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ORIGINAL

Decision No. 82389 May 24, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of SEA TRUCK, INC., a California )  
corporation, for authority to )  
acquire a highway common carrier )  
certificate of BUSY BEE FREIGHT )  
LINES INC., a California corpo- )  
ration, and for authority for )  
SEA TRUCK, INC., to issue a )  
promissory note, security agree- )  
ment and execute a financing )  
statement and for an interim )  
order authorizing SEA TRUCK, )  
INC., to lease the certificate. )

Application No. 57155  
(Filed March 18, 1977)

O P I N I O N

By this application, Busy Bee Freight Lines Inc., a California corporation (seller) requests authority to sell and transfer and Sea Truck, 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 the Commission pursuant to Decision 82434 dated February 5, 1974 in Application 54168. It authorizes the transportation of general commodities between all points and places in San Francisco Territory and between all points and places on or within 10 statute miles of eleven routes located in an area extending from Sacramento on the north to Visalia-Tulare on the south. This authority was registered with the Interstate Commerce Commission and a Certificate of Registration was issued under Docket No. MC-121731.

Pursuant to the Agreement of Purchase and Sale entered into by the parties on January 31, 1977, consideration for the

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transaction is \$62,500.00 of which \$20,000.00 will be paid in cash on or before the consummation date and the balance of \$42,500.00 shall be paid in equal monthly installments of \$2,500.00 each plus eight percent interest per annum for seventeen months. A promissory note will be issued to cover the balance due and a security agreement encumbering the operating rights will be executed to assure performance under the Agreement of Purchase.

The application indicates that the seller is in dire financial need and must of necessity sell its highway common carrier certificate in order to pay its outstanding creditors. Purchaser has been operating as a permitted carrier and has the capability of conducting the operation previously carried on by the seller. Seller will continue to operate as a permitted carrier.

Applicants request authority of this Commission to execute a temporary lease agreement pending an order of the Interstate Commerce Commission authorizing the sale and transfer of the interstate authorities. Purchaser proposes to lease both the intrastate and interstate authorities. Purchaser presently holds a radial highway common carrier permit issued by this Commission. Its balance sheet of December 31, 1976 shows net worth of \$86,552.

Seller is a party to Pacific Coast Tariff Bureau and Western Motor Tariff Bureau tariff publications to provide rates and rules for operation under the certificate to be transferred. Purchaser proposes to adopt the 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 March 21, 1977. The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide

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dissemination of the application. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed temporary lease agreement would not be adverse to the California public interest.

2. The proposed transfer and sale of the certificated operating rights and equipment and the encumbrance of such operating rights and property would not be adverse to the California public interest.

3. The proposed note issue is for proper purpose. The money, property, or labor to be procured or paid by the issue of the note authorized by this decision, is reasonably required for the purpose specified, which purpose are not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. Because of the urgency effecting the application, the authority to enter into the proposed lease should be effective on the date hereof.

The Commission concludes that the proposed transactions, insofar as they do not affect the operating authority issued by the Interstate Commerce Commission, 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 approved by the Interstate Commerce Commission, the revocation of the certificate granted to the seller by Decision 82434 and the issuance of an in lieu certificate in appendix form to purchaser.

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 granted. The authorization granted shall not be construed as a finding of value of the rights to be transferred.

O R D E R

IT IS ORDERED that:

1. Upon approval of the Interstate Commerce Commission and effective therewith Eusy Bee Freight Lines may transfer the operating rights referred to in the application to Sea Truck 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 common carrier operations transferred to show that it has adopted or established as its own, such 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 the cancellation of the operating authority granted by this decision.
4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission in

such form as the Commission may prescribe, an annual report or reports related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized by 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 Sea Truck, 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 and over the routes set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted by Decision 82434 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser shall comply with the safety rules of the California Highway Patrol and the insurance requirement 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, 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 No. 84-Series for the transportation of collect on delivery shipments. If the purchaser elects not to transport collect on delivery shipments, it shall make appropriate tariff filings as required by the General Order.

10. Pending final order of the Interstate Commerce Commission to transfer the interstate rights, Sea Truck, Inc., may lease from

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Busy Bee Freight Lines, Inc. the operating authority granted by Decision 82434 in accordance with the terms and conditions set forth in Exhibit C attached to the application.

11. Within sixty days after the effective date hereof and on not less than ten days' notice to the Commission and to the public, applicant shall amend the tariffs presently on file with this Commission in the name of the applicant seller to reflect the lease authority granted by Ordering Paragraph 10 hereof.

12. Purchaser may execute and deliver a note and security agreement in substantially the same form referred to and for the purposes set forth in the application.

13. 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.

14. The authority granted by this order to execute and deliver an encumbering document will become effective when the issuer has paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$85. In all other respects, the effective date of this order is the date hereof.

Dated at Los Angeles, California, this 24<sup>th</sup> day of MAY, 1977.

*I concur as to the conclusions but not effective date to the date hereof.*

*William S. Jones, Jr.*  
Commissioner

Commissioner Robert Satinovich, being necessarily absent, did not participate in the disposition of this proceeding.

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President

*Vermon L. Sturgeon*  
*Richard D. Howell*

PUBLIC UTILITIES COMMISSION  
STATE OF CALIFORNIA  
Commissioners  
83494  
MAY 27 1977  
85.  
By *[Signature]*

Sea Truck, Inc., a California corporation, 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 as follows:

- I. Between all points and places in the San Francisco Territory as described in Note A hereof.
- II. Between all points and places on or within 10 statute miles laterally of the following routes:
  - (a) Interstate Highway 80 between San Francisco and Sacramento, inclusive;
  - (b) State Highway 4 between its junction with Interstate Highway 80 near Pinole, and Stockton, inclusive;
  - (c) Interstate Highway 580 between its intersection with State Highway 17 and its intersection with Interstate Highway 5, inclusive;
  - (d) Interstate Highway 5 between its intersection with State Highway 4 at Stockton and its intersection with State Highway 198, inclusive;
  - (e) State Highway 120 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;
  - (f) State Highway 198 between its intersection with Interstate Highway 5 and its intersection with State Highway 99 near Visalia, inclusive;
  - (g) State Highway 99 between Sacramento and Tulare, inclusive;
  - (h) State Highway 152 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;

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- (i) State Highway 33 between its intersection with State Highway 152 at the Dos Palos Wye and its intersection with Interstate Highway 5, via Firebaugh, inclusive;
- (j) State Highway 130 between its intersection with State Highway 33 and its intersection with State Highway 99, inclusive, and
- (k) State Highway 140 between its intersection with Interstate Highway 5 and State Highway 99, inclusive;

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

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 salesman'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.

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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.
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.

## 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 Simla 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

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Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly 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 Hiles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; 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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