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Decision 82 05 066

MAY 17 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THOMAS G. BAILEY dba )  
 TRIANGLE TRANSFER COMPANY, to trans- )  
 fer his highway common carrier )  
 certificate and TRIANGLE LINES, INC., )  
 a California corporation, to acquire )  
 said certificate (Public Utilities )  
 Code 851 and 1064.5). )

Application 82-02-02  
 (Filed February 1, 1982;  
 amended March 22, 1982)

O P I N I O N

Thomas G. Bailey (transferor), an individual, doing business as Triangle Transfer Company, requests authority to transfer two certificates of public convenience and necessity to Triangle Lines, Inc. (transferee), a newly formed California corporation of which Thomas G. Bailey is president and sole stockholder.

One certificate, issued April 30, 1980 under Public Utilities (PU) Code § 1063.5 in Application GC 7037, File T-101,374, authorizes the transportation of general commodities within the State. The other certificate was issued under PU Code § 1063 by Decision 79462 dated December 14, 1971, in Application 52973. This certificate authorizes the transportation of general commodities between Fresno, Sunnyside, Clotho, Sanger, Centerville, and intermediate points, and also between Sunnyside and Clovis and intermediate points. It is also the subject of a coextensive Certificate of Registration issued by the Interstate Commerce Commission in Docket MC-58832.

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 often change their legal form while continuing the same operations, and it held that such 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.

Applicants have requested a deviation from the Commission's Rules of Practice and Procedure which require wide distribution of the application. Notices of the filing of the application and amendment appeared in the Commission's Daily Calendars of February 4 and March 24, 1982, respectively. No protests have been received.

#### Findings of Fact

1. There is no change in the beneficial ownership of the § 1063.5 common carrier authority.
2. The proposed transfers 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 proposed transfers should be authorized.
2. The proposed PU Code § 1063 certificate will not broaden or change the interstate or foreign commerce rights now held by the transferor.

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3. The limitations imposed by PU Code § 1064.5 will not apply.
4. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1982, Thomas G. Bailey, an individual, may transfer to Triangle Lines, Inc., a California corporation, the operating authority issued under PU Code § 1063.5 in Application GC 7037, and the operating authority issued under PU Code § 1063 by Decision 79462, dated December 14, 1971, in Application 52973.

2. Within 30 days after the transfer Triangle Lines, Inc. shall file with the Commission written acceptance of the certificates and a true copy of the instrument of transfer.

3. Triangle Lines, 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 Orders 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.

4. In the event the transfers authorized in paragraph 1 are completed, effective concurrently with the effective date of the tariff filings or adoption notices required by paragraph 3:

- a. A PU Code § 1063 certificate of public convenience and necessity is granted to Triangle Lines, Inc. as set forth in Appendix A hereof.

- b. The certificate of public convenience and necessity issued to Thomas G. Bailey under PU Code § 1063 by Decision 79462 dated December 14, 1971, in Application 52973, is revoked.
- c. The PU Code § 1063.5 certificate issued to Thomas G. Bailey in Application GC 7037, is transferred to Triangle Lines, Inc. ✓

5. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

This order becomes effective 30 days from today.

Dated May 17, 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

Triangle Lines, 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 § 213 for the transportation of general commodities as follows:

1. Between Fresno, Sunnyside, Clotho, Sanger, Centerville, and intermediate points.
2. Between Sunnyside and Clovis and intermediate points.

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

Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

3. The limitations imposed by PU Code § 1064.5 will not apply.
4. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

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