

ORIGINAL

Decision No. 86724

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the applica- )  
tion of: )

DONALD TOBENER )  
An Individual )

and )

GOLDEN GATE TRUCKING, INC. )  
A California Corporation )

Application No. 56667  
(Filed August 3, 1976,  
Amended October 26, 1976)

for authority to sell and trans- )  
fer operating rights of a )  
Highway Common Carrier, pur- )  
suant to the provisions of )  
Section 851, et seq. of the )  
California Public Utilities )  
Code. )

O P I N I O N

Donald Tobener, an individual, (seller) requests authority to sell and transfer and Golden Gate Trucking, Inc., a California corporation, (purchaser) seeks authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier. The certificate was granted by Decision 84099, dated February 19, 1975, in Application 55323 and authorizes transportation of general commodities with the usual exceptions between points in the San Francisco-East Bay Cartage Zone. The certificate is registered with the Interstate Commerce Commission (ICC) in Docket No. MC-136578 (Sub-No. 4).

Purchaser's sole stockholder and president is Michael Tobener, seller's brother. Pursuant to the Purchase and Sale Agreement dated August 3, 1976, between the applicants, the total consideration for the transaction includes the following:

- 1. Certificate and highway carrier permits issued by this Commission. \$1,000.00

2.	Certificate of Registration issued by the ICC	\$3,000.00
3.	Furniture, fixtures and leasehold improvements	\$7,831.50
4.	Highway equipment including eighteen vehicles and various other equipment	<u>\$36,153.45</u>
	Total	\$47,984.95

The highway carrier permits are the subject of a separate transfer application. Payment for the operating authorities is to be made in cash upon consummation. The fixtures and other items will be paid for with \$2,000 in cash on consummation and the balance to be represented by a promissory note and paid over a period of ten months at an interest rate of 6% per annum. A second promissory note will be issued to cover the full purchase price of the equipment to be payable at an annual interest rate of 6% in monthly installments of \$1,004.26 each.

Purchaser's balance sheet of July 30, 1976, indicates net worth of only \$6,000. However, the application, as amended, states that purchaser will assume the entire transportation business intact as presently operated by seller. Seller's operating statement for the six-months period ending June 30, 1976, shows net income before income tax, of over \$90,000 and purchaser's pro-forma operating statement for calendar year 1977 projects net income of \$161,663.76 before income tax and after adjustment for interest and principal then due or paid pursuant to the transactions proposed in the application. Based on these estimated results, it appears that purchaser will have adequate financial resources to perform the operations now conducted by seller.

Seller is party to Pacific Coast Tariff Bureau, Agent, tariffs to provide rates and rules for operations under the certificate to be transferred. Purchaser proposes to adopt the tariffs.

A copy of the application and its amendment have been forwarded to the California Trucking Association and notices of the filing of the application and amendment appeared in the Commission's Daily Calendars of August 4 and October 27, 1976, respectively. The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed transfer and sale of the operating rights and highway equipment would not be adverse to the public interest.
2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.
3. The proposed note issue to cover the highway equipment obligation is for the proper purposes. The money, property, or labor to be procured or paid for by the issue of the note authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or part, reasonably chargeable to operating expenses or to income.
4. No authority need be granted for the issuance of a promissory note to cover the furniture, fixtures and leasehold improvements since the obligation will be discharged within a period less than 12 months.
5. The highway equipment herein authorized to be sold is no longer necessary or useful in the performance of the obligation of seller to serve the public.

The Commission concludes that the application should be granted as set forth in the ensuing order. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Donald Tobener and the issuance of a certificate in appendix form to Golden Gate Trucking, Inc., a California corporation. The new certificate issued to Golden Gate Trucking, Inc.,

will not broaden or change the interstate or foreign commerce rights held by the carrier.

Purchaser is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the state, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before October 1, 1977, Donald Tobener, an individual, may sell and transfer the operating rights and equipment referred to in the application to Golden Gate Trucking, Inc., a California corporation.
2. Within thirty days after the transfer the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchaser 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, as its own, the rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five 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 pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the

Commission's General Order 80-Series. Failure to comply with the provisions of General Order 80-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Golden Gate Trucking, Inc., a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision 84099 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Purchaser shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

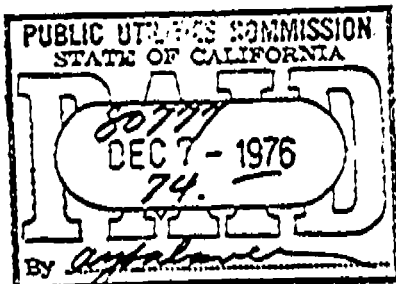
9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

10. The issuer of the note authorized by this order shall file with the Commission a report, or reports, as required by General Order 24-Series.

11. Purchaser may execute and deliver a note for a principal amount not exceeding \$36,153.45 in substantially the same form referred to and for the purposes set forth in the application.

12. The authority granted by this order to execute and deliver a promissory note will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$74. In all other respects, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7<sup>th</sup> day of December, 1976.



President  
  
  
  
Commissioners

Golden Gate Trucking, 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 Section 213 of the Public Utilities Code, for the transportation of general commodities within the San Francisco-East Bay Cartage Zone as described in Note A.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.

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5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.
10. Explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

## NOTE A

## SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of State Highway 82; thence southeasterly along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of

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and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to San Pablo Avenue (State Highway 123) to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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