

ORIGINAL

Decision No. 87538 June 28, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
 of JOHN B. MILLER, an individual,)
 for authority to sell and trans-)
 fer all of the outstanding stock)
 in PENGUIN TRUCKING CO., INC.,)
 a California corporation, to)
 DREISBACH EXPORT PACKING CO.,)
 INC., a California corporation,)
 pursuant to the provisions of)
 section 854 of the Public Utili-)
 ties Code of the State of Cali-)
 fornia, and for a contempora-)
 neous surrender of the Certifi-)
 cate of Public Convenience and)
 Necessity presently held by)
 DREISBACH EXPORT PACKING CO.,)
 INC. under Decision Number 86201.)

Application No. 57323
 (Filed May 19, 1977)

O P I N I O N

John B. Miller, an individual (MILLER), sole shareholder of Penguin Trucking Co., Inc. (PENGUIN), a California corporation, and Dreisbach Export Packing Co., Inc. (DREISBACH), a California corporation, seek authority for the sale and transfer of all of the outstanding stock of PENGUIN to DREISBACH. There are presently 100 shares of common stock of PENGUIN issued and outstanding, all of which is owned by MILLER.

PENGUIN currently operates as a highway common carrier under a certificate granted by this Commission in Decision 87206 dated April 12, 1977 in Application 56991. Its certificate authorizes the transportation of commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment between points in San Francisco Territory, Los Angeles Basin Territory, the Counties of Contra Costa, Sacramento, San Joaquin, Stanislaus and Merced, as

well as points on various specified routes between San Fernando and Redding; between Hayward, also Sacramento, and the California-Nevada State Line; between points in northern San Joaquin Valley; and between various points on the north and west shores of Lake Tahoe; also between points within San Diego Territory and between said territory and Los Angeles Basin Territory, including intermediate points. PENGUIN also holds permit carrier authority from this Commission and operates under interstate and foreign commerce authority issued by the Interstate Commerce Commission.

DREISBACH operates as a highway common carrier under a certificate granted by Decision 86201 dated August 3, 1976 in Application 56462, as amended. Its certificate authorizes the transportation of general commodities, with certain exceptions, between all points in the San Francisco Territory and points within 25 statute miles thereof. DREISBACH also operates under permit authority from this Commission as well as under interstate and foreign commerce authority issued by the Interstate Commerce Commission.

MILLER desires to sell all of his stock in PENGUIN to DREISBACH for a price of \$25,000 as evidenced by their Letter of Agreement (Exhibit "B") and proposed Bill of Sale (Exhibit "C"). MILLER has recently been advised by his physician to reduce his business activities. Applicant DREISBACH desires to acquire complete ownership and control of PENGUIN as a means of enlarging its own less-extensive certificated operation.

DREISBACH declares that its offer to surrender its certificate in favor of owning and controlling PENGUIN's more-extensive certificate is made so as to avoid any violation of the Interstate Commerce Commission's policy which prohibits duplication of authority by commonly-held and controlled entities. Since the PENGUIN authority is more extensive, geographically, than the existing DREISBACH authority and is clearly duplicative thereof, DREISBACH asserts that

all such commonly-held and controlled conflicts will be removed by the surrender of its own certificate upon acquiring ownership and control of PENGUIN's certificate from MILLER if the authority sought herein is granted.

Attached to the application and identified as Exhibit "A" is DREISBACH's balance sheet for the year ended December 31, 1976. It shows total assets of \$1,165,389, liabilities of \$910,691 and stockholders' equity of \$254,698. The company's income statement shows a net income (after taxes) of \$58,676 for calendar year 1976.

Applicants assert that the granting of this application will have no adverse competitive effect on any existing carrier since only the sale of stock rather than the issuance of new operating authority is involved. They declare that the physical condition of MILLER, the seller of the stock, strongly indicates expeditious ex parte handling of this matter.

A copy of the application was mailed to the California Trucking Association and notice of the filing of the application was made in the Commission's Daily Calendar of May 20, 1977. No protests to the application have been received.

After consideration, the Commission finds that:

1. The sale of stock in PENGUIN by MILLER (sole owner) to DREISBACH would not be adverse to the public interest.
2. The resultant control of PENGUIN by DREISBACH would not be adverse to the public interest.
3. The surrender to the Commission of the certificate granted to DREISBACH pursuant to Decision 86201 should be authorized.

The Commission concludes that the sale and transfer of all of the common stock of PENGUIN, now owned by MILLER, to DREISBACH and thus the resultant acquisition of control of PENGUIN by DREISBACH, as requested in the application, should be authorized. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the capital stock of Penguin Trucking Co., Inc.

The Commission also concludes that the effective date of this order should be the date on which it is signed inasmuch as applicants indicate that they desire to consummate the proposed sale of stock as of June 30, 1977 and because there is no reason to delay the requested authority.

O R D E R

IT IS ORDERED that:

1. Dreisbach Export Packing Co., Inc. may control Penguin Trucking Co., Inc.
2. Within ninety days after the effective date hereof, John B. Miller and Dreisbach Export Packing Co., Inc. shall file reports informing the Commission whether or not the transfer of stock control authorized herein has been completed.
3. Upon consummation of the stock sale and transfer authorized herein, as evidenced by compliance with ordering paragraph 2 above, the certificate of public convenience and necessity granted to Dreisbach Export Packing Co., Inc. by Decision 86201 is revoked effective on the date of consummation of the aforesaid stock transfer.
4. Dreisbach Export Packing Co., Inc. shall have all rates and charges covering its highway common carrier operations cancelled on the date of consummation of the aforesaid stock transfer.
5. Dreisbach Export Packing Co., Inc. shall file all necessary reports with this Commission, including its annual report, for that portion of the calendar year 1977 to the date of consummation of the aforesaid stock transfer.

A. 57323 -j1

The effective date of this order is the date hereof:

Dated at San Francisco, California, this 28th day of
JUNE, 1977.

Robert Botwin

President

William Lyons Jr.

James L. Stinson

Richard D. Howell

Commissioners