

Decision No. 88366 JAN 17 1978

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of SOUTHWEST DELIVERY SERVICE,)
INC., A California Corporation,)
for authority to acquire a highway)
common carrier certificate of)
ASTOR TRUCK-RITE, INC. A Cali-)
fornia Corporation.)

Application No. 57453
(Filed July 15, 1977)

O P I N I O N

By their joint application, Southwest Delivery Service, Inc., a California corporation (SOUTHWEST) and Astor Truck-Rite, Inc., also a California corporation (ASTOR), seek authority to merge the two companies. SOUTHWEST is to be the surviving corporation.

ASTOR holds a certificate of public convenience and necessity authorizing it to transport general commodities, with certain exceptions, between all points within the Los Angeles Basin Region as described in its certificate. The certificate, which was originally granted by Decision 61418 dated January 24, 1961 in Application 42826, was acquired by ASTOR, the corporation, by Decision 62014 dated May 22, 1961 in Application 43342.

By its letter dated November 17, 1977, SOUTHWEST has furnished the Commission with the following additional facts in clarification and support of this transfer application: (1) ASTOR operated under its certificate until September 30, 1976, on which date it was forced to cease all trucking operations due to an employees' strike; (2) effective May 13, 1977, ASTOR ceased its existence as a separate corporate entity by merging into SOUTHWEST, which is to be the surviving corporation; and (3) because of the unsettled conditions resulting from the labor dispute, the applicants neglected to obtain the Commission's prior authorization for acquisition of the corporate stock of ASTOR by SOUTHWEST from Mr. Barry Kiek, the sole stockholder.

Specifically, by this application, as clarified by the aforesaid letter of November 17, 1977, applicants request approval of the following transactions:

- (a) Transfer of all the outstanding shares of stock of ASTOR to SOUTHWEST;
- (b) Merge ASTOR into SOUTHWEST, the latter to assume all of the assets and liabilities of the former pursuant to the provisions of the California Corporations Code; and
- (c) SOUTHWEST to issue to Barry Kiek and to Morley Kiek, corporate officers of said company, 100 shares each of its \$10 par value common stock.

The application contains the following financial data for each of the carriers involved:

- (1) ASTOR's balance sheet of May 12, 1977 which shows assets of \$116,100; liabilities of only \$200; and net worth of \$115,900.
- (2) SOUTHWEST's pro forma statement of income for the five-month period ending May 31, 1977 which shows the operating results for the merged operations of both corporations conducted under the SOUTHWEST entity and indicating revenues of \$142,000, expenses of \$120,800 and net income of \$15,200 after provision for income taxes.

ASTOR's California certificate has been registered with the Interstate Commerce Commission under Docket No. MC-120961 to cover its coextensive interstate or foreign commerce operations. Upon approval of this application, SOUTHWEST proposes to apply for authority from the Interstate Commerce Commission authorizing it to acquire ASTOR's Certificate of Registration. According to the applicants, consummation of the merger involved herein will occur when both the federal and state commissions have given their respective approval thereto.

ASTOR currently participates in various rate tariffs published on its behalf by the Western Motor Tariff Bureau, Inc., Agent. SOUTHWEST states that it proposes to participate in those same tariffs if the authority for its acquisition of ASTOR's corporate stock and the proposed merger is granted by this Commission.

Applicants indicate that no other carrier has any interest in this matter or objection thereto. For this reason, they request a waiver from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of such applications. A copy of the application was mailed by applicants to the California Trucking Association. Notice of the filing of the application appeared in the Commission's Daily Calendar of July 19, 1977. No protests to the application have been received. Applicants also request that the Commission's decision on their application be handled ex parte; that the resulting decision be made effective on the date it is signed; and that the necessary tariff publications be authorized for publication on five days' notice to the public.

