

ORIGINALDecision No. 84555

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

JAMES R. MULLEN, HOWARD W. HESTER,)
 and BERNARD J. GLASER, partners,)
 doing business as ACTION DRAYAGE)
 CO., to sell and transfer a high-)
 way common carrier certificate)
 to JOHN R. COSTA and PETER G.)
 COSTA, partners, doing business as)
 PACIFIC CARTAGE & WAREHOUSING.)

Application No. 55591
 (Filed March 28, 1975)

OPINION

James R. Mullen, Howard W. Hester and Bernard J. Glaser, a partnership, doing business as Action Drayage Co. (sellers), request authority to sell and transfer and John R. Costa and Peter G. Costa, co-partners, doing business as Pacific Cartage & Warehousing (purchasers), request authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier.

The certificate was granted by Decision No. 79857, dated March 28, 1972 in Application No. 53096, as amended by Decision No. 80190, dated June 27, 1972, and registered with the Interstate Commerce Commission in Docket No. MC-121689, dated April 2, 1972. The certificate authorizes the transportation of general commodities with certain exceptions between various points in the San Francisco Territory and between points in a limited area east of such territory. The certificate is currently in suspension for failure to maintain on file evidence of adequate insurance coverage as required by the Commission's General Order No. 100-Series which also requires payment of a \$150 fee for reinstatement of a certificate so suspended.

Pursuant to the Purchase Agreement entered into by applicants on January 31, 1975, the agreed total cash consideration is \$12,500 for both the intrastate certificate and the interstate Certificate of Registration. Applicants propose to seek from the Interstate Commerce Commission corresponding authority to transfer the Certificate of Registration. The purchase price will be paid in full when final approval of the transfer of the operating authority is given by this Commission and the Interstate Commerce Commission.

Applicant purchasers are presently engaged in the transportation of property in intrastate commerce between points in the area covered by the subject certificate pursuant to a permit issued by this Commission. They allege that the regularity and frequency of the service they provide will of necessity increase; that it is judicious to acquire certificated authority so as to continue their operations on a permanent basis; and in order to comply with the rules and regulations of this Commission. The purchasers currently operate with the use of leased highway equipment and allege that they will purchase or lease whatever equipment is necessary to conduct the common carrier operations of sellers. Purchasers' balance sheet as of April 30, 1975 shows assets of \$23,855, liabilities of \$3,067 and partnership equity of \$20,788. Applicant sellers participate in several tariff publications of Pacific Coast Tariff Bureau, Agent, which tariffs applicant purchasers will adopt effective with the consummation of the proposed transfer.

Applicants have requested relief from the provisions of Rule 37 of the Commission's Rules of Practice and Procedure which require that copies of the application be widely disseminated. It is alleged that a copy of the application was forwarded to the California Trucking Association and notice of the filing of the application appeared in the Commission's Daily Calendar on April 1, 1975. It is further alleged that the deviation is requested under

Rule 37, in order to permit applicants to secure just, speedy and inexpensive determination of the issues presented. No protests to the application have been received.

The Commission finds that the deviation requested from Rule 37 should be authorized, that the proposed transfer would not be adverse to the public interest and concludes that the application should be granted as provided in the ensuing order. 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 James R. Mullen, Howard W. Hester and Bernard J. Glaser, a partnership, doing business as Action Drayage Co., and the issuance of a certificate in appendix form to John R. Costa and Peter G. Costa, co-partners, doing business as Pacific Cartage & Warehousing. The new certificate issued to the co-partnership will not broaden the interstate or foreign commerce rights held by the carrier.

Purchasers are 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before December 1, 1975, James R. Mullen, Howard W. Hester and Bernard J. Glaser, a partnership, may sell and transfer the operative rights referred to in the application to John R. Costa and Peter G. Costa, a co-partnership, doing business as Pacific

Cartage & Warehousing.

2. Within thirty days after the transfer purchasers 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. Purchasers shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that they have adopted or established, as their 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 John R. Costa and Peter G. Costa, a co-partnership, authorizing them 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.

5. The certificate of public convenience and necessity granted by Decision No. 79857, as amended by Decision No. 80190, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

7. Purchasers shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Purchasers shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchasers elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

9. Applicants James R. Mullen, Edward W. Hester and Bernard J. Glaser, a partnership, and John R. Costa and Peter G. Costa, a co-partnership, are granted a deviation from Rule 37 of the Commission Rules of Practice and Procedure to the extent requested in the application.

10. The authorization to transfer the operating authority is conditioned upon the prior payment to the Commission of the \$150 reinstatement fee required by General Order No. 100-Series.

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

Dated at San Francisco, California, this 17th day of June, 1975.

Vernon L. Sturgeon
President
William J. Lyons, Jr.
Stanley D. ...
Ronald ...
Paul ...
Commissioners

John R. Costa and Peter G. Costa, by the certificate of public convenience and necessity granted by the decision noted in the margin, are 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:

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Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

1. Used household goods and personal effects not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
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. 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-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Cement.

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8. Logs.

9. Articles of unusual or extraordinary value.

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; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly 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

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doing-business as
PACIFIC CARTAGE & WAREHOUSING

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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