

Decision No. 86243

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)  
 of L.B.D., Inc., a California )  
 Corporation, for authority to )  
 acquire highway common carrier )  
 certificates and properties of )  
 ASSOCIATED FREIGHT LINES, a )  
 California Corporation; for )  
 authority of L.B.D., Inc. to )  
 issue securities; and for an in- )  
 Y terim order authorizing L.B.D., )  
 Inc. to lease certificates and )  
 properties, and to issue stock. )

Application No. 56640  
 (Filed July 23, 1976,  
 Amended August 3, 1976)

INTERIM OPINION

By this application, Associated Freight Lines, a California corporation (seller), and L.B.D., Inc., a California corporation (purchaser), request authority for the sale and transfer of property and the certificated and permitted operating authorities issued by this Commission to seller.

The application indicates that, as a result of a recent labor dispute, seller has lost approximately 75% of its former traffic and has incurred severe financial losses. The carrier does not now have a labor contract with the labor union. L.B.D., Inc., the proposed purchaser, was organized and is managed by certain key officers and employees of seller. It is now operating as a labor contractor under temporary contract with the Western Conference of Teamsters and, pursuant thereto, provides all operational labor for Associated Freight Lines (Exhibit H to the application).

Applicants request interim authority of this Commission to execute a lease agreement pending final order of the Interstate Commerce Commission for the sale and transfer of the interstate authorities. Purchaser proposes to initially lease both the intra-state and interstate operating authorities, equipment and other

property of seller hereinafter described and thereafter will purchase such assets upon approval of a companion application affecting seller's interstate operative rights which has been filed with the Interstate Commerce Commission.

The operative rights to be transferred include the following which are more fully described in Appendix A to this decision.

CERTIFICATES ISSUED BY THE PUC

SELLING PRICE

Decision 78749 dated June 2, 1971 , in Application 52494, granting to seller authority between the major points in California over numerous routes in lieu of previous authority which had been granted to seller, as amended.	\$ 5,000
Decision 81666 dated July 31, 1973, in Application 52494 by which seller acquired the operating authority previously held by Joe Saia, generally extending between Sacramento and Lake Tahoe.	\$ 500
Decision 82512 dated February 20, 1974, in Application 53981 adding routes within California to those authorized in the in-lieu certificate granted in Decision 78749.	\$ 500
Decision 80404 dated August 29, 1972, which confirmed transfer of petroleum irregular route certificate to Associated Freight Lines; originally acquired by Las Vegas Truck Line, Inc., by Decision 60507 dated August 2, 1960, in Application 42338.	\$ 500

PERMITS ISSUED BY THE PUC

File T-26,188 amended October 13, 1972; statewide, general commodity, highway contract carrier permit.

File T-26,188 amended October 13, 1972; statewide, general commodity, radial highway common carrier permit.

CERTIFICATES ISSUED BY THE ICC

Certificate of public convenience and necessity issued June 24, 1970 in Docket No. MC 57254 (Sub 11) embracing routes and points throughout the major portion of California. \$195,000

Certificate of public convenience and necessity issued April 4, 1974 in Docket No. MC 57254 (Sub 13) reflecting the transfer to seller of the rights, extending generally between Sacramento and Lake Tahoe. \$ 40,500

The certificate of public convenience and necessity issued May 6, 1976 in Docket No. MC 52754 (Sub 13) extending the operating authority in the Lake Tahoe Area. \$ 8,000

Total \$250,000

Seller will retain its household goods carrier permit and certain other certificated operating authority which is the subject of an application for sale to another carrier. The highway carrier permits to be transferred are the subject of a separate application. The total purchase price shall be paid in full within thirty days following final approval of the proposed transaction by this Commission and the Interstate Commerce Commission.

In connection with the proposed transaction, purchaser will acquire seller's highway vehicles consisting of 342 trucks, tractors, trailers and converter gears, 6 service and passenger vehicles and miscellaneous office and shop equipment and supplies. (Appendix "A" to Exhibit "B" of the Application). Payment for the motor vehicles and the shop and office equipment shall be made monthly in an amount equal to the monthly amortization in book value of the properties and allocable taxes, licenses and tire amortization prorated on a monthly basis, plus an amount equal to 1/12th of the interest being charged to seller by United

California Bank which holds a lien on the motor vehicle equipment. The materials and supplies will be acquired with a deposit of \$200,000 which amount will be adjusted to reflect seller's book value applicable at time of consummation. It is anticipated that equipment liens held by United California Bank and International Harvester Company, as of June 30, 1976, amounting to \$442,000 and \$235,000 respectively will be assumed by purchaser on a prorated basis by termination and issuance of a new loan by the bank and the assignment of the obligation due International Harvester Company without any change in the terms and conditions thereof.

