

Decision No. 81464

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of

1. FRANK E. WILLS, an individual, doing business as WILLS FREIGHT LINE, to transfer, and of WILLS FREIGHT LINE, INC., a corporation, to acquire highway common carrier certificate and other property;
2. WILLS FREIGHT LINE, INC., a corporation, to issue stock, issue a \$40,000 note, and to assume liabilities.

Application No. 53809
(Filed January 29, 1973)

O P I N I O N

Frank E. Wills, doing business as Wills Freight Line (seller), seeks to transfer his certificate of public convenience and necessity and other property to Wills Freight Line, Inc. (buyer) and buyer seeks authority to issue securities and assume seller's liabilities. Notice of the filing of the application appeared on the Commission's calendar of January 30, 1973.

There are no protests.

Seller has entered into an agreement with buyer for the sale to buyer of all of the assets and properties of seller: the goodwill and trade name, the common carrier certificate and the permitted operating authority and all other property belonging to and used in connection with the operation of the business of seller. In consideration of the transfer buyer agrees to assume the payment of all debts and obligations of seller and to save seller free and harmless

from all liability in connection with any debt or obligation of the business of seller. The purchase price to be paid to seller is to be represented by a promissory note of buyer in the principal sum of \$40,000, bearing interest at the rate of 7 percent per annum, and payable over a period of 10 years in monthly installments of \$464.43, or more. Buyer requests authority to issue 1,000 shares of its \$1.00 par value capital stock for cash to Raymond E. Robideaux and Frank R. Wills, 500 shares each.

Seller desires to retire from active business and desires to sell his business under terms which will provide him with income during his retirement. Frank R. Wills and Raymond E. Robideaux, who are respectively the son and nephew of seller, have been employed by seller for a considerable period of time. They have formed a corporation for the purpose of conducting the operations of seller. Seller desires to sell business to buyer in order that the business may be carried on by members of his family. The use of the corporate form of business will provide for a simplified method of ownership and will enable the principals to separate their own personal financial situations from that of the business.

After consideration the Commission finds that:

1. The proposed transactions would not be adverse to the public interest.
2. The proposed stock issue and promissory note are for a proper purpose.
3. The money, property, or labor to be procured by the issue of the stock and promissory note herein authorized are reasonably required for the purpose specified herein, which purposes are 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.

The action taken herein shall not be construed as a finding of the value of the rights and properties to be transferred, nor as authorization of the issuance of stock exceeding the net worth of the business on the date of transfer. So far as the operating rights are concerned, the authorization herein granted is for the transfer of the highway common carrier certificate of public convenience and necessity only. Any transfer of permitted operating authority must be the subject of a separate application or applications.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Frank E. Wills and the issuance of a certificate in appendix form to Wills Freight Line, Inc.

Such appendix will reflect the current designations of highways and roads and will not enlarge nor broaden the authority to be transferred.

Wills Freight Line, 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 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 August 31, 1973, Frank E. Wills may sell and transfer, and Wills Freight Line, Inc. may purchase and acquire, the highway common carrier certificate of public convenience and necessity and the related assets, and may assume the liabilities referred to in the application.

2. Wills Freight Line, 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 1,000 shares of its \$1.00 par value common stock and a promissory note in the amount of \$40,000.

3. Wills Freight Line, 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. Within thirty days after the consummation of the transfer herein authorized, Wills Freight Line, 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.

5. Wills Freight Line, 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 ten days after the effective date of this order on not less than ten 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.

6. On or before the end of the third month after the consummation of the transfer 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.

7. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Wills Freight Line, Inc. 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.

8. The certificate of public convenience and necessity granted in paragraph 6 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 73652, which certificate is revoked concurrently with the effective date of the tariff filings required by paragraph 5 hereof.

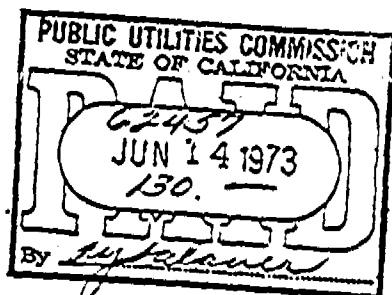
9. Within thirty days after the transfer herein authorized is consummated, Wills Freight Line, Inc. shall file a written acceptance of the certificate herein granted. Wills Freight Line, Inc. is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it 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. Wills Freight Line, 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. Wills Freight Line, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Wills Freight Line, Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

The authority herein granted to issue stock and issue a promissory note will become effective when Wills Freight Line, Inc. has paid the fees prescribed by Sections 1904.1 and 1904(b) of the Public Utilities Code, which fees are \$50 and \$80, respectively. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 12th day of JUNE, 1973.



William L. Sturgeon
President
William Sturgeon

[Signature]
[Signature]
Commissioners

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

Wills Freight Line, 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 the following specified commodities:

- (1) BOILERS, FURNACES, RADIATORS, STOVES, RELATED ARTICLES OR PARTS NAMED, as listed under that heading in Items Nos. 11960 through 13231 of the Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
- (2) CONDUITS, PIPE, SMOKESTACKS, TUBING OR FITTINGS, OTHER THAN CLAY, CONCRETE OR EARTHEN, as listed under that heading in Items Nos. 29220 through 30440 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
- (3) COOLERS, COOLING BOXES, COOLING ROOMS OR REFRIGERATORS, as listed under that heading in Items Nos. 30600 through 30742 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
- (4) ELECTRICAL APPLIANCES OR EQUIPMENT, OR PARTS NAMED, as listed under that heading in Items Nos. 34020 through 35430 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
- (5) LAMPS, LANTERNS OR LIGHTING FIXTURES, OR PARTS NAMED, as listed under that heading in Items Nos. 55690 through 56100 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.
- (6) MACHINERY OR MACHINES, OR PARTS NAMED, as listed under that heading in Items Nos. 58470 through 67391 of Western Classification No. 76, George H. Dumas, Agent, on the issue date thereof.

Between:

- A. All points and places in the San Francisco-East Bay Cartage Zone as described in Note A.

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- B. Points in paragraph A, on the one hand, and Fremont, Newark and intermediate points between Fremont and the San Francisco-East Bay Cartage Zone, on the other hand.
- C. Points in paragraph A, on the one hand, and on the other hand, points on or within five miles laterally of the following routes:
- (1) Interstate Highway 80 between the San Francisco-East Bay Cartage Zone and Hercules;
 - (2) State Highway 4 between Hercules and Antioch;
 - (3) Interstate Highway 680 between Martinez and Dublin; and
 - (4) State Highway 24 between the San Francisco-East Bay Cartage Zone and Walnut Creek.

In performing the service herein authorized, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

NOTE A

SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of State Highway 82; thence southeasterly along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said

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boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to San Pablo Avenue (State Highway 123) to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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