

ORIGINAL

Decision No. 87801 AUG 30 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MUELLER TRUCK )  
 CO., to sell and EAST TEXAS )  
 MOTOR FREIGHT LINES, INC., to )  
 purchase, Certificates of Public )  
 Convenience and Necessity of )  
 MUELLER TRUCK CO., pursuant to )  
 Section 851 of the Public Utili- )  
 ties Code; and of MUELLER TRUCK )  
 CO. to lease its Certificates of )  
 Public Convenience and Necessity )  
 and of EAST TEXAS MOTOR FREIGHT )  
 LINES, INC. to temporarily )  
 acquire through lease such Cer- )  
 tificates of Public Convenience )  
 and Necessity pursuant to )  
 Section 1063 of the Public )  
 Utilities Code. )

Application No. 57365  
(Filed June 6, 1977)

Application of S & M FREIGHT )  
 LINES to sell; and EAST TEXAS )  
 MOTOR FREIGHT LINES, INC., to )  
 purchase, Certificates of Public )  
 Convenience and Necessity of )  
 S & M FREIGHT LINES, pursuant to )  
 Section 851 of the Public Utili- )  
 ties Code; and of S & M FREIGHT )  
 LINES to lease its Certificates )  
 of Public Convenience and Neces- )  
 sity and of EAST TEXAS MOTOR )  
 FREIGHT LINES, INC. to tempo- )  
 rarily acquire through lease )  
 such Certificates of Public )  
 Convenience and Necessity pur- )  
 suant to Section 1063 of the )  
 Public Utilities Code. )

Application No. 57392  
(Filed June 15, 1977)

INTERIM OPINION

By Application 57365, Mueller Truck Company, a California corporation (MUELLER), as seller-lessor, seeks authority: (1) to sell its intrastate highway common carrier certificate to East Texas Motor Freight Lines, Inc., a Texas corporation qualified to do business in California (ETMF), as buyer-lessee; and (2) to temporarily lease said certificate to buyer. The certificate was

granted by Decision 83230 dated August 6, 1974 in Application 54935, as amended by Decisions 85520 and 85803 in Application 55826, to MUELLER. This carrier also conducts transportation subject to the jurisdiction of the Interstate Commerce Commission (ICC), as well as operations under permits issued by this Commission in File T-33,311.

By Application 57392, S & M Freight Lines, a California corporation (S & M), as seller-lessor, seeks authority: (1) to sell a portion of its intrastate highway common carrier certificate to the same buyer-lessee, East Texas Motor Freight Lines, Inc. (ETMF); and (2) to temporarily lease that portion of its certificate to the proposed buyer. The original certificate, including the portion involved herein, was granted by Decision 85727 dated April 20, 1976 in Application 56281. S & M also conducts transportation operations under the jurisdiction of the ICC and under permits issued by this Commission in File T-61,895.

East Texas Motor Freight Lines, Inc., the buyer-lessee of both intrastate certificate authorities involved herein, is a multi-state motor carrier operating in interstate and foreign commerce under ICC jurisdiction. It currently holds only intrastate permits issued by this Commission in File T-97,441.

Inasmuch as the two transfer and temporary lease applications involved herein essentially seek the same authority from this Commission, and involve the same buyer-lessee, they are consolidated herein for the Commission's consideration and resulting decision.

Both MUELLER's and S & M's California certificates have been registered with the ICC in Docket No. MC-98134 (Sub No. 2) and Docket No. MC-10381 (Sub No. 3), respectively. Accordingly, both of these carriers have concurrently filed with the ICC similar applications for authority to sell and transfer to ETMF all or a part of their respective California certificates previously registered with the ICC. These applications have been assigned Docket Nos. MC-F-13171 (MUELLER) and MC-F-13193 (S & M, portion).

In addition, under Section 210a(b) of the Interstate Commerce Act, the ICC has granted the applicants authority to lease their individual operating rights to ETMF pursuant to ICC Order served April 13, 1977 (MUELLER) and Order served May 13, 1977 (S & M).

Interstate operations have been commenced by ETMF pursuant to the aforesaid federal authorities, under MUELLER's certificate on May 2, 1977 and under S & M's certificate (portion) on May 31, 1977. The necessary tariff amendments by each of the carriers involved have been published and filed with this Commission to indicate these changes in their interstate operations.

The lease agreements (Exhibit "B") provide for payments of \$500 per calendar month to MUELLER and of \$200 per month to S & M pending the ICC's final approval of the sale and transfer of the operating rights.

According to the Agreements of Sale between the parties, the transactions include sale of the intrastate operating rights and the coextensive interstate certificates of registration. MUELLER will receive a total purchase price of \$100,000 payable in cash upon the closing date of the transaction and S & M will receive \$85,000 of which \$20,000 is payable in cash on the closing date of the transaction while the balance of \$65,000 is payable in cash on the first day of the thirteenth calendar month following the date of the initial payment. The entire agreement is conditional upon the ICC's final approval of the sale, transfer and conversion of the registered interstate rights into a permanent interstate certificate.

MUELLER's application contains its Profit and Loss Statement for the calendar year 1976 showing a net loss from operations of \$57,843. Due to the sudden adverse change in this carrier's financial position, both seller and buyer have determined that the continuation of MUELLER's ability to render a motor common carrier service to the shipping and receiving public requires that ETMF, the buyer, immediately assume temporary control over MUELLER's operating rights pending final disposition of the proposed sale, transfer and conversion proceedings currently awaiting approval by the Interstate Commerce Commission.