Purchaser will lease seven terminal and office facilities presently leased to seller and located at various cities for a total monthly rental of \$14,500 for a period of six years. These properties are presently leased to seller by an affiliate of the seller. Consideration for the lease of the highway and other equipment shall be the same monthly payments agreed upon for the purchase. Consideration for lease of the operating authorities shall be the difference between the deposit for the materials and supplies and the book value of such items.

Purchaser proposes to encumber the operating authorities and properties to be sold and enter into a security agreement to cover all obligations under the Agreement of Purchase and Sale of July 13, 1976 covering the proposed transactions and a Covenant Not to Compete, dated July 13, 1976, between seller, purchaser, Wales D. Morgan and John A. Pifer. Consideration to be paid by purchaser under this covenant will be one and four tenths percent (1.4%) of the monthly gross revenue received by purchaser after consummation of the proposed transaction, subject to a maximum payment of \$15,000 per month for a period of six years. The security interest will be subject to and junior to any other liens, encumbrances or security

interests made in connection with the financing of the equipment to be transferred.

Purchaser requests authority to issue not to exceed total of 80,000 shares of its \$10 par value per share Class A voting and Class B non-voting (preferred) capital stock at a sale price of \$10 per share. Pursuant to the Issuance of Shares (Exhibit "D" to the application), all persons who it is contemplated will be officers of purchaser must purchase Class A stock at a minimum subscription of \$25,000. Persons other than those who it is contemplated will be officers and who subscribe for \$25,000 or more may purchase Class A or Class B stock.

Stock will be offered initially only to persons who it is contemplated will be employees of purchaser for a minimum subscription of \$5,000 for Class B stock. Proceeds for the sale of the stock will be utilized to acquire the operating rights and properties to be transferred and to provide purchaser with permanent

working capital. The following persons have indicated their intention to purchase Class A stock:

<u>Name</u>	<u>No./Shares</u>
Paul D. Bradley	7,500
R. T. Lindstrom	3,500
George Atanasoff	2,500
Joseph Fallabel	2,500
Nathan Rook	<u>2,500</u>
Total	18,500

Purchaser's pro forma balance sheet of June 30, 1976 shows assets of \$1,277,000, liabilities of \$677,000 and net worth of \$600,000. Seller is party to tariff publications of Western Motor Tariff Bureau, Inc., Agent, as are necessary for publication of rates to cover the operations under the certificate authorities to be transferred. Purchaser proposes to adopt such tariffs.

Applicants have requested a deviation from the Commission's Rules of Practice and Procedure which require wide distribution of the application. Notice of the application and its amendment was listed in the Commission's Daily Calendar on July 27, 1976 and August 5, 1976, respectively. No protests to the application have been received.

Applicants further request that the authority for the temporary lease of the operating rights and properties and the authority to issue stock be made effective on the date hereof.

After consideration, the Commission finds:

1. The proposed temporary lease agreement would not be adverse to the public interest.
2. The proposed transfer and sale of the certificated operating rights and equipment and the encumbrance of such operating rights and property would not be adverse to the public interest.

3. The highway and other equipment herein authorized to be leased and sold is no longer necessary or useful in the performance of the obligation of Associated Freight Lines to serve the public.

4. The requested deviation from the Commission Rules of Practice and Procedure should be authorized.

5. The proposed stock issue is for the proper purposes. The money, property, or labor to be procured or paid for by the issue of the stock 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.

6. Because of the urgency effecting the application, the authority to enter into the proposed lease should be made effective on the date hereof.

The Commission concludes that the proposed transactions, insofar as they do not affect the operating authorities issued by the Interstate Commerce Commission, should be granted as set forth in the ensuing order. A public hearing is not necessary. The order which follows will require purchaser to submit a proposed in-lieu certificate subsequent to the consummation of the transaction referred to in the Agreement of Purchase and Sale (Exhibit B to the Application). After review of the proposed in-lieu certificate, a final order will be issued revoking the authorities transferred and establishing an in-lieu certificate.

The action taken herein shall not be construed as a finding of the value of the capital stock of L.B.D., Inc., or the certificates of public convenience and necessity, or the equipment and operating property to be transferred.

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.

