

Decision No. 90722 AUG 28 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of PENGUIN TRUCKING CO., INC., a  
California corporation, to transfer  
its certificate of public conven-  
ience and necessity as a highway  
common carrier to DREISBACH  
ENTERPRISES, INC., a California  
corporation, by means of a merger,  
pursuant to the provisions of  
Section 854 of the Public Utilities  
Code of the State of California.

Application No. 58922  
(Filed June 7, 1979)

O P I N I O N

Penguin Trucking Co., Inc. (Penguin), a California corporation, seeks authority herein to merge into Dreisbach Enterprises, Inc. (Dreisbach), a California corporation, and to transfer to Dreisbach its certificate of public convenience and necessity as a highway common carrier.

The merger of Penguin into Dreisbach is part of a reorganizational effort to reduce to a single entity those operations that, in the past, have been conducted under three separate corporate entities, all with a unity of ownership. It is contemplated by the applicant that the completed merger will occur in the following manner: Dreisbach Export Packing Co., Inc. will be merged into Dreisbach Cold Storage Company (the name of which will simultaneously be changed to Dreisbach Enterprises, Inc.); and Penguin will be merged into Dreisbach Enterprises, Inc. Thus, the surviving entity will be known as Dreisbach Enterprises, Inc. At the present time neither Dreisbach Export Packing Co., Inc. nor Dreisbach Cold Storage Company holds any certificated authority from the Commission.

According to applicant, all of the outstanding stock of Dreisbach Export Packing Co., Inc. and Dreisbach Cold Storage Company is held by Ronald T. Dreisbach, who will also hold all of the outstanding stock of Dreisbach Enterprises, Inc. At present, all of the outstanding stock of Penguin is owned by Dreisbach Export Packing Co., Inc. Accordingly, the requested merger approval will not result in any change in ownership of Penguin, nor in any change in ownership of Penguin's certificated authority.

Penguin holds authority as a highway common carrier for the transportation of commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment throughout California with the exception of certain designated areas and highways. The certificate was granted pursuant to Decision No. 87206 dated April 12, 1977 in Application No. 56991. Penguin also holds a certificate of public convenience and necessity issued by the Interstate Commerce Commission (ICC) in Docket No. MC-65115. By its decision dated April 4, 1979 in Docket No. MC-FC-77905, the Interstate Commerce Commission authorized transfer of the entire operating rights of Penguin set forth in Certificate No. MC-65115 as well as those portions of Certificates of Registration Nos. MC-98886, Sub 2, and MC-120936, Sub 1, acquired by Penguin in No. MC-F-12741 to Dreisbach Enterprises, Inc. It is requested that because the ICC has approved the involved merger, the Commission should recognize the plenary jurisdiction of the ICC and authorize the merger requested herein.

Penguin requests that this application be handled on an ex parte basis since it seeks only a reorganizational-type merger rather than a new competitive authority and thus will have no adverse competitive impact on any existing carrier.

Notice of the filing of this application appeared in the Commission's Daily Calendar of June 11, 1979. A copy of the application was also served upon the California Trucking Association. No protests have been received.

After consideration, the Commission finds that: (1) The proposed merger would not be adverse to the public interest; and (2) it can be seen with reasonable certainty that there would not be the likelihood of any significant adverse impact upon the environment upon approval of the merger. We conclude that the application should be granted as set forth in the ensuing order. A public hearing is not necessary. The order which follows will provide for, in the event the merger is completed, the revocation of the certificate presently held by Penguin and the issuance of an in-lieu certificate in appendix form to Dreisbach Enterprises, Inc., a California corporation.

Dreisbach Enterprises, Inc. is placed on notice that operating 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 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. Penguin Trucking Co., Inc., a California corporation, may merge into and transfer the operative rights referred to in the application to Dreisbach Enterprises, Inc., a California corporation. This authorization shall expire if not exercised by January 15, 1980, or within such additional time as may be authorized by the Commission.

2. Within thirty days after the merger, Dreisbach Enterprises, Inc. shall file with the Commission written acceptance of the certificate and written notice that the merger agreement has been consummated.

3. Dreisbach Enterprises, Inc. shall file tariffs with the Commission naming rates and rules on the same level as heretofore governing the operations merged. 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 merger. 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 the cancellation of the operating authority granted by this decision.

4. In the event the merger 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 Dreisbach Enterprises, Inc., a California corporation, 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, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision No. 87206 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Dreisbach Enterprises, 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.

