

ORIGINAL

Decision No. 88436 JAN 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of)
 LEASEWAY TRANSPORTATION CORP.,)
 a Delaware corporation, and)
 MAGAZINE DISTRIBUTORS OF CALIF-)
 ORNIA, INC., a California cor-)
 poration, for authority to con-)
 trol GENERAL TRUCKING SERVICE, a)
 California corporation, for)
 purposes of merging the latter)
 into MAGAZINE DISTRIBUTORS OF)
 CALIFORNIA, INC., and to trans-)
 fer the latter's certificated)
 highway common carrier rights)
 to the surviving company, pur-)
 suant to Sections 851-854 of)
 the Public Utilities Code.)

Application No. 57444
 (Filed July 13, 1977)

SUPPLEMENTAL OPINION

By Decision 87885 dated September 20, 1977 in this proceeding, Magazine Distributors of California, Inc. (MAGAZINE), a wholly-owned corporate subsidiary of Leaseway Transportation Corp., a non-carrier holding and management company, acquired control of General Trucking Service (GENERAL) and two of its affiliated companies through an exchange of common stock and received authority to merge GENERAL into MAGAZINE, the surviving corporation.

A similar application for such authority under Section 5 of the Interstate Commerce Act was filed by the parties involved with the Interstate Commerce Commission under its Docket No. MC-F-13240. Said application has been approved by the Interstate Commerce Commission by its Order therein bearing a service date of October 28, 1977.

As a prerequisite to the issuance by this Commission of an in-lieu certificate of public convenience and necessity to MAGAZINE, and the corresponding revocation of the superseded certificate of GENERAL, the parties involved in this proceeding were ordered to file certain written reports with this Commission relative

to when (1) the change in control of GENERAL had been completed; and (2) the proposed merger of GENERAL into MAGAZINE, as the surviving corporation, had been consummated. The necessary reports required to be filed pursuant to Decision 87885 have now been received by this Commission. The Consummation Notice filed by the parties involved with both the federal and state commissions shows that consummation of the merger and control transaction occurred on December 16, 1977.

By letter dated December 12, 1977, a proposed in-lieu certificate was submitted to this Commission by the counsel for MAGAZINE. Upon review thereof and an appropriate modification by the Commission's staff relating only to updating an obsolete description of the Los Angeles Territory described therein, the in-lieu highway common carrier certificate now conforms to the scope of operating authority acquired by MAGAZINE, as the surviving corporation, through the aforesaid exchange of common stock and its resulting merger with GENERAL. Our staff's revision of the subject carrier's proposed in-lieu certificate more accurately restates the existing certificated rights and, thus, will be adopted by the order herein.

The action taken herein is for the specific purpose of implementing and finalizing the Commission's order in Decision 87885 by restating and reissuing the existing certificate. The restated authority neither broadens nor changes the intrastate, interstate or foreign commerce rights previously held by GENERAL prior to its merger into MAGAZINE.

The counsel for MAGAZINE asks that the Commission's supplemental order herein be issued as expeditiously as is possible in order to complete the final phase of this proceeding. Accordingly, the effective date of said order should be the date on which it is signed since there is no reason to delay issuance of the in-lieu certificate to MAGAZINE.

Magazine Distributors of California, 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Magazine Distributors of California, Inc., a California 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 of this decision.

2. In providing service pursuant to the authority granted by this order, Magazine Distributors of California, Inc. shall comply with the following service regulations. Failure to do so may result in cancellation of the authority:

- (a) Within thirty days after the effective date of this order, Magazine Distributors of California, Inc. shall file a written acceptance of the certificate granted. Magazine Distributors of California, Inc. is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.
- (b) Within one hundred twenty days after the effective date of this order, Magazine Distributors of California, Inc. shall establish the authorized service and cancel, amend or refile tariffs, as necessary, in the Commission's office pursuant to the in-lieu certificate granted by this decision.
- (c) The tariff filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and to the public, and the effective date of the tariff filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order 80-Series.

- (e) Magazine Distributors of California, 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 this 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.
- (f) Magazine Distributors of California, 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, it shall make the appropriate tariff filings as required by the General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall be in lieu of and supersede the existing certificate of public convenience and necessity as a highway common carrier heretofore granted to General Trucking Service by Decision 61534 dated February 21, 1961 in Applications 35856 and 42445, which certificate is hereby revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b).

The effective date of this order is the date hereof.

Dated at San Diego, California, this 31st day of JANUARY, 1978.

Robert Batistovich
President

William J. Gussow, Jr.

Richard D. Lowell

Clair T. D. Smith
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Magazine Distributors of California, 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: Printed Matter, viz.: Books, Magazines and Periodicals; Newspaper or Magazine Display Racks; and Iron or Steel Wire between the following points:

1. Points within the Los Angeles Territory as described in Note A.
2. Los Angeles, on the one hand, and Pomona, Ontario and San Bernardino, on the other hand.
3. Los Angeles, on the one hand, and Whittier, Santa Ana and San Diego, on the other hand.
4. Los Angeles, on the one hand, and Ventura, Santa Barbara, Santa Maria, San Jose, San Mateo, Oakland and San Francisco, on the other hand.
5. Los Angeles, on the one hand, and Bakersfield, Tulare, Visalia, Merced, Modesto, Fresno, Stockton and Sacramento, on the other hand.

The authority set forth in paragraphs 2, 3, 4 and 5 does not include the right to render service from, to or between intermediate points.

Carrier shall not establish through rates and joint rates, charges, and classifications as to the separate authorities set forth in paragraphs 1, 2, 3, 4 and 5 above.

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.

Issued by California Public Utilities Commission.

Decision 88436, Application 57444.

NOTE A

LOS ANGELES TERRITORY

The Los Angeles Territory includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118 at San Fernando (including the City of San Fernando); thence southeasterly along State Highway 118 to and including the City of Pasadena; thence easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michilinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northerly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue and the prolongation thereof to the west side of Sawpit Wash; southerly on Sawpit Wash to the intersection of Mountain Avenue and Royal Oaks Drive; easterly along Royal Oaks Drive to Buena Vista Street, south on Buena Vista Street and due south on a prolongation thereof to the west bank of 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 Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway (State Highway 90); westerly on Imperial Highway to Lakewood Boulevard (State Highway 19); southerly along Lakewood Boulevard to its intersection with State Highway 1 at Ximeno Street; southerly along Ximeno Street 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 point of beginning.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 88435, Application 57444.