

ORIGINAL

Decision 82 01 84 JAN 19 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Application of SILVER FOOT)
INC., a corporation to acquire )
and of SIERRA RAILROAD COMPANY, )
a corporation, to transfer Cert- )
ificate of Public Convenience )
and Necessity to operate as a )
Highway Common Carrier pursuant )
to Section 1063.5 of the Public )
Utilities Code (File T-1538) )
pursuant to Sections 851 et seq., )
of the California Public )
Utilities Code. )

Application 60019
(Filed October 22, 1980)

O P I N I O N

Silver Foot, Inc. (purchaser), a Delaware corporation
qualified to do business in California, seeks to acquire
certificates of public convenience and necessity to operate as a
highway common carrier held by Sierra Railroad Company (seller), a
California corporation.

Seller is a common carrier by rail subject to the
jurisdiction and regulation by the Interstate Commerce Commission
(ICC) as a Class II railroad. Seller is also engaged in the
transportation of general commodities as a highway common carrier
under a certificate of public convenience and necessity granted
by Decision (D.) 19306 dated February 6, 1928 in Application 13647

applying from Stockton to Sonora. It also holds a certificate as a highway common carrier issued under Public Utilities (PU) Code Section 1063.5 in Application GC-750 issued April 30, 1980. This certificate authorizes the transportation of general commodities with certain exceptions between all points in the State of California. It is, however, subject to the PU Code Section 1064.5 which provides that no certificate of public convenience and necessity issued under Section 1063.5 may be transferred for a period of five years except to the extent of operations actually conducted in good faith, not including operations as a subhauler. By amendment to the application, applicants have certified that actual operations conducted include only the Counties of Stanislaus and Tuolumne.

Applicants entered into an Agreement of Sale dated August 22, 1980, for the sale of seller's railroad business and related properties. That transaction was authorized by ICC in its order in Finance Docket No. 29506, decided March 9, 1981. Incidental to such sale, seller proposes to transfer to purchaser without additional consideration the highway carrier certificates issued by this Commission.

Seller is party to Western Motor Tariff Bureau tariff publications covering its operations under the certificate issued by D.19306. Purchaser proposes to adopt the tariffs. No tariffs are on file for operations under the Section 1063.5 certificate. Seller has submitted an affidavit of subhauling which excludes prime carrier operations under that authority. By the explicit requirements of Section 1064.5, subhaul operations do not qualify a Section 1063.5 certificate for transfer during the first five years after issuance. Accordingly, that portion of the application must be denied.

Purchaser's pro forma balance sheet attached to the application shows assets of \$1,275,000, including \$25,000 in cash, and \$275,000 in net worth.

Applicants allege that the proposed transfer will not adversely affect any other carrier, nor the shipping public. Purchaser intends to retain seller's management which possesses the necessary experience to continue operations under the certificate.

Purchaser is staffed by experienced and trained personnel, who have full knowledge of the technicalities of the physical transportation of the commodities described in the

certificate to be transferred. They also have full knowledge of the Commission's requirements affecting for-hire transportation of general commodities.

Applicants indicate that no other carrier has an interest in the proposed transfer. Notice of the filing of the application appeared in the Commission's Daily Calendar of October 28, 1980. No protests to the application have been received and we will, therefore, grant applicants a deviation from the provisions of the Commission's Rules of Practice and Procedure which require wide distribution of the application.

Findings of Fact

1. The proposed transfer of the operating rights granted by D.19306 would not be adverse to the public interest.
2. A public hearing is not necessary.
3. Operations actually conducted in good faith, not including operations as a subhauler, have not been performed by seller under its certificate GC 750.

Conclusions of Law

1. The application to transfer the certificate issued by D.19306 should be granted as set forth in the ensuing order.
2. Transfer of certificate GC 750 is prohibited by statute and must be denied.

3. Relief from the Commission's Rules of Practice and Procedure requiring wide dissemination of the application should be authorized.

4. The authorization granted should not be construed as a finding of the value of the rights authorized to be transferred.

