

ORIGINAL

Decision 82 07 063

JUL 7 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 LEE WAY MOTOR FREIGHT, INC. For)
 Authority to Sell its Terminal in)
 Paramount, California to an)
 Affiliated Non-carrier, Pursuant to)
 Section 851 of the Public Utilities)
 Code.)

Application 82-04-06
(Filed April 1, 1982)

O P I N I O N

By this application, Lee Way Motor Freight, Inc. (Lee Way), a Delaware corporation, proposes to sell its terminal at Paramount, California to Frito-Lay, Inc. (Frito-Lay), an affiliated noncarrier, under Public Utilities (PU) Code Section 851.

Both Lee Way and Frito-Lay are wholly owned subsidiaries of Pepsi-Co, Inc. (Pepsi-Co). Lee Way operates in intrastate commerce under PU Code Sections 1063 and 1063.5 highway common carrier certificates, and highway contract and heavy-specialized carrier permits under File T-76,263. It also performs interstate operations under authority issued by the Interstate Commerce Commission (ICC).

PU Code Section 851 provides that no public utility may sell property necessary or useful in the performance of its duties without first having secured an order from this Commission

authorizing it to do so. The property in question consists of 2.53 acres of land, fully paved and fenced, with 11,000 square feet of terminal office improvements.

Lee Way has included, as Exhibit B of the application, a report on a study conducted by a management consulting firm. The purpose of the study was the evaluation of locations and service territories of Lee Way's four existing facilities in the Los Angeles area (South Gate, Pacoima, Orange, and Paramount). To improve operating efficiency, the report recommended the closing of the Paramount terminal and the consolidation of its operations with those in the South Gate terminal.

Lee Way states that only a limited amount of intrastate transportation is being handled through the Paramount terminal. In fiscal 1981, only \$6,376 in intrastate revenue was generated through that facility. This amounts to about 4% of applicant's total intrastate revenue during that period. Lee Way's intrastate operations represent a minuscule part of their overall systemwide revenues.

Lee Way also alleges that it has been involved in continuous disputes with the City of Paramount, and with residential property owners in the area, because of the noise resulting from nighttime operations conducted at the facility.

The proposed purchase price for the property is \$922,000 in cash. A similar purchase offer was tendered by Public Freight System (PFS), a California corporation. PFS holds a highway common carrier certificate issued under PU Code Section 1063.5 and a highway contract carrier permit. PFS also operates interstate under authority issued by the ICC. However, Pepsi-Co determined that the property would be useful to Frito-Lay and directed Lee Way to convey the property to Frito-Lay on terms economically comparable to those offered by PFS on the open market. Thereupon, PFS filed a suit against Lee Way and Pepsi-Co on March 4, 1982 in the Superior Court. The suit was removed to United States District Court, Central District, Los Angeles, as Case No. 82-1202 WMB (Gx). PFS also requested of this Commission to be made a party of record in the instant application.

On April 19, 1982, an order granting a preliminary injunction was handed down by the District Court to restrain and enjoin Lee Way and Pepsi-Co from allowing any change to the character of the property as a freight terminal.

Subsequently, as a result of an agreement settling the law suit, PFS, through its attorney, filed with this Commission on May 19, 1982 a notice of withdrawal as an interested party in this application.

A copy of the application was furnished to the California Trucking Association. Notice of the filing of the application appeared in the Commission's Daily Calendar of April 7, 1982. There is no longer any known opposition.

In view of the pending completion of escrow, applicant has requested that the order be made effective at the earliest possible date.

Findings of Fact

1. Lee Way has four terminals in the Greater Los Angeles area.
2. Lee Way desires to close the Paramount terminal and to sell the property to Frito-Lay, a noncarrier. Both corporations are wholly owned subsidiaries of Pepsi-Co.
3. The relatively small amount of intrastate operations generated by the Paramount facility can be absorbed by the other terminals without adverse effect upon the standard of service to the public.
4. As a result of an agreement with Pepsi-Co and Lee Way, PFS is no longer an interested party in this proceeding.
5. The property in question is no longer necessary or useful in the performance of Lee Way's duty to the public.
6. A public hearing is not necessary.

7. The order which follows 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. Lee Way Motor Freight, Inc., a Delaware corporation, may sell, as specified in the application, its terminal property at Paramount, California to Frito-Lay, Inc., a Delaware corporation.

2. This authorization shall expire if not exercised by December 1, 1982, or within such additional time as the Commission may authorize.

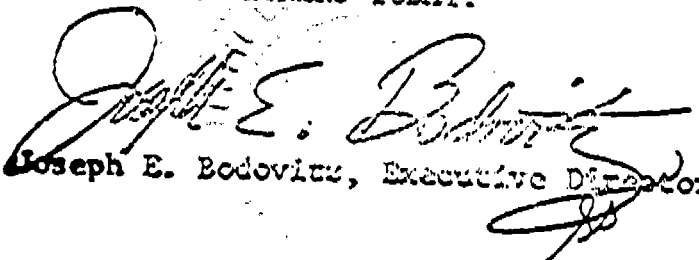
This order is effective today.

Dated JUL 7 1982, at San Francisco, California.

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

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

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


Joseph E. Bodovitz, Executive Director