After consideration, the Commission finds that:

1. Control of Astor Truck-Rite, Inc. by Southwest Delivery Service, Inc., and the merger of the two corporations with Southwest Delivery Service, Inc. as the surviving corporation, would not be adverse to the public interest and should be authorized.
2. The proposed stock issuance by Southwest Delivery Service, Inc. to Barry Kiek and Morley Kiek is for a proper purpose.
3. The money, property or labor to be procured or paid for by the issuance of stock authorized herein is reasonably required for the purpose specified, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.
4. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

On the basis of the foregoing findings, we conclude that the application should be granted and that the effective date of the Commission's order should be the date the decision is signed since there is no reason to delay granting the authority sought. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the assets involved in the merger, or of the capital stock of Southwest Delivery Service, Inc. to be issued in exchange therefor. The order which follows will provide for, in the event the merger is completed, the revocation of the certificate presently held by Astor Truck-Rite, Inc. and the issuance of an in-lieu certificate, in appendix form, to Southwest Delivery Service, Inc.

Southwest Delivery Service, Inc. 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.

O R D E R

IT IS ORDERED that:

1. Southwest Delivery Service, Inc., a California corporation, may control Astor Truck-Rite, Inc., a California corporation.
2. Within thirty days after the effective date hereof, Southwest Delivery Service, Inc. shall file a report informing the Commission whether or not the control authorized herein has been completed.
3. Within thirty days after the effective date hereof, Astor Truck-Rite, Inc. may merge into Southwest Delivery Service, Inc., with the latter to be the surviving corporation.
4. Within thirty days after the effective date hereof, Southwest Delivery Service, Inc., for the purposes specified in this proceeding, may issue not exceeding 200 shares of its \$10 par value common stock as follows: 100 shares to be issued to Mr. Barry Kiek and 100 shares to Mr. Morley Kiek in exchange for the acquisition of all of the outstanding common stock of Astor Truck-Rite, Inc. by Southwest Delivery Service, Inc., the transferee, as authorized herein.
5. Within thirty days after the merger, Southwest Delivery Service, Inc. shall file with this Commission a written acceptance of the certificate and a true copy of the bill of sale or other instrument of merger.
6. Southwest Delivery Service, Inc. shall amend or reissue the tariffs on file with the Commission naming rates and rules governing the common carrier operations so merged to show that it has adopted or established, as its 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 date of the merger. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs as 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 authority granted by this decision.

7. In the event the merger authorized in paragraph 3 is completed, and effective concurrently with the effective date of the tariff filings required by paragraph 6, a certificate of public convenience and necessity is granted to Southwest Delivery 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 of this decision.

8. The certificate of public convenience and necessity granted by Decision 61418 and acquired by Astor Truck-Rite, Inc. by Decision 62014 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 6.

9. Southwest Delivery Service, Inc. shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

10. Southwest Delivery Service, Inc. 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.

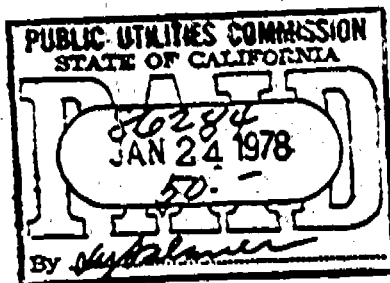
11. Southwest Delivery Service, Inc. shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, then it shall make the appropriate tariff filings as required by the General Order.

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

13. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order 24-Series.

14. The authority granted by this order to issue stock will become effective when the issuer has paid the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In all other respects, the effective date of this order is the date hereof.

Dated at San Francisco, California, this 17th
day of JANUARY, 1978.



President
William S. Brown, Jr.

Vernon L. Johnson

Robert D. Howell

Walter T. Deland
Commissioners

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

Southwest Delivery Service, Inc., a California corporation, 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 located within the Los Angeles Basin Region as described in Note A hereof.

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.

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.

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

NOTE ALOS ANGELES BASIN REGION

Los Angeles Basin Region includes that area embraced by the following boundary: Beginning at the intersection of the western boundary of the City of Los Angeles and the Pacific Ocean; thence along the western and northern boundaries of said city to its first point of intersection with the southern boundary of the Angeles National Forest; southeasterly and easterly along the southern boundaries of the Angeles National Forest and the San Bernardino National Forest 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 and including the City of Redlands; westerly along Interstate Highway 10 to Interstate Highway 15 (formerly U.S. Highway 395); southwesterly along Interstate Highway 15 to its junction with State Highway 91; southwesterly along State Highway 91 to State Highway 55; southerly and southwesterly along State Highway 55 and its prolongation to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to the point of beginning.

(END OF APPENDIX A)

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