

ORIGINAL

Decision No. 88493 FEB 7 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
 of WELLS CARGO, INC. a corporation, )  
 for authority to purchase the )  
 operative rights and specified )  
 equipment of WESTERN TRUCK LINES, )  
 a corporation, and for authority )  
 to issue a promissory note. )

Application No. 57686  
 (Filed November 15, 1977)

I N T E R I M O P I N I O N

By Decision 83947 dated December 30, 1974, in Application 55400, the Commission authorized Wells Cargo, Inc., a Nevada corporation authorized to do business in California (Wells), and Western Truck Lines, a California corporation (Western), to execute a purchase agreement and temporary lease of Western's highway common carrier operating certificates and equipment. The temporary lease enabled Wells to continue Western's operations pending the issuance of an order by the Interstate Commerce Commission.

The two highway common carrier certificates involved were granted to Western by Decision 80189 dated February 8, 1972 in Application 44200; and by Decision 81798 dated August 28, 1973, as amended in Application 53977. Said certificates authorize the transportation of general commodities, with the usual exclusions, over an extensive area via numerous routes which include points in the Los Angeles Basin Territory as well as other points in southern California; also points in the San Francisco Bay Area, Santa Rosa, Chico and Placerville, on the north, and San Ysidro, on the south.

On March 15, 1977 the Interstate Commerce Commission (I.C.C.) issued its initial Decision in Docket No. MC-F-12313. Also, by its Order served August 24, 1977, the I.C.C. gave its approval to WELLS' application for authority to convert WESTERN's Certificates of Registration to direct I.C.C. certificates and to permanently transfer the aforesaid converted operating authorities to WELLS.

WELLS declares that the circumstances, which justified its temporary lease of WESTERN's authorities, continue to exist; that authorization for the transfer thereof would allow the permanent transfer of WESTERN's entire authority; and that it would allow WELLS

to acquire the equipment and other operating properties which are necessary to insure to the public the continued availability of service provided by WELLS under the temporary lease. WELLS has the operating experience, personnel and financial resources necessary to continue providing the transportation services formerly offered by WESTERN.

Attached to the application as Exhibit 2 is WELLS' balance sheet as of July 31, 1977. It shows total assets of \$6,794,846, total liabilities of \$3,714,684 and total stockholders' equity of \$3,080,162. Its statement of income for the seven months ended July 31, 1977 indicates a net income, after taxes, of \$170,787 from its highway operations.

WELLS proposes to adopt the same bureau tariff rates as those now published for WESTERN to cover its operations.

Applicant WELLS, the purchaser, asks that its California certificate, which was acquired through a transfer proceeding by Decision 67932 dated September 30, 1964 in Application 45562, be revoked since its certificated area of operations is entirely encompassed by and thus duplicates the operating rights of WESTERN, the transferor, in the southern California area.

After consideration, the Commission finds that:

1. The proposed transfer of the certificates granted by Decision 80189 and by Decision 81798 as amended by Decision 82346, as well as the specified equipment referred to in the application, would not be adverse to the California public interest and should be authorized.

2. The proposed promissory note, not to exceed \$124,000 in amount, is for a proper purpose.

3. The money, property or labor to be procured or paid for by the promissory note herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings, we conclude that the transactions proposed in the application, insofar as they do not affect the operating authorities issued by the Interstate Commerce Commission, should be granted as set forth in the ensuing order. A public hearing is not necessary. The order which follows will require purchaser to submit a proposed in-lieu certificate combining the two authorities of WESTERN, subsequent to the consummation of the sale and transfer referred to in the Purchase and Temporary Lease Agreements

attached to the application as Exhibits 5 and 6. After our review of the proposed in-lieu certificate, a final order will be issued revoking the WESTERN authorities transferred herein and issuing an in-lieu certificate to Wells Cargo, Inc., and also revoking the existing certificate held by the latter.

Inasmuch as both parties are desirous of consummating the transactions involved at the earliest possible date, and since there is no reason to delay the proposed transfer of the certificates and equipment, the Commission's order herein should be made effective on the date it is signed.

The action taken herein shall not be construed as a finding of the value of the certificates of public convenience and necessity and the specified equipment to be sold and transferred.

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

#### I N T E R I M   O R D E R

IT IS ORDERED that:

1. On or before July 1, 1978, Western Truck Lines, a California corporation, may transfer the operating rights granted it by Decision 80189 and by Decision 81798 as amended by Decision 82346; and the specified equipment, all as referred to in the application, to Wells Cargo, Inc., a Nevada corporation.
2. Within thirty days after the transfer, Wells Cargo, Inc., shall file with the Commission a written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.
3. Wells Cargo, Inc., 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 date of 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 80-Series. Failure to comply with the provisions of General Order 80-Series may result in cancellation of the operating authorities transferred by this decision.

4. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. Wells Cargo, 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.

6. Wells Cargo, 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.

7. Wells Cargo, 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.

8. Within 90 days after the date of the transfer, Wells Cargo, Inc. shall submit to this Commission a proposed in-lieu certificate of public convenience and necessity, consolidating and describing all of its newly-acquired highway common carrier operating authorities. Such proposed certificate shall reflect the current designations of highways and roads used to describe said authorities and shall not exceed, in any way, the scope of the authorities acquired from WESTERN. To the extent possible, Wells Cargo, Inc. shall, in submitting the

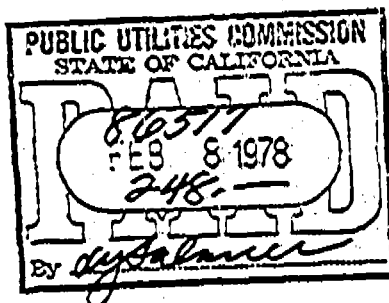
proposed in-lieu certificate, eliminate any overlapping or duplicate authority that may now exist.

9. On or after the effective date of this order and on or before July 1, 1978, for the purposes specified in this proceeding, Wells Cargo, Inc. may issue a promissory note in the principal amount of not exceeding \$124,000, and may execute and deliver an encumbering document, which document shall be in substantially the same form as that attached to the application.

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

11. The authority granted by this order to issue a promissory note and to execute and deliver an encumbering document will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$248. In other respects, the effective date of this order is the date hereof.

Dated at San Francisco, California, this 7th day of FEBRUARY, 1978.



Robert Batimand

President

William Lyons Jr.

Vernon L. Sturgeon

Richard D. Howell

Commissioners

Commissioner CLAIRE T. DEDRICK

Present but not participating.