

ORIGINALDecision No. 90459 JUN 19 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of O.N.C. FREIGHT SYSTEMS, a Nevada corporation, and MC LEAN TRUCKING COMPANY, a North Carolina corporation, for authority to lease and/or transfer the Certificate of Public Convenience and Necessity to operate as a Highway Common Carrier, issued to O.N.C. FREIGHT SYSTEMS by the California Public Utilities Commission, pursuant to §§851-854, and such other provisions of the California Public Utilities Code as are applicable.

Application No. 58867
(Filed May 14, 1979)

O P I N I O N

O.N.C. Freight Systems (seller), a Nevada corporation, requests authority to sell and transfer and McLean Trucking Company (purchaser), a North Carolina corporation, authorized to do business in California, requests authority to purchase and acquire certificated rights authorizing operations as a highway common carrier.

The certificate was granted by Decision No. 87821 dated September 7, 1977, in Application No. 57377, as amended by Decision No. 88302 dated January 10, 1978, and authorizes the transportation of general commodities, with certain exceptions, between points in northern California.

The agreement of sale covers the sale and transfer of interstate as well as intrastate authority issued by various states. Pursuant to Section 5 of the Interstate Commerce Act, the entire transaction is subject to the exclusive jurisdiction of the Interstate Commerce Commission (ICC). On April 12, 1979, the ICC authorized

purchaser to lease the operating rights of seller until such time as a final determination of the application for authority to transfer can be made.

The agreed purchase price for all certificated authority and property is \$52,009,000. Seller will assume long-term debt in the amount of \$47,430,000 and miscellaneous credit in the amount of \$130,000. The balance of \$4,449,000 will be paid with a down payment of \$500,000 and an installment note in the amount of \$3,949,000. The rent for lease of the property to be purchased is \$375,000 per month, of which \$287,500 per month will be applied as a credit against the purchase price when the agreement is consummated.

~~Purchaser~~ is presently authorized to operate in interstate and foreign commerce but holds no intrastate authority in California. As of November 30, 1978, purchaser indicated a net worth in the amount of \$105,127,670.

It is alleged that for most of its 18 years as a regional carrier seller was financially successful, but since its territorial expansion to transcontinental status, it has declined since 1974 to a place where, without prompt relief, bankruptcy appears imminent; and in order that the public may continue to experience adequate service pursuant to such authority as has been granted by this Commission, and other regulatory bodies, it is necessary that the authority be transferred as proposed.

Applicants have requested that Rule 37 of the Commission's Rules of Practice and Procedure relating to service on existing carriers be waived. Notice of the application was listed in the Commission's Daily Calendar on May 15, 1979. No protest to the application has been received. Applicants further request that the authority for the temporary lease of the operating rights be effective immediately.

Findings of Fact

1. After consideration the Commission finds that the proposed lease and transfer would not be adverse to the public interest. A public hearing is not necessary.

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

Conclusions of Law

1. The application should be granted as provided in the order which follows.

2. In the event the transfer is approved by the ICC, the certificate granted by Decision No. 87821, as amended by Decision No. 88302, should be revoked and an in lieu certificate in appendix form should be issued to purchaser.

3. Because of the proposed lease the effective date of this order should be the date of signature.

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 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.

O R D E R

IT IS ORDERED that:

1. Upon approval of the Interstate Commerce Commission and effective therewith, O.N.C. Freight Systems may sell and transfer the operative rights referred to in the application to McLean Trucking Company.

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 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. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in paragraph 2 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 4, a certificate of public convenience and necessity is granted to McLean Trucking Company 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.

6. The certificate of public convenience and necessity granted by Decision No. 87821, as amended by Decision No. 88302, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Purchaser 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.

8. 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.

9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

10. Pending final order of the Interstate Commerce Commission in this application to transfer, McLean Trucking Company may lease from O.N.C. Freight Systems, the operating authority granted by Decisions Nos. 87821 and 88302 according to the terms and conditions as set forth in Appendix D of the application.

11. Within thirty days after the effective date hereof and on not less than one day's notice to the Commission and the public, applicant lessee shall amend the tariffs presently on file with this Commission in the name of the applicant lessor to reflect the lease authority granted by Ordering Paragraph 10 hereof.

12. The provisions relating to notice as set forth in Rule 37 of the Commission's Rules of Practice and Procedure are waived.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th day of JUNE, 1979.

John E. Byron
President
George L. Thompson
Robert P. Howell
Clare J. Dudrick
James W. Green
Commissioners

McLean Trucking Company, 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 San Francisco Territory as described in Note A and between the San Francisco Territory, on the one hand, and:
 - a. Sacramento and all points located within a radius of twenty statute miles of Sacramento, on the other hand.
 - b. Points on Interstate Highway 5 between Red Bluff and the California-Oregon State Line, including Red Bluff, on the other hand.
 - c. Points on U.S. Highway 97 between Weed and the California-Oregon State Line, on the other hand.
- II. Between all points and places on and within ten statute miles laterally of the following highways (See Exception):
 1. Saratoga-Sunnyvale Road between Cupertino and Saratoga, inclusive;
 2. State Highway 17 between Campbell and Los Gatos, inclusive;
 3. U.S. Highway 101 between San Francisco and Novato inclusive;
 4. Interstate Highway 80 between Richmond and Sacramento, inclusive;
 5. Interstate Highways 580, 205 and 5 between Hayward and Stockton and State Highway 99 between Stockton and Sacramento, inclusive;
 6. State Highway 4 between Pinole and Stockton, inclusive;
 7. State Highway 24 between Oakland and its intersection with State Highway 4 and State Highway 160 between its intersection with State Highway 4 and Sacramento, inclusive;

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8. State Highway 21 between Cordelia and its intersection with Interstate Highway 680 and between that point and Mission San Jose via Interstate Highway 680, inclusive;
9. State Highway 12 between Fairfield and Lodi, inclusive; and,
10. Unnumbered highway between Concord and Byron, inclusive.

Exception: The ten statute mile extension above noted shall not apply north of Novato.

- III. A. Between Sacramento and all points located within a radius of twenty statute miles of Sacramento, on the one hand, and Red Bluff and all intermediate points on the following named highways, on the other hand:
1. Interstate Highway 80 between Sacramento and Roseville, State Highway 65 between Roseville and Marysville and State Highway 99 between Marysville and Red Bluff, inclusive;
 2. State Highway 16 between Sacramento and woodland, inclusive;
 3. Interstate Highway 5 between Woodland and Red Bluff, inclusive.
- B. Between Sacramento and Redding, on the one hand, and on the other hand, intermediate points between Redding and the California-Oregon State Line on Interstate Highway 5 and State Highway 97, with two statute mile laterals.
- C. Between Oleum, on the one hand, and, on the other hand, Redding and all Points north of Redding to and including the California-Oregon State Line.
- D. Between Redding and Keswick Dam and intermediates within three statute miles laterally.
- E. Live and/or dressed poultry from Corning, Orland, Willows, Maxwell and Williams, on the one hand, to Oakland and San Francisco, on the other hand.

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- IV. Through routes and rates may be established between any and all points and places specified in Paragraphs I and II above.

Except that pursuant to the authority herein granted carrier shall not transport any shipments:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, 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.
5. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
6. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
7. Articles of extraordinary value.

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

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 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; southwestly 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.

(END OF APPENDIX A)

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