

Decision 82 05 027

MAY - 4 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Don Rowell, Inc., a corporation, to)
 acquire, and Don Rowell, an indivi-)
 dual to transfer a common carrier)
 certificate T-82940 (and certain)
 property pursuant to Sections 851, et)
 seq., of the California Public)
 Utilities Code).)

Application 82-02-69
 (Filed February 25, 1982)

O P I N I O N

Don L. Rowell, doing business as Rowell Trucking, requests authority to transfer a certificate of public convenience and necessity to Don Rowell, Inc., a newly formed California corporation of which Don Rowell is president and sole stockholder. The certificate, issued April 30, 1980 under Public Utilities (PU) Code § 1063.5 in Application GC 2054, File T-82940, authorizes the transportation of general commodities within the State.

Section 1063.5 authorized 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 5-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 5-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

A.82-02-69 ALJ/ks *

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.

Findings of Fact

1. There is no change in the beneficial ownership of the § 1063.5 common carrier authority. There are no protests.
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.

Conclusion of Law

The application should be granted.

O R D E R

IT IS ORDERED that:

1. On or before September 30, 1982, Don L. Rowell may transfer to Don Rowell, Inc. the operating authority issued under PU Code § 1063.5 in Application GC 2054.
2. Within 30 days after the transfer Don Rowell, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. Don Rowell, 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 them as its own. 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 with General Order Series 80 and 147 (regulations governing the construction and filing of tariffs). Failure to comply may result in cancellation of the operating authority granted by this decision.

This order becomes effective 30 days from today.

Dated MAY 4 1982, at San Francisco,
California.

JOHN E. BRYSON

President

RICHARD D. GRAVELLE

LEONARD M. CRIMES, JR.

VICTOR CALVO

PRISCILLA C. CREW

Commissioners

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


Joseph E. Bodovitz, Executive Director

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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.

Conclusion of Law

The application should be granted.

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