

Decision No. 77292

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WESTERN FREIGHT HANDLERS, INC., a corporation, to transfer, and of HEAVY TRANSPORT, INC., a corporation, to acquire a certificate of public convenience and necessity of WESTERN FREIGHT HANDLERS, INC.

Application No. 51812
(Filed April 7, 1970)

O P I N I O N

Western Freight Handlers, Inc. (Seller), requests authority to sell and transfer and Heavy Transport, Inc. (purchaser), requests authority to purchase and acquire the seller's certificate of public convenience and necessity (Decision No. 62703, dated October 17, 1961, in Application No. 43427, as amended by Decision No. 62749, dated October 31, 1961 in Application No. 43427). The parties also request authority to execute a temporary lease pending the transfer.

The seller has authority to transport:

- a. Construction, mining and logging machinery, equipment, materials and supplies restricted to shipments weighing 5,000 pounds or more.
- b. Commodities which by reason of size, bulk or weight require special equipment or handling, and materials, parts and supplies that are appurtenant to or a necessary part of such commodities.

between the following points, subject to the restrictions hereinafter set forth:

1. All points and places in or within 25 miles of the boundary of the San Francisco Territory.

2. All points and places on or within 25 miles of the following highways:
 - a. U. S. Highway 40 between Richmond and the California-Nevada state line, inclusive.
 - b. U. S. Highway 50 between Hayward and the California-Nevada state line, inclusive.
 - c. U. S. Highways 99, 99-W and 99-E between Red Bluff and Merced, inclusive.
 - d. U. S. Highway 40-Alternate between U. S. Highway 40 near Davis and the California-Nevada state line near Peavine, inclusive.
 - e. State Highway 36 between Red Bluff and Johnstonville, inclusive.
 - f. U. S. Highway 395 between Johnstonville and the California-Nevada state line near Peavine, inclusive.
 - g. U. S. Highway 395 between the California-Nevada state line near Topaz Lake and Lee Vining, inclusive.
 - h. State Highway 32 between Chico and State Highway 36, inclusive.
 - i. State Highway 89 between State Highway 36 and U. S. Highway 395 near Topaz Lake, inclusive.
 - j. Unnumbered highway between U. S. Highway 40-Alternate and Quincy, via Honcut, La Porte and Nelson Point, inclusive.
 - k. State Highway 49 between Sattley and State Highway 120 at Yosemite Junction, inclusive.
 - l. State Highway 20 between Williams and U. S. Highway 40 near Cisco, inclusive.
 - m. State Highway 24 between Oakland and Sacramento, inclusive.
 - n. State Highway 4 between U. S. Highway 40, near Pinole, and State Highway 89, near Markleyville, inclusive.
 - o. State Highway 120 between U. S. Highway 50, near Lathrop, and Lee Vining, inclusive.
 - p. State Highway 108 between Sonora and U. S. Highway 395, near Fales Hot Springs, inclusive.

The seller's authority is subject to the restrictions that:

1. It shall not transport shipments to, from or between any point in Sonoma County.
2. It shall not transport shipments of less than 10,000 pounds from, to or between points on the following highways:
 - a. State Highway 89 between Truckee and Tahoe Valley.
 - b. U. S. Highway 50 between Tahoe Valley and the California-Nevada state line.

The seller has authority to establish through routes and rates between any and all points and places specified in subparagraphs 1 through 2. p. above. It may use any and all available alternate routes for operating convenience only.

The San Francisco Territory referred to is described as follows:

SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwestwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway

via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; south-westerly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

The purchaser has authority from this Commission (Decision No. 52378, dated December 20, 1955 in Application No. 35946; Decision No. 67426, dated June 23, 1964 in Application No. 46630) to transport:

- a. Machinery, equipment, materials and supplies incidental to or used in the construction, exploration, development, operation, refining, production and maintenance of facilities for the discovery, development, production, or refining of natural gas, petroleum and petroleum products.
- b. Machinery and equipment of unusual size or weight.
- c. Property or commodities of unusual size and weight requiring use of special equipment.
- d. Building contractors' equipment.
- e. Grading and paving equipment.
- f. Electrical transmission equipment.
- g. Water well drilling equipment.
- h. Mining machinery and equipment.
- i. Fabricated structures, tanks and hangars.

- j. Such materials and supplies as are appurtenant to or a necessary part of the machinery, equipment and property herein authorized to be transported in subparagraphs b to j inclusive, but not building or construction materials and supplies generally used in the various building and construction businesses.

from, to and between all points on or within fifty road miles laterally of the following routes:

U. S. Highway 101, 101 By-Pass and 101 Alternate, between the Mexican border and King City.

U. S. Highway 99 between the Mexican border and Madera.

U. S. Highway 6 between Los Angeles and Benton Station.

U. S. Highway 395 between San Bernardino and Inyokern.

State Highway 127 between Baker and Nevada state line.

U. S. Highway 466 between Barstow and Nevada state line.

U. S. Highway 66 between Los Angeles and Needles.

U. S. Highway 70 between Los Angeles and Blythe.

U. S. Highway 80 between San Diego and Winterhaven.

The agreed consideration for the transfer of the seller's operating rights is \$26,000, payable upon approval of the transfer by this Commission and the Interstate Commerce Commission (Exhibit A on the application^{1/}). The parties also request authority for the seller to lease to the purchaser pending final approval by this Commission and the Interstate Commerce Commission of the transfer, the seller's operating authority for the sum of \$200 per month, said sum to be deducted from the total purchase price of \$26,000.

^{1/} It is alleged that the seller's authority has been registered with the Interstate Commerce Commission.

The application shows that as of June 30, 1969, the purchaser had a net worth of \$278,389.

The reason for the request for authority to temporarily lease the seller's authority is founded in its adverse financial condition which, the seller believes, makes it imperative that interim relief be granted to forestall further losses and ultimate bankruptcy proceedings. For the first six months of 1969 the seller had an operating loss of \$47,785.

The applicants allege that approval of the within proposed transaction is in the public interest in that it will preserve to the public a needed common carrier service which will be strengthened and improved by the financial resources of transferee. They further allege that approval will have no adverse effect to the public or any other common carrier in that the transferee proposes to adopt the rates and charges named in transferror's present tariff.

After consideration the Commission finds that the proposed sale is not adverse to the public interest. Authority to lease the certificate as requested will be granted.

The authorization herein granted shall not be construed as a finding of the value of the rights herein authorized to be transferred. A public hearing is not necessary.

Heavy 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 these rights. Aside

from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. 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.

O R D E R

IT IS ORDERED that:

1. On or before October 1, 1970, Western Freight Handlers, Inc., may sell and transfer, and Heavy 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 five days after the effective date of this order on not less than five 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 authority to purchase and acquire 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 transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate. 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. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

8. Authority to lease the seller's operating rights to the purchaser for the sum of \$200 per month, pending completion of the authorized transfer, is granted.

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

Dated at San Francisco, California, this ^{3rd} (JUNE) day of JUNE, 1970.

William Squires, Jr.
President
Augusta
[Signature]
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.