

ORIGINALDecision No. 84779

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of A. W. REID DRAYING)
COMPANY, a California corporation,)

and)

JAMES S. MANLOWE to transfer the)
certificate of public convenience)
and necessity and the permit of)
A. W. Reid to James S. Manlowe,)
and to encumber property related)
to transportation of Reid as)
security for payment.)Application No. 55601
(Filed April 4, 1975,
Amended June 20, 1975)OPINION

The applicants request authority for:

1. A. W. Reid Draying Company, a California corporation, (seller) to sell and transfer and James S. Manlowe, an individual, (purchaser) to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier.

2. Purchaser to encumber said certificate by Security Agreement and to guarantee payment of contract indebtedness of Manlowe United, Inc. (Manlowe), a newly formed noncarrier California corporation of which purchaser is president and sole director. He allegedly will receive 1500 shares of stock of Manlowe as its sole stockholder.

The certificate was granted by Decision No. 71128, dated August 16, 1966, in Application No. 48534, and transferred to the present holder pursuant to authority granted by Decision No. 74345, dated July 2, 1968, in Application No. 50299. The certificate was registered with the Interstate Commerce Commission in Docket No. MC 65185, Sub-No. 2. The certificate authorizes transportation

of general commodities, with the usual exclusions, between all points and places in the San Francisco-East Bay Cartage Zone. Seller also operates pursuant to a permit which is the subject of a separate application to transfer.

Pursuant to the Novation of Purchase and Sale Agreement of June 19, 1975, consideration for the sale of the certificate is \$4,000 for the intrastate operating rights, \$5,000 for the Certificate of Registration and \$1,000 for the goodwill and the use of the seller's name. Payment will be made in cash upon final approval by this Commission and the Interstate Commerce Commission of the sale and transfer.

A separate but related Purchase and Sale Agreement dated June 19, 1975, (Exhibit 4 of the amended application) between seller and Manlowe provides in substance:

1. Manlowe will purchase seller's office and highway equipment and supplies for the purpose of leasing such property to purchaser. The purchase price is \$70,000 of which \$6,000 is to be paid in cash upon approval of the application for transfer of the certificate by the appropriate regulatory authorities, and the balance of \$64,000 is to be paid in 96 monthly installments and evidenced by a promissory note. The debt will be secured by the purchaser granting a security interest in the equipment and supplies to the seller.

2. Seller to deliver to Manlowe an executed covenant not to compete for a period of 5 years from William D. Reid, seller's key employee. Consideration for the non-competition agreement is \$23,465.80 of which \$4,000 is payable upon execution of the agreement and the balance is to be paid in 60 monthly installments.

3. Purchaser to grant seller a security interest in the operating authority to be transferred and to guarantee payment of the amounts due from Manlowe to seller in connection with the sale of the equipment and supplies and the non-competition agreement.

The equipment to be sold to Manlowe and in turn leased to purchaser, includes 21 highway vehicles and various items of office, shop and trucking equipment. The unaudited balance sheet of March 1, 1975 for purchaser and Nancy Manlowe, his wife, shows assets of \$78,500, liabilities of \$5,300 and net worth of \$73,200. The transaction between seller and Manlowe will occur subsequent to the transfer of the operating authority. Thus, neither of the two corporations will be a public utility and will not require authority from this Commission for the sale and purchase of the equipment and supplies.

Seller is party to such Pacific Coast Tariff Bureau tariffs as are necessary for publication of rates and rules in connection with the certificate and purchaser proposes to adopt these tariffs. A copy of the application has been forwarded to the California Trucking Association and notice of the filing of the application and its amendment appeared in the Commission's Daily Calendar of April 7, 1975 and June 23, 1975, respectively. The Interstate Commerce Commission, by its Order No. MC-FC-75793, dated May 3, 1975, approved the transfer of the Certificate of Registration No. MC65185, Sub-No. 2, from seller to purchaser.

The applicants request relief from the provisions of Rule 37 of the Commission's Rules of Practice and Procedure which requires wide dissemination of the application. The relief is requested on the basis of Rule 87 which permits deviation from the rules in order to secure just, speedy and inexpensive determination of the issues presented. In support thereof, the applicants allege that the transactions will have no adverse effect on the shipping public or any other carriers. No protests to the application have been received.

After consideration, the Commission finds:

1. The requested deviation from its Rules of Practice and Procedure should be authorized;

2. The proposed transactions would not be adverse to the public interest.

The Commission concludes that the proposed transactions 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 A. W. Reid Draying Company and the issuance of a certificate in appendix form to James S. Manlowe.

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 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 value of the rights authorized to be transferred.

O R D E R

1. On or before February 1, 1976, A. W. Reid Draying Company may sell and transfer the operating rights referred to in the application to James S. Manlowe.
2. Purchaser may execute and deliver Guaranties and a Security Agreement in substantially the same forms as those attached to the Amendment to Application as parts of Exhibit 4.
3. Within thirty days after the transfer, 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.
4. 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 he has adopted or established,

as his 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.

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 4, a certificate of public convenience and necessity is granted to James S. Manlowe authorizing him 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.

6. The certificate of public convenience and necessity granted by Decision No. 71128 as transferred pursuant to authority granted by Decision No. 74345, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

7. 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.


8. Purchaser shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

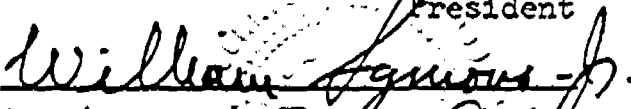
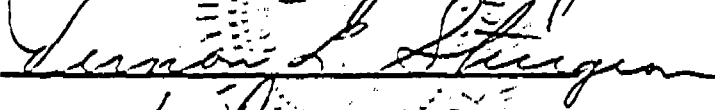
9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If he elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

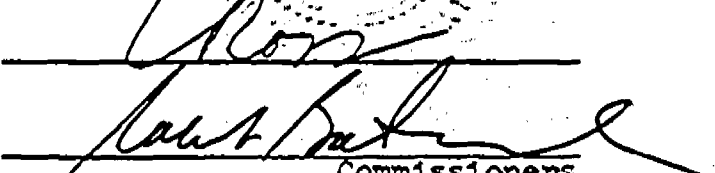
10. The applicants are granted a deviation from Rule 37 of the Commission's Rules of Practice and Procedure to the extent requested.

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

Dated at San Francisco, California, this 12th day of August, 1975.



President





Commissioners

James S. Manlowe, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport general commodities between all points and places in San Francisco-East Bay Cartage Zone as described in Appendix B, subject to the following restrictions:

The carrier shall not transport any shipments of:

1. Petroleum products in bulk in tank vehicles.
2. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item No. 5 of Minimum Rate Tariff No. 4-B.
3. Livestock, viz.: Bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities of unusual value.
5. Commodities of abnormal size or weight which, because of such size or weight, require the use of low-bed trucks or low-bed trailers.

The carrier may use any and all public streets, roads, highways, and bridges necessary to perform the service authorized by this order.

(END OF APPENDIX A)

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SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of State Highway 82; thence southeasterly along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to San Pablo Avenue (State Highway 123) to Rivers Street; thence

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westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX B)

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