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Decision 92-04-025 April 8, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Apex Trucking Incorporated)
 (Cal. T. No. 146,226) (Transferor) to)
 Transfer, and Apex Bulk Commodities, Inc.)
 (Transferee) to Acquire, all Operating)
 Authorities Held by Transferor; and to)
 Transfer and Assign Simultaneously)
 Transferror's Common Carrier Tariff)
 (CAL PUC No. 2), Special Contracts, And)
 Dump Truck Deviations.)

Application 92-01-012
 (Filed January 7, 1992)

O P I N I O N

By this application Apex Trucking Incorporated (Apex) and Apex Bulk Commodities, Inc. (Apex Bulk) request authority to transfer from Apex to Apex Bulk all operating authorities held by Apex, and to transfer and assign simultaneously Apex's common carrier tariff (CAL PUC No. 2), special contracts, and authorities to deviate from dump truck minimum rates.

Apex holds certificates of public convenience and necessity to operate as a highway common carrier and cement carrier, and also holds permits to operate as a highway contract, agricultural, dump truck, tank truck, and vacuum truck carrier. Apex Bulk is a corporation formed for the purpose of continuing the transportation operations of Apex.

The applicants believe that formal Commission action is required to permit Apex Bulk to continue the operations of Apex, because if the authorities were transferred pursuant to delegated authority of the Transportation Division, Apex Bulk would be unable to continue the operations currently provided by Apex unless and until separate deviation, contract, and tariff filings were made. Moreover, the applicants assert that Apex could not continue to provide transportation services because the operating authorities would have been transferred to Apex Bulk.

Apex's operations will be continued by Apex Bulk, serving the same shippers and utilizing the same financial resources utilized by Apex. Apex Bulk has submitted information indicating compliance with Public Utilities (PU) §§ 1063.5 and 3553 pertaining to vehicle safety, driver education, and workers' compensation laws. A balance sheet showing Apex's financial condition as of October 31, 1991 indicates total assets of about \$3.2 million and a net worth of about \$1.3 million. The assets reflected in this balance sheet will be used by Apex Bulk upon transfer of the authorities.

Apex is owned in equal shares by Steven L. Gale and Randal C. Gale. Apex Bulk is owned in equal shares by Steven L. Gale, Randal C. Gale, and Denny Wyatt. Apex Bulk will continue all aspects of the operations of Apex, using the same employees, equipment, and facilities.

Apex currently operates its dump truck operations pursuant to numerous deviations from minimum rate tariffs. Under normal transfer applications, deviations are not transferred, and Apex Bulk would be required to wait until the dump truck permit application was approved, file new deviation applications, and wait until the protest period expired, before resuming the operations formerly conducted by Apex. To insure the continuity of Apex's operations, the applicants request that the Commission authorize the transfer of the deviation authorities presently held by Apex, as well as any deviation requests submitted subsequent to the filing of this application, simultaneously with the filing of a new common carrier tariff. The applicants request that the Commission also specifically authorize the transfer of Apex's common carrier tariff upon 10 days' notice; they also request a waiver from the provisions of General Orders (GO) 80-C and 147-C to the extent necessary. Rule 3.1 of GO 80-C requires, for instance, that unless the Commission otherwise orders, tariff provisions may not become effective on less than 30 days' notice. Rule 8.2 of GO 147-C

provides that special contract rates may not be effective earlier than 20 days after listing on the Commission's Daily Transportation Calendar.

The Transportation Division has advised that two deviations set forth in Exhibit E of the application (DT-90-113F and DT 90-114F) expired in December 1991, and that three deviations (DT 91-235F, DT 91-236F, and DT 91-238F) have been granted and are in effect, but not included in Exhibit E. One further deviation, DT 92-008F, was only recently filed and was to become effective in February 1992. In the circumstances, it will not be adverse to the public interest to transfer all effective dump truck deviations granted to Apex, as well as any which were to become effective at the time the application was filed.

Notice of filing of the application appeared in the Commission's Daily Transportation Calendar. No protest to the application has been received. The application should be granted. A public hearing is not necessary.

Findings of Fact

1. Apex operates pursuant to common carrier and permitted carrier authorities granted by this Commission.

2. Apex Bulk has been formed with the purpose of taking over the operations of Apex, and plans to continue Apex's operations as presently conducted, with the same equipment and facilities and personnel utilized by Apex.

3. The owners of Apex, Steven L. Gale, and Randal C. Gale, along with Denny Wyatt, will own and conduct the operations of Apex Bulk.

4. The owners of Apex Bulk possess the financial ability and experience necessary to operate Apex Bulk in a manner consistent with the public interest.

5. The owners of Apex Bulk have complied with PU Code §§ 3553 and 1063.5.

Conclusions of Law

1. The application should be granted.
2. A public hearing is not necessary.

O R D E R

IT IS ORDERED that:

1. Apex Trucking Incorporated (Apex) is authorized to transfer the operating authorities identified in the application to Apex Bulk Commodities, Inc. (Apex Bulk).

2. Apex is authorized to transfer its common carrier tariff (CAL P.U.C. No. 2), as well as the contracts and unexpired dump truck carrier rate deviations named in Exhibit E of the application, and any contracts, tariff supplements, and dump truck carrier deviations in effect or submitted to the Commission after the filing of the application to Apex Bulk upon the effective date of the common carrier tariff, the filing of which shall be on no less than 10 days' notice to the Commission.

3. Apex and Apex Bulk are authorized to depart from the provisions of Public Utilities Code §§ 452, 454, and 461.5, Distance Table 8, and General Orders 80-C and 147-C to the extent necessary to comply with this decision.

4. The application is granted.

This order is effective today.

Dated April 8, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

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NEAL J. SHULMAN, Executive Director