

ORIGINALDecision 82 01 33 JAN 5 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of)
 BOB RICH-SCHROEDER TRUCKING, INC.,)
 to acquire the business and)
 operating authority of CHARLES)
 RAMORINO, dba BOB RICH TRUCK)
 SERVICE, and RAYMOND L. FIORESI,)
 dba SCHROEDER DRAYAGE CO., and to)
 issue a promissory note.)

Application 60856
 (Filed August 28, 1981)

O P I N I O N

Charles Ramorino (Ramorino) now operates a trucking business under the fictitious name of Bob Rich Truck Service. He is also president and majority stockholder of a California corporation which has recently been renamed Bob Rich-Schroeder Trucking, Inc. (Corporation). Raymond L. Fioresi is a carrier operating under the fictitious name Schroeder Drayage (Schroeder). Schroeder was originally a partnership between Raymond Fioresi and his father, now deceased. Raymond Fioresi no longer wishes to operate as a trucker.

Two separate transactions are planned by which the Corporation will acquire the authority of both carriers and become active as a carrier under Ramorino's control and management. The transaction between Ramorino and Corporation is merely a change in form from an individual to a corporation. The transfer from Schroeder to Corporation, on the other hand, is a change in control and responsibility. Ramorino presently holds permits from this Commission in File T-70,716 and a certificate of public convenience and necessity granted under Public Utilities (PU) Code § 1063.5

in GC 1550. Schroeder holds permits from this Commission in File T-72,874, and a highway common carrier certificate of public convenience and necessity issued by Decision (D.) 80916 in Application 53459. This certificate has been registered with the Interstate Commerce Commission (ICC) in MC 121702. Schroeder also holds a \$ 1063.5 certificate granted in GC 1519.

Applicants request authority: (1) Under PU Code §§ 851-854 for Corporation to acquire the business, property, and authority of Ramorino, (2) under PU Code §§ 851-854 for Corporation to acquire the business and authority of Schroeder, and (3) under PU Code §§ 816 et seq. for Corporation to issue a promissory note to Schroeder.

The application contains the latest available financial statement for Ramorino and Schroeder. There are no financial statements for Corporation since it has been inactive for a number of years.

Schroeder operates as a motor carrier generally in the northern California area under its authority from this Commission and the ICC. Raymond Fioresi, subsequent to the death of his father and partner, has decided for personal reasons to reduce the scope of his business activity and to sell the Schroeder business. Ramorino has conducted motor carrier operations in California for the past 20 years.

It was alleged that the proposed transactions would be advantageous to the public since they provide for a continuation of the Schroeder business which has been in operation since 1906. Because of the experience of its president, Corporation is allegedly capable of continuing this business and maintaining service to the public.

It is intended that Schroeder's permits would be transferred or canceled by separate applications. Schroeder's

§ 1063.5 certificate is to be canceled effective with the required new tariff filings. It is not needed since Corporation will possess the § 1063.5 certificate acquired from Ramorino. The cancellation will prevent duplication. It is anticipated that Ramorino's permits will also be transferred to Corporation by separate application. Applicants request that the tariff filings be authorized upon five days' rather than 30 days' notice so that the transfers may be completed as expeditiously as possible. Both Schroeder and Ramorino are parties to tariffs issued by Pacific Coast Tariff Bureau. It is requested that Corporation be authorized to modify rules, regulations, or rates to be adopted as necessary to eliminate any inconsistencies which exist between the present Schroeder and Ramorino tariffs.

Corporation will issue its promissory note to Schroeder for payment of the balance due on the purchase price. The note will be secured by the issuance of a standard Uniform Commercial Code security agreement secured by the assets being acquired from Schroeder. Under the contract of sale this property includes all of the fixtures, equipment, vehicles, and other tangible assets of the Schroeder business. It also includes the trade business name, goodwill, intangible assets, the operating authority, and a covenant not to compete for five years. The purchase price is \$147,000. Corporation will also assume a balance due by Schroeder to a third party of \$13,600.31. A cash down payment of \$12,840.00 will be payable upon the close of this sale. The balance due will be \$134,160, payable in the sum of \$850 per month with interest of 9½% per year.

