

Decision No. 80676

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
R. E. ELLIS DRAYING CO., INC., a)
California corporation, to sell and)
transfer specified parts of its)
highway common carrier certificate)
to O.N.C. MOTOR FREIGHT SYSTEM, a)
California corporation.)

Application No. 53077
(Filed December 30, 1971)

O P I N I O N

R. E. Ellis Draying Co., Inc. (Ellis) is a highway common carrier operating within this State pursuant to a certificate of public convenience and necessity issued by this Commission in Decision No. 61692, dated March 21, 1961, in Application No. 42930, as amended by Decision No. 61847, dated April 18, 1961, and transferred to it by Decision No. 69022, dated May 11, 1965. This authority is the subject of a certificate of registration issued by the Interstate Commerce Commission in No. MC-99367 (Sub. No. 1), dated April 13, 1966.

O.N.C. Freight Systems is a carrier operating in several states subject to the authority of the Interstate Commerce Commission and holds California operating authority issued in Decision No. 79864, dated March 28, 1972. By Decision No. 80186, dated June 27, 1972, in Application No. 41429, this Commission recognized the corporate name change of this carrier from O.N.C. Motor Freight System to O.N.C. Freight Systems, hereinafter called ONC.

Pursuant to Section 5 of the Interstate Commerce Act, the Interstate Commerce Commission has exclusive and plenary jurisdiction over this transaction and in Docket No. MC-F-11333, dated August 28, 1972, it approved the acquisition by ONC of the interstate operating rights evidenced by Ellis' certificate of registration, supra.

In the instant proceeding, the carriers have requested that the intrastate authority held by Ellis be transferred to ONC.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate held by Ellis and the issuance of a certificate in appendix form to ONC.

O.N.C. Freight Systems 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. On or before December 1, 1972, R. E. Ellis Draying Co., Inc., may sell and transfer, and O.N.C. Freight Systems, may purchase and acquire, the operative rights referred to in the application.
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 R. E. Ellis Draying Co., Inc. has withdrawn or canceled and O.N.C. Freight Systems 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-Series. Failure to comply with and observe the provisions of General Order No. 80-Series 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, unless seller continues operations under a certificate or under a permit with revenues requiring the filing of an annual report on the operations retained.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to O.N.C. Freight Systems, a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificates of public convenience and necessity granted to R. E. Ellis Draying Co., Inc., and O.N.C. Freight Systems which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser 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-Series.

8. 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.

9. 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.

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

Dated at San Francisco, California, this 9th day of OCTOBER, 1972.

Vernon L. Sturgeon
President
William J. Sturgeon
William J. Sturgeon
William J. Sturgeon
William J. Sturgeon
Commissioners

O.N.C. Freight Systems, 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 as follows:

- I. Between all points and places in the San Francisco Territory as described in Note A and between the San Francisco Territory, on the one hand, and:
 - a. Sacramento and all points located within a radius of twenty miles of Sacramento, on the other hand.
 - b. Points on Interstate Highway 5 between Red Bluff and the California-Oregon State Line, including Red Bluff, on the other hand.
 - c. Points on U.S. Highway 97 between Weed and the California-Oregon State Line, on the other hand.
- II. Between all points and places on and within ten miles laterally of the following highways (See Exception):
 1. Saratoga-Sunnyvale Road between Cupertino and Saratoga, inclusive;
 2. State Highway 17 between Campbell and Los Gatos, inclusive;
 3. U.S. Highway 101 between San Francisco and Novato, inclusive;
 4. Interstate Highway 80 between Richmond and Sacramento, inclusive;

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5. Interstate Highways 580, 205 and 5 between Hayward and Stockton and State Highway 99 between Stockton and Sacramento, inclusive;
6. State Highway 4 between Pinole and Stockton, inclusive;
7. State Highway 24 between Oakland and its intersection with State Highway 4 and State Highway 160 between its intersection with State Highway 4 and Sacramento, inclusive;
8. State Highway 21 between Cordelia and its intersection with Interstate Highway 680 and between that point and Mission San Jose via Interstate Highway 680, inclusive;
9. State Highway 12 between Fairfield and Lodi, inclusive; and
10. Unnumbered highway between Concord and Byron, inclusive.

Exception: The ten mile extension above noted shall not apply north of Novato.

III. A. BETWEEN Sacramento and all points located within a radius of twenty miles of Sacramento, on the one hand, and Red Bluff and all intermediate points on the following named highways, on the other hand:

1. Interstate Highway 80 between Sacramento and Roseville, State Highway 65 between Roseville and Marysville and State Highway 99 between Marysville and Red Bluff, inclusive;
2. State Highway 16 between Sacramento and Woodland, inclusive;
3. Interstate Highway 5 between Woodland and Red Bluff, inclusive.

- B. Sacramento and Redding, on the one hand, and on the other hand, intermediate points between Redding and the California-Oregon State Line on Interstate Highway 5 and State Highway 97, with two mile laterals.
 - C. BETWEEN Oleum, on the one hand, and, on the other hand, Redding and all points north of Redding to and including the California-Oregon State Line.
 - D. BETWEEN Redding and Keswick Dam and intermediates within three miles laterally.
 - E. Live and/or dressed poultry from Corning, Orland, Willows, Maxwell and Williams, on the one hand, to Oakland and San Francisco, on the other hand.
- IV. Through routes and rates may be established between any and all points and places specified in paragraphs I and II above.
- 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.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.

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4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerated equipment.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Articles of extraordinary value.
8. Commodities likely to contaminate or damage other freight.
9. Logs.

NOTE A

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue

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to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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