

APR - 6 1982

ORIGINAL

Decision 82 04 045

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Rita Berkman dba)
 Music Express to transfer his)
 Highway Common Carrier Certificate)
 and The Music Express Corp. Inc.,) Application 61161
 a California Corporation, to acquire) (Filed December 30, 1981)
 said Certificate (Public Utilities)
 Code 851 and 1064.5))
)

O P I N I O N

Rita Berkman (transferor), an individual doing business as Music Express, requests authority to transfer a certificate of public convenience and necessity to The Music Express Corporation, Inc. (transferee), a newly formed California corporation. The certificate, issued April 30, 1980 under Public Utilities (PU) Code § 1063.5 in Application GC 16, File T-115817, authorizes the transportation of general commodities within the State.

Section 1063.5 authorizes holders of radial highway common carrier permits to convert their permits to highway common carrier certificates. In Decision 89575 dated October 31, 1978, as amended, the Commission held that during the five-year period after their § 1063.5 certificates become effective, carriers should be allowed to expand or contract their operations conducted under such certificates by making appropriate tariff filings. This procedure preserves the carriers' opportunity, formerly available to radial permit holders, to develop and shape their operations based upon managerial objectives. PU Code § 1064.5 prohibits the transfer of § 1063.5 certificates during that five-year period except to the extent of operations actually conducted as a prime carrier. By Resolution 18049 dated July 31, 1979 the Commission

recognized that businesses often change their legal form while continuing the same operations, and it held that some transfers of § 1063.5 certificates were not transfers within the meaning of § 1064.5. Therefore, when a transfer of a § 1063.5 certificate is required by a change in the form of the business entity, such as the incorporation of a proprietorship or partnership where the beneficial ownership interests remain substantially the same, the transfer will be authorized without compliance by the applicants with the service rules relating to transfers. This application involves such a transfer.

Notice of the filing of the application appeared in the Commission's Daily Calendar of January 5, 1982. No protests have been received. Inasmuch as this is a matter which does not significantly affect any other party, relief from the provisions of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application will be granted.

Findings of Fact

1. There is no change in the beneficial ownership of the § 1063.5 common carrier authority.
2. The proposed transfer would not be adverse to the public interest. A public hearing is not necessary.
3. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusions of Law

1. The application should be granted.
2. Relief from the provisions of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application should be granted.

Only the amount paid to the State for operative rights may be used for 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. On or before July 1, 1982, Rita Berkman may transfer to The Music Express Corporation, Inc. the operating authority issued under PU Code § 1063.5 in Application GC 16.
2. Within 30 days after the transfer The Music Express Corporation, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. The Music Express Corporation, Inc. shall amend or reissue 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 5 days after the effective date of this order on not less than 5 days' notice to the Commission and the public, and the effective date

of the tariff filings shall be concurrent with the transfer. The tariff filings made under 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 (GO) Series 80 or 147. Failure to comply with the provisions of GO Series 80 or 147 may result in cancellation of the operating authority granted by this decision.

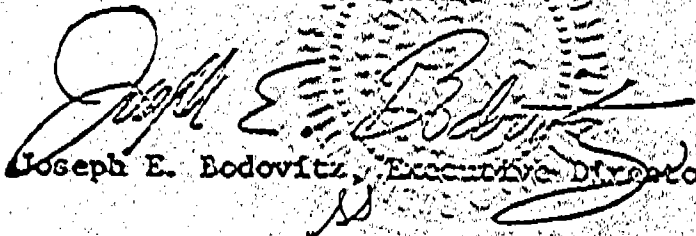
4. Applicants are granted relief from the provisions of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application.

This order becomes effective 30 days from today.

Dated APR 6 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. Bodovitz, Executive Director