

Decision No. 88639 MAR 21 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of WES-MAR TRANSPORTATION, INC.)
a California corporation, to)
purchase from MERCURY FREIGHT)
LINES, a California corporation,)
the certificate of public con-)
venience and necessity authorizing)
the transportation of general)
commodities, with specified)
exceptions, between points and)
places in the Los Angeles Basin)
Region.)

Application No. 57615
(Filed October 11, 1977)

O P I N I O N

Mercury Freight Lines, a California corporation (seller), seeks authority to sell and transfer its highway common carrier certificate of public convenience and necessity to Wes-Mar Transportation, Inc., a California corporation (purchaser), and the latter seeks authority to issue 40,000 shares of its no par value, common stock.

Mercury Freight Lines operates as a highway common carrier of general commodities with certain exceptions, between points and places in the Los Angeles Basin Region as described in Appendix A hereof. The certificate was granted pursuant to Decision 54300 dated December 18, 1956 in Application 35956 and acquired by Mercury Freight Lines by Decision 76128 dated September 3, 1969 in Application 51301, and is also the subject of a co-extensive Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-99991, Sub. No. 1.

By the terms of the agreement between the seller and purchaser dated September 30, 1977, the total selling price of the certificate is \$33,000. Of this sum \$20,000 is payable in cash upon consummation of

A. 57615 - HK

the transaction. The balance of \$13,000 is payable in installments of \$786.83 or more per month including interest at the rate of 8% per annum from the date of consummation until the total purchase price has been paid in full. No other asset is involved in this transaction.

Purchaser proposes to issue to its President and Chief Executive Officer, Charles E. Snydergaard, and its Vice President, Richard A. Swanson, a total of 20,000 shares each of its no par value common stock in consideration of a payment of \$20,000 each, for a total of \$40,000. This cash will be used for the initial capitalization of Wes-Mar Transportation, Inc. as well as for the initial \$20,000 payment for the certificate.

The application asserts that Charles W. Snydergaard and Richard A. Swanson are thoroughly familiar with the operation of motor vehicle equipment and the providing of highway carrier service. Initially the transferee proposes to operate with leased equipment and subhaulers in accordance with General Orders Nos. 102 and 130.

The applicants have requested a deviation from the Commission's Rules of Practice and Procedure which requires wide dissemination of the application and certify that a copy of the application was forwarded to the California Trucking Association. Notice of the filing of the application appeared in the Commission's Daily Calendar of October 12, 1977. A protest was received from Western Marine Express, Wilmington, California which alleged that it would be disadvantaged by the issuance of a certificate to a corporation whose corporate name was "confusingly misleading and deceptively similar to the protestant's name."

With respect to the foregoing, the Commission disposed of a similar protest by stating in Decision 79433 dated December 7, 1971 in Application No. 52593:

"Where, as here, a change of corporate name is effected pursuant to statutory provisions and is evidenced by a certificate of the Secretary of State, and a competing carrier, "System 99", alleges that applicant, by such change, is

attempting to use a deceptive trade name, "System 101", which would infringe upon protestant's rights to use its name, the Commission lacks jurisdiction to adjudicate such alleged improper use of a trade name. The Commission merely receives the changed name and causes its records to reflect the change. Contentions made concerning the attempted unfair use of the changed name and the competitive effect thereof, should be raised in and resolved by a Court having appropriate jurisdiction." (emphasis added)

In the circumstances, the protest filed herein will not be considered in the disposition of this proceeding.

The Commission, however, has received a letter from the purchaser's attorney stating that it was the intention of Wes-Mar Transportation, Inc. to change its corporate name to "Pacific Ports Transportation, Inc." as soon as the transaction has been approved by this Commission and the Interstate Commerce Commission.

Seller is a party to Western Motor Tariff Bureau, Agent, tariff publications to provide rates for operations under the certificate to be transferred. Purchaser proposes to adopt the tariffs.

