

CAS/RI

Decision No.

91464

MAR 18 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of H. R. McDONALD)
doing business as R&S DRAYAGE)
(Transferor) and R&S DRAYAGE, INC.)
a California corporation (Trans-)
feree) and C. GARY BOWEN and LOIS)
L. BOWEN (Buyers), for approval)
of the transfer of the Highway)
Common Carrier authority of TRANS-)
FEROR to TRANSFEREE; and for)
acquisition of control by BUYERS)
through purchase of TRANSFEREE'S)
stock.)

Application No. 59233
(Filed October 24, 1979)

O P I N I O N

By this application, H. R. McDonald, doing business as R&S Drayage (transferor) seeks authority under Section 851 of the Public Utilities Code to transfer his certificate of public convenience and necessity as a highway common carrier to R&S Drayage, Inc. (transferee), a California corporation.

Additionally, C. Gary Bowen and Lois L. Bowen (buyers) seek to acquire control of the transferee pursuant to Section 854 of the Public Utilities Code.

The certificate was acquired by the transferor pursuant to Decision 84418 dated May 13, 1975 in Application 55486. It authorizes the transportation of general commodities, subject to certain exceptions, between all points and places in San Francisco Territory and all points within ten statute miles of any point therein. The certificate is also the subject of a coextensive Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-121769.

There have been issued and are outstanding 700 shares of \$100 per share par value stock of the transferee corporation. Six hundred and thirty-seven and one-half (637½) shares are owned by the transferor and his wife. Sixty-two and one-half (62½) shares are owned by the buyers. Pursuant to an Agreement for the Purchase and Sale of Stock, the buyers have agreed to purchase the transferor's stock for the sum of \$225,000 of which \$25,000 has been paid as a down payment. The balance of the purchase price or \$200,000, plus interest at the rate of 10% per annum, shall be paid in equal monthly installments of \$4,000 until June 1, 1986 at which time the balance will become due and payable.

Transferor desires to terminate his business interest in the motor carrier field. The intermediate step of creating the corporate transferee was designed to facilitate this shift in ownership.

Transferor is a party to such Pacific Motor Tariff Bureau, Agent, tariff publications as are necessary for publication of rates and rules to cover operations under the certificate to be transferred. Transferee will be required to adopt the same tariffs. Applicants have requested a deviation from the Commission's Rules of Practice and Procedure which require wide distribution of the application. Notice of the filing of the application was published in the Commission's Daily Calendar of October 26, 1979. No protests to the application have been received.

After consideration, the Commission finds:

1. The proposed transfer of the certificate would not be adverse to the public interest.
2. The control of R&S Drayage, Inc., by C. Gary Bowen and Lois L. Bowen would not be adverse to the public interest.
3. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

The Commission concludes that the application should be granted as set forth in the ensuing order. 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 H. R. McDonald, an individual, and the issuance of a certificate in appendix form to R&S Drayage, Inc., a California corporation. The new certificate issued to R&S Drayage, Inc. will not broaden or change the interstate or foreign commerce rights now held by the transferor.

The Commission further concludes that the acquisition of control of R&S Drayage, Inc. by C. Gary Bowen and Lois L. Bowen, as requested in the application, should be authorized. The action taken herein shall not be construed as a finding of the value of the capital stock of R&S Drayage, Inc.

Transferee is placed on notice that operating 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 consideration for the grant of such rights. Apart 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.

O R D E R

IT IS ORDERED that:

1. On or before September 30, 1980, H. R. McDonald, an individual doing business as R&S Drayage, may sell and transfer the operating rights referred to in the application to R&S Drayage, Inc., a California corporation.

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

3. Transferee 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 80-Series. Failure to comply with the provisions of General Order 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 R&S Drayage, 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 of this decision.

5. The certificate of public convenience and necessity granted by Decision 84418 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Transferee shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

7. Transferee 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 April 30 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. Transferee shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If transferee elects not to transport collect on delivery shipments, it shall make the appropriate tariff filing as required by the General Order.

9. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

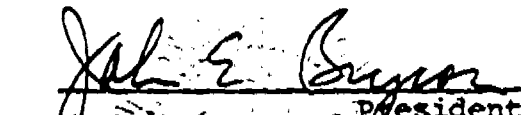
10. C. Gary Bowen and Lois L. Bowen (buyers) may control R&S Drayage, Inc., a California corporation.

11. Within ninety (90) days after the effective date hereof, the buyers and R&S Drayage, Inc. shall file reports informing the Commission whether or not the change in control authorized herein has been completed.

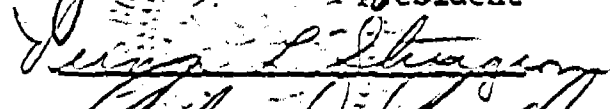
The effective date of this order shall be thirty days after the date hereof.

Dated MAR 18 1980, at San Francisco, California.

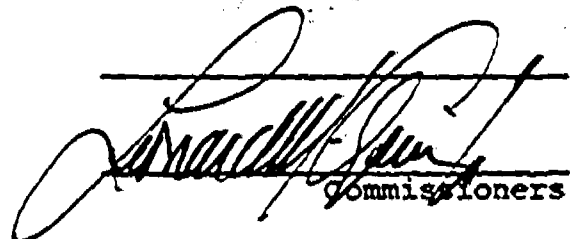
Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.



President



Michael W. Wood



Commissioners

R&S DRAYAGE, 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 in San Francisco Territory as described in Note A hereof, and all points within ten (10) statute miles of any point therein:

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).
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.

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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. Fresh Fruits and Vegetables, Nuts and unprocessed agricultural commodities.
11. Trailer coaches and campers, including integral parts and contents when the contents are within the trailer coach or camper.
12. Transportation of any commodity, the transportation or handling of which, because of width, length, height, weight, shape, or size requires special authority from a governmental agency regulating the use of highways, roads, streets, in any motor vehicle or combination of vehicles.

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

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific Company right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the campus boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

(END OF APPENDIX A)

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