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MAY 22 1979

ORIGINAL

Decision No. 90335

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of NAVAJO FREIGHT LINES,)
 INC., a New Mexico corporation, and)
 ARKANSAS-BEST FREIGHT SYSTEM, INC.,)
 an Arkansas corporation, for authority)
 to transfer the former's certificate)
 of public convenience and necessity)
 to operate as a highway common)
 carrier to the latter pursuant to)
 §§ 851-854 of the California Public)
 Utilities Code.)

Application No. 58757
 (Filed March 22, 1979)

O P I N I O N

Navajo Freight Lines, Inc. (transferor), a New Mexico corporation, seeks authority to sell and transfer and Arkansas-Best Freight System, Inc. (transferee), an Arkansas corporation, seeks authority to acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier (with exceptions) between points bounded by the San Francisco Bay area, Fresno, and Sacramento and between the Los Angeles Basin Territory and San Diego and Oceanside. The certificate was granted by Decision No. 84967 in Application No. 55821.

Transferee, a wholly owned subsidiary of Arkansas-Best Corporation, a Delaware corporation, is authorized to operate in interstate and foreign commerce as a common carrier of general and specific commodities over regular and irregular routes pursuant to Certificate No. MC-29910 (and subs) issued by the Interstate Commerce Commission (ICC). Transferee has no present intrastate operating authority in California.

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An Agreement of Sale and Purchase of Stock was entered into on April 1, 1978 between applicants which, inter alia, provided for the sale of stock by transferor which ultimately resulted in the surviving corporation being transferee. A copy of that agreement is attached to the application as Exhibit C, and an amendment thereto dated May 16, 1978 is attached as Exhibit D. Pursuant to ICC orders issued in Docket No. MC-F-13608, the merger of transferor into its parent, and of the parent into transferee, was accomplished on December 31, 1978.

Transferee had a net worth of \$25,979,600 as of December 31, 1978. The application states that transferee stands ready, willing, and able to operate any and all authority issued to it by this Commission. The application indicates that with transferee's greater resources, capital structure, and favorable operating ratio, the transfer of the operating authority to transferee will ensure a more efficient operation of the intrastate operating authority.

The notice of the filing of the application appeared on the Commission's Daily Calendar of March 26, 1979. No protest has been received. Applicants request that Rule 37 of the Commission's Rules of Practice and Procedure concerning notice to other carriers be waived inasmuch as the merger authorized by ICC Docket No. MC-F-13608 has been completed.

Findings and Conclusion

1. Transferee has adequate financial resources and personnel to conduct the operations to be transferred.

2. Rule 37 of the Commission's Rules of Practice and Procedure concerning notice to other carriers should be waived inasmuch as the merger authorized in ICC Docket No. MC-F-13608 has been completed.

3. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

4. The proposed transfer will not be adverse to the public interest.

We conclude that the application should be granted. A public hearing is not necessary. The order which follows will provide for the revocation of the certificate presently held by transferor and the issuance of an in lieu certificate in appendix form to 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 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 value of the rights authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. Navajo Freight Lines, Inc., a New Mexico corporation, may transfer the operative rights referred to in the application to Arkansas-Best Freight System, Inc., an Arkansas corporation. This authorization shall expire if not exercised by October 1, 1979, 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 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 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 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 Arkansas-Best Freight System, Inc., an Arkansas corporation, authorizing it 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 No. 84967 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Transferee shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Transferee 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 March 31 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.

8. Transferee shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If transferee elects not to transport collect on delivery shipments, it 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 22nd day of MAY, 1979.

John E. Byers
President
James L. Thompson
Donald D. Howell
James H. Smith
Commissioners

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

Appendix A ARKANSAS-BEST FREIGHT SYSTEM, INC. Original Page 2
(an Arkansas corporation)

- f. State Highway 99 between Fresno and Sacramento, inclusive.
 - g. State Highway 120 between its junction with Interstate Highway 5 near Lathrop and Oakdale, inclusive.
 - h. State Highway 33 and Interstate Highway 5 between the junction of Interstate Highway 5 and Interstate Highway 205 near Tracy and Mendota, inclusive.
 - i. State Highway 180 between Mendota and Fresno, inclusive.
 - j. State Highway 152 between Los Banos and Califa, inclusive.
 - k. State Highway 140 between Gustine and Merced, inclusive.
- 4. Through routes and rates may be established between any and all points described in paragraphs 2 and 3, a through k, above.
 - 5. Carrier may use any and all highways and roads between the areas described for operating convenience only.
 - 6. Between Stockton, on the one hand, and Manteca, on the other hand, using any and all highways and roads between such points.
 - 7. Between all points and places in the Los Angeles Basin Territory, as described in Note C hereto, on the one hand, and San Diego and Oceanside, on the other hand, via Interstate Highway 5.

Restriction: To the extent of any duplication of the operative rights authorized herein, such operative rights may not be separated to permit Arkansas-Best Freight System, Inc., to sell or transfer one portion of this certificate authority and retain another portion of this certificate authority to perform the same service.

Applicant shall not transport any shipments of:

- 1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item 5 of Minimum Rate Tariff No. 4-B.

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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.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
5. 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.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.
9. Commodities requiring special equipment and handling because of unusual size, weight, or shape.
10. Articles of extraordinary value as set forth in Rule No. 3 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.
11. Trailer coaches and campers, including integral parts and contents where the contents are within the trailer coach or camper.

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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

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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.

Note B

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 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; southwestwesterly 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

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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.

Note C

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State

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Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

(END OF APPENDIX A)

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