

ORIGINAL

Decision 82 01 32 JAN 5 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MERCURY PARCEL & DRAYAGE SERVICE, INC.,)
 a California corporation, for authority)
 to acquire a highway common carrier)
 certificate of FREDERICK T. JEWETT, an)
 individual, dba MERCURY PARCEL & DRAYAGE)
 and for authority for MERCURY PARCEL &)
 DRAYAGE SERVICE, INC. to issue promissory)
 notes, a security agreement and to execute)
 a financing statement.)

Application 60851
(Filed August 28, 1981)

O P I N I O N

Mercury Parcel & Drayage Service, Inc. (Mercury), a California corporation, requests authority to buy and Frederick T. Jewett (Jewett), an individual, dba Mercury Parcel and Drayage, requests authority to sell the latter's highway common carrier certificate and trucking business assets for the total purchase price of \$200,000 of which \$25,000 will be paid down and the balance paid in installments. Mercury also requests that it be authorized to issue four promissory notes covering the balance of the purchase price of \$175,000, to execute a security agreement pledging the certificate as collateral for the payments under the notes, and to execute a financing statement as required by the California Uniform Commercial Code. Mercury and Jewett also request waiver of Rules 21(f) and 37(a) concerning service of the application on other carriers. A copy of the application was served on the California Trucking Association. A notice of the filing of the application appeared in the Commission's Daily Calendar on September 1, 1981. No protests have been received.

Jewett is presently conducting operations as a highway common carrier under a certificate issued to him in Decision (D.)81832, dated September 5, 1973, which authorizes the transportation of general commodities between all points and places within the San Francisco Territory. This certificate has been registered with the Interstate Commerce Commission (ICC), and thus Jewett is also authorized to conduct commensurate operations in interstate and foreign commerce. A transfer application has been filed with the ICC requesting approval of the transfer.

Jewett also conducts operations under a highway contract carrier permit. While the permit is included in the involved sale, a separate application seeking transfer of the permit to Mercury has been filed with the Commission.

Applicants submit that the proposed transfer will be in the public interest. Jewett has been conducting operations as a for-hire motor carrier for many years under the authority which is the subject of this application. Due to age and other relevant factors, he has decided to retire from business. At the same time it is his intention that his business be perpetuated by its sale to Mercury. In the past, Mercury has conducted a business in the San Francisco Bay Area which is germane to motor carrier transportation. Through that business it has gained the necessary experience to carry on Jewett's business. Mercury will maintain and operate Jewett's equipment and will continue to employ Jewett's personnel. Mercury will continue to serve all of the members of the shipping public previously served by Jewett. As a result, applicants contend there will be no transportation hiatus resulting from the sale, and members of the shipping public will not be adversely affected. Since the proposed transfer will be a continuation of service previously performed in the San Francisco Bay Area, no adverse competitive effect upon existing carriers will result from approval of the proposed transfer.

Applicants represent that the purchase price is fair, just, and reasonable and was established after arm's-length negotiations. The financial statements of Jewett show that for the year 1980 Jewett had an operating profit of \$73,121.15 on gross revenue of \$240,309. As of December 31, 1980 Jewett's operation had a net worth of \$51,533 (before year-end adjustments were made) including \$8,100 in liabilities which will be borne by Jewett on completion of the proposed transaction. Goodwill is carried on Jewett's books as \$17,182. The vehicular equipment involved in the sale consists of a flatbed trailer, a White 2-axle tractor, and five Ford van trucks. Mercury's pro forma balance sheet shows it will enter into the proposed operation with \$33,500 cash and a net worth of \$40,000, exclusive of the assets to be transferred.

The four notes to be issued by Mercury are in the principal amounts, respectively, of \$100,000, \$25,000, \$25,000, and \$25,000, with interest at 10% annually from December 1, 1981, and are payable in monthly installments. The first note falls due in 59 months, the second note in approximately 71 months, the third note in approximately 83 months, and the last note in approximately 95 months. Installment payments on the second note are not required to commence until after the due date of the first note. Installment payments on the third note are not required to commence until after the due date of the second note. Installment payments on the fourth note are not required to commence until after the due date of the third note. Monthly installment payments will range between approximately \$2,000 and \$2,200 until the last note is satisfied.

To provide collateral for the balance of the purchase price Mercury has agreed to grant Jewett a security interest in the certificate sought to be transferred and, accordingly, to perfect that security interest it is necessary to execute an Encumbering Agreement and Financing Statement as required by the terms and provisions of the Uniform Commercial Code. Copies of the Purchase Agreement, the notes, the Security Agreement, and the Financing Statement are attached to the application. The Purchase Agreement is conditioned upon approval by this Commission and the ICC.

Findings of Fact

1. Jewett desires to sell and Mercury to buy the former's certificate of public convenience and necessity to operate as a highway common carrier and trucking business assets for a total purchase price of \$200,000.

2. Under the terms of the sale Mercury will pay \$25,000 down, issue Jewett four promissory notes totaling \$175,000, and pledge the certificate as security for the payment of the notes by signing a written Encumbering Agreement and Financing Statement.

3. To discharge the notes, Mercury will be required to pay between \$2,000 and \$2,200 per month for approximately 95 months.

4. In 1980 Jewett's operation grossed \$240,309 and had a net profit of \$73,121.15.

5. Mercury will enter into the proposed operation with \$33,500 cash and a net worth of \$40,000 exclusive of the assets being transferred.