INTERIM ORDER

IT IS ORDERED that:

1. On or before February 1, 1977, Associated Freight Lines, a California corporation, may lease the operative rights issued by this Commission and the property referred to in the application, as amended, to L.B.D., Inc., a California corporation.
2. On or before July 1, 1977, Associated Freight Lines, a California corporation, may sell and transfer the certificated operating rights issued by this Commission and the property referred to in the application, as amended, to L.B.D., Inc., a California corporation.
3. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.
4. Purchaser shall adopt 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 one day after the effective date of this order on not less than one day's 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.

5. 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.

6. 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.

7. 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.

8. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application, as amended.

9. Purchaser, for the purpose specified in this proceeding, may issue a total of 80,000 of its \$10 par value per share capital stock for the purposes set forth in the application, as amended.

10. Purchaser may assume the equipment obligations of seller as requested in the application, as amended.

11. Purchaser may execute and deliver security agreements in substantially the same form referred to in the application, as amended.

12. The issuer of the stock authorized by this order shall file with the Commission a report, or reports, as required by General Order 24-Series.

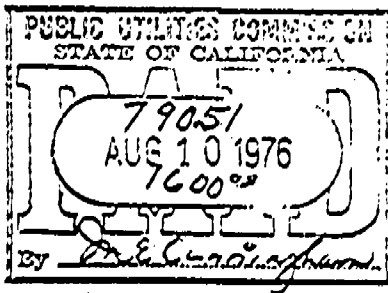
13. Within 30 days after the effective date hereof and on not less than one day's notice to the Commission and to the public, applicant lessee shall amend the tariffs presently on file with this Commission in the name of the applicant lessor to reflect the lease authority granted by Ordering Paragraph 1 hereof.

14. Within 60 days after the date of the transfer, purchaser shall submit to this Commission a proposed in-lieu certificate of public convenience and necessity, describing and consolidating all its highway common carrier operating authorities acquired. Such proposed certificate shall reflect the current designations of highways and roads as used to describe its authority and shall not exceed in any way the scope of the authority acquired by the purchaser. To the extent possible, purchaser shall, in submitting the proposed in-lieu certificate, eliminate any overlapping and duplicate authorities that may now exist.

15. The authority granted by this order to issue stock will become effective not earlier than the date the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$1,600.

In all other respects, the effective date of this order is the date hereof.

Dated at San Francisco, California, this 10th day of August, 1976.



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President  
*William J. Quinn*  
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*Thomas L. Sturgeon*  
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*Robert W. Holmes*  
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Commissioners

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

Commissioner Robert Satinovich, being necessarily absent, did not participate in the disposition of this proceeding.

Chronological history of the individual highway common carrier and petroleum irregular route authorities acquired from Associated Freight Lines.

<u>PROCEEDING NO.</u>	<u>Cal. P.U.C. DECISION NO.</u>	<u>DATE ISSUED</u>	<u>I.C.C. CERTIFI- CATE OF PC&amp;N NO.</u>
A. 30473	44091	April 25, 1950	*MC 92273 (Sub 3)
Property as a highway common carrier between Sacramento and Truckee-Lake Tahoe area - Granted to Joe Saia.			
A. 40227	57477	April 14, 1964	*MC 92273 (Sub 3)
General Commodities as a highway common carrier between points in El Dorado and Placer Counties. Granted to Joe Saia.			
A. 48547	74082	May 7, 1968	
Both certificates described above amended to exclude transportation of trailer coaches and campers.			
A. 52494	81666	May 31, 1973	MC 57254 (Sub 13)
Both certificates described above acquired by Associated Freight Lines.			
*Granted to Joe Saia under these Certificate of Registration Numbers and were later converted to conventional I.C.C. certificates of public convenience and necessity.			

Issued by California Public Utilities Commission.

Decision 86243, Application 56640.

<u>PROCEEDING NO.</u>	<u>Cal. P.U.C. DECISION NO.</u>	<u>DATE ISSUED</u>	<u>I.C.C. CERTIFI- CATE OF PC&amp;N NO.</u>
A. 31153	44359	June 20, 1950	
Petroleum irregular route certificate - State of California - Granted to Starksen Transportation Co.			
A. 50526	80404	August 29, 1972	
Petroleum irregular route certificate acquired by Associated Freight Lines.			
A. 52494	78749	June 2, 1971	MC 57254 (Sub 11)
General Commodities as a highway common carrier - 146 routes between Laytonville and California-Mexico border.			
A. 53981	82512	February 20, 1974	
General Commodities as a highway common carrier - 9 routes - area bounded by Red Bluff, Sacramento and Santa Cruz.			

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 86243, Application 56640.