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ORIGINAL

Decision No. 83617

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of A. W. HAYS TRUCKING INC., a
corporation, to sell and transfer
a certificate of public convenience
and necessity as a cement carrier
to K LINES, INC., an Oregon
corporation.

Application No. 53994

ORDER OF MODIFICATION

By Decision No. 82493 dated February 20, 1974, A. W. Hays Trucking, Inc. was authorized to sell and transfer, and K Lines, Inc. was authorized to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a cement carrier. The agreed cash consideration for the certificate was \$15,000. Also included as part of the agreement of sale was a covenant not to compete for which applicant seller was to receive \$16,000 payable in two equal installments of \$8,000 each; however, the application contained no request for authorization to issue a promissory note and no such authorization was provided for in Decision No. 82493. By their present petition the parties request modification of Decision No. 82493 to provide for authorization to issue a promissory note in the amount of \$16,000 payable without interest as follows: \$8,000 on July 1, 1975 and \$8,000 on July 1, 1976.

As of December 31, 1972 K Lines, Inc. indicated a net worth in the amount of \$1,095,218.

Section 817 of the Public Utilities Code specifically sets forth the purposes for which a public utility may issue stock and other evidences of indebtedness payable at periods of more than 12 months after the date thereof.

Although the section primarily relates to property investments, subsection (c) thereof specifically provides for the improvement or maintenance of service.

It is alleged that the payment over a two-year period as evidenced by the promissory note is deemed essential by the parties to insure to each the good faith of the other in performing the obligations of the covenant agreement; that the covenant not to compete is essential to the improvement and maintenance of the purchaser's service; and that, if not authorized, the purchase transaction will, in all likelihood, not be consummated.

After consideration the Commission finds that the proposed issuance of the promissory note is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the security 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.

The Commission concludes that the petition for modification should be granted. A public hearing is not necessary.

IT IS ORDERED that Decision No. 82493 dated February 20, 1974 is amended in the following respects:

8. By adding the following ordering paragraph:

9. On or after the effective date of this order and on or before January 2, 1975, for the purposes specified in this proceeding, transferee may issue an evidence of indebtedness in the principal amount of not exceeding \$16,000, and may execute and deliver the promissory note, which documents shall be in substantially the same form as those attached to the application.

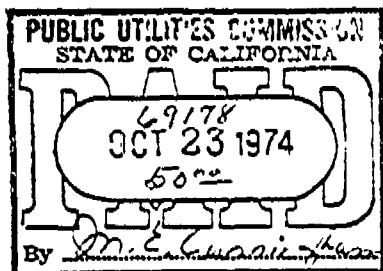
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b. By amending the effective date to read as follows:

"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 \$50. In other respects the effective date of this order shall be twenty days after the date hereof."

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 22nd
day of OCTOBER, 1974.



William L. Stinson
President
William J. Moran, Jr.
Thomas J. Moran
Commissioners

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