6. Jewett has been conducting highway common carrier operations for many years, and due to age and other relevant factors he has decided to retire from business.

7. Mercury will perpetuate Jewett's business and will continue to employ Jewett's personnel.

8. In the past, Mercury has conducted a business in the San Francisco Bay Area which is germane to motor carrier transportation.

9. The purchase price is reasonable.

10. The issuance of notes proposed by Mercury is for the acquisition of property, and the purposes to which the issue are to be applied are not, in whole or in part, reasonably chargeable to operating expenses or to income.

11. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

12. A public hearing is not necessary.

Conclusions of Law

1. The proposed transfer is in the public interest and should be authorized.

2. The issuance of notes and the signing of the Encumbering Agreement and Financing Statement as requested in the application should be approved.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. Frederick T. Jewett (Jewett) may sell and transfer the operative rights and property specified in the application to Mercury Parcel & Drayage Service, Inc. (Mercury). This authorization shall expire if not exercised by April 1, 1982, or within such additional time as the Commission may authorize.

2. Mercury shall:
 - a. File with the Transportation Division written acceptance of the certificate and copies of the bill of sale or other transfer documents within 30 days after transfer.
 - b. Amend or reissue Jewett's tariffs. The tariffs shall not be effective before the date of transfer, nor before 5 days' notice is given to the Commission.
 - c. Comply with General Orders Series 80, 100, and 104, and the California Highway Patrol safety rules.
 - d. Maintain accounting records in conformity with the Uniform System of Accounts.
 - e. Comply with General Order Series 84 (collect-on-delivery shipments). If Mercury elects not to transport collect-on-delivery shipments, it shall file the tariffs required by that General Order.
3. When the transfer is completed, and on the effective date of the tariffs, a certificate of public convenience and necessity is granted to Mercury authorizing it to operate as a highway common carrier, as defined in PU Code Section 213, between the points and over the routes listed in Appendix A.
4. The certificate of public convenience and necessity granted by D.81832 is revoked on the effective date of the tariffs.
5. On or after the effective date of this order, but before April 1, 1982, for the purposes specified, Mercury may issue evidences of indebtedness in principal totaling not to exceed \$175,000 and may execute and deliver an Encumbering Document and Financing Statement. These documents shall be substantially the same as those attached to the application.

6. The authority granted by this order to issue evidences of indebtedness and to execute and deliver an Encumbering Document will become effective when issuer pays \$350, set by PU Code Section 1904(b). In all other respects this order becomes effective 30 days from today.

7. The service requirements prescribed by Rules 21(f) and 37(a) of the Commission's Rules of Practice and Procedure are waived in respect to this application.

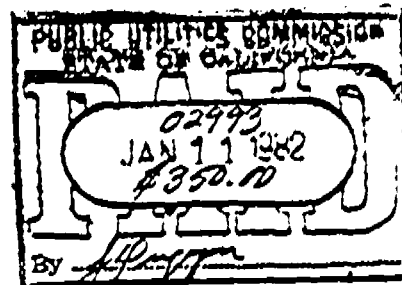
Dated JAN 5 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

Commissioner Leonard M. Grimes, Jr.,
being necessarily absent, did not
participate.

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

Joseph E. Bodovick
Joseph E. Bodovick, Executive Director



Appendix A MERCURY PARCEL & DRAYAGE SERVICE, INC. Original Page 1
(a California corporation)

Mercury Parcel & Drayage Service, 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 Public Utilities Code Section 213 for the transportation of general commodities as follows:

From, to, and between all points and places located along the following named routes and within 5 statute miles laterally.

1. U.S. Highway 101 between San Rafael and San Jose inclusive.
2. State Highway 17 between San Rafael and Los Gatos, inclusive.

In performing the service authorized, carrier may make use of any and all streets, roads, highways, and bridges necessary or convenient for the performance of the service.

Except that under the authority 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 salesman's hand sample cases, suitcases, overnight or boston bags, briefcases, 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).

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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 semiplastic 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.
6. Commodities when transported in motor
vehicles equipped for mechanical
mixing in transit.
7. Logs.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including
integral parts and contents when the
contents are within the trailer coach
or camper.

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10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
11. Fresh fruits and vegetables, nuts in the shell, and mushrooms, from point of growth or from accumulating points, wineries, and cold storage plants.
12. Explosives subject to U.S. Department of Transportation regulations governing the transportation of hazardous materials.
13. New furniture, loose, not in packages nor completely wrapped.
14. Garments on hangers.
15. Baled hay, fodder, and straw.
16. Numbers referred to are item numbers of National Motor Freight Classification A-13 (Cal. P.U.C. No. 11) on the issue date thereof.
 - (a) Toilet Paper, Napkin Paper, or Toweling, as described in Item 51460.
 - (b) Toilet Seat Covers or Paper Towels, as described in Item 151490.
 - (c) Paper Towels, as described in Item 151490.

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- (d) Wrapping Paper, as described in Item 151780.
- (e) Wrapping Paper, as described in Item 151800.
- (f) Coasters, as described in Item 152520.
- (g) Paper Doilies or Place Mats, as described in Item 15300.
- (h) Paper Napkins, Table Cloths, Doilies, Facial Cleansing Tissues, Handkerchiefs, Neck Strips, or Place Mats, as described in Item 153020.
- (i) Paper or Paperboard Bath Mats, as described in Item 153700.
- (j) Excelsior, Paper (Shredded Paper), as described in Item 153080.

(END OF APPENDIX A)