

Decision No. 91136 DEC 18 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

(a) CITIZENS TRANSPORTATION OF CALI-)
FORNIA, INC., a California corpora-)
tion, to purchase from CITIZENS TRANS-)
PORTATION CO. OF RIVERSIDE, a Califor-)
nia corporation, the certificate of)
public convenience and necessity au-)
thorizing the transportation of gen-)
eral commodities, with specified ex-)
ceptions, between points and places)
in the Los Angeles area.)

Application No. 59057
(Filed August 9, 1979)

(b) CITIZENS TRANSPORTATION OF CALI-)
FORNIA, INC., a California corpora-)
tion, to issue shares of its common)
capital stock.)

O P I N I O N

Citizens Transportation of California, Inc. (buyer), 1670 East Holt Boulevard, Ontario, California 91761, seeks to purchase from Citizens Transportation Co. of Riverside (seller) certain intrastate and interstate operating authorities. Buyer also requests authority to issue shares of its common capital stock to R.I.D. Equipment Leasing, Inc. (R.I.D.).

The California intrastate authority is a highway common carrier certificate of public convenience and necessity authorizing transportation of general commodities (with certain exceptions) between particular points in southern California, as described in Appendix A of Exhibit B to the application (Western Motor Tariff Bureau, Inc., Agent, Tariff WMT 100-A, Original Page 283). The intrastate

general commodity common carrier certificate involved was transferred to seller by D.62676 (1961). A coextensive certificate of registration was issued by the Interstate Commerce Commission (ICC) in Docket No. MC-8758, Sub-No. 4.

Seller formerly owned certain bulk petroleum certificates (highway common carrier and petroleum irregular route carrier) which were transferred to Apex Bulk Commodities by D.90799 (1979). Seller's remaining intrastate general commodity certificate was corrected (updated) and restated at that time in Appendix C of that decision.

Seller also is the owner and holder of certificates of public convenience and necessity issued by the ICC in Docket No. MC-8758 and Sub-No. 1 thereof which authorize the transportation of special commodities between various points and places in southern California (Appendix A of Exhibit B, Original Page 282).

Buyer and seller have agreed that \$15,000 shall be paid for the California intrastate authority, and \$15,000 shall be paid for the interstate authority.

Applicants allege that the proposed transfer of seller's general commodity intrastate certificate and coextensive certificate of registration to buyer, and the issuance of shares of common capital stock by buyer to R.I.D., will be in the public interest for the following reasons:

(1) There will be no change in the competitive relationship among carriers for the reason that buyer will simply replace seller as a general commodity carrier between points in the area involved. Assertedly, adequate service to the public would be assured without adverse effect on any other common carrier.

(2) There will be no change in the rates and other charges now assessed to the public.

(3) There is adequate financing to support the proposed transaction and proposed operation for the reason that the general commodity certificate will be purchased for cash and the balance of the cash to be received by the corporation will be utilized for highway common carrier service.

Exhibit E to the application is a financial statement of seller as of April 30, 1979, and a statement of income and expenses for the period January 1, 1979 to April 30, 1979, inclusive. It shows a loss before taxes of \$26,768.29.

The Articles of Incorporation of buyer authorize the issuance of one million shares of common capital stock, which, under the current corporate laws of the State of California, is described neither as par value nor no par value. This is the only class of shares authorized. The corporation presently has no shares of stock issued or outstanding. Pursuant to Sections 816-830 of the Public Utilities Code, buyer seeks authority to issue 50,000 shares of its common capital stock to R.I.D. in consideration of the payment of \$50,000 cash, which cash will be used for the initial capitalization of buyer. Appendix C to the application is a pro forma balance sheet of buyer giving effect to the issuance of the stock and the purchase of the described operating authorities of seller. The provisions of Rule 17 (Financial Statement) of the Commission's Rules of Practice and Procedure are not applicable to buyer for the reason that it is a newly formed corporation, and it has not conducted any business of any kind or character.

Buyer believes that the initial \$50,000 will be sufficient capitalization of the corporation because after applying the sum of \$30,000 cash for the purchase of the operating authorities involved, buyer would still have \$20,000 in cash, which it believes would be adequate to establish and maintain operations for a period of at least six months. Buyer initially proposes to lease truck equipment from its proposed shareholder. In the event that additional funds are required from time to time, R.I.D. proposes to make funds available to buyer by way of a loan from itself to buyer secured by a demand note. Exhibit D to the application lists equipment which buyer proposes to lease from R.I.D. Buyer also proposes to utilize subhauliers in compliance with General Order No. 130 and under the lease and interchange rules of the ICC. Buyer has arranged for the lease of terminal space in the Ontario area suitable for providing service.

Copies of the application were mailed to the California Trucking Association at Burlingame and Los Angeles. Applicants allege that publication in that organization's weekly magazine will give adequate notice to all highway common carriers operating within the area involved. They request under Rule 87 of the Rules of Practice and Procedure that Rule 37(a) be waived in order to secure just, speedy, and inexpensive determination of the issues. The matter was published in the Federal Register and was noticed in the Commission's Daily Calendar of August 13, 1979. There are no protests.

Findings of Fact

1. Buyer will have the necessary equipment and financial ability to conduct the proposed highway common carrier operations it seeks to acquire from seller.
2. There will be no change in the competitive relationships among common carriers for the reason that buyer will simply replace seller as a general commodity carrier between points in the area involved.
3. There will be no change in rates or charges now assessed to the public.
4. There is adequate financing to support the proposed transaction and proposed operation.
5. The proposed sale, transfer, and stock issuance are for proper purpose and will not be adverse to the public interest.

