

ORIGINAL

Decision No. 88160 NOV 29 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
 of: MORRIS R. SCHROEDER, an)
 individual, doing business as)
 S.B.T.C., to purchase from BURTON)
 TRUCK & TRANSFER CO., a California)
 corporation, the Certificate of)
 Public Convenience and Necessity)
 for the transportation of general)
 commodities, issued by the Public)
 Utilities Commission, pursuant to)
 Sections 851-854 of the California)
 Public Utilities Code, and for the)
 issuance of an In-Lieu Certificate)
 of Public Convenience and)
 Necessity.)

Application No. 57518
 (Filed August 16, 1977)

O P I N I O N

By their joint application, Burton Truck & Transfer Co., a California corporation (BURTON), seeks authority to sell and transfer, and Morris R. Schroeder, an individual, doing business as S. B. T. C. (SCHROEDER), proposes to purchase and acquire a highway common carrier certificate of public convenience and necessity.

The certificate involved herein was granted to BURTON by Decision 85200 dated December 2, 1975 in Application 56008 and authorizes the transportation of general commodities, with the usual exceptions, between all points and places in a defined area which embraces most of Los Angeles County and a key portion of Orange County. BURTON's California certificate has been registered with the Interstate Commerce Commission under Docket No. MC-3853 (Sub No. 5) which authorizes coextensive interstate and foreign commerce operations in California. BURTON also holds permits as a radial highway common carrier and as a highway contract carrier issued to that corporation by this Commission in File T-49,546, which permits are not involved in this proceeding.

SCHROEDER, the buyer herein, is presently operating pursuant to a highway contract carrier permit issued by this Commission on June 24, 1977. By this application, he is seeking authority to acquire BURTON's California certificate, as well as its interstate operating authority, both identified above.

Attached to the application as Exhibit "A", is a copy of the "Purchase and Sale Agreement" between the parties involved. It provides for a total price of \$15,000 for the sale and transfer of BURTON's operating rights, including goodwill. Of that amount, \$10,000 is designated for the California certificate, while \$5,000 is for the federal Certificate of Registration. The terms of payment are cash, with a down payment of \$5,000 and the balance of \$10,000 payable on the closing date of the transaction.

SCHROEDER proposes to continue the operations now performed by BURTON but will utilize his own motor vehicle equipment and facilities, adding thereto whenever transportation conditions require him to do so. SCHROEDER asserts that he has experienced an increase in the demand for his transportation services from his regular customers as well as the shipping public, which he will be able to fulfill if this application is granted. Predicated on these factors, SCHROEDER alleges that he has both the financial ability and the necessary equipment and facilities to adequately serve the transportation needs of both present and potential shippers.

According to SCHROEDER, he and his employees are well qualified to participate in the management and operation of a transportation company dedicated to serving the public. He declares that approval of the proposed transfer will have no adverse effect on any other common carrier or on the shipping public and that there will be no change in the rates and charges now being assessed for such transportation.

Attached to the application (Exhibit "B") is SCHROEDER's balance sheet as of February 1, 1977 showing total assets of \$106,554, liabilities of \$39,015 and a net worth of \$67,539. His

profit and loss statement (Exhibit "C") shows a net operating profit of \$7,531 for the six-month period ending June 30, 1977. BURTON's balance sheet dated December 31, 1976 lists total assets of \$1,241,276, total liabilities of \$900,540 and shareholders' equity of \$340,736.

BURTON currently participates in various agency tariffs published on its behalf by the Western Motor Tariff Bureau, Inc., Agent. SCHROEDER avers that he proposes to adopt the same tariff rates now published for the account of BURTON, and consequently there will be no change in the rates currently being assessed for the same transportation.

Since no competing carrier has any interest in this matter or objection thereto, both applicants request a waiver from the provisions of the Commission's Rules of Practice and Procedure regarding service, which rules require wide dissemination of such applications. Their application shows that a copy thereof was mailed by them to both the California Trucking Association and to the Highway Carriers Association. Notice of the filing of the application appeared in the Commission's Daily Calendar of August 19, 1977. No protests to the application have been received.

The applicants urge the Commission to decide this matter by ex parte action inasmuch as there is no known opposition; also that the resultant tariff publications be authorized for publication on five days' notice to the public.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Burton Truck & Transfer Co. and the issuance of an in-lieu highway common carrier certificate, in appendix form, to Morris R. Schroeder. Said certificate will restate the metes and bounds of the geographical area authorized therein so as to reflect the current highway designations involved, but will not broaden or change the interstate or

foreign commerce rights held by the carrier.

Morris R. Schroeder is hereby 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 given. The authorization granted shall not be construed as a finding of the value of the rights to be transferred.

O R D E R

1. On or before May 1, 1978, Burton Truck & Transfer Co., a California corporation, may sell and transfer the operating rights referred to in the application to Morris R. Schroeder, an individual.
2. Within thirty days after the transfer, Morris R. Schroeder 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. Morris R. Schroeder shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that he has adopted or established, as his 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 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, and effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Morris R. Schroeder authorizing him 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 85200 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Morris R. Schroeder shall comply with the safety rules administered by the California Highway Patrol, and the insurance requirements of the Commission's General Order 100-Series.

7. Morris R. Schroeder shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Morris R. Schroeder shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If he elects not to transport collect on delivery shipments, he 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.

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

Dated at San Francisco, California, this 29th day of NOVEMBER, 1977.

Robert Batinaul

President

William Symons Jr.

Vernon L. Sturgeon

Robert D. Gualth

Laurel D. Delrich

Commissioners

Morris R. Schroeder, 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 following described area:

Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Sepulveda Boulevard; northerly along Sepulveda Boulevard to State Highway 118; northeasterly along State Highway 118 through and including the City of San Fernando; continuing northeasterly thence southeasterly along State Highway 118 to and including the City of Pasadena; easterly along Interstate Highway 210 (formerly USH-66) to State Highway 19; southerly along State Highway 19 to Lower Azusa Road; easterly on Lower Azusa Road to its intersection with the San Gabriel River; southerly along the West Bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to State Highway 72; southeasterly and southerly on State Highway 72 to State Highway 90; easterly and southeasterly on State Highway 90 to State Highway 91; southwesterly on State Highway 91 to State Highway 55; westerly, southerly and southwesterly along State Highway 55 and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to the point of beginning.

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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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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
5. 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.
6. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.

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7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)