

ORIGINAL

Decision No. 78413

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of BROOKS TERMINAL COMPANY, a)
California corporation, to)
transfer a certificate of public)
convenience and necessity to)
BROOKS TERMINAL & DRAYAGE COMPANY,)
a California corporation and of)
BROOKS TERMINAL & DRAYAGE COMPANY,)
a California corporation to acquire)
said certificate of public)
convenience and necessity and to)
issue stock.)

Application No. 52382
Filed December 30, 1970
and Amendment
Filed January 28, 1971

O P I N I O N

Brooks Terminal Company seeks an order of the Commission authorizing it to transfer its highway common carrier certificates of public convenience and necessity and certain related assets to Brooks Terminal & Drayage Company, and the latter seeks authority to issue 1,400 shares of its \$10 par value capital stock, to issue a \$46,000 note and to execute and deliver a Security Agreement.

Brooks Terminal Company is a California corporation operating as a highway common carrier transporting general commodities, with certain exceptions, in the San Francisco Bay area, under certificates of public convenience and necessity granted by Decision No. 50995, dated January 18, 1955, in Application No. 35127, and by Decision No. 53064, dated May 15, 1956, in Application No. 35974, as amended by Decision No. 53553, dated August 7, 1956, and acquired pursuant to authority granted by Decision No. 75456, dated March 13, 1969, in Application

No. 50841. Both certificates were later amended by Decision No. 74082, dated May 7, 1968, in Application No. 48547. Brooks Terminal Company also operates pursuant to permits issued by this Commission and to authority from the Interstate Commerce Commission.

Brooks Terminal & Drayage Company is a California corporation incorporated on or about November 13, 1970. This company proposes to acquire the California certificates of public convenience and necessity and the Interstate Commerce Commission operating rights, together with certain related assets of Brooks Terminal Company for a total purchase price of \$55,000, payable by cash of \$9,000 and the balance of \$46,000 to be evidenced by a Promissory Note repayable in monthly installments of \$766.67, together with interest at the rate of 8% per annum on the unpaid balance. Said note would be secured by a Security Agreement.

In order to provide for the cancellation of indebtedness incurred for a \$2,000 cash down payment and to increase the down payment by \$7,000 for said purchase, and to provide working capital of \$5,000, Brooks Terminal & Drayage Company proposes to issue and sell 1,400 shares of its \$10 par value capital stock. Its pro forma balance sheet, after giving effect to the proposed transactions, is summarized from Exhibit E, filed in the proceeding, as follows:

Assets

Cash	\$ 5,000
Revenue equipment	20,700
Other equipment	9,300
California operating authority	1,000
I.C.C. operating authority	2,000
Covenant not to compete	500
Goodwill	<u>21,500</u>
Total	<u>\$60,000</u>

Liabilities

Note payable	\$46,000
Capital stock	<u>14,000</u>
Total	<u>\$60,000</u>

After consideration the Commission finds that:

1. The proposed transfer and Security Agreement would not be adverse to the public interest.
2. The proposed note and stock issues are for proper purposes.
3. The money, property or labor to be procured or paid for by the issue of the note and stock herein authorized is reasonably required for the purposes specified herein, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application, as amended, 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 and encumbrance of the highway common carrier certificates of public convenience and necessity only. Any transfer or encumbrance 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 transaction is consummated, the transfer of the certificates presently held by Brooks Terminal Company to Brooks Terminal & Drayage Company and their restatement in appendix form.

Brooks Terminal & Drayage Company 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.

The acquisition of the highway common carrier certificates of public convenience and necessity being authorized herein shall not be deemed to authorize separate operative rights to transport the same commodities between the same points and over the same routes.

ORDER

IT IS ORDERED that:

1. Brooks Terminal Company may sell and transfer, and Brooks Terminal & Drayage Company may purchase and acquire, the highway common carrier certificates of public convenience and necessity and related assets referred to in the application, as amended.

2. Brooks Terminal & Drayage Company, on or after the effective date hereof and on or before June 30, 1971, for the purposes specified in the application, as amended, may issue a note in the principal amount of not exceeding \$46,000, which note shall be in the same form, or in substantially the same form, as Appendix C of Exhibit B, attached to the application.

3. Brooks Terminal & Drayage Company may execute and deliver a Security Agreement in the same form, or in substantially the same form, as Appendix D of Exhibit B, attached to the application.

4. Brooks Terminal & Drayage Company, on or after the effective date hereof and on or before June 30, 1971, for the purposes specified in the application, as amended, may issue and sell, at par, not exceeding 1,400 shares of its \$10 par value capital stock.

5. Brooks Terminal & Drayage Company 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.

6. Within thirty days after the consummation of the transfer herein authorized, Brooks Terminal & Drayage Company 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.

