

ORIGINAL

Decision No. 86462

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of ASSOCIATED FREIGHT LINES for )  
authority to sell a portion of its )  
operating authority as a highway )  
common carrier; and of SYSTEM 99 )  
for authority to purchase a por- )  
tion of the operating authority as )  
a highway common carrier of )  
ASSOCIATED FREIGHT LINES. )

Application No. 56660  
(Filed July 30, 1976)

I N T E R I M   O P I N I O N

By this application, Associated Freight Lines, now known as Best-Way Freight Lines of Arizona,<sup>1</sup> a California corporation (seller), and System 99, a California corporation (purchaser), request authority for the sale and transfer of a portion of a certificate of public convenience and necessity authorizing operations as a highway common carrier.

The certificate authority was acquired through merger by seller pursuant to Decision 80404, dated August 29, 1972. The portion to be transferred authorizes transportation of general commodities generally between San Bernardino, on the one hand and Nipton and Goffs and all points within thirty-five statute miles of an unnumbered highway between Nipton and Goffs on the other hand.

Applicants request interim authority of this Commission to execute a lease agreement pending final order of the Interstate Commerce Commission for the lease and sale and transfer of certain interstate authorities. Purchaser proposes to initially lease both the intrastate and interstate operating authorities and thereafter will purchase such assets upon approval of a companion application

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<sup>1</sup>By amendment of its articles of incorporation, Associated changed its name to Best-Way Freight Lines of Arizona.

affecting seller's interstate operative rights which has been filed with the Interstate Commerce Commission.

The application indicates that as a result of a recent labor dispute seller has incurred severe financial losses. To prevent seller from imminent financial collapse, purchaser agreed to purchase a portion of seller's operating rights. A new corporation, L.B.D., Inc.,<sup>2</sup> was formed by employees of seller and it negotiated an agreement with the Teamsters under which it is supplying drivers and office employees to seller. L.B.D., Inc., was granted authority by Decision 86243, dated August 10, 1976 in Application 56640 to purchase most of the remaining operating rights of seller.

Assertedly, no new or different service will result from the lease-purchase, and no diversion of any meaningful traffic will be effected from competing carriers. The public will be permitted to continue use of a service necessary to it which before the strike grossed approximately \$100,000 per month, a service now reestablished by seller but which it can continue only briefly. On the other hand, granting of the application will permit purchaser to continue same service as was provided by seller.

Pursuant to the Purchase and Sale Agreement of July 2, 1976 between the applicants, consideration for the lease of the operating authority referred to herein and the operating authority issued by the Interstate Commerce Commission is \$175,000 and an additional amount of \$5,000 for each month of the temporary lease authority.

An additional payment for the lease of \$425,000 will be made payable in seventy-two equal monthly installments with interest at the prime rate as established by the Bank of America for commercial loans, plus one percent. This payment will be reduced by the sum of each of the first twelve monthly rental payments and one-half of such payments for succeeding months.

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<sup>2</sup>By amendment of its articles of incorporation, L.B.D., Inc. changed its name to Associated Freight Lines.

On consummation of the purchase and sale of the authorities, purchaser will pay seller \$75,000 in a lump sum in addition to the lease amounts set forth above.

The proposed transactions are also subject to a covenant not to compete dated July 2, 1976, whereby seller and John A. Pifer agree not to compete with lessee during the lease period and for five years after the sale and transfer of the operating authorities. Payment under the covenant agreement is \$75,000 during the lease period and an additional \$190,000 after the purchase. In the event only the purchase is authorized, payment will be a lump sum of \$75,000.

Purchaser proposes to encumber the operating authorities by a security agreement to cover its obligations under the Purchase and Sale Agreement. Its balance sheet of March 31, 1976 shows net worth of almost \$2,700,000.

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 was listed in the Commission's Daily Calendar on August 3, 1976. No protests to the application have been received.

Applicants further request that the authority for the temporary lease of the operating rights be made effective immediately.

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 operating rights and the encumbrance of such rights would not be adverse to the public interest.

3. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

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

5. Because of the urgency affecting 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 sale and transfer referred to in the Agreement of Purchase and Sale (Exhibit A to the Application). After review of the proposed in-lieu certificate, a final order will be issued revoking the authority transferred and establishing an in-lieu certificate.

The action taken herein shall not be construed as a finding of the value of the certificate of public convenience and necessity to be leased and 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, Best-Way Freight Lines of Arizona, a California corporation, may lease the operative rights issued by this Commission and referred to in the application to System 99, a California corporation.

2. Upon the filing of an enabling order issued by the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act in Proceeding No. MC-F-12889, Best-Way Freight Lines of Arizona, a California corporation, may sell and transfer the operating rights issued by this Commission referred to in the application to System 99, a California corporation.

3. 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.

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 to 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.

9. Purchaser may execute and deliver a security agreement in substantially the same form referred to in the application.

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

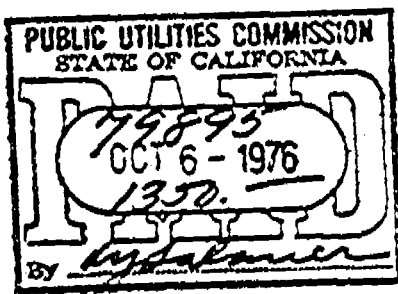
11. Within 30 days after the effective date hereof and on not less than one day's notice to the Commission and to the public, applicant lessee shall amend the tariffs presently on file with this Commission in the name of the applicant lessor to reflect the lease authority granted by Ordering Paragraph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


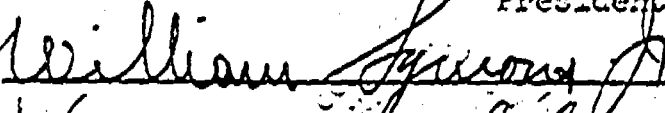

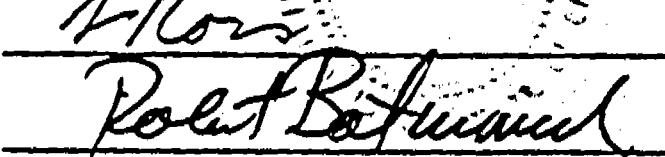
12. Within 60 days after the date of the transfer, purchaser shall submit to this Commission a proposed in-lieu certificate of public convenience and necessity, describing and consolidating all its existing and newly acquired highway common carrier operating authorities. Such proposed certificate shall 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.

13. The authority granted by this order to execute and deliver an encumbering document will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$1,350. In all other respects, the effective date of this order is the date hereof.

Dated at San Francisco, California, this 5<sup>th</sup> day of October, 1976.



  
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President  
  
  
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Vernon L. Sturgeon  
  
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Robert Bateman  
Commissioners