

ORIGINAL

Decision No. 79737

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of }  
JOEL MITHERS, Trustee in Bankruptcy, }  
in the Matter of LTL DELIVERY, INC., }  
Bankrupt, to sell, and CALIFORNIA }  
DELIVERY SERVICE, 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. 53057  
(Filed December 14, 1971)

O P I N I O N

This is an application by Joel Mithers, Trustee in Bankruptcy (hereinafter referred to as Trustee), in the matter of LTL Delivery Inc. (hereinafter referred to as LTL) and California Delivery Service (hereinafter referred to as Delivery). Applicants seek an order authorizing Trustee to sell to Delivery the highway common carrier rights of LTL.

Prior to being adjudicated a bankrupt, LTL held a certificate of public convenience and necessity to operate as a highway common carrier between all points in the Los Angeles Basin Region. LTL also held authority to operate in interstate and foreign commerce pursuant to a certificate of registration issued by the Interstate Commerce Commission.

In Decision No. 78869 in Application No. 52479 entered on June 29, 1971, this Commission authorized Trustee to sell the LTL operating rights to Cal-Hawaiian Freight, Inc. The verified application avers that the sale and transfer to Cal-Hawaiian was never consummated. The record indicates that on October 29, 1971 the United States District Court, Central District of California, entered an order rescinding said sale. One item of relief sought by the

present application is an order vacating and setting aside the order in Decision No. 78869, which authorized the sale to Cal-Hawaiian.

Delivery presently holds a certificate of public convenience and necessity to operate as a highway common carrier in the Los Angeles Territory. The Los Angeles Territory encompasses a smaller area than the Los Angeles Basin Region. On October 6, 1971, Trustee and Delivery entered into an agreement whereby Delivery would purchase the LTL operating rights for \$35,000. At the same time, Delivery entered into an agreement with Robert Reeder Trucking which provides for the sale of its operating rights to Reeder. The agreement between Trustee and Delivery is contingent not only upon the approval of this Commission and the Interstate Commerce Commission of the transfer of the LTL operating rights, it is also contingent upon the approval by both Commissions of the transfer of Delivery's operating rights to Reeder. The request to transfer the Delivery operating rights to Reeder is the subject of Application No. 53067, which is presently pending before this Commission. The agreement allocates \$1,000 of the purchase price to the operating rights and the remainder to goodwill.

The record indicates that Delivery had gross operating revenues of \$378,359 for the six-month period ending September 30, 1971, and it had a net profit of approximately \$25,000 for that period. Its president has been engaged in the motor carrier transportation business since 1966.

Copies of the application were served upon the California Trucking Association, Highway Carriers Association and Department of General Services of the State of California. No protests to the application have been received by the Commission.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.

2. In Decision No. 78869 in Application No. 52479 the Commission authorized Trustee to sell LTL's operating rights to Cal-Hawaiian Freight, Inc. Said sale was never consummated. On October 29, 1971, the United States District Court, Central District of California entered an order rescinding the sale in bankruptcy of said operating rights.

3. The transfer of LTL's certificate of public convenience and necessity to operate as a highway common carrier by Trustee to Delivery would not be adverse to the public interest.

4. Delivery has the ability, including financial ability, to conduct operations under said certificate.

5. To avoid confusion among members of the shipping public and assist the Commission in the performance of its regulatory functions, the operating rights herein transferred should be restated in appendix form.

#### Conclusions of Law

1. The authority to sell and transfer the LTL operating rights to Cal-Hawaiian Freight, Inc. contained in Decision No. 78869 in Application No. 52479, should be revoked.

2. Trustee should be authorized to sell and transfer to Delivery LTL's certificate of public convenience and necessity to operate as a highway common carrier.

3. The certificate herein authorized to be transferred should be restated in appendix form.

California Delivery Service 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. 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. The authority to sell and transfer the operating rights of LTL Delivery, Inc., to Cal-Hawaiian Freight, Inc., granted in Decision No. 78869 in Application No. 52479, is hereby revoked.

2. On or before December 1, 1972, Joel Mithers, Trustee in Bankruptcy of LTL Delivery, Inc., Bankrupt, may sell and transfer and California Delivery Service may purchase and acquire the operating rights set forth in Appendices A and B attached hereto.

3. 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.

4. 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 operating authority granted by this decision.

5. 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.

6. 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-Series.

7. 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.

8. 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.

9. In the event the transfer authorized in paragraph 2 hereof is consummated, the operating rights set forth in Appendices A and B attached hereto and made a part hereof are issued in lieu of and will supersede the rights set forth in Decision No. 61235 in Application No. 42576, Decision No. 68578 in Application No. 47211 and Decision No. 71274 in Application No. 48592, which are hereby revoked and cancelled, said

A. 53057 JM

revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 4 hereof.

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

Dated at San Francisco, California, this 27th day of FEBRUARY, 1972.

William J. Guoras Chairman  
James L. Sturgeon  
Commissioners

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

California Delivery Service, a corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities between all points within the Los Angeles Basin Region as described in Appendix B attached hereto.

Applicant shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
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.: boars, 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 semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers 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. Logs.

(END OF APPENDIX A)

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## LOS ANGELES BASIN REGION

Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence along the westerly and northerly boundaries of said City to its point of first intersection with the southerly boundary of Angeles National Forest; southeasterly and easterly along the boundary of Angeles and San Bernardino National Forests to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; westerly along Redlands Boulevard to U. S. Highway 99; northwesterly along U. S. Highway 99 to and including the City of Redlands; westerly along U. S. Highway 99 to U. S. Highway 395; southerly along U. S. Highway 395 to State Highway 18; southwesterly along State Highway 18 to U. S. Highway 91; westerly along U. S. Highway 91 to State Highway 55; southerly along State Highway 55 to the Pacific Ocean; westerly and northerly along the shore line of the Pacific Ocean to the point of beginning.

(END OF APPENDIX B)

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