

IS

ORIGINAL

Decision No. 83581

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ALLTRANS EXPRESS CALIFORNIA, INC.)
for authority to sell (1) its)
operating authority as a highway)
common carrier; and (2) certain) Application No. 54997
property used in its public utility) (Filed June 26, 1974)
operations; and of DELTA LINES, INC.)
for authority to purchase the)
operating authority as a highway)
common carrier of ALLTRANS EXPRESS)
CALIFORNIA, INC.)
_____)

ORDER GRANTING LIMITED REHEARING,
AND MODIFYING DECISION NO. 83292,
AS AMENDED

By Application No. 54997 filed June 26, 1974, Delta Lines, Inc. (Delta) and Alltrans Express California, Inc. (Alltrans), requested authority for the sale to Delta of Alltrans' certificate of public convenience and necessity to operate as a highway common carrier, and the sale of certain of Alltrans' physical assets to Delta California Industries (DCI), Delta's parent.

After hearings, held on July 18, 19 and 22, 1974, the Commission issued Decision No. 83292, granting authority for the transfer as referred to in Application No. 54997. The authority was granted upon the condition that Delta and its affiliated corporations (a) accept a single highway common carrier certificate, and a single express company certificate which shall encompass all the authorities of each type presently held, with duplications omitted, and (b) shall restate, refile and reissue all of their tariffs.

On August 14, 1974, a Petition for Reconsideration and Rehearing of Decision No. 83292 was filed by protestant Willig Freight Lines (Willig) alleging that the Findings, Conclusions and Order in Decision No. 83292 did not accurately reflect the stipulation entered into between the Applicants and Willig, which

stipulation formed the basis for the withdrawal of Willig's protest. On August 15, 1974 a Petition for Rehearing of Decision No. 83292 was filed by protestants Nielsen Freight Lines, Inc., Peters Truck Lines, Golden West Freight Lines and Applegate Drayage Company (hereinafter referred to collectively as Nielsen, et al.). On September 4, 1974, Decision No. 83388 was issued, amending Decision No. 83292 to conform more closely to the stipulation entered into between the Applicants and Willig, and clarifying the conditions to the authority granted by Decision No. 83292.

Having fully reviewed the petition filed by Willig, we conclude that the modifications of Decision No. 83292, set forth in Decision No. 83388, have rendered the requests made by Willig moot. This petition should therefore be dismissed.

The petition filed by Nielsen, et al., alleges numerous errors with respect to the subject decision. After having considered each and every allegation in said petition, we are of the opinion that limited rehearing should be granted, and one modification should be made as set forth hereinafter. We are of the further opinion that in all other respects not specifically covered herein, rehearing or reconsideration should be denied.

One of the primary arguments alleged by Nielsen, et al., in the instant petition is the Commission's failure to adequately consider, discuss and make findings, pursuant to Northern California Power Agency v. Public Utilities Commission. 5 C.3d 370 (1971), on the effect on competition which will result from the subject transfer. Having fully reviewed the record, we are of the opinion that additional evidence and argument on this issue is necessary. Rehearing, limited to the presentation of evidence and argument on the issue of the effect of the subject transfer on competition, should therefore be granted.

Nielsen, et al., also allege error in the failure to adequately consider and discuss Delta's financial ability to handle the transaction in the public interest, and allege that there is,

in fact, no evidence of record to substantiate Delta's ability in this regard. Having thoroughly reviewed the record in this respect, we are of the opinion that there is evidence of record to support a positive finding that Delta has the requisite financial ability to enable it to serve Alltrans' customers. However, Nielsen, et al., properly allege that such an additional finding is necessary. Accordingly, Decision No. 83292, as amended, should be appropriately modified.

Nielsen, et al., also properly allege that there is not sufficient evidence with regard to waiver of guarantees to be made by Delta and its affiliates under DCI's present loan agreement with Bank of America National Trust and Savings Association (See Tr. 274, Exhibit 19). We are therefore of the opinion that the limited rehearing to be granted hereinafter should also include the introduction of evidence with respect to this waiver.

IT IS THEREFORE ORDERED that:

1. Rehearing of Decision No. 83292, as modified by Decision No. 83388, is hereby granted for the following purposes:

a. To allow the introduction of additional evidence with respect to the effect on competition, and;

b. To allow the introduction of evidence with respect to waiver of the guarantees to be made by Delta Lines, Inc. and its affiliates under the loan agreement between Delta California Industries and the Bank of America National Trust and Savings Association, dated September 30, 1972.

The limited rehearing granted herein shall be heard before such Commissioner or Examiner and at such time and place as may hereafter be designated.

2. Decision No. 83292, as amended by Decision No. 83388, is hereby further amended by the addition of the following finding:

"10. Delta has the requisite financial ability to enable it to adequately serve those customers presently being served By Alltrans."

3. The Petition for Reconsideration and Rehearing filed by Willig Freight Lines is hereby dismissed.

4. In all other respects, rehearing or reconsideration of Decision No. 83292, as amended, is hereby denied.

The Secretary is directed to cause appropriate notice of rehearing to be mailed at least ten (10) days before such rehearing.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 8th day of OCTOBER, 1974.

Vernon L. Sturgeon
President
William J. Sullivan, Jr.
Richard J. Bukachy
[Signature]
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.