The order which follows will provide, in the event of transfer of the certificate granted by D.19306, for revocation of that certificate as presently held by the seller and issuance of a certificate in appendix form to the purchaser.

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. Sierra Railroad Company may sell and transfer the certificate granted by D.19306 to Silver Foot, Inc., a Delaware corporation. This authority shall expire if not exercised by

April 1, 1982, or within such additional time as the Commission may authorize.

2. Purchaser 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 seller'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. File an annual report of seller's operations for the period from the first day of the current year to the date of transfer.
- e. 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 is granted to Silver Foot, Inc., a Delaware corporation, authorizing it to operate as a highway common carrier, as defined in PU Code Section 213, over the route and between the points listed in Appendix A.

4. The certificate of public convenience and necessity granted by D.19306 is revoked on the effective date of the tariffs.

5. A deviation from the Commission's Rules of Practice and Procedure is granted to eliminate the need to serve the application on other parties.

6. The request for transfer of certificate GC 750 granted under PU Code Section 1063.5 is denied.

This order becomes effective 30 days from today.

Dated JAN 19 1982, at San Francisco, California.

JOHN E. BRYSON

President

RICHARD D. GRAVELLE

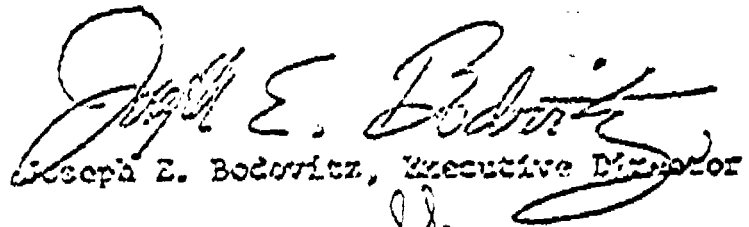
LEONARD M. GRIMES, JR.

VICTOR CALVO

PRISCILLA C. GREW

Commissioners

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

  
Joseph E. Bodoritz, Executive Director

Silver Foot, 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 Stockton, on the one hand, and Sonora, on the other hand, via Mariposa Road (San Joaquin County Road J7) to its junction with Escalon Bellota Road (San Joaquin County Road J6); Escalon Bellota Road to its junction with Lone Tree Road (San Joaquin County Road J9) west of Valley Home; Lone Tree Road to its junction with Valley Home Road (Stanislaus County Road J9) at Valley Home; Valley Home Road to its junction with State Highway 108 at Oakdale; State Highway 108 to Sonora with service to intermediate points east of Oakdale and service to the off route points of Columbia, Soulsbyville and Tuolumne, subject to the following restriction:

RESTRICTION: Carrier shall not provide service to intermediate points between Stockton and Oakdale.

Issued by California Public Utilities Commission.

Decision 82 01 84, Application 60019.



Except that under the authority granted, carrier shall not transport any shipments of:

1. Used household goods and personal effects, office, store, and institution furniture and fixtures.
2. Automobiles, trucks, and buses, new and used.
3. Ordinary livestock.
4. Liquids, compressed gases, commodities in semiplastic form, and commodities in suspension in liquids in bulk in any tank truck or tank trailer.
5. Mining, building, paving, and construction materials, except cement or liquids, in bulk in dump truck equipment.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Portland or similar cements, either alone or in combination with lime or powdered limestone, in bulk or in packages, when loaded substantially to capacity.
8. Articles of extraordinary value.
9. Trailer coaches and campers, including integral parts and contents when contents are within the trailer coach or camper.
10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

Issued by California Public Utilities Commission.

Decision 82 01 84, Application 60019.

11. Explosives subject to U.S. Department of Transportation regulations governing the transportation of hazardous materials.
12. Fresh fruits, nuts, vegetables, logs, and unprocessed agricultural commodities.
13. Any commodity, the transportation or handling of which, because of width, length, height, weight, shape, or size, requires special authority from a governmental agency regulating the use of highways, roads, or streets.
14. Transportation of liquid or semisolid waste, or any other bulk liquid commodity in any vacuum-type tank truck or trailer.

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 this service.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 82 01 84, Application 60019.