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ORIGINAL

Decision No. 90798 SEP 12 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
DONALDSON FREIGHT DELIVERY, INC., a)
corporation, for authority to acquire)
a Certificate of Public Convenience)
and Necessity, and G & H TRANSPORTATION,)
INC., a corporation, to transfer pursuant)
to Sections 851-854 of the California)
Public Utilities Code.)

Application No. 58715
(Filed March 1, 1979)

O P I N I O N

Donaldson Freight Delivery, Inc., a California corporation, (purchaser) seeks to acquire the operative right to transport general commodities by motor vehicle in intrastate, interstate, and foreign commerce granted by Decision No. 87631, dated July 19, 1977, to G & H Transportation, Inc. (seller). Said operative right was registered with the Interstate Commerce Commission in Docket No. MC-96621, Sub 6, dated January 6, 1978.

The certificate authorizes the transportation of general commodities with certain exceptions between Los Angeles Basin Territory and San Diego Territory and between said territories over Interstate Highways 5 and 15, and all points and places on and within 10 statute miles thereof. Service is also authorized between Los Angeles Basin Territory and Goleta, California via U.S. Highway 101.

Purchaser proposes to pay the sum of \$60,000 to seller, allocated as follows: \$30,000 for the intrastate authority and \$30,000 for the interstate certificate of registration, such consideration to be paid pursuant to the purchase and sale agreement entered into by the parties on February 27, 1979, as follows: the sum of \$10,000 upon transfer of the rights to be purchased and the remainder of the purchase price of \$50,000 at the rate of \$10,000 per annum, plus interest at

nine percent per annum, on the first anniversary of the transfer of the rights, and an additional \$10,000 on each and every succeeding anniversary date, plus interest, until the total sum of \$60,000, plus interest on the unpaid balance, has been paid. The agreement also provides that closing will take place within 10 days of final approval of both the California Public Utilities Commission and the Interstate Commerce Commission, at which time purchaser will pay seller the down payment of \$10,000.

Purchaser will use as its main operating base terminal facilities located at 12891 Nelson Street, Garden Grove, CA 92642, where there is adequate space available for the present operation and there is room for expansion as and when needed. In addition to its main facility in Garden Grove, purchaser will maintain terminal facilities in Los Angeles at 4219 Produce Plaza, North Vernon, and in San Diego at 1347 Sampson Street.

Seller is presently a party to all Western Motor Tariff Bureau, Inc., Agent, tariff publications as are necessary for publication of rates to cover its operating rights both as to intrastate, interstate, and foreign commerce operations. Purchaser proposes to adopt those tariffs effective with consummation of the proposed transfer.

Purchaser's balance sheet as of December 31, 1978 shows that it has total current assets of \$52,675.50 and current liabilities of \$38,281.74 for a current ratio of 1.4 percent. Retained earnings are reported at \$22,193.45. Exhibit D to the application shows that purchaser has 33 pieces of equipment consisting of 12 bobtails, 6 tractors, 6 van trailers, 6 flatbed trailers, and 1 converter gear.

It is alleged that the proposed transfer is consistent with the public interest and will promote the same for the following reasons, among others: (a) Seller desires to curtail its present operations, particularly as to the areas involving transportation in interstate or foreign commerce; (b) purchaser desires to conduct the operations as

they were conducted by seller and is able to operate more efficiently and to render a better service to the shipping public; (c) purchaser holds permits as set forth in File T-116,217; and (d) purchaser's personnel have had many years' experience in the trucking business.

Since applicants are uncertain of the names of the common carriers who might have an interest in this application, if any, they request relief from the provisions of Rule 37 of the Rules of Practice and Procedure, basing said relief upon the provisions of Rule 87, which provides for deviation from the rules in order to "secure just, speedy, and inexpensive determination of the issues presented". Applicants certify that a copy of the application was forwarded to the California Trucking Association, 1240 Bayshore Highway, Burlingame, CA 94010, for publication in its periodical, "CAL TRUX". No protests have been received.

Findings of Fact

1. The proposed sale and transfer of the operating rights would not be adverse to the public interest.
2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.
3. The authorization granted shall not be construed as a finding of the value of the rights authorized to be transferred.
4. A public hearing is not necessary.
5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

The application should be granted as set forth in the ensuing order.

The order which follows will provide, in the event the transfer is completed, for revocation of the certificate presently held by the seller and issuance of a certificate in appendix form to the purchaser. The new certificate issued to the purchaser will not broaden or change the interstate or foreign commerce rights held by the transferor.

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. On or before December 31, 1979, G & H Transportation, Inc. may sell and transfer the operating rights referred to in the application to Donaldson Freight Delivery, Inc.
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 the 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 Donaldson Freight Delivery, Inc., 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. 87631 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. 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.

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

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9. The applicants are granted the 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 SEP 12 1979, at San Francisco, California.

John E. Guyon
President
William L. Guyon
Robert D. Novak
Alan L. D. Smith
James M. Smith
Commissioners

Donaldson Freight Delivery, 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 general commodities as follows:

- A. Between all points and places within Los Angeles Basin Territory as described in Note A hereof.
- B. Between all points and places in San Diego Territory as described in Note B hereof.
- C. Between the Territories described in Paragraphs A and B above serving all points and places on and within ten (10) statute miles laterally of Interstate Highways 5 and 15.
- D. Between all points and places within the Territories described in Paragraphs A, B and intermediate points as indicated in Paragraph C above, on the one hand, and Goleta, on the other hand, serving all points and places on and within ten (10) statute miles laterally of U.S. Highway 101.

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).

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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.: 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 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. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
11. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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12. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

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-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 113, 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

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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 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.

(END OF APPENDIX A)

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