

Decision No. 86725

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of JOHN F. GARDEN AND THOMAS J.)
STEWART, a Partnership and)
DRIVERS TRUCKING SERVICE, INC. a)
California Corporation for author-)
ity to Sell and Transfer Operation)
Rights of a Highway Common Car-)
rier, Pursuant to the Provisions)
of Section 851, et seq. of the)
California Public Utilities Code.)

Application No. 56675
(Filed August 5, 1976)

O P I N I O N

John F. Garden and Thomas J. Stewart, co-partners, doing business as Nimitz Air Cargo (sellers), request authority to sell and transfer and Drivers Trucking Service, Inc., a California corporation (purchaser), requests 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 80640, dated October 25, 1972, in Application 53482. It authorizes transportation of general commodities with the usual exceptions between points in the San Francisco Territory and is registered with the Interstate Commerce Commission in Docket No. MC-121700. Purchaser will also acquire certain equipment from seller consisting of six highway vehicles and one forklift and will assume all outstanding liabilities and obligations affecting such equipment.

Pursuant to the Purchase and Sale Agreement of June 25, 1976, between the applicants, consideration for the operating rights and equipment is \$10,500, which amount is not allocated between the assets to be sold and transferred. The equipment obligations total \$13,050.

Purchaser presently holds highway carrier permit authority issued by this Commission. Its financial statement of June 30, 1976 shows net worth of \$8,034.

Sellers are party to Pacific Coast Tariff Bureau, Inc., tariff publications to provide rates and rules for operations under the certificate to be transferred. Purchaser proposes to become a participant in Western Motor Tariff Bureau, Inc., Agent, tariffs.

A copy of the application has been forwarded to the California Trucking Association and notice of the filing of the application appeared in the Commission's Daily Calendar of August 6, 1976. 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 and the assumption of the encumbrance on the equipment by purchaser 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 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.
4. Purchaser's request for a change in tariff participation is reasonable and justified.

The Commission concludes that the proposed transactions are not adverse to the public interest and 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 John F. Garden and Thomas J. Stewart, co-partners, and the issuance of a certificate in appendix form to Drivers Trucking Service, Inc.,

a California corporation. The new certificate issued to Drivers Trucking Service, 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 cancelled 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 value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before August 1, 1977, John F. Garden and Thomas J. Stewart, co-partners, may sell and transfer the operating rights and equipment referred to in the application to Drivers Trucking Service, 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 is hereby authorized and required to cancel participation from tariffs covering the certificate to be transferred issued by Pacific Motor Tariff Bureau, Inc., and to have its participation added to appropriate tariffs issued by Western Motor Tariff Bureau, Inc., Agent, as proposed in the application. 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. The effective cancellation date of the Pacific Motor Tariff Bureau, Inc., shall be concurrent with the effective date of the Western Motor Tariff Bureau, Inc., Agent, tariff publications authorized herein.

5. 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 Drivers Trucking Service, 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.

6. The certificate of public convenience and necessity granted by Decision 80640 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

8. 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.


9. 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.

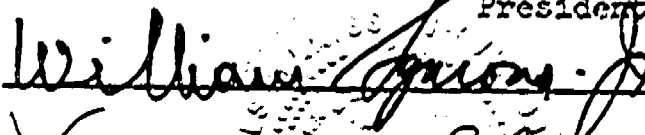
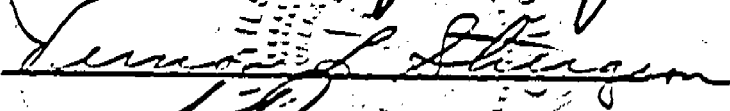
10. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

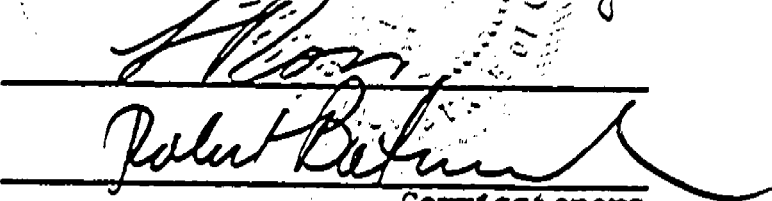
11. Purchaser may assume the equipment obligation as requested in the application.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of December, 1976.



President





Commissioners

Drivers Trucking Service, 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 between all points and places in the San Francisco Territory as described in Note A.

Except that carrier shall not transport any shipment of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff 4-B.
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 high-way vehicles.
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.

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8. Logs.
9. Articles of extraordinary value as set forth in Item 780 of National Motor Freight Classification A-12, William Herbold, Issuing Officer, on October 25, 1976.
10. Fruits or vegetables, fresh or green.

NOTE A

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Sinla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.;

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northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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