

Decision No. 88903 MAY 31 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the application )  
of JAMES WILLIAM LIVESAY and DANIEL )  
GEORGE HOXTER doing business as )  
GOLDEN BAY FREIGHT LINES, a limited )  
partnership to transfer to, and of )  
JAMES WILLIAM LIVESAY, an individ- )  
ual, to acquire, a common carrier )  
certificate and operation. )

Application No. 57798  
(Filed January 13, 1978)

O P I N I O N

James William Livesay, a general partner, and Daniel George Hoxter, a limited partner, doing business as Golden Bay Freight Lines, (sellers), request authority to sell and transfer, and James William Livesay, an individual (purchaser), requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier.

Said certificate was granted by Decision 86236 dated August 10, 1976 in Application 56488. The certificate is registered with the Interstate Commerce Commission in Docket MC-120708, (Sub No. 1), dated March 6, 1964 and authorizes the transportation of general commodities, with the usual exceptions, over certain highways in San Francisco Territory, and between said territory and Saratoga and Los Gatos. The sellers also hold permitted highway carrier authority issued by this Commission in File No. T-114,131. Transfer of the permitted authority is subject to the filing of a separate application with this Commission.

Because of irreconcilable differences between them, the sellers have agreed to dissolve their limited partnership. The agreement, filed as Exhibit IV of the application, provides that the operation of the enterprise will be continued by the purchaser, who is to pay Daniel George Hoxter the sum of \$25,898.80 for all of his rights, title and interest in the limited partnership. Said sum is to be paid with a lump sum payment of \$5000 upon the effective date of the agreement, and thereafter with 104 equal weekly payments of \$200.95 each.

As evidence of the foregoing, purchaser has executed a promissory note in favor of Daniel George Hoxter which is filed as part of Exhibit IV of the application.

It is alleged that approval of their transfer will assure the continuity of this carrier's service to the public. Sellers are a party to Pacific Motor Tariff Bureau, Agent, tariff publications. Purchaser proposes to adopt said tariffs. Applicants have requested a deviation from the Commission's Rules of Practice and Procedure which require wide dissemination of the application. Notice of the application was published in the Commission's Daily Calendar of January 16, 1978 and a copy of the application was furnished to the California Trucking Association. No protests to the application have been received.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and that deviation from the Commission's Rules of Practice and Procedure, as requested in the application, should be granted.

On the basis of the foregoing findings we conclude that the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by James William Livesay and Daniel George Hoxter, a limited partnership, doing business as Golden Bay Freight Lines, and the issuance of a certificate in appendix form to James William Livesay, an individual.

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.

O R D E R

IT IS ORDERED that:

1. James William Livesay and Daniel George Hoxter, a limited

partnership, doing business as Golden Bay Freight Lines, may sell and transfer the operative rights referred to in the application to James William Livesay, an individual. This authority shall expire if not exercised by December 31, 1978 or within such additional time as may be authorized by the Commission.

2. 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.

3. 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 he has adopted or established, as his 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 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 James William Livesay, an individual, doing business as Golden Bay Freight Lines, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision 86236 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. 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.

7. Purchaser 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. 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, he shall make the appropriate tariff filings as required by the General Order.

9. Deviation from the Commission's Rules of Practice and Procedure is granted as requested in the application.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 31st day of May, 1978.

Robert Bateman  
President

William S. Jones

James L. Ferguson

Richard D. Howell

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

James William Livesay, 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 on and within five statute miles of the following routes:

1. U.S. Highway 101 and State Highway 82 between San Francisco and San Jose, both inclusive.
2. State Highway 17 between Richmond and Los Gatos, both inclusive.
3. Interstate Highway 580, State Highway 238, Interstate Highway 680, State Highway 237 and State Highway 85 between Oakland and Saratoga, both inclusive.

Carrier may serve between any two points named in this appendix whether named in one or more than one of the three numbered paragraphs 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.

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).

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JAMES WILLIAM LIVESAY  
(an individual)  
doing business as  
GOLDEN BAY FREIGHT LINES

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.
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. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

(END OF APPENDIX A)

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