

Decision 83 09 065 SEP 16 1983**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 CALIFORNIA DISTRIBUTION CENTERS, INC.)
 for authority to control High Sierra) Application 83-08-47
 Express dba HSE Trucking, through) (Filed August 18, 1983)
 acquisition of capital stock.)
)

O P I N I O N

This is an application by California Distribution Centers, Inc. (applicant) for authority to control High Sierra Express, doing business as HSE Trucking, through the acquisition of capital stock.

Notice of the filing of the application appeared in the Commission's Daily Calendar on August 22, 1983. There are no protests.

The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. Because of the unforeseen emergency hereafter set forth the public interest requires that Rule 81.5 be waived and this matter be disposed of without appearing on the Commission's Agenda.
3. Applicant is a highway common carrier transporting general commodities pursuant to a certificate of public convenience and necessity authorizing statewide operations issued to applicant on April 30, 1980 in Application GC9224.
4. High Sierra Express, doing business as HSE Trucking (High Sierra), is a Nevada corporation. A certified copy of its certificate of qualification to do business in California and a certified copy of its Articles of Incorporation have been filed with the Commission in File T-134253. High Sierra holds authority as a highway common carrier for the transportation of general commodities statewide in California pursuant to a certificate of public convenience and necessity granted by Decision 82-12-017, dated

December 1, 1982. It also holds authority from this Commission to operate as a contract carrier, and holds authority from the Interstate Commerce Commission, i.e. a certificate of Public Convenience and Necessity in Docket MC151922 (Sub No. 1) authorizing the transportation of general commodities with specified exceptions between points in Arizona, California, Idaho, Nevada, Oregon, Utah and Washington.

5. Applicant is the owner of 50% of the outstanding shares of stock of Owen Distribution Company (Owen), a Nevada corporation, which in turn owns all of the outstanding shares of stock of High Sierra. When applicant acquired 50% of the shares of Owen, it was not aware that the ownership of 50% of the shares of another corporation was deemed control for the purposes of Sections 854 and 3551 of the Public Utilities Code. Applicant recently became aware of this fact and the holding of the Commission in Gale v. Teel, 81 Cal P.U.C. 817.

6. Applicant proposes to acquire direct ownership of 80% of the outstanding shares of High Sierra by purchasing these shares for \$120,000. The book value of the shares as of June 30, 1983, was \$126,410.

7. Applicant needs to acquire 80% control of High Sierra before the end of September 1983 in order to avail itself of financial commitments so it can increase its operating facilities. This situation constitutes an unforeseen emergency within the meaning of Rule 81.5.

8. As of December 31, 1982, applicant had assets of \$1,421,879.

9. The proposed acquisition of control of High Sierra by applicant is not adverse to the public interest.

10. It can be seen with certainty that there is no possibility that a granting of this application may have a significant adverse effect on the environment.

11. Because of the emergency nature of this order should become effective on the date it is issued.

Conclusions of Law

1. Notice of the following order did not appear on the Commission's public agenda as required by the Government Code. This matter is an unforeseen emergency in that it is necessary for the requested authority to be granted so applicant can avail itself of financing, which expires on September 30, 1983, to improve its facilities, which will benefit the shipping public.

2. The application should be granted.

O R D E R

IT IS ORDERED that:

1. California Distribution Centers, Inc., a corporation, is authorized to acquire, by purchase of common stock, 80% control of the shares of High Sierra Express, a corporation, in accordance with the terms set forth in the application. Applicant shall file written notice of the acquisition of control with the Transportation Division within 15 days after the purchase of shares has been made.

2. The authority granted in Ordering Paragraph 1 shall expire unless it is exercised before March 31, 1984.

This order is effective today.

Dated SEP 16 1983, at San Francisco, California.

William T. Boyleyew
Victor Calvo
Donald [unclear]

Commissioner LEONARD M. GIBBES, JR. being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner PRISCILLA C. GREW, being necessarily absent, did not participate in the disposition of this proceeding.