According to S & M's Profit and Loss Statement, the carrier sustained a small loss for calendar year 1976. Because of this sudden change in its financial position, S & M desires to have ETMF assume temporary control of the aforesaid portion of S & M's operating rights. Moreover, the president and managing officer of S & M, who is also one-half owner of that corporation, has had a prolonged adverse medical history which has recently become more aggravated and thus S & M can no longer effectively conduct its business affairs.

All of the parties involved declare that granting of these applications will assure the shipping and receiving public of a continuance of transportation services on intrastate traffic and will also preserve the vitality of the operating rights involved pending action upon the proposed sales, transfers and conversion applications currently before the ICC.

Both MUELLER and S & M are parties to tariff publications issued by Western Motor Tariff Bureau, Inc., Agent, naming rates and rules covering transportation performed under their respective operating certificates which are proposed to be transferred. ETMF plans to adopt those same rates as its own.

A copy of each application involved herein was mailed to the California Trucking Association and notice of the filing of Applications 57365 and 57392 appeared in the Commission's Daily Calendar of June 8, 1977 and June 23, 1977, respectively. No protests to either of the applications have been received.

The Interstate Commerce Commission has already authorized the temporary leasing of the interstate operating authorities on an interim basis. There is no reason for this Commission to delay the effective date of its order authorizing the leasing of the California intrastate certificates involved. Accordingly, as requested by the applicants, our interim order will be made effective ten days after the date on which it is signed.

After consideration, the Commission finds that:

1. Each of the proposed temporary lease agreements would not be adverse to the California public interest.
2. The proposed sale and transfer of the operating rights of MUELLER and of S & M's portion to ETMF would not be adverse to the California public interest.
3. Because of the urgency affecting both applications, the authority to enter into each of the proposed leases should be made effective ten days after the effective date of this order.

The Commission concludes that the proposed transactions should be authorized and that each application should be granted as set forth in the ensuing order. A public hearing is not necessary. The order which follows will require ETMF to submit a proposed in-lieu certificate subsequent to the consummation of the sale and transfer of the certificates. After the Commission's review of the proposed certificate, a final order will be issued to revoke the certificate authorities transferred and to grant in-lieu certificates to ETMF and S & M.

The action taken herein shall not be construed as a finding of the value of the certificates of public convenience and necessity or portion thereof to be leased and transferred.

East Texas Motor Freight Lines, Inc., is placed on notice that operative rights, as such, do not constitute a class 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.

INTERIM ORDER

IT IS ORDERED that:

1. On or before November 1, 1977, Mueller Truck Co., a California corporation, may lease the operating rights granted to it by this Commission, and referred to in Application 57365, to East Texas Motor Freight Lines, Inc., a Texas corporation.

2. On or before November 1, 1977, S & M Freight Lines, a California corporation, may lease a portion of the operating rights granted to it by this Commission, and referred to in Application 57392, to East Texas Motor Freight Lines, Inc., a Texas corporation.

3. Upon the filing of an enabling order issued by the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act in Proceeding No. MC-F-13171, Mueller Truck Co., a California corporation, may sell and transfer the operating rights granted to it by this Commission, as referred to in Application 57365, to East Texas Motor Freight Lines, Inc., a Texas corporation.

4. Upon the filing of an enabling order issued by the Interstate Commerce Commission under Section 5 of the Interstate Commerce Act in Proceeding No. MC-F-13193, S & M Freight Lines, a California corporation, may sell and transfer a portion of the operating rights granted to it by this Commission, as referred to in Application 57392, to East Texas Motor Freight Lines, Inc., a Texas corporation.

5. Within thirty days after said transfers, East Texas Motor Freight Lines, Inc., the purchaser, shall file with the Commission a written acceptance of each of the certificates and a true copy of each of the bills of sale or other instruments of transfer.

6. Purchaser shall adopt the tariffs, on file with the Commission, naming rates and rules governing each of the common carrier operations sold and transferred to show that it has adopted or established, as its own, the rates and rules of each selling carrier. 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 to the public and the effective date of the tariff filings shall be concurrent with the effective date of each such 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 authorities authorized to be transferred to purchaser by this decision.

7. 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.

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. Within thirty days after the effective date hereof and on not less than five days' notice to the Commission and to the public, applicant lessee shall amend the tariffs presently on file with this Commission in the name of each of the applicant lessors to reflect the lease authorities granted by Ordering Paragraphs 1 and 2 hereof.

11. Within ninety days after the date of the final transfer, purchaser shall submit to this Commission a proposed in-lieu certificate of public convenience and necessity describing and consolidating all of its newly-acquired highway common carrier operating authorities. Such proposed in-lieu certificate shall reflect the current designations of highways and roads used to describe all of its authorities and shall not exceed in any way the scope of the authorities acquired by the purchaser. To the extent possible, purchaser shall, in submitting the proposed in-lieu certificate, eliminate any overlapping or duplicate authorities that may now exist.

A. 57365 and A. 57392 - CAS/jl

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

Dated at San Francisco, California, this 30th day of AUGUST, 1977.

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President

*William S. ...*

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*Robert P. ...*

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Commissioners

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

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.