

ORIGINAL

Decision No. 85637

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Applica-)
 tion of T. P. DRAYAGE, INC., a)
 California corporation, for au-)
 thority to acquire a certificate)
 of public convenience and neces-)
 sity as a highway common carrier)
 from ADELINE S. BODAS doing busi-)
 ness as INTERCITY MOTOR EXPRESS,)
 and for authority to issue securi-)
 ties.)

Application No. 56216
 (Filed January 21, 1976)

O P I N I O N

Adeline S. Bodas, doing business as Intercity Motor Express, (seller) seeks authority to transfer her highway common carrier certificate of public convenience and necessity to T. P. Drayage, Inc., (purchaser) and the latter seeks authority to issue 400 shares of \$10 par value capital stock, and to execute a security agreement and promissory note.

T. P. Drayage, Inc., a California corporation, is a highway permit carrier and does not presently hold certificated operating authority issued by this Commission.

Seller desires to discontinue for-hire carrier operations. The sale of the certificate will permit the orderly liquidation of the business and will permit purchaser to render a responsive service to its shippers and enlarge the scope of its activities which it cannot readily do under its highway carrier permits. Thus, purchaser's shippers will have the benefit of its service as a highway common carrier with the corresponding responsibility.

The certificate to be transferred was granted by Decision 80688, dated October 31, 1972, in Application 53387 and authorizes transportation of general commodities with the usual exceptions between all points and places within the San Francisco Territory.

The certificate was registered with the Interstate Commerce Commission in Docket MC-121701.

Pursuant to Purchase Agreement of November 13, 1975, between the parties, the purchase price is \$11,000 of which \$3,000 is on deposit in escrow and \$4,000 is to be paid within 15 days subsequent to administrative approval of the sale and transfer by this Commission and the Interstate Commerce Commission. The balance of \$4,000 shall be paid within 6 months after consummation date at an interest rate of 8% per annum. This debt will be evidenced by a promissory note and a security agreement which provides for the certificate to be collateral to secure payment to seller.

Purchaser's unaudited balance sheet of September 30, 1975, shows assets of \$29,695.38, liabilities of \$21,809.67 and net worth of \$7,885.71. It operates 2 tractors, 8 trucks, 2 trailers and 2 fork lifts.

Currently, all of purchaser's issued and outstanding stock is owned in equal amounts of 750 shares each by Thomas Perez and William Perez. The issuance of the additional 400 shares will not affect the control of the corporation as it now exists.

Purchaser desires to issue the additional stock in order to obtain \$4,000 working capital. The shares of stock will be issued to members of the Perez family.

Seller is party to Western Motor Tariff Bureau, Inc., Agent, tariff publications as are necessary for publication of rates to cover the operations under the certificate to be transferred. Purchaser proposes to adopt the tariffs.

A copy of the application was served on the California Trucking Association and other parties and notice of the filing of the application was made in the Commission's Daily Calendar of January 28, 1976. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed transfer and encumbrance of the operating rights would not be adverse

to the public interest.

2. The proposed stock issue would be for a proper purpose.
3. The money, property or labor to be procured or paid for by the stock issuance herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

The Commission concludes that, except for the short-term note which needs no authorization, the application should be granted as set forth 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 held by Adeline S. Bodas and the issuance of a certificate in appendix form to T. P. Drayage, Inc., a corporation. The new certificate issued to the purchaser will not broaden or change the interstate or foreign commerce rights held by the carrier. The Commission further concludes that the effective date of this order should be on the date hereof and there is no reason to delay granting the relief requested.

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. The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred or the value of the capital stock of T. P. Drayage, Inc.

O R D E R

IT IS ORDERED that:

1. On or before September 1, 1976, Adeline S. Bodas may sell and transfer the operative rights referred to in the application to T. P. Drayage, Inc., a California 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 80-Series. Failure to comply with the provisions of General Order 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 T. P. Drayage, Inc., a California corporation, authorizing it 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 80688 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 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 April 30 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 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. T. P. Drayage, Inc., on or after the effective date hereof and on or before September 1, 1976, for the purpose specified in this proceeding, may issue not exceeding a total of 400 shares of its capital stock at an issue price of \$10 per share.

10. On or after the effective date hereof and on or before September 1, 1976, T. P. Drayage, Inc., may execute and deliver a security agreement, which document shall be in substantially the same form as Appendix C of Exhibit E attached to the application.

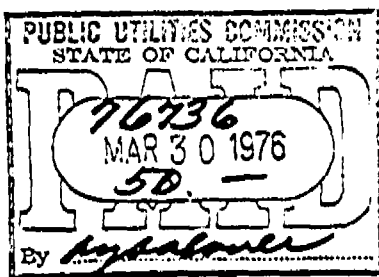
11. T. P. Drayage, Inc., shall file with the Commission the report required by General Order 24-B, which order insofar as applicable, is hereby made a part of this order.


12. The portion of the application which seeks authority to issue a short-term note is hereby dismissed.

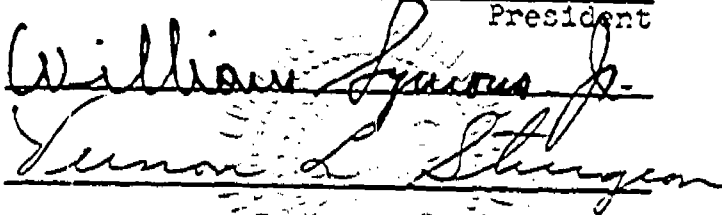
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13. The authority granted by this order to issue stock will become effective when the issuer has paid the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In all other respects the effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 30th day of March, 1976.





President




Commissioners

T. P. Drayage, Inc., 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:

1. Between all points and places in the San Francisco Territory as described in Note A.

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 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.

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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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.
10. Fresh fruits or vegetables.

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;

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southwesterly 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 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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