

ORIGINAL

Decision No. 78869

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 JOEL K. MITHERS, Trustee in Bankruptcy,)
 In the Matter of LTL DELIVERY, INC.,)
 Bankrupt, to sell, and)
 CAL-HAWAIIAN FREIGHT INC.,)
 a California corporation, to purchase)
 a highway common carrier operating)
 right for the transportation of)
 property pursuant to Section 851-853)
 of the California Public Utilities)
 Code.)

Application No. 52479

(Filed March 2, 1971)

O P I N I O N

In this application, Cal-Hawaiian Freight Inc., a California corporation, buyer, of 695 North Batavia, Orange, California, requests authority to purchase, and Joel K. Mithers, Trustee in Bankruptcy, seller, requests authority to sell the highway common carrier certificate held by the bankrupt LTL Delivery, Inc. The certificate was issued by Decision No. 61235 dated December 20, 1960, in Application No. 42576, and transferred to the bankrupt by Decision No. 68578 dated February 9, 1965, in Application No. 47211, and Decision No. 71274 dated September 13, 1966, in Application No. 48592.

The applicants certify that a copy of the application has been served on the California Trucking Association. The buyer has filed a certified copy of its articles of incorporation with the application, a copy of a purchase and sale agreement

dated October 20, 1970; a certified copy of Return of Sale and Order approving said sale in bankruptcy dated December 16, 1970, and a copy of the buyer's balance sheet, profit and loss statement for the period July 1, 1970, to December 30, 1970.

The buyer does not hold any certificated authority from this Commission. The buyer alleges it has been engaged in moving freight in containers as a non-vessel operator between the ports of Los Angeles and San Francisco, California, and the ports of the various islands of Hawaii, under a tariff duly filed with the United States Maritime Commission. In addition, Cal-Hawaiian has been duly granted authority to operate in interstate air transportation and international air transportation as an air freight forwarder effective October 13, 1970, by the United States Civil Aeronautics Board.

The buyer lists assets of \$95,255 and states that it has available a substantial fleet of equipment; that it proposes to fill the needs and demands of the shipping public and its shipping customers and resume the service as was heretofore operated by LTL Delivery, Inc., and that there will be no change in rates and other charges now assessed to the public. LTL Delivery, Inc., had heretofore maintained the same rules and regulations and rates as are contained in Western Motor Tariff Bureau, Inc., Agent, Local Joint and Proportional Freight Tariff, Scope of Operations and Participating Carriers Tariff No. 100, and other applicable tariffs. Buyer desires to continue the services previously rendered pursuant to the tariffs of LTL Delivery, Inc., and requests that it be permitted to succeed to

and adopt the tariffs of LTL Delivery, Inc., heretofore participated in.

The return and sale of the trustee discloses that on August 6, 1969, an Involuntary Petition in Bankruptcy was filed in the Matter of LTL Delivery, Inc., in Bankruptcy No. 59064, in the United States District Court, Central District of California, as a result of which LTL Delivery, Inc., was adjudicated a bankrupt. It further disclosed that Joel K. Mithers has been ever since the duly appointed, acting, and qualified Trustee in Bankruptcy of the Estate of said LTL Delivery, Inc., Bankrupt; that all the rights, title and interest of all of the assets of the bankrupt passed to the aforesaid Trustee, by operation of law as of August 6, 1969; and that in assets of the aforesaid bankrupt are the motor carrier operations herein described.

Applicants allege that LTL Delivery, Inc., was prior to its bankruptcy engaged in intrastate commerce within the State of California as a highway common carrier in the transportation of general commodities, with certain exceptions, within the Los Angeles Basin Area, as set forth in Decision No. 72174, dated September 13, 1966; that LTL Delivery, Inc., also held authority to operate in interstate or foreign commerce pursuant to a Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC 31689 (Sub No. 2); that LTL Delivery, Inc., also held authority to operate in interstate or foreign commerce pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission in Docket No. MC 31689; and that said LTL Delivery, Inc., had

heretofore engaged therein within the aforesaid described territories prior to its being adjudicated a bankrupt.

The agreement between the parties dated October 20, 1970 provides that the consideration passing for the purchase and sale of said certificate of public convenience and necessity issued by the Public Utilities Commission, and the certificate of registration and certificate of public convenience and necessity issued by the Interstate Commerce Commission, as herein described, and the good will as it relates to the aforesaid operating rights, is in the total sum of \$35,000, allocated \$1,000 for operating authorities and \$34,000 for the good will in connection with said operating rights, payable all as more particularly set forth in that certain purchase and sale agreement dated October 20, 1970, by and between the parties hereto. The U.S. District Court, In the Matter of LTL Delivery, Inc., Bankrupt, No. 59064, by its return of sale and order, approved the within sale by its order dated December 16, 1970.

On April 14, 1971, applicants filed a certified copy of proceedings before the Interstate Commerce Commission being Order No. MC-FC-72750 dated March 19, 1971, effective on April 26, 1971, authorizing the transfer of operating rights set forth in Certificate No. MC-31689 and which have been assigned Nos. MC-31689 and MC-31689 (Sub. No. 2) to the transferee, Cal-Hawaiian Freight Inc., a California corporation.

Copies of the application have been served in accordance with the Commission's procedural rules. No protests or objections to the transfer have been received in opposition to the application. A public hearing is not deemed necessary.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest.

Cal-Hawaiian Freight 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.

O R D E R

IT IS ORDERED that:

1. Within sixty days after the effective date of this order, Joel K. Mithers, Trustee in Bankruptcy, in the matter of LTL Delivery, Inc., Bankrupt, a corporation, is authorized, subject to the conditions of this order, to sell and transfer, and Cal-Hawaiian Freight Inc. is hereby authorized to acquire the certificate of public convenience and necessity set forth in Decision No. 61235,

dated December 20, 1960, in Application No. 42576, and registered with the Interstate Commerce Commission in Dockets Nos. MC-31689 and MC-31689 (Sub. No. 2).

2. Cal-Hawaiian Freight Inc. shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that they have adopted or established, as their own, said rates, rules and regulations. 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 Orders Nos. 80-A and 61-A.

3. On or before the end of the third month after the consummation of the transfer as herein authorized, Cal-Hawaiian Freight Inc., a California corporation, 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.

4. Within thirty days after the transfer herein authorized is consummated, Cal-Hawaiian Freight Inc. shall file a written acceptance of the certificate. Cal-Hawaiian Freight Inc. 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-F.

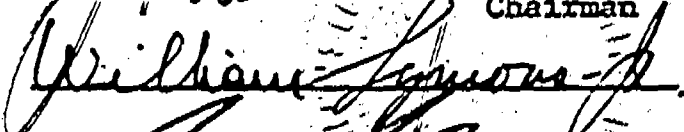
5. Cal-Hawaiian Freight Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual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

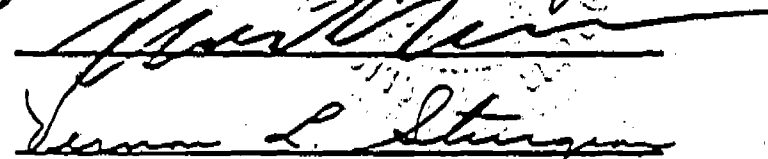
6. Cal-Hawaiian Freight Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Cal-Hawaiian Freight Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 29th day of JUNE, 1971.



Chairman




Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.