

ORIGINAL

Decision No. ~~90944~~ OCT 23 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BASIC MATERIALS )  
TRANSPORT, a California )  
corporation, to sell and )  
transfer operating rights to )  
FOOTHILLS EXPRESS, INC., a )  
California corporation. )

Application No. 58852  
(Filed May 9, 1979)

O P I N I O N

Basic Materials Transport (Basic Materials) applies to sell and transfer its operating rights to Foothills Express, Inc. (Foothills).

Basic Materials presently conducts operations under a certificate of public convenience and necessity which we issued to it in Decision No. 87259 dated April 26, 1977 in Application No. 57003. The certificate authorizes services as a highway common carrier for the transportation of general commodities between points in the State of California. Basic Materials also holds an Interstate Commerce Commission certificate of registration which it proposes to sell to Foothills concurrently with the certificate of public convenience and necessity.

The application states that Basic Materials desires to concentrate its efforts on other transportation services and to sell the authority so that the service will be continued for the public benefit. The negotiated purchase price is \$25,000; \$20,000 of which is allocated to the interstate authority and \$5,000 to the intrastate certificate.

The application further states that the sale will not result in any interruption of the transportation services to members of the shipping public.

The purchase and sale agreement shows Joe A. Miller as president and principal stockholder of Foothills. He owns 1,000 shares of one class common stock in the corporation, the total shares outstanding being 2,500. Mr. Miller has had many years of experience in the highway carrier business in California.

A Foothills balance sheet, attached to the application, shows total assets of \$249,580, consisting of \$9,500 cash, \$223,000 of equipment, a \$12,000 forklift, and \$5,000 of office furniture. Foothills, if the transfer is granted, intends to execute a promissory note for \$25,000 paid in 12 equal monthly installments at 11½ percent interest per annum.

Basic Materials requests a waiver of the service required by our Rule 37 on the basis that this transfer will not affect the interest of any other carrier. We find this request is reasonable.

The application states that if it is approved, Foothills will adopt, amend, or reissue the tariffs of Basic Materials and otherwise file and publish the necessary rates as prescribed by the Commission.

#### 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 for, in the event the transfer is completed, the revocation of the certificate presently held by Basic Materials and the issuance of a certificate in appendix form to Foothills.

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.

Foothills 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. Basic Materials Transport may sell and transfer the operative rights referred to in the application to Foothills Express, Inc. This authorization shall expire if not exercised by March 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 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 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 Foothills Express, 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. 87259 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.

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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.

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

Dated OCT 23 1979, at San Francisco, California.

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President

Commissioner JOHN E. BRYSON

Present but not participating.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

*Richard D. Harrell*  
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*Charles T. DeWitt*  
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*Lawrence W. Green*  
\_\_\_\_\_  
Commissioners

Foothills Express, 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 the points located on the following routes:
  - (a) Interstate Highway 80 between Sacramento and Auburn with service at the off-route, intermediate points of Citrus Heights, Rocklin, Loomis, Penryn and Newcastle;
  - (b) State Highway 49 between Auburn and Coloma, inclusive;
  - (c) State Highway 193 between its junction with State Highway 49 (near Coloma) and Lotus, inclusive;
  - (d) Unnumbered county road (Auburn-Foresthill Road) between its junction with State Highway 49 and Foresthill, inclusive;
  - (e) State Highway 193 between its junction with State Highway 49 (at Cool) and Georgetown, inclusive; and
  - (f) State Highway 193 between Georgetown and the junction of State Highways 193 and 49 (near Placerville), inclusive.

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

- a. 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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- b. 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.
- c. 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.
- d. 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.
- e. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
- f. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
- g. Commodities requiring protection from heat by use of ice (either water or solidified carbon dioxide), or release of liquified gases.
- h. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

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