

ORIGINAL

Decision No. 81845

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

(a) R.B.N. TRANSPORTATION CO.,
a California Corporation, to
purchase from CITY TRANSFER, INC.,
the Certificate of Public Conven-
ience and Necessity issued by the
Public Utilities Commission, of
general commodities as a highway
common carrier between points in
the Los Angeles Basin territory
pursuant to Sections 851-853 of the
California Public Utilities Code.

(b) R.B.N. TRANSPORTATION CO.,
to issue shares of its common
capital stock pursuant to Sections
816-830 of the California Public
Utilities Code.

(c) R.B.N. TRANSPORTATION CO.,
a California corporation to
authorize the issuance of indebted-
ness pursuant to Sections 816-830
of the California Public Utilities
Code.

Application No. 54153

(Filed July 5, 1973)

O P I N I O N

Applicants seek an order authorizing: (1) R.B.N. Transportation Co., a California corporation, (R.B.N.), to purchase, and City Transfer, Inc. (City) to sell, a certificate of public convenience and necessity as a highway common carrier for \$75,000, payable \$10,000 in cash, and a note for \$65,000, payable \$1,500 or more per month; (2) R.B.N. to issue 10,000 shares of \$1.00 per share par value stock to Roy B. Nygren and Mrs. Roy B. Nygren for \$10,000 in cash; and (3) R.B.N. to issue a note for \$65,000 to City.

R.B.N. is a California corporation authorized by its articles to operate as a highway common carrier.^{1/} Its principal place of business is in Montebello. It is authorized to issue not to exceed 75,000 shares of common capital stock at \$1.00 per share par value. It has no shares of stock issued or outstanding.

As a newly formed corporation, it has no assets or liabilities. The first directors are Roy B. Nygren, Charles R. Nygren, Ronald K. Nygren, and Jeffrey G. Nygren.

City is the owner of a certificate of public convenience and necessity as a highway common carrier for the transportation of general commodities, with the usual exceptions, between points in a portion of the Los Angeles Basin as described in Decision No. 59618, dated February 1, 1960 in Application No. 41517.^{2/} This authority was restated and an in-lieu certificate, which consolidated all of City's operating rights, was issued in Decision No. 77698, dated September 1, 1970 in Application No. 52066. The description of the authority to be transferred is shown on original page 11 to Appendix A of Decision No. 77698, supra.

City has agreed to sell, and R.B.N. has agreed to purchase, subject to the approval of this Commission and the Interstate Commerce Commission,^{3/} the above authority and the coextensive certificate of registration only^{4/} for \$10,000 cash and \$65,000 evidenced by a promissory note payable \$1,500 or more per month, with interest at 6 percent per annum on the unpaid principal. R.B.N. will adopt the tariffs pursuant to which City performs the services.

In order to secure the \$10,000 in cash, R.B.N. will issue 10,000 shares of its common capital stock at \$1.00 per share for a total of \$10,000 to Roy B. Nygren (one of the incorporators) and Mrs. Roy B. Nygren, husband and wife, as joint tenants. These parties have also agreed to advance an additional \$5,000 to R.B.N. for working cash to be evidenced by a demand note.

^{1/} Exhibit A on application.

^{2/} City is retaining other authorities.

^{3/} Exhibit C on application.

^{4/} R.B.N. will lease operating equipment.

Applicants allege that the proposed transfer of the City certificate to R.B.N. and the issuance of shares of common capital stock by the corporation to Roy B. Nygren and Mrs. Roy B. Nygren, in addition to the issuance of indebtedness to City will be in the public interest for the reasons:

(1) R.B.N. will continue to conduct the highway common carrier operations.

(2) There will be no change in the rates and other charges now assessed to the public.

(3) There is adequate financing for the transfer due to the installment terms calling for payment of the purchase price of said certificate over a period of time to City.

Findings

1. R.B.N. should be authorized to purchase, and City should be authorized to sell, to R.B.N. the certificate of public convenience and necessity referred to above.

2. The transfer of such certificate will not be adverse to the public interest.

3. R.B.N. has the financial resources with which to conduct operations for a reasonable period of time and will have available facilities with which to conduct the operations now conducted by City.

4. R.B.N. and City should be authorized to execute the proposed transfer agreement, Exhibit C.

5. R.B.N. should be authorized to execute a promissory note in the principal amount of \$65,000 payable to City Transfer, Inc.

