

ORIGINAL

Decision No. 90843 SEP 25 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DOLPHIN TRANSPORTATION, INC., a corporation, for authority to (a) acquire a Certificate of Public Convenience and Necessity, and (b) issue a Promissory Note and execute and deliver a Security Agreement, and MARINO FREIGHT LINES, INC., a corporation, for authority to transfer pursuant to Sections 816 to 830 and 851 to 854 of the Public Utilities Code.

Application No. 58942  
(Filed June 18, 1979)

O P I N I O N

Marino Freight Lines, Inc. requests authority to sell and transfer and Dolphin Transportation, Inc., a California corporation, requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a highway common carrier. The certificate was granted by Decision No. 87952 dated October 4, 1977 in Application No. 57206 and authorizes the transportation of general commodities between points in southern California. The certificate is the subject of a Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-121764.

The agreed consideration is \$65,000 with a value of \$30,000 being placed upon the intrastate authority and a value of \$35,000 being placed upon the interstate authority. The purchase price is to be paid as follows:

1. A cash payment of \$13,000.
2. The balance of \$52,000 in the form of a promissory note payable in 60 equal monthly installments with interest at the rate of 9 percent per annum, and a security agreement encumbering the operating rights to be executed to ensure performance under the Purchase and Sale agreement.

Purchaser presently operates as a permitted carrier. It owns and operates 38 units of equipment and has terminal facilities in Long Beach.

A copy of the application was served upon the California Trucking Association and notice of the filing of the application appeared in the Commission's Daily Calendar on June 19, 1979. The applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. The request, under the circumstances, is reasonable and will be granted. No protest to the application has been received.

Findings of Fact

1. After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. A public hearing is not necessary. The order which follows will provide, in the event the transfer is completed, for the revocation of the certificate presently held by seller and the issuance of a certificate in appendix form to purchaser.

2. The proposed encumbrance is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the promissory note authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

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

Conclusion of Law

The Commission concludes that the application should be granted.

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. Marino Freight Lines, Inc. may sell and transfer the operative rights referred to in the application to Dolphin Transportation, Inc. This authorization shall expire if not exercised by June 1, 1980, 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 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 it 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 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 Dolphin Transportation, Inc., a 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 of this decision.

6. The certificate of public convenience and necessity granted by Decision No. 87952 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 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.

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 purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

10. Purchaser is authorized to execute and issue a promissory note in the amount of \$52,000 and a security agreement in substantially the same form as provided in Exhibit C of the application.

11. The issuer of the note authorized by this order shall file with the Commission a report or reports as required by General Order No. 24-Series.

12. Applicants are granted relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application.

The authority granted by this order to issue an evidence of indebtedness (and to execute and deliver an encumbering document) will become effective when the issuer has paid the fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$104. In other respects the effective date of this order shall be thirty days after the date hereof.

Dated SEP 25 1979, at San Francisco, California.

John E. Canyon President  
Henry P. Higgins  
Richard B. Kral  
Charles T. ...  
Edward M. ... Commissioners



Dolphin Transportation, 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:

1. Between all points and places in Los Angeles Basin Territory as described in Note A hereof.
2. Between all points and places in the territory described in Paragraph 1 above, on the one hand, and the following, on the other hand, serving all intermediate points on or within ten statute miles laterally of the named highways.
  - a. San Diego Territory as described in Note B hereof via Interstate Highways 5 and 15.
  - b. Bakersfield via Interstate Highway 5 to its junction with State Highway 99 at Wheeler Ridge, thence via State Highway 99.
  - c. Mojave via Interstate Highway 5 and State Highway 14.
  - d. Santa Barbara via U. S. Highway 101 and State Highway 1.

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

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.

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## 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 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.

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## 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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