

GM

Decision No. 84386

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Applica-)
tion of STANLEY FENTON, doing)
business as DURKEE DRAYAGE COM-)
PANY to sell and transfer)
operating rights to DURKEE)
DRAYAGE COMPANY, a California)
corporation.)
)
)
)
)
)

Application No. 55479
(Filed February 5, 1975;
Amended March 27, 1975)

OPINION

Stanley Fenton, an individual, doing business as DURKEE DRAYAGE COMPANY (seller) requests authority to sell and transfer and DURKEE DRAYAGE COMPANY, a California corporation (purchaser) requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier and certain equipment.

Said certificate was granted by Decision No. 83033, dated June 25, 1974, in Application No. 54108, and registered with the Interstate Commerce Commission in Docket No. MC 121744. The certificate authorizes the transportation of general commodities, with the usual exceptions within an area bounded on the south by San Jose and Los Gatos, on the north by San Rafael, Richmond and Vallejo and on the east by Livermore and also all points and places in Contra Costa County. Seller also operates pursuant to permits issued by this Commission which are the subject of a separate transfer application.

Purchaser also requests authority to issue 167 shares of its \$10.00 par value per share common stock for the seller's operating authority and certain equipment, pursuant to the agreement entered into by applicants on January 10, 1975, as amended on March 24, 1975.

Applicants propose to seek corresponding authority from the Interstate Commerce Commission for approval of transfer of the Certificate of Registration.

Applicant seller is transferring his business from a sole proprietorship to a newly formed corporation which has as its president and sole stockholder applicant seller. The corporation was specifically formed to be successor in interest to the business being conducted by seller. It is alleged that all personnel, equipment and operations under the proprietorship will continue under the corporation. Applicant seller's balance sheet of December 31, 1974, shows total net worth of \$53,183.37.

The application was served on numerous other carriers and on the California Trucking Association. There were no protests to the application.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it and the request for issuance of stock should be authorized. 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 Stanley Fenton and the issuance of a certificate in appendix form to Durkee Drayage Company, a corporation.

The proposed security issue 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.

Applicant purchaser 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 October 1, 1975, Stanley Fenton may sell and transfer the operative rights and property referred to in the application, as amended, to Durkee Drayage Company, a corporation.
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. 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 Durkee Drayage Company, 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.

5. The certificate of public convenience and necessity granted by Decision No. 83033 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. 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.

8. 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.

9. After the effective date hereof Durkee Drayage Company, a corporation, may assume equipment obligations and issue not exceeding 167 shares of its \$10 par value capital stock to Stanley Fenton for the purposes set forth in the application.

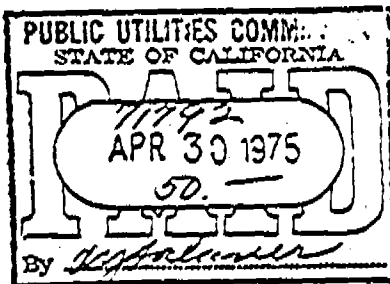
10. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

A. 55479 - GM

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 other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 29th day of April, 1975.

Vernon L. Sturgeon
President
William J. Quinn
Donald Ross
Robert S. ...
Commissioners



Durkee Drayage Company, a corporation, 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 as follows:

- I. Between all points and places on or within 10 miles laterally of the following routes:
 - A. U. S. Highway 101 between San Rafael and San Jose, inclusive;
 - B. Interstate Highway 280 and State Highway 82 between San Francisco and San Jose, inclusive;
 - C. State Highway 17 between Los Gatos and Oakland, inclusive;
 - D. State Highway 9 between Los Gatos and Saratoga, inclusive;
 - E. State Highway 85 between Saratoga and Mountain View, inclusive;
 - F. Interstate Highway 80 between San Francisco and Vallejo, inclusive;
 - G. Interstate Highway 680 between Vallejo and its junction with State Highway 237, near Milpitas, inclusive; and
 - H. Interstate Highway 580 between San Leandro and Livermore, inclusive.

Issued by California Public Utilities Commission.

Decision No. 84386, Application No. 55479.

- II. Between all points and places in Contra Costa County or within 10 miles of the boundary line of Contra Costa County.
- III. Between all points and places included in Paragraphs I (A through H) and II.

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Mechanical duplications and overlaps which occur in describing the operating authority granted herein shall not be construed as conferring more than one operating right to transport the same commodities between the same points.

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.

Issued by California Public Utilities Commission.

Decision No. 84386, Application No. 55479.

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.
8. Explosives.
9. Furniture, uncrated, new.
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 84386, Application No. 55479.