6. R.B.N. should be authorized to adopt and place in effect all of City's applicable tariffs.

7. R.B.N. should be authorized to issue to Roy B. Nygren and Mrs. Roy B. Nygren, husband and wife, as joint tenants, 10,000 shares of its common capital stock for the purposes stated in this opinion.

8. The proposed stock issue is for proper purposes.

9. The money, property, or labor to be procured or paid for by the issue of the securities herein authorized is reasonably required for the purposes specified herein and such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

10. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

11. A public hearing is not necessary.

Conclusions

The Commission concludes that the application should be granted.

The authorization herein granted shall not be construed as a finding of value of the rights or properties herein authorized to be transferred, or of the stock of R.B.N. Transportation Co. So far as the rights are concerned the authorization herein granted is for the transfer of the highway common carrier certificate of public convenience and necessity only.

The order which follows will provide for, in the event the transfer is consummated, the issuance of a revised page to Appendix A of Decision No. 77698, a portion of the certificate presently held by City Transfer, Inc. and the issuance of a certificate in appendix form to R.B.N. Transportation Co., a corporation, which certificate will not exceed in scope the portion of the certificate presently held by City Transfer, Inc. being transferred herein.

R.B.N. Transportation Co. 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.

In issuing this decision we place the issuer of the authorized stock and its shareholders on notice that we do not regard the number of shares outstanding, the total par (stated) value of the shares, nor the dividends paid, as measuring the return it should be allowed to earn on its investment in plant, and that this authorization is not to be construed as a finding of the value of the company's stock or property nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. On or before January 1, 1974, City Transfer, Inc. may sell and transfer, and R.B.N. Transportation Co., a corporation, may purchase and acquire, the operative rights referred to in the application.
2. Within thirty days after the transfer the purchaser shall file with the Commission a 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 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-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. 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; (1) a certificate of public convenience and necessity is granted to R.B.N. Transportation Co., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof; (2) Appendix A of Decision No. 77698, is amended by incorporating First Revised Page 10, attached hereto, in revision of Original Page 10; and (3) the authority shown on Original Page 11 of Appendix A to Decision No. 77698 is revoked and Original Page 11 is cancelled.

5. 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.

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.

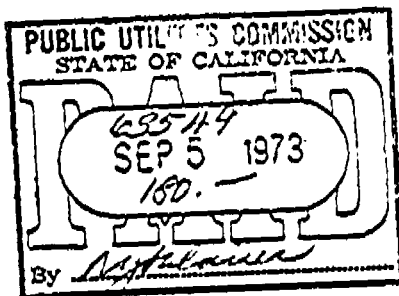
8. R.B.N. Transportation Co. may issue and sell to Roy B. Nygren and Mrs. Roy B. Nygren, husband and wife, as joint tenants, not to exceed 10,000 shares of its common stock at the stated par value of \$1.00 per share for the purposes specified in the opinion herein.

9. R.B.N. Transportation Co. may issue to City Transfer, Inc. a promissory note in the principal amount of \$65,000 under the terms and conditions specified in the agreement of sale, Exhibit C on the application.

10. R.B.N. Transportation Co., a corporation, shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

11. The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$130; and the authority granted by this order to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In other respects the effective date of this order is the date hereof.

Dated at San Francisco, California, this 5th day of SEPTEMBER, 1973.



Verano L. Spingarn
President
William J. Synovis, Jr.
W. J. Synovis, Jr.
Samuel M. ...
Samuel M. ...
Commissioners

R.B.N Transportation Co., 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 within the following area:

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 along the southerly boundary of Angeles and San Bernardino National Forests to the point of intersection of the southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line, thence in a southerly and westerly direction along said county boundary to a point thereon distant five miles east of the intersection of said county line and State Highway 91, thence generally southerly, southwesterly, southeasterly, and southwesterly along a line generally paralleling and distant five miles from State Highway 91, State Highway 55, Interstate Highway 5, Central Avenue in Irvine, California, and the prolongation thereof southwesterly to the Pacific Ocean, thence along the coastline of the Pacific Ocean westerly and northerly to the point of beginning.

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.

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

END OF APPENDIX A

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Appendix A
(Dec. 77698)

CITY TRANSFER, INC.
(a corporation)

First Revised Page 10

Cancels

Original Page 10

- III. A. Through routes and rates may be established between any and all points described in Paragraphs I and II above.
- B. Applicant may use any streets, roads or highways between the areas described for operating convenience only.

END OF APPENDIX A

Issued by California Public Utilities Commission.

Amended by Decision No. 81845, Application No. 54153.