

Decision No. 81358

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
E. I. BRANDT, an individual, dba)
E. I. BRANDT TRUCKING SERVICE,)
seller, to transfer its assets and)
certificate of public convenience)
and necessity to E. I. BRANDT)
TRUCKING CO., INC., a California)
corporation, buyer, to accept said)
assets and certificate and for them)
to issue securities and assume)
seller's liabilities.)

Application No. 53578
(Filed September 11, 1972)

O P I N I O N

By this application E. I. Brandt, doing business as E. I. Brandt Trucking Service (seller), seeks to transfer his assets and certificate of public convenience and necessity to E. I. Brandt Trucking Co., Inc. (buyer), and buyer requests authority to issue securities and assume seller's liabilities.

There are no protests.

Under the certificate seller transports dried fruit from the general Yuba City-Colusa area to the general Bay Area-Stockton area.

For the purpose of taking advantage of the corporate form of conducting business, seller has caused buyer to be formed.

A profit and loss statement for the seller for the period January 1, 1972 through June 30, 1972 shows a net profit of \$25,146.89.

Buyer seeks to issue for seller's net worth the following securities: 10,000 shares of its \$10 par value common stock having a book value equal to seller's net worth as of June 30, 1972.

After consideration the Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. The proposed stock issue is for a proper purpose.
3. The money, property, or labor to be procured by the issue of the stock herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or income.
4. A public hearing is not necessary.

Based on the foregoing findings the Commission concludes that the application should be granted to the extent and under the conditions as set forth in the ensuing order.

The action taken herein shall not be construed as a finding of the value of the properties to be transferred so far as the operating rights are concerned, nor as authorization for issuance of stock exceeding the net worth of the business on the date of transfer.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by E. I. Brandt and the issuance of a certificate in appendix form to E. I. Brandt Trucking Co., Inc.

E. I. Brandt Trucking Co., Inc. is 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 cancelled 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 August 31, 1973, E. I. Brandt may sell and transfer, and E. I. Brandt Trucking Co., Inc. may purchase and acquire, the highway common carrier certificate and related assets referred to in the application.

2. E. I. Brandt Trucking Co., Inc., on or after the effective date hereof and on or before August 31, 1973 for the purpose set forth in this proceeding, may issue not exceeding 10,000 shares of its \$10 par value common stock to E. I. Brandt and assume outstanding liabilities.

3. E. I. Brandt Trucking Co., Inc. shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

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 consummation of the transfer herein authorized, E. I. Brandt Trucking Co., Inc. 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.

6. E. I. Brandt Trucking Co., Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the highway 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 highway common carrier 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.

7. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to E. I. Brandt Trucking Co., Inc. 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 Appendix A attached hereto and made a part hereof.

8. The certificate of public convenience and necessity granted in paragraph 7 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 51697 which certificate is revoked concurrently with the effective date of the tariff filings required by paragraph 6 hereof.

9. Within thirty days after the transfer herein authorized is consummated, E. I. Brandt Trucking Co., Inc. shall file a written acceptance of the certificate herein granted. E. I. Brandt Trucking Co., Inc. 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.

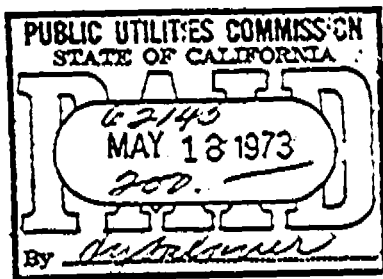
10. E. I. Brandt Trucking Co., Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an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

11. E. I. Brandt Trucking Co., Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If E. I. Brandt Trucking Co., Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

12. By accepting the certificate herein granted, E. I. Brandt Trucking Co., Inc., a corporation, shall assume any and all obligations of E. I. Brandt, as an individual, which may be imposed by the Commission in its investigation in Case No. 9479 against E. I. Brandt.

The authority herein granted to issue stock will become effective when E. I. Brandt Trucking Co., Inc. has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$200. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 8th day of MAY, 1973.



William L. Steiner
President
William J. ...
...
...
Commissioners

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

E. I. Brandt Trucking Co., Inc., 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 dried fruit from Yuba City and Colusa, on the one hand, to San Francisco, Oakland, Alameda, and Stockton, on the other hand, and to transport empty pallet boards returning from such destinations to said points of origin. Such authority does not include the right to render service from, to or between intermediate points.

(END APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 81358, Application No. 53578.