

Decision No. 88136 NOV 22 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of NAKANO EXPRESS SERVICE, INC.,)
a California corporation, for)
authority to purchase highway)
common carrier operating rights)
and property, BASIN TRUCK LINE,)
INC., a California Corporation,)
to transfer pursuant to Sections)
851-854 of the California Public)
Utilities Code.)

Application No. 57373
(Filed June 13, 1977;
amended September 12, 1977)

O P I N I O N

Basin Truck Line, Inc., a California corporation (seller), seeks authority to sell and transfer and Nakano Express Service, Inc., a California corporation (purchaser), seeks authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier and certain motor vehicle equipment and other assets pursuant to an Agreement of Sale which is attached to the application as Appendix 2.

The certificate was granted by Decision No. 62554 dated September 12, 1961 and amended by Decision No. 74082 dated May 7, 1968 in Application No. 43089 and authorizes the transportation of general commodities with the usual exclusions between all points in the Los Angeles Basin Territory. The authority is registered with the Interstate Commerce Commission in Docket No. MC-121197 (sub. No. 1). Seller also holds permits authorizing operations as a radial highway common carrier and highway contract carrier which purchaser will seek to acquire through separate applications.

Pursuant to the Agreement of Sale the total consideration is \$140,000 allocated as follows:

1. Highway Common Carrier Certificate.	\$ 54,000
2. Interstate Commerce Commission certificate of registration.	30,000
3. Radial Highway Common and Highway Contract Carrier Permits.	1,000
4. Motor Vehicle and Office Equipment.	23,500
5. Seller's Accounts and Contracts.	20,000
6. Covenant not to Compete.	9,000
7. Goodwill.	<u>2,500</u>
Total	\$140,000

Payment will be made in cash upon approval of this Commission and the Interstate Commerce Commission; \$14,000 has been placed in escrow. In order to complete the transaction purchaser intends to borrow the remaining \$126,000 from Nakano Warehouse and Transportation Co. which is the sole owner of purchaser's stock. The loan will be evidenced by an unsecured promissory note with interest at six percent per annum.

Purchaser has not previously held operating authority from this Commission. It proposes to continue the operation as presently conducted by seller, using the property concurrently acquired with the rights, to perform the services. Purchaser further proposes to add to the equipment and facilities as the demands of the shipping public require and will continue to employ the services of seller's managerial staff including its president and its operation manager, both of whom have had extensive motor truck transportation experience.

Purchaser's unaudited balance sheet of March 31, 1977 discloses a net worth of \$20,000. It proposes to adopt the tariffs published by Western Motor Tariff Bureau, Inc. to which the seller is now a party.

A copy of the application and amendment thereto have been forwarded to the California Trucking Association and were noticed on the Commission's Daily Calendars of June 15 and September 13, 1977, respectively. Applicant requests relief from the provision of Rule 37 of the Commission's Rules of Practice and Procedure which requires wide dissemination of the application.

By letter dated July 20, 1977, an attorney representing a former employee of the seller advised the Commission that his client was the plaintiff and the seller was the defendant in a law-suit filed in the Superior Court, Los Angeles County, for breach of contract and requested he be informed of any hearing date and the procedure necessary to enter formal objections to the transfer. By letter dated August 18, 1977 from the assigned Administrative Law Judge, the attorney was advised that his remedy lies solely with the Superior Court.

No other protests to the application have been received. On September 20, 1977 the Commission's Transportation Division staff advised it had reviewed the application, as amended, and believes it is one which in the absence of protest may be granted by ex parte order.

Findings

1. The proposed sale and transfer of the certificate and other assets referred to in the application 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 proposed note issue is for proper purposes. The money, property, or labor to be procured or paid for by the issue of the note authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. A public hearing is not necessary.

The Commission concludes that the proposed transactions should be authorized as set forth in the ensuing order. The operating rights will be restated in the form of a new certificate. The new certificate issued to the purchaser will not broaden or change the interstate or foreign commerce rights heretofore held by the seller. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Basin Truck Line, Inc., and the issuance of an in lieu certificate in appendix form to Nakano Express Service, Inc.

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 canceled 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 sold and transferred.

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1978, Basin Truck Line, Inc., may sell and transfer the operative rights issued by this Commission and the assets referred to in the application to Nakano Express Service, Inc.
2. Within thirty days after the transfer 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 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 Nakano Express Service, Inc., 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 No. 62554, as amended, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 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 it elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

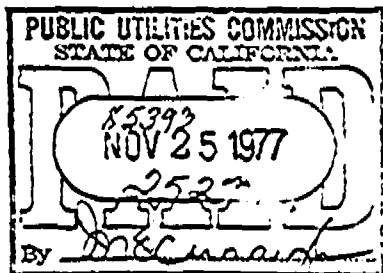
9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested.

10. Purchaser may execute and deliver a note 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 No. 24-Series.

12. The authority granted by this order to execute and deliver a note will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$252. In all other respects, the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 22nd
day of NOVEMBER, 1977.



Robert Bateman
President
William J. Sproull
Vernon L. Strang
Charles D. Shanks
Charles J. Schick
Commissioners

Nakano Express 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 within the Los Angeles Basin Territory as described in Note A hereof.

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).
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.

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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. Logs.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

NOTE A

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

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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.

END OF APPENDIX A

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