

ORIGINAL

Decision No. 87952 OCT 4 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of MARINO FREIGHT LINES, INC., a )  
corporation, for authority to (a) )  
acquire a Certificate of Public )  
Convenience and Necessity, and )  
ACTIVE TRANSPORT, INC., a )  
corporation, for authority to )  
transfer, pursuant to Sections )  
851 to 854 of the Public )  
Utilities Code, (b) issue stock, )  
(c) assume a Note, and (d) issue )  
a Promissory Note and execute )  
and deliver a Security Agreement, )  
all pursuant to Section 816 to )  
830 of the Public Utilities Code.)

Application No. 57206  
(Filed April 7, 1977)

O P I N I O N

Active Transport, Inc., a California corporation, (seller) requests authority to sell and transfer and Marino Freight Lines, 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 84114 dated February 19, 1975 in Application 52790 and acquired by the seller pursuant to Decision 84931 dated September 23, 1975 in Application 55869. It authorizes the transportation of general commodities in an area of Southern California approximately contiguous with Los Angeles Basin Territory except for certain areas in Riverside and Orange Counties. The certificate is the subject of a Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-121764. Seller also operates pursuant to permits issued by this Commission. Disposition of these permits is not part of this transaction.

Marino Freight Lines, Inc., a California corporation, proposes to purchase and acquire the highway common carrier certificate for the sum of \$180,000 of which \$36,000 is for the intrastate authority and \$144,000 is for the Certificate

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of Registration. The purchase price would be paid with \$36,000 in cash upon execution of the agreement and a \$144,000 promissory note secured by a security agreement covering the operating rights proposed to be transferred herein. The note is repayable in 59 months with an interest rate of 9% per annum payable at the rate of \$1,850 or more per month applied first to interest and the balance to the principal, with any remaining balance due and payable at the end of the 60th month.

Purchaser also seeks authority to issue 7500 shares of common capital stock, without par value to its President for a total consideration of \$150,000 in cash and other assets as set forth in Exhibit D of the application.

Purchaser proposes to assume the balance owing on a note payable to the Security Pacific National Bank in Modesto, California. The note was for an original amount of \$24,500 and the balance due is \$15,873.46 with payments at the rate of \$800 per month for principal and interest.

Seller is a party to Western Motor Tariff Bureau, Agent, tariff publications to provide rates for operations 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 April 11, 1977. The applicants request relief from the provision of the Commission's Rules of Practice and Procedure which requires wide dissemination of the application. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed sale and transfer of the operating rights, the encumbrance of such rights and the assumption of the promissory note would not be adverse to the public interest.

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

3. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

The Commission concludes that the application should be granted as set forth in the ensuing order. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate held by Active Transport, Inc., and the issuance of an in lieu certificate in appendix form to Marino Freight Lines, Inc.

Purchaser is placed on notice that operating rights, as such, do not constitute a class of property which may be used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State 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 the value of the rights authorized to be transferred.

O R D E R

1. On or before April 1, 1978, Active Transport, Inc., a corporation, may sell and transfer the operating rights referred to in the application to Marino Freight Lines, Inc., a corporation.

2. Within thirty days after the transfer, the purchaser shall file with the Commission a 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 No. 80-Series. Failure to comply with the provisions of General Order No. 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 Marino Freight Lines, Inc., a 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 84931 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules of the California Highway Patrol, and 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 No. 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.

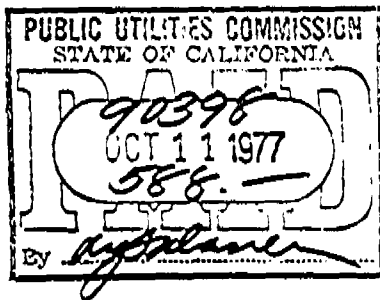
9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

10. 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.

11. 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.

12. The authority granted by this order to execute and deliver an encumbering document and to issue stock will become effective when the issuer has paid the fees prescribed by Sections 1904(b) and 1904.1 of the Public Utilities Code, which fees total \$588. In all other respects, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 4<sup>th</sup> day of OCTOBER, 1977.



Robert Bateman  
President

William S. Symons, Jr.  
Richard A. Swale

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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

Marino Freight Lines, 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 as follows:

1. Between all points and places in Los Angeles Basin Territory as described in Note A hereof.
2. Between all points and places in the territory described in Paragraph 1 above, on the one hand, and the following, on the other hand, serving all intermediate points on or within ten statute miles laterally of the named highways.
  - a. San Diego Territory as described in Note B hereof via Interstate Highways 5 and 15.
  - b. Bakersfield via Interstate Highway 5 to its junction with State Highway 99 at Wheeler Ridge, thence via State Highway 99.
  - c. Mojave via Interstate Highway 5 and State Highway 14.
  - d. Santa Barbara via U. S. Highway 101 and State Highway 1.

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).

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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.
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. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
10. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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.

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## NOTE A

## LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

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MARINO FREIGHT LINES, INC.  
(a California corporation)

Appendix A

NOTE B

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

(END OF APPENDIX A)

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## NOTE B

## SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S 17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

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