After consideration the Commission finds:

1. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.
2. The Commission lacks jurisdiction to adjudicate the assertion of Western Marine Express that the purchaser is attempting to use a similar business name to wit "Wes-Mar Transportation, Inc.," which would infringe on Western Marine Express's right to the use of its name.
3. The proposed issuance of stock is for a proper purpose.
4. The money, property or labor to be procured or paid for by the issuance of stock 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.
5. The proposed sale and transfer would not be adverse to the public interest.

The Commission concludes that the application should be granted as applied for. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the certificate to be sold and transferred. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Mercury Freight Lines and the issuance of a certificate in appendix form to Wes-Mar Transportation, Inc. The certificate will be restated but such restatement will not change or broaden the authority 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 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

IT IS ORDERED that:

1. Mercury Freight Lines, a California corporation, may sell and transfer the operating rights referred to in the application to Wes-Mar Transportation, Inc., a California corporation. This authority shall expire if not exercised by December 31, 1978 or within such additional time as may be authorized by the Commission.
2. Wes-Mar Transportation, Inc., on or after the effective date hereof and on or before December 31, 1978, for the purpose specified in the application, may issue not to exceed 40,000 shares of its no par value common capital stock to its President and Chief Executive Officer, Charles S. Snydergaard and its Vice President, Richard A. Swanson, in the amount of 20,000 shares each, in consideration of the payment of \$20,000 each for a total of \$40,000.

3. Wes-Mar Transportation, Inc. shall file with the Commission a report required by General Order No. 24-B which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the transfer, the purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

5. Purchaser 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 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 a cancellation of the operating authority granted by this decision.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, a certificate of public convenience and necessity is granted to Wes-Mar Transportation, Inc., a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between points within the area set forth in Appendix A, attached hereto and made a part hereof.

7. The certificate of public convenience and necessity granted by Decision 54300 dated December 18, 1956 in Application 35956 and acquired by Mercury Freight Lines, a California corporation, pursuant to Decision 76128 dated September 3, 1969 in Application 51301 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5 hereof.

8. Purchaser shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

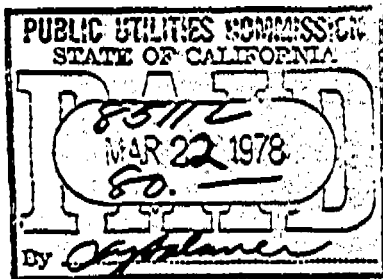
9. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

10. Purchaser shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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

12. The authority granted in this order to issue stock shall become effective when Wes-Mar Transportation, Inc., has paid the fee prescribed by Section 1904.1 of the Public Utilities Code which fee is \$80. In other respects the effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 21st day of MARCH, 1978.



Robert B. Baker
President
William Seymour Jr.
Virginia L. Sturgeon
Robert D. Howell
Clare J. Sedwick
Commissioners

Wes-Mar Transportation, Inc., 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 as follows:

- I. Between all points and places in the Los Angeles Basin Region as described in Note A hereof.

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. 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.

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Decision 88639, Application 57615.

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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.
10. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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.

NOTE A

LOS ANGELES BASIN REGION

Los Angeles Basin Region includes all points and places within the following boundary: Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean, thence along the westerly and northerly boundaries of said City to its point of first intersection with the southerly boundary of Angeles National Forest, thence along the southerly boundary of Angeles and San Bernardino National Forests to the point of intersection of said southerly boundary of the San Bernardino National Forest and the San Bernardino-Riverside County Line, thence in a southerly and westerly direction along said County boundary to a point thereon distant 5 statute miles east of the intersection of said county

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Decision 88639, Application 57615.

boundary and State Highway 91, thence generally southerly and southwesterly along a line generally paralleling and distant 5 statute miles from State Highway 91, State Highway 55, Interstate Highway 5, State Highway 133 (Laguna Canyon Road), and the prolongation thereof to the Pacific Ocean, thence along the coastline of the Pacific Ocean to the point of beginning.

(END OF APPENDIX A)

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Decision 88639, Application 57615.