

Decision No. 77578

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 August R. Leite, an individual, doing)
 business as Leite Drayage Co., for)
 authority to transfer assets, and)
 Leite Drayage Co., Inc., A California)
 Corporation, for authority to acquire)
 assets, assume liabilities, and issue)
 stock.)

Application No. 52028
Filed July 10, 1970

O P I N I O N

August R. Leite, doing business as Leite Drayage Co., seeks an order of the Commission authorizing him to transfer his highway common carrier certificate of public convenience and necessity and related assets to Leite Drayage Co., Inc., and the latter seeks authority to issue 1,000 shares of its \$10 par value common stock.

Pursuant to the certificate of public convenience and necessity granted by Decision No. 54157, dated December 4, 1956, as amended by Decision No. 54817, dated April 9, 1957, in Application No. 36176, August R. Leite operates as a highway common carrier of specific commodities between San Francisco, on the one hand, and Oakland, Berkeley and Richmond, on the other hand. In addition, he operates as a highway contract carrier and a radial highway common carrier subject to the jurisdiction of this Commission. For the year 1969, the carrier reports total operating revenues and net income of \$132,257 and \$38,736, respectively.

Leite Drayage Co., Inc. is a California corporation incorporated on or about June 29, 1970. In exchange for \$10,000 aggregate par value of its common stock, the corporation proposes to acquire certain assets, subject to liabilities, of August R. Leite, doing business as Leite Drayage Co. As of May 31, 1970, the net book value, after deducting accumulated depreciation, of the assets to be transferred amounted to \$28,173, with no value being assigned to operating rights. Deducting the current liabilities and advances by owner aggregating \$18,173 leaves a proprietor's capital of \$10,000.

After consideration the Commission finds that: (1) the proposed transfer would not be adverse to the public interest; (2) 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 (3) such purpose is 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 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 properties 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 order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by August R. Leite and the issuance of a certificate in appendix form to Leite Drayage Co., Inc.

Leite Drayage Co., 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, these 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. August R. Leite, on or after the effective date hereof and on or before December 31, 1970, may sell and transfer, and Leite Drayage Co., Inc. may purchase and acquire, the highway common carrier certificate of public convenience and necessity and related assets referred to in the application.

2. Leite Drayage Co., Inc., on or after the effective date hereof and on or before December 31, 1970, in acquiring said certificate and assets, may assume outstanding liabilities and issue not exceeding 1,000 shares of its \$10 par value common capital stock.

3. Leite Drayage Co., 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.

4. Within thirty days after the consummation of the

transfer herein authorized, Leite Drayage Co., 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.

5. Leite Drayage Co., 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 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 operating authority granted by this decision.

6. On or before the end of the third month after the consummation of the transfer as herein authorized, Leite Drayage Co., 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 transferor for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. In the event the transfer authorized in Paragraph No. 1 hereof is consummated, a certificate of public convenience and necessity is granted to Leite Drayage Co., Inc. authorizing it to operate

as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points particularly set forth in Appendix A attached hereto and made a part hereof.

8. The certificate of public convenience and necessity granted in Paragraph No. 7 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 54157 as amended by Decision No. 54817, which certificate is revoked effective concurrently with the effective date of the tariff filings required by Paragraph No. 5 hereof.

9. Within thirty days after the transfer herein authorized is consummated, Leite Drayage Co., Inc. shall file a written acceptance of the certificate herein granted. Leite Drayage Co., 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 the insurance requirements of the Commission's General Order No. 100-E.

10. Leite Drayage Co., 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.

11. Leite Drayage Co., Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Leite Drayage Co., Inc.

elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

12. This order shall become effective when Leite Drayage Co., Inc. has paid the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50.

Dated at San Francisco, California, this 4th day of AUGUST, 1970.

[Signature]
Chairman

[Signature]
Commissioner

[Signature]
Commissioner

[Signature]
Commissioner

[Signature]
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

49300
AUG 7 - 1970
50.00

By [Signature]

Leite Drayage Co., Inc., a corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport:

1. CHEMICALS.
2. DRUGS, MEDICINES OR TOILET PREPARATIONS.
3. HARDWARE.
4. PAINTS, COMPONENTS OF PAINT, OR PUTTY.
5. MISCELLANEOUS COMMODITIES, viz.:

Boxes, bottles or cans, fibreboard,
paper or pulpboard
Oil filters
Oil filter cartridges

between:

San Francisco, on the one hand, and Oakland,
Berkeley and Richmond, on the other hand.

Such authority does not include the right to render service to, from or between intermediate points.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 77578, Application No. 52028.