

ORIGINAL

Decision No. 91763 MAY 6 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
YELLOW FREIGHT SYSTEM, INC., to)
acquire a portion of a certificate)
of public convenience and necessity)
from CITY DRAYAGE CO., INC., in)
conformance with a Section 5 order)
of the Interstate Commerce)
Commission.)

Application No. 59455
(Filed February 14, 1980)

O P I N I O N

City Drayage Co., Inc. (City), a California corporation, requests authority to sell and transfer, and Yellow Freight System, Inc. (Yellow), an Indiana corporation, requests authority to purchase and acquire a portion of a certificate of public convenience and necessity authorizing operations as a highway common carrier.

City's certificate of public convenience was granted by Decision No. 83547, dated October 8, 1974, in Application No. 54277.^{1/} It authorizes transportation of general commodities between Santa Rosa and Sacramento, on the north, and Los Banos and Tulare, on the south, including intermediate points and points within 25 miles of City's authorized routes. The portion of the certificated authority sought to be transferred to Yellow is the following:

General commodities, with the usual exceptions.

Between San Francisco and Santa Rosa, serving all intermediate points, except San Rafael, on the following route,

^{1/} City's intrastate certificate authority is also registered with the Interstate Commerce Commission in Docket No. MC-121752.

and serving the off-route points in Sonoma and Napa Counties within 25 miles thereof:

From San Francisco, over U. S. Highway 101 to Santa Rosa and return.

Serving as off-route points in connection with Yellow's regular route operations, those points in Placer County, within 25 miles of the junction of Interstate Highway 80 and California Highway 99.

Yellow is authorized to operate as a highway common certificated carrier pursuant to Decision No. 61200, issued December 13, 1960, in Application No. 42522 and Decision No. 82694, dated April 2, 1974, in Application No. 54719. It is also presently authorized to operate as a radial highway common carrier for which Yellow has filed a timely "grandfather" application seeking to convert such permitted authority over to that of a highway common carrier and a highway contract carrier pursuant to Sections 1063.5 and 3572.5 of the Public Utilities Code. Yellow states that its Section 1063.5 highway common carrier certificate, when effective, will embrace the routes and areas sought to be acquired from City in the subject application. Yellow also operates as a motor common carrier in interstate or foreign commerce and, pursuant to Certificate No. MC-112713 and related supplemental authority thereto, transports general commodities over transcontinental routes throughout most of the continental United States.

The requested transfer of operating authority is, in the first instance, subject to the exclusive and plenary jurisdiction of the Interstate Commerce Commission under Section 11343 (formerly Section 5) of the Interstate Commerce Act (49 USCA Section 11343). By Decision dated December 31, 1979 issued in Dockets Nos. MC-F-13996-F and MC-112713 (Sub. No. 280-F) the Interstate Commerce Commission

authorized the sale and acquisition of the intrastate and interstate authority involved in Application No. 59455 now before this Commission. Ordering Paragraph 1 of the Interstate Commerce Commission's decision requires applicants to file with the Interstate Commerce Commission, within 90 days from the date thereof, a certified copy of an order from this Commission approving the partial transfer of the intrastate certificate involved herein.

Consideration for the sale of the operating authority is the sum of \$135,000 payable upon consummation of the terms of the Agreement, a copy of which has been attached as Exhibit 13 of Application No. 59455. The certificate of service, dated February 4, 1980, indicates that a copy of the application was mailed to the California Trucking Association. In addition, Application No. 59455 was listed on the Commission's Daily Calendar for February 15, 1980. No protests to the application have been received.

After consideration, this Commission finds that:

1. The proposed sale and transfer would not be adverse to the public interest.
2. It can be seen with certainty that there is no possibility that the project in question may have a significant effect upon the environment.

The Commission concludes that Application No. 59455 should be granted. A public hearing is not necessary. Because of the urgency of this matter, the certificates held by the parties to the transfer will not be restated at this time. The ensuing order will provide for the future revocation of the certificates presently held by City and Yellow and the issuance of in lieu certificates, in appendix form, to City and Yellow by supplemental order after proposed in lieu certificates, to be submitted by the carriers to reflect the authorized transfer, are reviewed by the Commission staff.

Applicants are 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 value of the rights authorized to be transferred.

In view of the 90-day expiration date of the pending interstate operating authority involved, the following intrastate ex parte order should be made effective on the date hereof.

O R D E R

IT IS ORDERED that:

1. In accordance with the order of the Interstate Commerce Commission, City Drayage Co., Inc., a California corporation; may transfer the operating rights referred to in Application No. 59455 to Yellow Freight System, Inc., an Indiana corporation. The authorization shall expire if not exercised by September 30, 1980 or within such additional time as may be subsequently authorized by this Commission.
2. Within thirty days after the transfer, applicants shall file with the Commission written acceptance of the certificates and the purchaser shall file with the Commission a true copy of the bill of sale or other instrument of transfer.
3. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the authority granted by this decision to show that they have adopted or

published, as their 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 filing 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 filings 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. Applicants 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.

5. Applicants shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

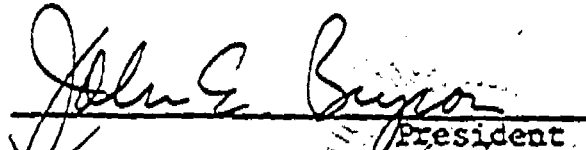
6. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If they elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

7. Within one hundred eighty days after the effective date of this order each applicant shall submit to this Commission a proposed in lieu certificate of public convenience and necessity describing and consolidating all of its highway common carrier operating authorities as granted by this Commission. Such proposed

certificates shall reflect the current designations of highways and roads as used to describe their authorities and shall not, unless submitted with a proper application, exceed in any way the scope of the authority authorized by the Commission in the decisions they are intended to replace. To the extent possible, applicants shall, in submitting the proposed in lieu certificates, eliminate any overlapping and duplicate authorities that may now exist.

The effective date of this order is the date hereof.

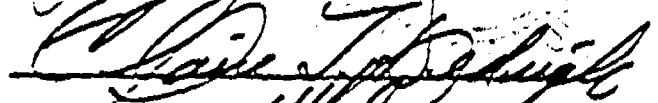
Dated MAY 6 1980 , at San Francisco, California.



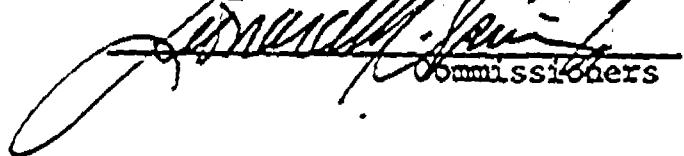
President



Commissioner



Commissioner



Commissioner