

Decision No. 90173 APR 10 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of)

TOMMY L. APPLETON, an individual,)
doing business as APP'S DELIVERY)
SERVICE, for authority to acquire)
a certificate of public conven-)
ience and necessity as a highway)
common carrier from T.P. DRAYAGE,)
INC., a California corporation.)

Application No. 58589
(Filed January 10, 1979)

O P I N I O N

T. P. Drayage, Inc., a California corporation (seller), requests authority to sell and transfer and Tommy L. Appleton, an individual doing business as APP'S DELIVERY SERVICE, (purchaser), requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier. The certificate was granted to the seller by Decision 85637 dated March 30, 1976 in Application 56216. It authorizes the transportation of general commodities, with the usual exceptions, between all points in the San Francisco Territory. The certificate is the subject of a Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-FC-76375. Seller also operates pursuant to permits issued by this Commission under File T-81,794. Disposition of these permits is not part of this transaction.

Purchaser proposes to purchase the highway common carrier certificate for the sum of \$6,000 of which \$3,000 is for the intrastate authority and \$3,000 for the interstate Certificate of Registration. The purchase price will be paid as follows: \$3,000 to be paid upon consummation and the balance of \$3,000 to be paid in twelve equal monthly installments commencing one month following consummation, together with interest on each thereof at the rate of seven percent per annum.

Purchaser presently holds a radial highway common carrier permit issued by this Commission in File T-109,006. He operates eight highway vehicles in his business. His balance sheet of September 31, 1978 shows a net worth of \$13,610 which amount does not include accounts receivable of \$5,284 and accounts payable of \$979. Such amounts were excluded because purchaser's business is on a cash accounting basis.

According to the application, seller has decided to discontinue the operations herein proposed to be transferred. Thus, the sale of the certificate will permit the orderly liquidation of this part of seller's business. The grant of this application will permit purchaser to render a responsive service to its shippers and enlarge the scope of its activities which it cannot now readily do. Hence, purchaser's shippers will have the benefit of its service as a highway common carrier with the corresponding responsibility.

Seller is a party to Pacific Coast Tariff Bureau, Agent, tariff publications to provide rates and rules for the operations under the certificate to be transferred. Purchaser will be required to adopt the tariffs.

Pursuant to the Commission's Rules of Practice and Procedure, a printed notice containing a brief summary of the subject application was mailed by applicant's counsel on January 18, 1979 to numerous common carriers in this State. Public notice of the filing of the application herein appeared in the Commission's Daily Calendar of January 12, 1979. No protest to the application has been received.

After consideration, the Commission finds that the proposed sale and transfer of the operating rights would not be adverse to the public interest and that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The Commission concludes the application should be granted as set forth in the ensuing order. The order which

follows will provide for, in the event the transfer is completed, the revocation of the certificate held by T. P. Drayage, Inc., and the issuance of an in-lieu certificate in appendix form to Tommy L. Appleton.

Purchaser is placed on notice that operating rights, as such, do not constitute a class of property which may be used as an element of value in rate fixing for any amount of money in excess of that 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 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 authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. T. P. Drayage, Inc., a California corporation, may sell and transfer the operating rights referred to in the application to Tommy L. Appleton, an individual, doing business as App's Delivery Service. This authorization shall expire if not exercised by December 31, 1979, 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 a 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 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 Tommy L. Appleton, an individual, 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, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision 85637 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules of the California Highway Patrol, and 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.

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

Dated at San Francisco, California, this 10th day of APRIL, 1979.

John E. Boyson
President
Leonard L. Stanger
Robert W. Givale
Walter J. Friedrich
James M. Gering
Commissioners

Tommy L. Appleton, 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:

1. Between all points and places in the San Francisco Territory as described in Note A.

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, briefcases, 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.

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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. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.
10. Fresh fruits or vegetables.

Note A

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along

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the Southern Pacific Company right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestery along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the campus boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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