

Decision No. 86009**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 DEAN MCGUIRE, doing business as)
 MCGUIRE & SONS TRUCKING, to sell)
 the operating authority of McGuire)
 & Sons Trucking to GOLDEN WEST)
 FREIGHT LINES, a California)
 corporation. }

Application No. 55184
 (Filed September 18, 1974;
 amended September 18, 1975)

O P I N I O N

This application was filed on September 18, 1974. Delta Lines, Inc. filed a protest by letter on September 24, 1974.

The application provides for the sale of the McGuire operating authority for \$14,000 or for McGuire's debt to the Internal Revenue Service, the lower sum to be the purchase price. The Internal Revenue Service is to have a lien on the right to be transferred until the purchase price is paid. McGuire filed a Voluntary Petition in Bankruptcy in the U.S. District Court on August 23, 1974 and was so adjudicated. The Bankruptcy Court authorized the sale of the operating authority on November 26, 1974.

The Commission was advised on August 4, 1975 that Golden West Freight Lines had withdrawn as a prospective purchaser. A Petition to Substitute Purchaser was received on August 28, 1975 and returned due to a lack of signatures. It was filed on September 18, 1975. The petition alleges that the right to purchase was assigned to Applegate Drayage Company (Applegate) on July 25, 1975 and that the Internal Revenue Service has consented to the substitution. The protest of Delta Lines, Inc. was renewed by a letter dated October 14, 1975 and withdrawn on March 23, 1976.

The operating authority to be sold was granted to Dean McGuire, an individual, by Decision No. 78692 in Applications Nos. 52107 and 52146, which authorized the transportation of general commodities, with certain exceptions, along Highway 99, between Redding and Sacramento.

Applegate is an efficient and experienced general commodity carrier, with the equipment and ability to conduct operations under the certificate for which authority to transfer is herein sought.

Findings

1. The proposed sale and transfer would not be adverse to the public interest.
2. The protest originally filed has been withdrawn.
3. To avoid confusion among the shipping public and assist the Commission in the performance of its regulatory functions, the authority authorized to be transferred herein should be restated in an in lieu certificate of public convenience and necessity.
4. A public hearing is not necessary.

We conclude that the application should be granted as hereinafter set forth.

Applegate Drayage Company 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.

O R D E R

IT IS ORDERED that:

1. On or before October 1, 1976, Dean McGuire may sell and transfer the operative rights referred to in the application to Applegate Drayage Company.
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 as its own, the rates and rules. The tariff 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 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. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

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 3, a certificate of public convenience and necessity is granted to Applegate 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 of this decision.

6. The certificates of public convenience and necessity granted by Decisions Nos. 78692 and 84595 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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 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

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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.

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

Dated at San Francisco, California, this 29th day
of JUNE, 1976.

William A. ... President
Leonard ...
Robert ... Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Applegate Drayage Company, a California 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:

- A. Between all points and places on or within 10 miles of the following routes:
 - 1. Interstate Highway 80, State Highway 113 and Interstate Highway 5 between Sacramento and Redding.
 - 2. State Highway 16 between Woodland and Sacramento.
 - 3. State Highway 113 between Davis and Yuba City.
 - 4. State Highway 99 between Sacramento and Yuba City.
 - 5. State Highway 99 from Yuba City to Red Bluff.
 - 6. State Highway 32 between Orland and Chico.
 - 7. State Highway 162 between Willows and Glenn.
 - 8. State Highway 45 between Hamilton City and Colusa.
 - 9. State Highway 162 between its intersection with State Highway 45 (Codora) and its intersection with State Highway 99.
 - 10. State Highway 20 between Williams and Yuba City.
- B. The authority described in paragraph A above is subject to the following restrictions:
 - 1. State Highway 99 between Sacramento and Yuba City shall be traversed for operating convenience only. Service to intermediate points is not authorized.

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2. Service is not authorized to any off route points within 10 miles east of State Highway 99 between Yuba City and the intersection with Durham Highway.
- C. Between all points and places on and within 10 miles of the following routes:
1. Interstate 80 between Sacramento and Roseville;
 2. State Highway 65 between Roseville and Marysville;
 3. State Highway 20 between Marysville and Yuba City;
 4. State Highway 70 between Marysville and its intersection with U.S. Highway 395 (restricted against service to off route points west of State Highway 70 between Marysville and Oroville);
 5. State Highway 89 at the point of intersection with State Highway 70 and Greenville and unnumbered highways diverging from State Highway 89 at Greenville, this being in the nature of a loop operation; returning over the same regular routes in the reverse direction;
 6. Between the intersection of State Highway 70 and U.S. Highway 395 and Herlong via U.S. Highway 395; thence via unnumbered state or county road to Herlong and the Sierra Ordnance Depot;
 7. U.S. Highway 395 at Herlong Junction to the junction of U.S. Highway 395 and State Highway 36, thence via State Highway 36 to its junction with State Highway 89, thence via State Highway 89 to Greenville;
 8. State Highway 147 between its junction with State Highway 36 and State Highway 89; and
 9. State Highway 49 between North San Juan and its intersection with State Highway 70 at Vinton (restricted against service to off-route points south of North San Juan).

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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.

- D. Except that pursuant to the authority herein granted carrier shall not transport any shipment 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.
 5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.

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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. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

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