

ORIGINAL

Decision No. 88570 MAR 7 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of:)BUDGIT TRUCK LINES)
A California Corporation)

--and--)

L. J. CERKUEIRA)
An Individual)
doing business as)
C-WAY EXPRESS)Application No. 57588
(Filed September 23, 1977)for authority to sell and trans-)
fer operating rights of a High-)
way Common Carrier, pursuant to)
the provisions of Section 851,)
et seq. of the California Public)
Utilities Code.)O P I N I O N

By their joint application, Budgit Truck Lines, a California corporation (transferor), seeks authority to sell and transfer, and L. J. Cerkueira, an individual doing business as C-Way Express (transferee), seeks authority to purchase and acquire a certificate of public convenience and necessity which authorizes operations as a highway common carrier.

The certificate involved herein was granted by Decision 51029 dated January 25, 1955 in Application 35393 and subsequently amended, along with numerous other decisions, by Decision 74082 which excluded from said certificate the transportation of "Trailer Coaches and Campers." The certificate authorizes the transportation of general commodities, with certain specified exclusions, between all points and places located in the San Francisco-East Bay Cartage Zone as defined therein. The intrastate certificate has been registered with the Interstate Commerce Commission by transferor under Docket No. MC-99396 to cover its coextensive interstate and foreign commerce operations in California.

Attached to the application is a "Purchase and Sale Agreement" entered into by applicants. It shows the total purchase price

of the operating authorities involved herein to be \$2,500, of which \$800 represents the California intrastate certificate and \$1,700 is for the coextensive interstate Certificate of Registration. The total consideration is payable in cash to transferor at the time of consummation of the proposed sale and transfer.

In support of the proposed sale and transfer, both applicants allege that:

- (a) their transfer application is not adverse to the public interest;
- (b) granting the proposed sale and transfer will have no significant impact upon the competitive relationships which now exist between for-hire truckers operating within the aforesaid cartage zone since only a transfer of existing operating rights rather than the grant of new rights is involved;
- (c) transferor entered into the aforesaid "Purchase and Sale Agreement" in order to allow its president and sole shareholder, Mr. C. G. Dunster, to retire from the company's trucking business due to his ill health; and
- (d) there will only be a negligible effect upon competing carriers inasmuch as no new certificated operating authority is involved.

Transferor is a party to various agency tariffs issued on its behalf by Pacific Coast Tariff Bureau, Agent, which tariffs are necessary for the publication of rates to cover its operations under the certificate involved herein. Transferee proposes to adopt those same tariffs upon approval and consummation of the transfer.

Both parties request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of such transfer applications. A copy of the application was served by mail on the California Trucking Association on September 23, 1977. Notice of the filing of the application appeared in the Commission's Daily Calendar of September 26, 1977. No protest to the granting of the application has been received.

After consideration, the Commission finds that:

1. The proposed sale and transfer of the certificate involved would not be adverse to the public interest.

2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

After consideration, the Commission concludes that the application should be granted. A public hearing is not necessary. The operating rights involved will be updated and restated in the form of a new certificate which will not broaden or change the interstate or foreign commerce rights heretofore held by the transferor. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Budgit Truck Lines, transferor, and the issuance of an "in lieu" certificate, in appendix form, to L. J. Cerkueira, an individual doing business as C-Way Express, transferee.

Transferee 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 transferred.

O R D E R

IT IS ORDERED that:

1. Budgit Truck Lines, a corporation, may sell and transfer the operative rights referred to in the application to L. J. Cerkueira, an individual doing business as C-Way Express. This authorization shall expire if not exercised by September 1, 1978, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the transfer, the transferee 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. Transferee 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 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 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 L. J. Cerkueira, an individual doing business as C-Way Express, 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 of this decision.

5. The certificate of public convenience and necessity granted to Budgit Truck Lines by Decision 51029 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Transferee 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. Transferee 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. Transferee shall comply with the requirements of the Commission's General Order 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 thirty days after the date hereof.

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

Robert B. Berman
President
William J. Quinn
Vernon L. Sturgeon
Charles D. Howell
Clair T. Smith
Commissioners

L. J. Cerkueira, an individual, 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 in the San Francisco-East Bay Cartage Zone as described in Note A hereof, subject to the following exceptions:

Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

1. Petroleum Products in bulk in tank vehicles.
2. Used household goods and personal effects 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).
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. Dangerous explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
5. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

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 88570, Application 57588.

NOTE A

SAN FRANCISCO-EAST BAY CARTAGE ZONE

The San Francisco-East Bay Cartage Zone includes the area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard to South Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of State Highway 82; thence southeasterly along an imaginary line one mile west of and paralleling State Highway 82 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence along said boundary line to U.S. Highway 101 (Bayshore Freeway); thence leaving said boundary line proceeding to the junction of Foster City Boulevard and Beach Park Road; thence northerly and easterly along Beach Park Road to a point one mile south of State Highway 92; thence easterly along an imaginary line one mile southerly and paralleling State Highway 92 to its intersection with State Highway 17 (Nimitz Freeway); thence continuing northeasterly along an imaginary line one mile southerly of and paralleling State Highway 92 to its intersection with an imaginary line one mile easterly of and paralleling State Highway 238; thence northerly along said imaginary line one mile easterly of and paralleling State Highway 238 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to Somerset Avenue; thence westerly along Somerset Avenue and 168th Street to Foothill Boulevard; thence northwesterly along Foothill Boulevard to the southerly boundary line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along said County Line to its intersection with Arlington Avenue (Berkeley); thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (State Highway 123); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue to its intersection with County Road 20 (Contra Costa County); thence westerly along County Road 20 to Broadway Avenue; thence northerly along Broadway Avenue to

Issued by California Public Utilities Commission.

Decision 88570, Application 57588.

San Pablo Avenue (State Highway 123) to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right-of-way and continuing westerly along the prolongation of Morton Avenue to the shoreline of San Pablo Bay; thence southerly and westerly along the shoreline and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line to the San Francisco waterfront at the foot of Market Street; thence westerly along said waterfront and shoreline to the Pacific Ocean; thence southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 88570, Application 57588.