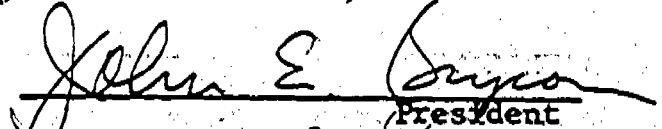
7. Dreisbach Enterprises, Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

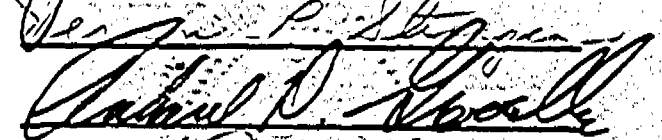
8. Dreisbach Enterprises, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Dreisbach Enterprises, Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings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

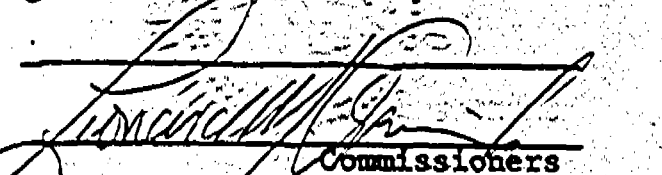
9. The applicant is granted a deviation from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application.

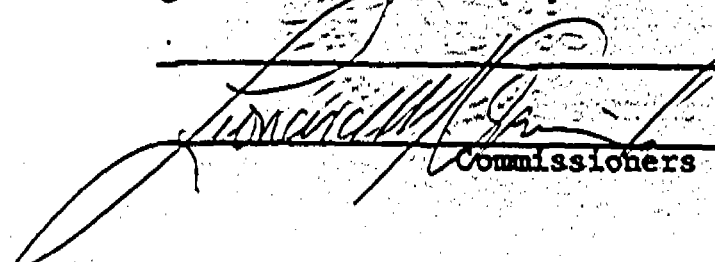
The effective date of this order shall be thirty days after the date hereof.

Dated AUG 28 1979, at San Francisco, California.

  
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President

  
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Commissioner

  
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Commissioner

  
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Commissioner

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

Dreisbach Enterprises, Inc., 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 commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment as follows:

(See Note 1)

(Note 1: All references to lateral mileage distances shown herein shall be construed to mean statute miles.)

1. Between all points and places in the Los Angeles Basin Territory as described in Note A.
2. Between all points on or within 5 miles laterally of Interstate Highway 5 and State Highway 1, between Los Angeles and San Ysidro, inclusive.
3. Between all points on or within 5 miles laterally of Interstate Highway 15 between San Bernardino and San Diego, inclusive.
4. Between all points on or within 5 miles laterally of State Highway 78, Between Oceanside and Escondido, inclusive.
5. Between all points and places in the San Diego Territory as described in Note B.
6. Between all points and places set forth in paragraphs 1, 2, 3, 4 and 5 above, on the one hand, and, on the other hand, all points located on or within 10 miles laterally of that portion of State Highway 1, U. S. Highway 101 and State Highway 217 situated north of the Los Angeles Basin Territory to and including Goleta.
7. Between San Francisco, Richmond and the Oakland Pickup and Delivery Zone as described in Note C, on the one hand, and Fremont, Milpitas, Palo Alto, Redwood City, San Jose, Santa Clara and San Mateo, on the other hand.

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8. Between all points and places within the Counties of Contra Costa, Sacramento, San Joaquin, Stanislaus and Merced.
9. Between all points and places on or within 25 miles laterally of the following highways:
  - a. U. S. Highway 101 between Sausalito and Petaluma, inclusive.
  - b. (1) Interstate Highway 5, State Highway 99, Interstate Highway 80, State Highway 65, State Highway 10, State Highway 99 and Interstate Highway 5 (east route); and (2) Interstate Highway 5, State Highway 99, Interstate Highway 80, State Highway 113 and Interstate Highway 5 (west route); between San Fernando and Redding, inclusive. (See restrictions, paragraph 12 below.)
  - c. Interstate Highway 580, Interstate Highway 205, Interstate Highway 5, State Highway 99 and U. S. Highway 50 between Hayward and the California-Nevada State Line, inclusive.
  - d. Interstate Highway 80 between Sacramento and the California-Nevada State Line, inclusive.
  - e. State Highway 120 between its junction with Interstate Highway 5 (east of Tracy) and Manteca, inclusive.
  - f. State Highway 33 between its junction with Interstate Highway 5 (south of Tracy) and Los Banos, inclusive.
  - g. State Highway 152 between Los Banos and the junction of State Highways 152 and 99 (approximately 4 miles southeast of Chowchilla) (formerly designated as Califa), inclusive.
  - h. State Highway 89 between its junction with Interstate Highway 80 (near Truckee) and Tahoe Valley, inclusive.

