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport:

- I. General commodities, except household goods, petroleum products in bulk, fresh fruits and vegetables and commodities requiring refrigeration, between San Francisco, South San Francisco, Pittsburg, Hercules, Oleum, Crockett, Avon, Shell Point, Clyde, Port Chicago, Nichols, Antioch, Martinez, Stege, San Pablo, Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda, San Leandro, San Lorenzo, Castro Valley, Hayward, Newark, Alvarado, Decoto, Centerville, Irvington, Niles, Milpitas, Santa Clara and San Jose and all intermediate points over and along the following routes:

Between San Francisco and South San Francisco: U.S. Highways Nos. 101 and 101 By-pass; between Richmond, El Cerrito, Albany, Berkeley, Emeryville, Oakland, Piedmont, Alameda and San Leandro: all available highways; between Berkeley and Antioch: U.S. Highway No. 40, State Highways Nos. 4 and 24, and unnumbered road between Crockett and junction with State Highway No. 4; between San Leandro and San Jose: U.S. Highway No. 50 and State Highways Nos. 9 and 17; between San Leandro and Castro Valley: U.S. Highway No. 50; between San Jose and Santa Clara: U.S. Highway No. 101; between San Francisco and Oakland: San Francisco-Oakland Bay Bridge.

Alternate routes: State Highway No. 21 between Martinez and Mission San Jose; U.S. Highway No. 50 between Castro Valley and Dublin; U.S. Highways Nos. 101 and 101 By-pass between South San Francisco and San Jose; Dumbarton and San Mateo Bridges and approaches.

- II. General commodities, except petroleum products in bulk in tank vehicles and uncrated used household goods, between all points and places in the San Francisco-East Bay Cartage Zone as described in Appendix B via any and all streets, roads, highways and bridges located within said zone.

Issued by California Public Utilities Commission.

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III. General commodities:

- (a) Between San Mateo and San Jose and intermediate points.
- (b) Between Crockett and Vallejo serving Benicia as an off-route point.
- (c) Between points and places in subparagraphs (a) and (b) hereof and points and places in paragraphs I and II.

In connection with paragraph III, applicant shall not transport any shipments of:

- (1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item No. 5 of Minimum Rate Tariff No. 4-B.
- (2) Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses, bus chassis.
- (3) Livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
- (4) Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
- (5) Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
- (6) Commodities when transported in bulk in dump trucks or in hopper type trucks.
- (7) Commodities when transported in motor vehicles equipped for mechanical mixing in transit.

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RESTRICTION:

"Whenever Cal-Pacific Truck Lines, Inc. engages other carriers for the transportation of property of:

K-M Truck Lines, Inc.
Kelly-Moore Paint Company, Inc.
Kelly-Moore Paint Company, Inc., of Sacramento
Kelly-Moore Paint Company, Inc., of Stockton
Kelly-Moore Paint Company, Inc., of Modesto
Kelly-Moore Paint Company, Inc., of Fresno
Kelly-Moore Paint Company, Inc., of Carmel
Kelly-Moore Paint Company, Inc., of Texas
Paco Textures Corporation
Chem-Guard Products, Inc.
Dri-Wall Tape Co.
Cal-Pacific Truck Lines, Inc.
Kelly-Moore Home Improvement Center of San Luis Obispo
Kelly-Moore Home Improvement Center of Santa Maria
Kelly-Moore Home Improvement Center of Santa Barbara
Paco Textures, Inc., of Texas
The Trilite Corporation
Kelly-Moore Industries Inc. of Arizona
Kelly-Moore Paint Company, Inc., of Los Angeles
Paco Textures Corporation of Los Angeles
Kelly-Moore Paint Company, Inc., of Contra Costa
K-M Clutch Company
Sprayline Inc., of Southern California
K-M Roof-Dek Co.
Marble Valley Limestone Co.
Kelly-Moore Paint Co., Inc., of Southern California
Cal-Mica Company
Kelly-Moore Properties, Inc.
Management Data Services, Inc.
Accountants Data Services, Inc.
K-M Taping Tools, Inc.
Industrial Minerals Co.
Kelly-Moore Paint Company of Santa Rosa
Kelly-Moore Paint Company of Wichita Falls
Kelly-Moore Paint Company of Amarillo
Kelly-Moore Paint Company of San Antonio
Kelly-Moore Paint Company of Lawton
Kelly-Moore Paint Company of Reno
Kelly-Moore Paint Company of Abilene
or customers or suppliers of said companies or corporations,
Cal-Pacific Truck Lines, Inc. shall not pay such carriers
rates and charges less than the rates and charges published
in Cal-Pacific Truck Lines, Inc.'s tariffs on file with
this Commission.

(End of Appendix A)

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The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary:

Beginning at the point where the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard and Lynnewood Drive to So. Mayfair Avenue; thence westerly along said So. Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of Highway U. S. 101; thence southeasterly along an imaginary line one mile west of and paralleling Highway U. S. 101 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence northeasterly, northwesterly, northerly and easterly along said southerly boundary to Bayshore Highway (U. S. 101 Bypass); thence leaving said boundary line and continuing easterly along the projection of last said course to its intersection with Belmont (or Angelo) Creek; thence northeasterly along Belmont (or Angelo) Creek to Seal Creek; thence westerly and northerly to a point one mile south of Toll Bridge Road; thence easterly along an imaginary line one mile southerly and paralleling Toll Bridge Road and San Mateo Bridge and Mt. Eden Road to its intersection with State Sign Route 17; thence continuing easterly and northeasterly along an imaginary line one mile south and southeasterly of and paralleling Mt. Eden Road and Jackson Road to its intersection with an imaginary line one mile easterly of and paralleling State Sign Route 9; thence northerly along said imaginary line one mile easterly of and paralleling State Sign Route 9 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to William Street; thence westerly along William Street and 168th Avenue to Foothill Boulevard; northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland boundary line to its intersection with the Alameda-Contra Costa County boundary line; thence northwesterly along last said line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (Highway U. S. 40); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue (Highway U. S. 40) to its intersection with County Road No. 20 (Contra Costa County); thence westerly along County Road No. 20 to Broadway Avenue (also known as Balboa Road); thence northerly along Broadway Avenue (also known as Balboa Road) to Highway U. S. 40; thence northerly along Highway U. S. 40 to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence

APPENDIX B TO DECISION NO. 72850

northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right of way and continuing westerly along the prolongation of Morton Avenue to the shore line of San Pablo Bay; thence southerly and westerly along the shore line and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line from Point San Pablo to the San Francisco Waterfront at the foot of Market Street; thence westerly along said waterfront and shore line to the Pacific Ocean; thence southerly along the shore line of the Pacific Ocean to the point of beginning.