

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of: )

(a) CALIFORNIA-PACIFIC FREIGHT, )  
INC., a California corporation, to )  
purchase from S & M FREIGHT LINES, )  
a California corporation, that )  
portion of a certificate of public )  
convenience and necessity autho- )  
rizing the transportation of )  
general commodities, with )  
specified exceptions, between )  
points in the Los Angeles Basin )  
Area and Indio, serving inter- )  
mediate points. )

Application No. 58114  
(Filed June 2, 1978)

(b) CALIFORNIA-PACIFIC FREIGHT, )  
INC., a California corporation, to )  
issue shares of its common capital )  
stock. )

O P I N I O N

By their joint application, S & M Freight Lines, a California corporation (S & M), seeks authority to sell and transfer; and California-Pacific Freight, Inc., also a California corporation (CAL-PAC), asks for authority to purchase and acquire the remaining portion of S & M's highway common carrier certificate of public convenience and necessity.

The certificate portion involved herein is all that remains of the certificate granted to S & M by this Commission's Decision 26264 dated January 11, 1977 in Application 56821, as amended by Decision 88902 dated May 31, 1978 in Application 57392, the last transfer proceeding involving S & M's certificate prior to this one. S & M's remaining certificate authority authorizes the transportation of general commodities, with certain specified exclusions, between all points in the Los Angeles Basin Area, on the one hand, and Indio, on the other hand, via Interstate Highway 10 and State Highway 111, consecutively, serving all

intermediate points on and within five(5) statute miles laterally of said highways.<sup>1</sup> The aforesaid portion of S & M's certificate has also been registered with the Interstate Commerce Commission under Docket No. MC-10381 (Sub No. 3) which authorizes coextensive interstate and foreign commerce operations in California. S & M also holds radial highway common carrier and highway contract carrier permits issued to it by this Commission in File T-61,895. If the proposed sale of its remaining certificate authority is approved herein, S & M intends to conduct only highway permit carrier operations in the future.

California-Pacific Freight, Inc. is a newly formed, non-carrier California corporation located in Santa Ana. A certified copy of its Articles of Incorporation was filed with this application as Exhibit "A". It is desirous of obtaining authority to engage in the for-hire transportation business within California as a common carrier by motor vehicle transporting general commodities in intrastate as well as interstate and foreign commerce. In regard to the interstate and foreign commerce authority involved, both applicants herein have also made joint application to the Interstate Commerce Commission (I.C.C.), under Docket No. 10381 (Sub No. 3), for an I.C.C. order authorizing the transfer of S & M's Certificate of Registration (a portion) to CAL-PAC.

Attached to the application as Exhibit "B" is a copy of the "Agreement" and the "Assignment of Agreement" between the parties involved. The assignment of the initial agreement merely assigns or conveys to California-Pacific Freight, Inc., the subsequently formed corporation as assignee, the same rights, title and interest formerly held by James M. McCormick, as assignor, who is now the president and chief executive officer of the new corporation.

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<sup>1</sup>When the former highways involved in this portion of S & M's certificate were last updated and redesignated, State Highway 111 was inadvertently omitted therefrom. At the request of applicants, said highway will be included in the certificated authority involved in this proceeding.

The agreement provides for the sale and transfer of the remaining portion of S & M's California certificate to CAL-PAC for the purchase price of \$15,000. Terms of payment specify installments of \$500 or more per month, including interest at the rate of 8½% per annum on the unpaid principal, until full payment has been made. The agreement also provides that the total payments of principal for the first calendar year shall not exceed \$4,400. No other asset is involved in the proposed sale.

CAL-PAC also seeks authority to issue to James M. McCormick, its president and chief executive officer, 5,000 shares of its common capital stock in consideration for the payment of \$5,000 cash, which money will then be used for the corporation's initial capitalization as reflected in that company's pro forma balance sheet attached to the application. CAL-PAC declares that it contemplates leasing truck equipment as well as using the services of subhaulers to perform its operations, thus eliminating the necessity and cost of purchasing its own truck equipment. Consequently, CAL-PAC asserts that it will be able to retain the initial \$5,000, received from the sale of its stock, as working capital which should be adequate to establish and maintain operations for a period of at least six months. In the event that additional working capital is required, James M. McCormick states that he proposes to make such funds available to CAL-PAC by means of a cash loan to the corporation secured by a demand note.

In support of the proposed sale and transfer of S & M's remaining certificated operating authority to CAL-PAC, both parties allege that:

- (a) The proposed transfer will assure continued adequate service to the shipping public;
- (b) There will be no change in the competitive relationship which exists among highway common carriers for the reason that CAL-PAC will simply replace S & M as a general commodity carrier.

between the points served under the certificate portion involved herein;

(c) There will be no change in the transportation rates and other charges now being assessed the shipping public;

(d) S & M experienced a net operating loss in the amount \$18,390.50 for the calendar year 1977, largely attributable to the major health problems of both of its principal corporate officers which precluded them from effectively managing the operations of the corporation (S & M) and this ultimately led to the prior partial sales of its operating authority, with the sale proposed herein constituting the last portion thereof; and

(e) Purchase of the stated portion of S & M's certificate by CAL-PAC will result in the purchasing carrier having a more sound financial position which should result in a permanent, efficient and profitable general commodity highway common carrier service.

