

ORIGINAL

Decision No. 90993 NOV 6 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of California Highway Express Inc., a Corporation, to purchase; and American Commercial Warehouse, Inc., a California Corporation, to sell; a certificate of Public Convenience and Necessity for the transport of commodities between points in the Los Angeles Territory, pursuant to Sections 851-854 of the California Public Utilities Code.

Application No. 58974
(Filed July 2, 1979)

O P I N I O N

American Commercial Warehouse, Inc. (seller), a California corporation, has applied to sell a highway common carrier certificate, authorizing the transportation of general commodities between all points and places in the Los Angeles Territory to California Highway Express Inc. (purchaser), a California corporation, for \$1,500. The certificate was granted by Decision No. 88240 dated December 13, 1977 in Application No. 57550. The purchase price is to be paid in two installments: \$750 when this application is filed and \$750 when, and if, the transfer is authorized. If the transfer authority is denied, the \$750 deposit will be returned to the purchaser. No assets other than the certificate are to be sold or transferred.

Seller has been operating as a highway common carrier of general commodities. Seller participated in the rates set forth in Western Motor Tariff Bureau, Inc. Agent, Local, Joint and Proportional Freight and Express Tariff No. III (Cal. PUC No. 15) and purchaser proposes to adopt the tariff of the seller. Purchaser's equipment list includes 6 van-type trucks, 8 tractors, 5 van trailers, and a single

40-foot flatbed. Purchaser's statement of financial condition dated December 31, 1978, shows total assets of \$21,500 and current liabilities of \$3,200. There is no profit and loss statement or reference to operating income or expenses.

Purchaser has its principal place of business in Temple City, California, about ten miles from Los Angeles. Applicants certify that a copy of the application was mailed to Highway Carriers Association in South Gate, California, and to the California Trucking Association in Burlingame, California. The application was also published in the Commission's Daily Calendar on July 6, 1979 and no protests have been received. Applicants request relief under the provisions of Rule 87 of the Commission Rules of Practice and Procedure for waiver of Rule 37(a), to avoid the cost of serving a large number of carriers in the Los Angeles Territory.

Findings of Fact

1. The proposed transfer will not be adverse to the California public interest.
2. Applicants have provided adequate notice of the filing of the application.
3. A public hearing is not necessary.
4. No protests have been filed.

Conclusions of Law

1. The provisions of Rule 37(a) should be waived.
2. 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. American Commercial Warehouse, Inc. may sell and transfer the operative rights (and property) referred to in the application to California Highway Express Inc. This authorization shall expire if not exercised by January 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 California Highway 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. 88240 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.

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

Dated NOV 6 1979, at San Francisco, California.

John E. Byrne
President

Joseph L. Litman

Richard D. Gosh

Alvin T. Mediate

Samuel J. ...
Commissioners

California Highway 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 between all points and places within the following described area:

Beginning at the intersection of the westerly boundary line of the City of Los Angeles and the Pacific Ocean; thence northerly and easterly along said city boundary line to its first point of intersection with the southerly boundary line of Angeles National Forest; thence in a general easterly direction following the said National Forest boundary line to its intersection with the easterly boundary line of Los Angeles County; thence southerly, westerly and southwesterly along said county boundary line to the shoreline of the Pacific Ocean; thence northerly and westerly along said shoreline to the place of beginning.

LIMITATIONS: Applicant shall perform no transportation services under this certificate except:

- (a) Shipments having origin or destination at a warehouse operated by applicant, or
- (b) Shipments which move for a shipper having an open warehouse storage account with applicant.

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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Decision 90993, Application 58974.

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 parts and contents when the contents are within the trailer coach or camper.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
8. 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.

(END OF APPENDIX A)

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