

ORIGINALDecision No. 81969**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of MICHAEL G. MARINELLI, doing business as M & L Trucking Company, Transferor, and M & L TRUCKING COMPANY, INC., a California corporation, Transferee, and ENRICO A. ROSSO and NORBERT O. ARTLIP, buyers, for authority to transfer operating rights of a highway common carrier to a newly formed corporation; for a newly formed corporation to issue stock; and for acquisition of control by buyers of said newly formed corporation through purchase of said stock.

Application No. 54183
(Filed July 18, 1973)

O P I N I O N

Michael G. Marinelli (Marinelli), doing business as M & L Trucking Company, seeks authority to transfer, and M & L Trucking Company Inc. (M & L, Inc.) seeks authority to purchase, a certificate of public convenience and necessity which authorizes operations as a highway common carrier, M & L, Inc., a California corporation incorporated on June 25, 1973, seeks authority to issue 300 shares of \$10 par value stock to Marinelli in exchange for the certificate of public convenience and necessity, the goodwill, and organizational expense assets. This represents a rounded-off capitalization of the historical book value figure for organizational costs and franchises held by Marinelli in the amount of \$3,073.47.

Applicants Enrico A. Rosso and Norbert O. Artlip (Rosso and Artlip) in turn request authority to acquire control through the purchase of equal amounts of the outstanding stock of M & L, Inc. from Marinelli for the sum of \$60,000. The \$60,000 represents a \$5,000 option to purchase and a payment of \$55,000 cash at the time the option to purchase is exercised.

Marinelli operates as a highway common carrier of general commodities with certain exceptions in portions of northern California pursuant to the certificate of public convenience and necessity granted by Decision No. 52880 dated April 10, 1956 in Application No. 35898; Decision No. 53554 dated August 7, 1956 in Application No. 35898; and Decision No. 58893 dated August 18, 1959 in Application No. 38650. This authority is the subject of a Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-99755 (Sub. No. 1). Marinelli also conducts operations in California as a permitted carrier.

Marinelli shows total assets of \$153,272.29 as of March 31, 1973, liabilities of \$147,106.54, and owners' equity of \$6,165.75.

The pro forma balance sheet of M & L, Inc., giving effect to Commission approval, is as follows:

Assets:

Historical value of organizational expense, franchise (operating authority), goodwill, and going business value of predecessor proprietorship	\$3,073.47
Total Assets	<u>3,073.47</u>

Liabilities and Shareholders' Equity

Equity

Capital Stock	\$3,000.00	
Paid in Surplus	<u>73.47</u>	<u>3,073.47</u>
Total Liabilities and Equity		<u>3,073.47</u>

M & L, Inc. presently has no motor vehicle equipment and proposes that after the Commission approves the transfer, it will purchase the necessary equipment from Marinelli, said purchase to be secured by promissory notes or by conditional sales contract.

It is alleged that Marinelli is contemplating retirement and the transfer is to achieve an orderly reduction of his involvement in the transportation business.

It is alleged that applicant Rosso is a substantial shareholder and operating manager of a long established and successful

Berkeley business concern and has personal assets of over \$400,000. Applicant Artlip is alleged to have had in excess of 10 years' experience in the field of rail and truck transportation.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. The proposed stock issue is for proper purposes. The money, property, or labor to be procured or paid for by the issue of the stock authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part reasonably chargeable to operating expenses or to income. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Michael G. Marinelli and the issuance of a certificate in appendix form to M & L Trucking Company, Inc. This certificate will be restated, but such restatement will not change or broaden the authority transferred.

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

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 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.

M & L Trucking Company, 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 March 31, 1974, Michael G. Marinelli may sell and transfer the operative rights referred to in the application to M & L Trucking Company, 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 M & L Trucking Company, 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 set forth in Appendix A, attached hereto and made a part here hereof.

6. The certificate of public convenience and necessity granted by Decision No. 52880, as amended by Decisions Nos. 53554 and 58893, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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 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.

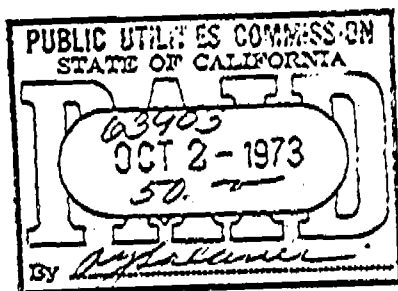
10. M & L Trucking Company, Inc., on or after the effective date hereof and on or before March 31, 1974, in acquiring the certificate of public convenience and necessity may issue not exceeding 300 shares of its \$10 par value common stock of Michael G. Marinelli.

11. The M & L Trucking Company, Inc., as the issuer of the stock authorized by this order, shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

12. Enrico A. Rosso and Norbert O. Artlip, on or after the effective date hereof and on or before July 1, 1974, may acquire control by purchasing equal numbers of the outstanding common stock of M & L Trucking Company, Inc. issued to Michael G. Marinelli for the sum of \$60,000, represented by a \$5,000 option to purchase and \$55,000 cash upon the exercising of said option.

13. The authority granted by this order to issue stock will become effective when the issuer has paid the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In all other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 2nd day of OCTOBER, 1973.



William J. Snow, 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.

M & L Trucking Company, 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:

- (a) Points in the San Francisco Territory as described in Note A and also including the points of Castro Valley and San Pablo.
- (b) Points in the San Francisco Territory on the one hand, and Antioch, Concord, Clayton, Dublin, Martinez, Pittsburg, Walnut Creek and all intermediate points via all streets and roads connecting said points and places, on the other hand.

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.

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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 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

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 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

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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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