

ORIGINAL

Decision No. 79738

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CALIFORNIA DELIVERY SERVICE, a cor-
poration, to transfer, and ROBERT
REEDER TRUCKING, a corporation, to
acquire a Certificate of Public
Convenience and Necessity to operate
as a Highway Common Carrier.

Application No. 53067
(Filed December 21, 1971)

O P I N I O N

This is an application by California Delivery Service (hereinafter referred to as Delivery) and Robert Reeder Trucking (hereinafter referred to as Reeder) in which applicants seek authority for Delivery to sell and Reeder to acquire Delivery's certificate of public convenience and necessity to operate as a highway common carrier.

Delivery presently holds a certificate of public convenience and necessity to operate as a highway common carrier in the Los Angeles Territory. It holds interstate operating authority in that area pursuant to a certificate of registration issued by the Interstate Commerce Commission. Delivery entered into an agreement with the Trustee in Bankruptcy of LTL Delivery, Inc. to purchase LTL's intra-state and interstate operating rights. LTL holds a certificate of public convenience and necessity from this Commission and a certificate of registration from the Interstate Commerce Commission to operate as a highway common carrier in the Los Angeles Basin Region. The Los Angeles Basin Region encompasses a larger area than the Los Angeles Territory.

The agreement between Delivery and the Trustee in Bankruptcy is contingent upon the approval by this Commission and the Interstate Commerce Commission of the transfer of the LTL operating rights and

of the approval by both Commissions of the transfer of the operating rights here involved. Similarly, the agreement which is the basis of this application is contingent upon the approval by both Commissions of the two proposed transfers of operating rights. The request to transfer the LTL operating rights is the subject of Application No. 53057, presently pending before this Commission.

The verified application indicates that Delivery has agreed to sell its intrastate and interstate operating rights to Reeder for \$22,500. The agreement provides that \$1,000 of the purchase price is allocated to the operating rights and the remainder is allocated to goodwill. The application also indicates that Reeder's sole shareholder and general manager has been in the motor carrier transportation business for sixteen years. Reeder presently holds permits issued by this Commission to operate as a radial highway common carrier and highway contract carrier. The record also indicates that Reeder had depreciated fixed assets of \$31,341 as of October 31, 1971. It had gross operating revenues of \$364,790 and a net profit of \$16,783 for the 12-month period ending on October 31, 1971.

Copies of the application were served upon the California Trucking Association. 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. The transfer of Delivery's certificate of public convenience and necessity to operate as a highway common carrier to Reeder would not be adverse to the public interest.
3. Reeder has the ability, including financial ability, to conduct operations under said certificate.
4. To avoid confusion among 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. Delivery should be authorized to sell and transfer its certificate of public convenience and necessity to operate as a highway common carrier to Reeder.
2. The certificate herein authorized to be transferred should be restated in appendix form.

Robert Reeder Trucking 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. On or before December 1, 1972, California Delivery Service may sell and transfer and Robert Reeder Trucking may acquire the operating rights set forth in Appendices A and B attached hereto.
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 operating authority 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-Series.

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. In the event the transfer authorized in paragraph 1 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 Decisions Nos. 51718, 58923, 70673 and 78443, which are hereby revoked and cancelled, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

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

Dated at San Francisco, California, this 23rd day of FEBRUARY, 1972.

William Lynous Chairman
Vernon L. Sturgeon
[Signature] Commissioners

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

Robert Reeder Trucking, a corporation, by the certificate of public convenience and necessity granted in 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 and places in the Los Angeles Territory as defined in Appendix B attached hereto.

Applicant shall not transport any shipments of:

1. 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.
2. Commodities when transported in bulk in dump trucks or in hopper type trucks.
3. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
5. 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.
6. 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.
7. 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, bus chassis.

(END OF APPENDIX A.)

Issued by California Public Utilities Commission.

Decision No. 79738, Application No. 53067.

LOS ANGELES TERRITORY includes the area embraced by the following boundary:

Beginning at the intersection of Sunset Boulevard and U.S. Highway No. 101, Alternate; thence northeasterly on Sunset Boulevard to State Highway No. 7; northerly along State Highway No. 7 to State Highway No. 118; northeasterly along State Highway No. 118 through and including the City of San Fernando; continuing northeasterly and southeasterly along State Highway No. 118 to and including the City of Pasadena; easterly along U.S. Highway No. 66 to State Highway No. 19; southerly along State Highway No. 19 to Lower Azusa Road; easterly on Lower Azusa Road to its intersection with the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to State Highway No. 26; westerly along State Highway No. 26 to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway; westerly on Imperial Highway to State Highway No. 19; southerly along State Highway No. 19 to its intersection with U.S. Highway No. 101, Alternate, at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and U.S. Highway No. 101, Alternate; thence northerly along an imaginary line to point of beginning.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision No. 79238, Application No. 53067.