S & M is a party to various agency tariffs issued on its behalf by the Western Motor Tariff Bureau, Inc., Agent, which tariffs contain the prescribed rates which cover its operations under the certificated authority involved herein. CAL-PAC proposes to adopt those same tariffs upon approval and consummation of the proposed transfer.

S & M, the selling carrier, requests a waiver of the provisions of the Commission's Rules of Practice and Procedure which require a wide dissemination of such transfer applications. A copy of the application was served by mail on the Burlingame and Los Angeles offices of the California Trucking Association on May 31, 1978. Notice of the filing of the application under consideration herein appeared in the Commission's Daily Calendar of June 7, 1978. 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 authority would not be adverse to the public interest.

2. The proposed issuance of stock and the promissory note is for a proper purpose.

3. The money, property or labor to be procured or paid for by the proposed issuance of stock and the promissory note authorized herein is reasonably required for the purposes specified in the application, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. The requested waiver of the Commission's Rules of Practice and Procedure regarding service of such applications should be authorized.

On the basis of the foregoing findings, the Commission concludes that the application should be granted. A public hearing is not necessary. The operating rights involved will be corrected and restated in the form of a new certificate, which restatement will not broaden or change the interstate or foreign commerce rights heretofore held by S & M, the selling carrier.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by S & M Freight Lines and the issuance of a new certificate, in appendix form, to California-Pacific Freight, Inc., the purchaser thereof.

California-Pacific Freight, 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 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. S & M Freight Lines, a California corporation, may sell and transfer the intrastate operative rights referred to in the application to California-Pacific Freight, Inc., a California corporation. This authorization shall expire if not exercised by March 1, 1979, or within such additional time as may be authorized by the Commission.

2. California-Pacific Freight, Inc., on or after the effective date of this order and on or before March 1, 1979, for the purposes specified in the application, may issue not exceeding 5,000 shares of its common capital stock to James M. McCormick at a total stated value of \$5,000; and also a note in the principal amount of not exceeding \$15,000, payable to S & M Freight Lines, which note shall be in substantially the same form as that shown in the application.

3. California-Pacific Freight, Inc. shall file with the Commission the reports 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, California-Pacific Freight, Inc. 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.

5. California-Pacific Freight, Inc. shall adopt, 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 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.

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 California-Pacific Freight, Inc. authorizing it 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 of this decision.

7. The certificate of public convenience and necessity granted to S & M Freight Lines by Decision 86864, as amended by Decision 88902, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

8. California-Pacific Freight, Inc. shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

9. California-Pacific Freight, 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.

10. California-Pacific Freight, Inc. shall comply with the requirements of the Commission's General Order No. 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.

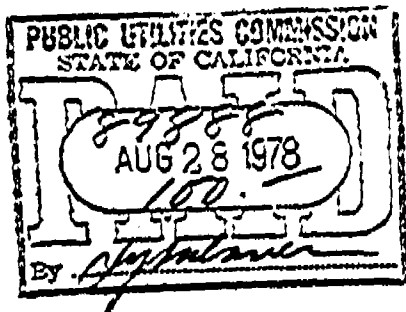
11. The applicants are granted a waiver from the Commission's Rules of Practice and Procedure to the extent requested in the application.

12. The authority granted by this order to issue capital stock and a promissory note shall become effective when California-Pacific Freight, Inc. has paid the fees prescribed by Sections 1904.1 and 1904(b) of the Public Utilities Code, which minimum fees are \$50 and \$50, respectively, or a total of \$100. In all other respects, the effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 22nd  
day of AUGUST, 1978.

Robert Babcock  
President  
William S. Brown  
Thomas L. Sturgeon

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Commissioners



Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

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



California-Pacific Freight, 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 general commodities as follows:

Between all points and places in the Los Angeles Basin Area as described in Note A hereof, on the one hand, and on the other hand, Indio via Interstate Highway 10 and State Highway 111 serving all intermediate points on said highways and all points laterally within five statute miles of said highways between the Los Angeles Basin Area and Indio.

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,

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lamb, 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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
8. Logs.

## NOTE A

## LOS ANGELES BASIN AREA

Los Angeles Basin Area includes the area embraced by the following boundary:

Beginning at the intersection of State Highway 27 and State Highway 1; northerly on State Highway 27 to U.S. Highway 101; westerly on U.S. Highway 101 to a point where the city limits of the City of Los Angeles are intersected thereby; northerly and easterly along said city limits of Los Angeles to a point from which an imaginary line drawn easterly intersects Interstate Highway 405; easterly from such point along such imaginary line to Interstate Highway 405; southerly along Interstate Highway 405 to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; thence northeasterly along McClay Avenue and its prolongation to the

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Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to State Highway 38; westerly along State Highway 38 to Bryant Street north of Yucaipa; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to and including the City of Redlands; westerly along Interstate Highway 10 to Interstate Highway 15; southerly along Interstate Highway 15 to Alessandro near March Air Force Base; westerly along Van Buren Boulevard to Arlington; southwesterly along Magnolia Avenue to State Highway 91; southwestwesterly and westerly along State Highway 91 to State Highway 55; southerly along State Highway 55 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 the point of beginning.

Included within the territory immediately above described are all places within the corporate limits of any city which is bisected by state and interstate highways and county roads constituting the boundary of such territory between Yucaipa and Newport Beach.

(END OF APPENDIX A)

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