Discussion

Under § 1064.5 the holder of a certificate of public convenience and necessity issued under § 1063.5 can transfer the authority only to the extent that he actually conducted operations

under it as a prime carrier. Commission Resolution 18049 found that it would be inconsistent with the intent of the legislation to apply § 1064.5 to transfers which merely effect a change in the form of a carrier, for instance, from an individual to a corporation, rather than an actual change in control of the operations conducted under the certificate. As provided in that resolution, the § 1063.5 certificate conferred here will leave Corporation holding the same statewide authority now held by its president and majority stockholder (Ramorino) as an individual. These same principles would require that the Schroeder § 1063.5 certificate, if it were to be transferred, be restricted to the scope of actual operations since there would have been an actual transfer of control from one individual to another. However, since Corporation does not need duplicate authority, the cancellation of the § 1063.5 certificate held by Schroeder, will simplify the authority structure. In all other respects this application is straightforward and approval should be granted without public hearing.

This authorization is not a finding of the value of the rights and properties to be transferred.

Findings of Fact

1. No protests have been received. A public hearing is not necessary.
2. The proposed security issue is for lawful purposes and the money, property, or labor to be obtained by it is required for these purposes. Proceeds from the security issue should not be charged to operating expenses or income. The issuance of a note and encumbering document should be authorized.
3. The transaction authorized herein will not enlarge or modify the interstate or intrastate operating authority now held by Schroeder.
4. There is no change in the beneficial ownership of the § 1063.5 authority to be transferred.
5. The authorized transfers will have no reasonably foreseeable impact on the energy efficiency of highway carriers.

Conclusions of Law

1. The proposed transfers, issuance of a note, encumbering document, and cancellations are not adverse to the public interest and should be authorized.

2. To complete the transactions authorized as soon as possible, this order should be effective immediately.

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. Charles Ramorino and Raymond L. Fiorese may sell and transfer the operative rights and property specified in the application to Bob Rich-Schroeder Trucking, Inc. This authority shall expire if not exercised by March 1, 1982, or within such additional time as the Commission may authorize.

2. Bob Rich-Schroeder Trucking, Inc. shall:

- a. File with the Transportation Division written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
- b. Amend or reissue sellers' 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.

3. If the transfer is completed, on the effective date of the tariffs, a certificate of public convenience and necessity will be granted to Bob Rich-Schroeder Trucking, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in PU Code § 213, between the points listed in Appendix A.

4. The certificates of public convenience and necessity granted by D.80916 and GC 1519 are revoked on the effective date of the tariff filings made in accordance with paragraph 2.b above.

5. On or after the effective date of this order, but before March 1, 1982, for the purposes specified, Bob Rich-Schroeder Trucking, Inc. may issue evidence of indebtedness in an amount not to exceed \$134,160 and may execute and deliver an encumbrance document. These documents shall be substantially the same as described in the application.

6. Bob Rich-Schroeder Trucking, Inc. shall file the reports required by and otherwise comply with General Order Series 24. Proceeds from the security issue may not be charged to operating expense or income.

7. Bob Rich-Schroeder Trucking, Inc. is authorized to make technical changes in its tariff filings, not producing rate increases to eliminate inconsistencies between Ramorino's and Fioresi's tariffs upon 5 days' notice to the public.

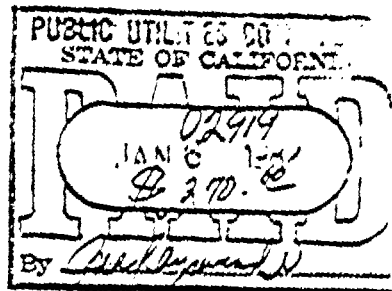
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The authority granted by this order to issue an evidence of indebtedness and to execute and deliver an encumbering document shall become effective when the issuer pays \$270 set by PU Code § 1904(b). In all other respects this order is effective today.

Dated JAN 5 1982, at San Francisco, California.

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

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



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

Joseph E. Sedovitz
Joseph E. Sedovitz, Executive Director

Appendix A - BOB RICH-SCHROEDER TRUCKING, INC. Original Page 1
(a California corporation)

Bob Rich-Schroeder Trucking, 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:

Between all points and places within the San Francisco Territory as described in Note A.

Except that under to 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 salesmen'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).
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.

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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 truck or trailers.
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. Fresh fruits and vegetables.

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.

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NOTE A

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; easterly along the county line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific Company right-of-way to the Campbell-Los Gatos City Limits; easterly along the limits and their prolongation to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and its prolongation to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along

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Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along this boundary line to the campus boundary of the University of California; westerly, northerly, and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along the waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to the point of beginning.

(END OF APPENDIX A)

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