

Decision 82 11 082 NOV 17 1982

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)  
of GARY D. KILGORE, an indivi- )  
dual doing business as G & J )  
Freight, for authority to )  
purchase the Highway Common )  
Carrier Certificates of Public )  
Convenience and Necessity of )  
G & J Freight, Inc., and for )  
G & J Freight Inc., a California )  
corporation to transfer the said )  
certificates to Gary D. Kilgore, )  
an individual, doing business as )  
G & J Freight, pursuant to )  
Sections 851-853 of the Cali- )  
fornia Public Utilities Code. )

Application 60878  
(Filed September 3, 1981;  
amended March 29, 1982)

O P I N I O N

G & J Freight, Inc. (Seller), a California corporation, holds a certificate of public convenience and necessity as a highway common carrier issued by the Commission in Decision (D.) 83275 dated August 6, 1974 in Application (A.) 54898. This certificate is the subject of a corrected Certificate of Registration issued by the Interstate Commerce Commission (ICC) in Docket No. MC-121620 bearing a service date of April 8, 1975. It authorizes transportation of a broad range of commodities between points and places in central and southern California. Seller also holds a highway common carrier certificate issued under Public Utilities (PU) Code Section 1063.5 in A. GC 3166. Seller held

authority as a highway contract, dump truck, and agricultural carrier under File T-85,683. These permits were transferred to Gary D. Kilgore (Purchaser), an individual doing business as G & J Freight, under a separate application on October 26, 1981 (File T-135,921).

Purchaser seeks to buy Seller's certificates of public convenience and necessity, equipment, and certain other assets as provided in the purchase agreement filed as Exhibit D of the application. The total purchase price is \$1,200,000 payable at \$150,000 in cash on consummation of the transfer and the balance covered by two promissory notes executed by the Purchaser, in principal amounts of \$750,000 and \$300,000, respectively, with interest at 12% per annum. Copies of the promissory notes are included in the purchase agreement. Security for each of them consists of a security agreement and deeds of trust covering real property, equipment as enumerated in Exhibit A of the application, and other property as enumerated in Exhibit B. Repayment of the notes will be in varying amounts and in differing stages as provided in Exhibit D of the application. The \$750,000 note is to be fully repaid by August 15, 1989 and the \$300,000 note at the rate of \$7,022.48 per month until paid in full.

Purchaser's balance sheet dated December 31, 1981 filed as an additional exhibit to the application, shows a net worth of \$116,131 and total current assets of \$1,196,067.

PU Code Section 1064.5 allows the transfer of Section 1063.5 certificates, within the first five years after issuance, only to the extent of operations actually conducted. Seller has indicated that there have been no operations under the 1063.5 certificate. Therefore it may not be transferred. By letter dated May 4, 1982, Seller has requested that this certificate be revoked.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. A copy of the application was furnished to the California Trucking Association. Notice of the filing of the application and its amendment appeared in the Commission's Daily Calendars of September 3, 1981 and April 1, 1982. No protests have been received.

We note that the certificate to be transferred, which dates from 1956 and was restated in 1974, includes commodity description references which are obsolete or superfluous and related to item numbers in Western Freight Classification No. 75, Cal PUC No. 8. Also included are references to twelve "Notes" where the commodities are described in great detail, resulting in a

certificate which is 46 pages long. For reasons of economy and efficiency, we do not believe that such lengthy certificates, which reflect narrowly drawn classification items and explicit delineation of every possible commodity that might be included in a broad commodity grouping, are desirable and they should be discontinued. The Western Freight Classification was superseded in 1964 by the National Motor Freight Classification which is now standard in the motor carrier industry.

We also observe that the Seller's Certificate of Registration, otherwise identical to the certificate to be transferred, does not include the lengthy "Notes" in which hundreds of commodities are described in minute detail. The Certificate of Registration does not appear to differ from the authorized intrastate operations in any respect.

Findings of Fact

1. Purchaser has the ability and sufficient financial resources to conduct the proposed operation.
2. The proposed promissory notes are for lawful purposes.
3. References to "Western Freight Classification No. 75. Cal PUC No. 8," are obsolete and will not be included in the certificate transferred to Purchaser.

4. References to Notes I through XII as shown in Appendix A of D.83275 dated August 6, 1974 in A.54898, are superfluous and will not be included in the certificate to be transferred to Purchaser.

5. A public hearing is not necessary.

6. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusion of Law

The proposed transfer is not adverse to the public interest and should be granted.

Only the amount paid to the State for operative rights may be used in 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. G & J Freight, Inc., a California corporation, may sell and transfer the operative rights and property specified in the application to Gary D. Kilgore, an individual. This authority shall expire if not exercised by December 31, 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 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 Gary D. Kilgore, an individual, authorizing him to operate as a highway common carrier as defined in PU Code Section 213 between the points and over the routes listed in Appendix A.

4. The certificates of public convenience and necessity granted in Application GC 3166 and Decision 83275 dated August 6, 1974 in Application 54898 are revoked on the effective date of the tariffs.