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- i. State Highway 28 between Tahoe City and the California-Nevada State Line, inclusive.
10. Between San Francisco Territory as described in Note D, Los Angeles Basin Territory as described in Note A, and all points and places included in paragraphs 8 and 9 above.
11. No local service is authorized between:
  - a. Points and places within the San Francisco Territory.
  - b. Points within the San Francisco Territory, on the one hand, and points on U. S. Highway 101 between Sausalito and Petaluma, inclusive, on the other hand.
12. RESTRICTIONS:

Applicant shall not transport any shipments to, from or between any of the following points:

- a. Newhall, Saugus, Castaic, Weed Patch, Lamont, Arvin and Di Giorgio.
- b. Any point on State Highway 14 between its junction with Interstate Highway 5 and Mojave.
- c. Any point on State Highway 58 between Bakersfield (but excluding Bakersfield) and Mojave.
- d. Any point on Interstate Highway 5 and State Highway 138 between Gorman and Lancaster.
- e. Any point between the northerly boundaries of Kern and San Bernardino Counties and the northerly boundary of the Los Angeles Basin Territory located east of the easterly boundary of carrier's 25-mile lateral.

NOTE A

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-

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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 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.

NOTE B

## SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary

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line running southeasterly to Lakeside on State Highway 67; thence southerly on County Road S-17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexico Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to point of beginning.

#### SAN DIEGO AREA

The San Diego Area includes that area embraced by the following boundary:

Beginning at a point where the boundary line between San Diego and Orange Counties intersects the shoreline of the Pacific Ocean, thence in a general easterly direction along said County boundary line to its intersection with State Highway 79, thence southerly along State Highway 79 to its intersection with Interstate Highway 8, thence due south along an imaginary line to the International Border between the United States and Mexico, thence westerly along said International Border to the shoreline of the Pacific Ocean, thence northerly along said shoreline to the point of beginning.

#### NOTE C

#### OAKLAND PICKUP AND DELIVERY ZONE

Oakland Pickup and Delivery Zone includes all of the City of Emeryville; also those parts of Albany, Alameda, Berkeley, Oakland and Piedmont bounded by the following: Beginning at San Francisco Bay and Alameda-Contra Costa County Line, thence easterly along said county line to Curtis Street, southerly on Curtis Street to Solano Avenue, easterly on Solano Avenue to Tulare Avenue, southerly and westerly along city limits boundary line of Albany to Ordway Street, southerly on Ordway Street to Hopkins Street, northeasterly on Hopkins Street to Grove Street, southerly on Grove Street to Rose Street, easterly on Rose Street to Oxford Street, southerly on Oxford Street to Hearst Avenue, easterly and southerly along the city limit boundary line of Berkeley to Dwight Way, southwesterly and westerly on Dwight Way to College Avenue, southerly on College Avenue to Broadway, southwesterly on Broadway to Mather Street, easterly on Mather Street and Pleasant Valley Avenue to Rose Avenue, southwesterly on Rose Avenue to Echo Avenue, southerly on Echo Avenue

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to Linda Avenue, easterly on Linda Avenue to Grand Avenue, southerly on Grand Avenue to Mandana Boulevard, easterly on Mandana Boulevard to Lakeshore Avenue, westerly on Lakeshore Avenue to Excelsior Avenue, easterly on Excelsior Avenue to Hopkins Street, easterly on Hopkins Street to 55th Avenue, southwesterly on 55th Avenue to Camden Street, southeasterly on Camden Street to Seminary Avenue, northeasterly on Seminary Avenue to Outlook Avenue, southeasterly on Outlook Avenue to Parker Avenue, southerly on Parker Avenue to Foothill Boulevard, southeasterly on Foothill Boulevard to the Oakland-San Leandro boundary line, westerly along the Oakland-San Leandro boundary line and its prolongation to Edes Avenue, northwesterly on Edes Avenue to Jones Avenue, westerly on Jones Avenue to 98th Avenue, easterly on 98th Avenue to Railroad Avenue, northwesterly on Railroad Avenue and its prolongation to 50th Avenue, southwesterly on 50th Avenue to San Leandro Bay, northwesterly along the shore line of San Leandro Bay and Oakland Inner Harbor to Oakland Middle Harbor, northerly along shore line of Oakland Middle Harbor and Oakland Outer Harbor and San Francisco to point of beginning;

-also-

City of Alameda, beginning at High Street and Oakland Inner Harbor, thence southerly, westerly and northerly along the shore line to the mouth of the Oakland Estuary, thence easterly along the alameda shore line of the Oakland Estuary, to starting point; including Government Island.

NOTE D

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; south-

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erly 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 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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