

ORIGINALDecision No. 75663

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 KINGS COUNTY TRUCK LINES,)
 a corporation, to sell and transfer a)
 certificate of public convenience and)
 necessity and equipment to WESTERN)
 MILK TRANSPORT, INC., a corporation,)
 and for WESTERN MILK TRANSPORT, INC.)
 to issue a promissory note. }

Application No. 51028
 (Filed April 24, 1969)

O P I N I O N

Kings County Truck Lines requests authority to sell and transfer, and Western Milk Transport, Inc. requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a highway common carrier and certain property. Authority is also requested by Western Milk Transport, Inc. to issue a promissory note. In addition, authority is requested to execute and operate pursuant to a lease arrangement pending final approval of the proposed transfer by this Commission and by the Interstate Commerce Commission.

The certificate was granted by Decision No. 73891 dated March 26, 1968, as amended by Decision No. 74454, dated July 23, 1968, in Application No. 49327 and authorizes the transportation of foods, foodstuffs, beverages and commodities requiring refrigeration or temperature control over routes extending between Sacramento and the San Francisco Territory and San Diego, inclusive of many intermediate and off-route points. The transfer also includes a Certificate of Registration issued by the Interstate Commerce Commission and specified motor vehicle equipment. The agreed

consideration is \$350,000, of which \$20,000 is for the certificates and \$330,000 is for the equipment. According to the terms of the sales agreement, as attached to the application, \$87,500 is to be paid in cash and the balance of \$262,500 is to be secured by a promissory note, payable in five years, with interest at the rate of 6 percent per annum. The agreement also specified a monthly rental of \$5,000 to be paid during the escrow period, which shall be applied to the down payment upon final approval and consummation.

Applicant buyer presently operates as both a radial and contract carrier. As of December 31, 1968, it indicated a net worth in the amount of \$916,627.

It is alleged that the president and principal stockholder of seller is in poor health and in the opinion of his doctor is unable to carry on with the responsibilities of managing the business.

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 indebtedness herein authorized is reasonably required for the purposes specified herein, and such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

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

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1970, and upon the filing with this Commission of an order of the Interstate Commerce Commission authorizing said transfer, Kings County Truck Lines may sell and transfer, and Western Milk Transport, Inc. may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, purchaser 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. Purchaser 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. Failure to comply with and observe the provisions of General Order No. 80-A may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser 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. Within thirty days after the effective date hereof, purchaser shall file a written acceptance of the certificate, the transfer of which is herein authorized. Purchaser is placed on notice that, if it accepts such certificate, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-E.

6. Purchaser 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.

7. Applicants may execute a promissory note in the amount of \$262,500.

8. Pending approval of the transfer by the Interstate Commerce Commission, applicants may execute and operate pursuant to the terms of the lease agreement as set forth in the copy of the sales agreement attached to the application.

9. On not less than five days' notice to the Commission and to the public, purchaser shall amend the tariffs on file with the Commission covering its operations herein to reflect the lease operations herein authorized.

The authority herein granted to issue a note will become effective when purchaser has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$262. In other respects the effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 13th day of MAY, 1969.

William Synow A.
President
Auguston
David B. Thompson
W. M. ...
[Signature]
Commissioners