5. On or after the effective date of this order, but before December 31, 1982, for the purpose specified, Purchaser may issue evidences of indebtedness in a total principal amount not exceeding \$1,050,000. These documents shall be substantially the same as those attached to the application. Purchaser shall file the reports required by General Order Series 24.

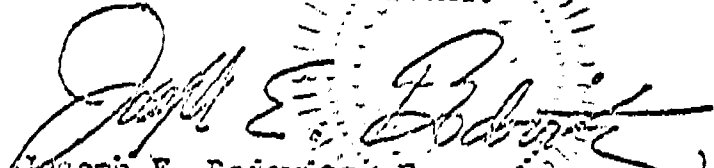
6. Applicants' request for relief from the provisions of Rule 37(a) of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application is granted.

The authority granted by this order to issue an evidence of indebtedness will become effective when the issuer pays \$2,100, set by PU Code Section 1904(b). In all other respects this order becomes effective 30 days from today.

Dated NOV 17 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D CRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

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

  
Joseph E. Bodovick, Executive Director

Gary D. Kilgore, an individual doing business as G & J Freight, 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 Section 213 for the transportation of the commodities specified between the points specified:

I. A. Specified Commodities;

1. Iron, steel, iron and steel articles, tin plate, and empty carriers and pallets returning.
2. Roofing, building, and paving materials.
3. Waste paper, waste paperboard, waste pulpboard, waste fibreboard, and waste rags.
4. Lumber and forest products.
5. Brick, fire clay, clay, and clay products, including tile mortar and sand.
6. Petroleum and petroleum products in packages.
7. Machinery and machinery parts.
8. Chemicals (Restriction: transportation of fertilizing compounds (manufactured fertilizer, liquid or dry is restricted to shipments having a prior or subsequent movement by for-hire rail, motor, or water carrier)).

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9. Alloys and aluminum.
  10. Aluminum tubing or pipe.
- B. From, to, and between all points on or within 25 statute miles of:
1. U.S. Highway 101 between Santa Rosa and the City of Los Angeles; Interstate Highway 5 between the City of Los Angeles and Santa Ana.
  2. State Highway 82 between San Francisco and San Jose.
  3. State Highway 99 between North Sacramento and its junction with Interstate Highway 5 near Wheeler Ridge; Interstate Highway 5 between the last described junction and its junction with Interstate Highway 10; Interstate Highway 10 between the last described junction and Colton.
  4. State Highway 1 between San Francisco and Monterey.
  5. State Highway 4 between its junction with Interstate Highway 80 near Pinole and Stockton.
  6. Interstate Highway 80 between San Francisco and Sacramento.
  7. Interstate Highway 580 between its junction with Interstate Highway 80 near Emeryville and its junction with Interstate Highway 205 near the Alameda-San Joaquin County Line; Interstate Highway 205 between the last described junction and its junction with Interstate Highway 5 northeast of Tracy; Interstate Highway 5 between the last described junction and its junction with State Highway 120; State Highway 120 between the last described junction and Manteca.

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8. State Highway 152 between Gilroy and Califa.
9. State Highway 198 between San Lucas and Visalia.
10. State Highway 46 between Paso Robles and Famoso.

II. A. Specified Commodities;

1. Foodstuffs.
2. Caps, covers or tops, other than display, for bottles, cans, glasses or jars, or can bottoms.
3. Paper.
4. Waste materials.
5. Miscellaneous commodities, viz.:
  - a. fibreboard boxes.
  - b. iron or steel drums.
  - c. bar lead.
  - d. petroleum lubricating oil in packages.
  - e. lift truck pallets, platforms, or skids.
  - f. iron or steel tin plate.
- B. Between Sacramento, on the one hand, and San Francisco, San Jose, Alameda, Oakland, Pittsburg, Stockton, and Perkins, on the other hand.

III. A. The following commodity:

1. Pears, fresh or green (not cold pack or frozen), and empty carriers returning.
- B. Between Walnut Grove and Modesto.

IV. A. The following commodity:

1. Tomatoes, fresh or green (not cold pack or frozen),  
and empty containers returning.

B. Between Sacramento, on the one hand, and Davis, Woodland,  
Elk Horn, Elk Grove, and Nicolaus, on the other hand.

RESTRICTION: The authority in Parts II, III and IV, does not  
include the right to render service from, to, or  
between intermediate points.

Duplications which occur in describing the operating  
authority in this appendix are not to be construed as  
granting more than one operating right to transport the  
same commodities between the same points. To the extent  
of any such duplication those rights are deemed to be  
merged.

(END OF APPENDIX A)

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 transfer nor before 5 days' notice is given to the Commission.
- c. Comply with General Order Series 80, 100, 104, and 147, and the California Highway Patrol safety rules. SS
- 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 Gary D. Kilgore, an individual, authorizing him to operate as a highway common carrier as defined in PU Code Section 213 between the points and over the routes listed in Appendix A.

4. The certificates of public convenience and necessity granted in Application GC 3166 and Decision 83275 dated August 6, 1974 in Application 54898 are revoked on the effective date of the tariffs.