7. Brooks Terminal & Drayage Company 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 defined by this decision.

8. On or before the end of the third month after the consummation of the transfer as herein authorized, Brooks Terminal & Drayage Company 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 Brooks Terminal Company for the period commencing with the first day of the current year to and including the effective date of the transfer, in addition to the annual report for the year 1970.

9. In the event the transaction authorized in Paragraph No. 1 hereof is consummated, certificates of public convenience and necessity are transferred to Brooks Terminal & Drayage Company 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 Appendices A, B, C and D attached hereto and made a part hereof.

10. To the extent of any duplication, the highway common carrier operative rights herein authorized to be transferred to Brooks Terminal & Drayage Company shall be deemed to be merged so that such operative rights may not later be separated to permit Brooks Terminal & Drayage Company to sell or transfer one certificate authority and retain another certificate authority to perform the same service.


11. Within thirty days after the transfer herein authorized is consummated, Brooks Terminal & Drayage Company shall file a written acceptance of the certificates herein defined. Brooks Terminal & Drayage Company is placed on notice that, if it accepts the certificates of public convenience and necessity herein defined, 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-F.

12. Brooks Terminal & Drayage Company 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.


13. Brooks Terminal & Drayage Company shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Brooks Terminal & Drayage Company elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

14. This order shall become effective twenty days after Brooks Terminal & Drayage Company has paid the fee prescribed by Section 1904(b) and the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fees are \$92 and \$50, respectively, amounting to a total of \$142.


Dated at San Francisco, California,
this 9th day of MARCH, 1971.



Chairman

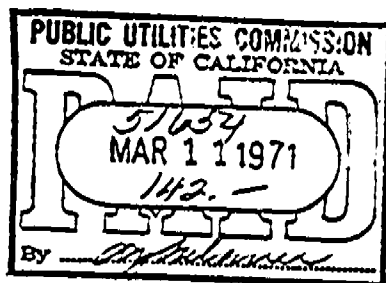


Verna L. Stinger



Commissioners

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



Brooks Terminal & Drayage Company, a California corporation, by the certificate of public convenience and necessity transferred by the decision noted in the margin, is authorized to transport general commodities between all points in the San Francisco Territory as defined in Appendix B.

Applicant shall not transport any shipments of:

- (1) Uncrated used household goods, personal effects and office, store and institution furniture, fixtures and equipment.
- (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 and 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 semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers 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.
- (8) Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 78413, App. No. 52382.

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 No. 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway No. 101 to its intersection with the corporate boundary of the City of San Jose; southerly, easterly and northerly along said corporate boundary to its intersection with State Highway No. 17; northerly along State Highway No. 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to the San Leandro-Oakland boundary line; easterly and northerly along the boundary line of the City of Oakland to the Berkeley-Oakland boundary line; southerly along said boundary to the campus boundary of the University of California; westerly, southerly and westerly along said boundary line 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 No. 40 (San Pablo Avenue); northerly along U. S. Highway No. 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco water front at the foot of Market Street; westerly along said water front and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.

(END OF APPENDIX B)

Brooks Terminal & Drayage Company, a California corporation, by the certificate of public convenience and necessity transferred by the decision noted in the margin, is authorized to transport general commodities between all points in the San Francisco-East Bay Cartage Zone as defined in Appendix D.

Applicant shall not transport any shipments of:

- (1) Petroleum products in bulk in tank vehicles.
- (2) Uncrated household goods.
- (3) Livestock.
- (4) Commodities of unusual value.
- (5) Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX C)

Issued by California Public Utilities Commission.

Decision No. 78413, Application No. 52382.

LIMITS OF SAN FRANCISCO-EAST BAY CARTAGE ZONE

San Francisco-East Bay Cartage Zone includes that 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 South 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 north-easterly 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 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.

The foregoing description includes the following points or portions thereof:

Alameda	Elkton	Oakland Pier	San Leandro
Alameda Pier	Elmhurst	Ocean View	San Lorenzo
Albany	Emeryville	Piedmont	San Mateo
Baden	Ferry Point	Point Castro	San Pablo
Bay Farm Island	Fruitvale	Point Fleming	South San Francisco
Bayshore	Government Island	Point Isabel	Stege
Berkeley	Hayward	Point Molate	Tanforan
Bernal	Lawndale	Point Orient	Treasure Island
Brisbane	Lomita Park	Point Potrero	Union Park
Broadway	Melrose	Point Richmond	Visitacion
Burlingame	Millbrae	Point San Pablo	Westlake
Camp Knight	Mills Field	Richmond	Winhaven
Castro Valley	Mt. Eden	Russell City	Yerba Buena Island
Colma	Oakland	San Bruno	
Daly City	Oakland Municipal	San Francisco	
East Oakland	Airport	San Francisco Inter-	
El Cerrito		national Airport	

APPENDIX "D" (Continued)

MAP SHOWING

LIMITS OF SAN FRANCISCO - EAST BAY CARTAGE ZONE

