

ORIGINAL

Decision No. 81671

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SILVER FLEET, INC., a corporation,
to transfer, and W. W. LYNCH, INC.,
a corporation, to acquire a
Certificate of Public Convenience
and Necessity to operate as a
Highway Common Carrier.

Application No. 53911
(Filed March 22, 1973)

O P I N I O N

Silver Fleet, Inc. (Silver Fleet), a California corporation, proposes to transfer, and W. W. Lynch, Inc. (Lynch), a California corporation, proposes to acquire the certificate of public convenience and necessity to operate as a highway common carrier in intrastate commerce issued to Silver Fleet by this Commission pursuant to Decisions Nos. 59793, 65886, 68061, and 78670. Lynch has been authorized by the Interstate Commerce Commission to acquire the interstate operating authority presently held by Silver Fleet which is identified as ICC Certificate of Registration No. MC 96 748 (Sub No. 1).

The written agreement between Silver Fleet and Lynch attached to the application as Exhibit A as amended by letter agreement dated June 12, 1973 attached to letter of transmittal dated June 19, 1973, from Milton W. Flack to the Commission, both of which letters have been received in evidence as Exhibit No. 1 and letter agreement dated June 25, 1973 received in evidence as Exhibit No. 2 provides that Lynch shall pay to Silver Fleet the total sum of \$40,000 for the aforesaid operating rights and any goodwill which may accompany them, \$20,000 being the consideration for the intrastate operating rights and \$20,000 being the consideration for the Certificate of Registration issued by the Interstate Commerce Commission.

In the event either this Commission and/or the Interstate Commerce Commission, by their final orders, deny the applications for approval of (1) the purchase by Lynch of the highway common carrier operating rights of Silver Fleet, (2) the transfer of the highway common carrier operating rights held by Culy Transportation Co., Inc., doing business as Cal-Canadian Motor Express to Silver Fleet Motor Express, Inc., (a corporation distinct from Silver Fleet, Inc.), or (3) the authority to issue stock and to grant options to acquire stock by Silver Fleet Motor Express, Inc. as set forth in the written agreement attached to the application as Exhibit A, as amended by Exhibits Nos. 1 and 2, the parties to said agreement are to be released of obligations under the agreement except that Silver Fleet shall return the \$5,000 down payment to Lynch.

Silver Fleet is a participating carrier in various Western Motor Tariff Bureau tariff publications which cover its present services under its operating rights. Lynch proposes to adopt those tariffs and continue the same rates.

Lynch is presently engaged as a highway contract carrier transporting general commodities, with certain exceptions, in the State of California under a permit.

The applicants allege that Lynch has experienced growing and continued demands from its shipping customers and the shipping public. If this application is granted Lynch will have the authority to fill the needs and demands of its customers and of the public and to continue the service heretofore offered by Silver Fleet. The parties further allege that the officers, directors, and employees of Lynch are well qualified to participate in intrastate and interstate motor truck transportation operations for the benefit of the public.

Exhibit B attached to the application contains a balance sheet of Lynch as of February 20, 1973, and income statements of Lynch for the year ended December 31, 1972, and for the period from January 1 through February 20, 1973.

Exhibit C attached to the application is a list of Lynch's fleet of equipment available for its motor carrier operations.

The balance sheet of Silver Fleet as of December 31 1972 and the statements of income and expense of Silver Fleet for the month of December, 1972 and the year ending December 31, 1972 are attached to the application as Exhibit D.

A copy of the application was forwarded to California Trucking Association which publishes information with respect to applications of this nature in "Cal Trux" which is distributed to the entire membership of the California Trucking Association. Applicants request relief from the provisions of Rule 37 of the Commission's Rules of Practice and Procedure. Such request for relief is hereby granted.

No protests to the granting of the application have been filed with this Commission.

The Commission finds that:

1. A public hearing is not required.
2. The application shows with reasonable certainty that the proposed transfer involved in this proceeding will not have a significant effect on the environment.
3. The proposed transfer will not be adverse to the public interest.

The Commission concludes that the proposed transfer by Silver Fleet to Lynch of the operating authority described in the application should be authorized.

Lynch 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.

The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Silver Fleet and the issuance of a certificate in appendix form to Lynch. The certificate will be restated but such restatement will not change or broaden the authority transferred.

O R D E R

IT IS ORDERED that:

1. On or before January 31, 1974, Silver Fleet, Inc. may sell and transfer the operative rights referred to in the application to W. W. Lynch, Inc.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the 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 transfer. 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 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 transfer the 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. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to W. W. Lynch, Inc., 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 set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 shall supersede the certificate of public convenience and necessity granted by Decision No. 59793 dated March 15, 1960 in Application No. 41585, which was transferred by Decision No. 65886 dated August 20, 1973, as amended by Decision No. 68061 dated October 20, 1964 and Decision No. 78670 dated May 11, 1971, all in Application No. 45607, which certificate, as amended, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Purchaser shall comply with 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 Charts 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 31st day of JULY, 1973.

William Sproun, Jr. President
[Signature]
[Signature] Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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

W. W. Lynch, 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 general commodities between all points in the Los Angeles Territory, as described in Note A.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment 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.
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.

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5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

Note A

LOS ANGELES TERRITORY

LOS ANGELES TERRITORY includes that area embraced by the following boundary: 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, thence easterly along the southerly boundary of Angeles National Forest to the point of intersection with the easterly boundary of Los Angeles County, thence southerly along the easterly boundaries of Los Angeles and Orange Counties to the point of intersection with State Highway 91, thence westerly along State Highway 91 to its junction with State Highway 55, thence southerly along State Highway 55 and the prolongation thereof to the Pacific Ocean and westerly and northerly to the point of beginning.

(END OF APPENDIX A)

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