Conclusions of Law

The Commission concludes that the proposed transfer would not be adverse to the public interest and should be granted as applied for. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the certificate to be sold and transferred. The order which follows will provide for the revocation of the certificate presently held by Citizens Transportation Co. of Riverside, a California corporation, and the issuance of a certificate in appendix form to Citizens Transportation of California, Inc., a California corporation.

Buyer 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 cancelled at any time by the State, which is not in any respect limited as to the number of rights which may be given. The authorization granted shall not be construed as a finding of the value of the rights and other assets to be transferred.

O R D E R

IT IS ORDERED that:

1. Citizens Transportation Co. of Riverside, a California corporation, may sell and transfer the highway common carrier general commodity operating rights referred to in the application to Citizens Transportation of California, Inc., a California corporation. This authority shall expire if not exercised by May 1, 1980 or within such additional time as may be authorized by the Commission.
2. Citizens Transportation of California, Inc., on or after the effective date hereof and on or before May 1, 1980, for the purpose specified in the application, may issue not to exceed 50,000 shares of its common capital stock having neither par nor no par value to R.I.D. Equipment Leasing, Inc. in consideration of assets referred to in the application having an initial net book value of \$50,000.
3. Buyer shall file with the Commission a report required by General Order No. 24-B which order, insofar as applicable, is hereby made a part of this order.

4. Within thirty days after the transfer, buyer shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

5. Buyer shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to 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. 117-Series. Failure to comply with the provisions of General Order No. 117-Series may result in a cancellation of the operating authority granted by this decision.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, a certificate of public convenience and necessity is granted to Citizens Transportation of California, 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 set forth in Appendix A attached hereto and made a part hereof.

7. The highway common carrier general commodity certificate of public convenience and necessity granted in

Appendix C of Decision No. 90799 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

8. Buyer shall comply with the safety rules of the California Highway Patrol, and the insurance requirements of the Commission's General Order No. 100-Series.

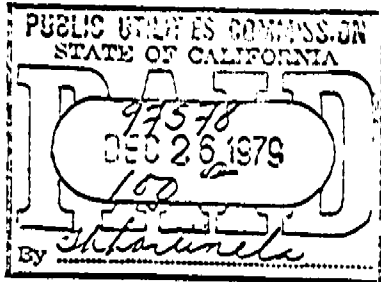
9. Buyer shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations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

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

11. Applicants are granted an exemption from Rule 37(a) of the Commission's Rules of Practice and Procedure requiring wide dissemination of the application.

12. The authority granted in this order to issue stock shall become effective when Citizens Transportation of California, Inc. has paid the fee prescribed by Section 1904.1 of the Public Utilities Code which fee is \$100. In other respects the effective date of this order shall be thirty days after the date hereof.

Dated DEC 18 1979, at San Francisco, California.



John E. Guyer

President
James P. Sherrington

Robert D. Howell

Charles J. ...

James ...

Commissioners

Citizens Transportation of California, 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:

- I. Between all points in Riverside Territory as described in Note A hereof.
- II. Between all points in said Riverside Territory and Los Angeles Orange County Area as described in Note B hereof, subject to the following restriction.

RESTRICTION: The authority set forth in II does not include the right to render service to, from, or between intermediate points nor to render service between points both of which are located within said Los Angeles-Orange County Area.

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 salesman'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).
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.

Issued by California Public Utilities Commission.

Decision 91136, Application 59057.

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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

NOTE A

RIVERSIDE TERRITORY

RIVERSIDE TERRITORY is bounded and described as follows: Beginning at the junction of the westerly boundary of San Bernardino County and the San Bernardino National Forest, then generally southerly along the westerly boundary of San Bernardino County and the northeasterly boundary of Orange County to the junction of the latter boundary and State Highway 91, then easterly along State Highway 91 to junction with State Highway 71, then southeasterly along State Highway 71 to junction with State Highway 79, then northerly along State Highway 79 to junction with State Highway 60, then easterly along State Highway 60 to junction with Interstate Highway 10, then northwesterly along Interstate Highway 10 to junction with the southerly boundary of San Bernardino County, then easterly and northerly along said county boundary to junction with the southerly boundary of San Bernardino National Forest, then generally westerly along the southerly boundary of said San Bernardino National Forest to the point of beginning. Said territory includes all points within a radius of 5 statute miles of State Highways 91, 71, 79 and State Highway 60 and Interstate Highway 10 not otherwise within the boundary above described, and, in addition, Banning, California.

Issued by California Public Utilities Commission.

Decision 91136, Application 59057.

NOTE B

LOS ANGELES-ORANGE COUNTY AREA

LOS ANGELES-ORANGE COUNTY AREA is bounded and described as follows: Beginning at the intersection of the westerly boundary of the City of Los Angeles and the Pacific Ocean (near Topanga Canyon), then along the westerly and northerly boundary of the City of Los Angeles, the southerly boundary of Angeles National Forest, the easterly boundary of Los Angeles County, the north-easterly boundary of Orange County, State Highway 91, State Highway 55 and the prolongation thereof to the Pacific Ocean and the coastline of the Pacific Ocean to the point of beginning. Said territory includes all points within a radius of 5 statute miles to the south and east of State Highway 91 and 55 between the Orange County line and the Pacific Ocean.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 91136, Application 59057.