

Decision 82 07 024 JUL 7 - 1982**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Loary Wilson Kimble )  
 dba Lorry's Delivery Service to )  
 transfer his Highway Common Carrier )  
 Certificate and Local Delivery )  
 Service Co. Inc., a California )  
 Corporation, to acquire said Certif- )  
 icate (Public Utilities Code 851 and )  
 1064.5). )

Application 82-03-41  
 (Filed March 11, 1982)

O P I N I O N

Loary Wilson Kimble (seller), doing business as Lorry's Delivery Service, requests authority to transfer a certificate of public convenience and necessity to Local Delivery Service Company, Inc. (purchaser), a newly formed California corporation of which he is sole stockholder. The certificate, issued April 30, 1980, under Public Utilities (PU) Code § 1063.5 in Application GC 1552, File T-73,267, 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

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. Purchaser's balance sheet of December 31, 1981 shows a net worth of \$28,000.

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.

O R D E R

IT IS ORDERED that:

1. Loary Wilson Kimble, an individual, may sell and transfer the operative rights specified in the application to Local Delivery Service Company, Inc., a California corporation. This authority shall expire if not exercised by October 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 the transfer, nor before 5 days' notice is given to the Commission.
- c. Comply with General Orders Series 80, 100, 104, and 147, 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 is granted to Local Delivery Service Company, Inc., a California corporation, authorizing it to operate as a highway common carrier, as defined in PU Code § 213.

4. The certificate of public convenience and necessity granted by Application GC 1552 is revoked on the effective date of the tariffs.

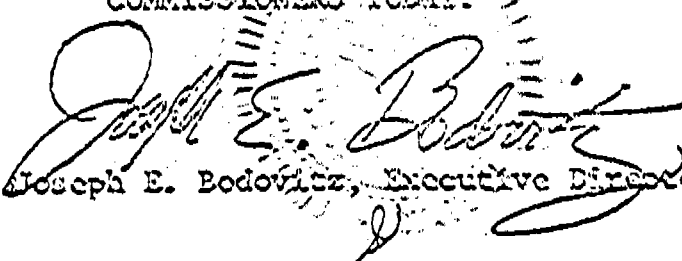
This order becomes effective 30 days from today.

Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
FRISCILLA C. CREW  
Commissioners

Commissioner John E. Bryson,  
being necessarily absent, did  
not participate.

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

  
Joseph E. Bodovitz, Executive Director