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AUG 19 1980

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of WHITFIELD TANK LINES, INC., a corporation, for interim authority to lease and operate the petroleum irregular route carrier certificate and the highway common carrier certificate of ROADWAY EXPRESS, INC.

Application No. 59696 (Filed May 28, 1980)

In the Matter of the Application of WHITFIELD TANK LINES, INC., a corporation, for authority to acquire the petroleum irregular route carrier certificate and the highway common carrier certificate of ROADWAY EXPRESS, INC.

Application No. 59699 (Filed May 30, 1980)

INTERIM OPINION

Whitfield Tank Lines, Inc. (Whitfield) and Roadway Express, Inc. (Roadway) are both Delaware corporations authorized to do business in California, and each holds operating authority issued by the Interstate Commerce Commission (ICC). By Application No. 59696, Whitfield seeks temporary authority to lease the California intrastate highway common carrier and petroleum irregular route carrier certificates acquired by Roadway from Western Gillette, Inc. (Gillette) pursuant to Decision No. 90639 dated July 31, 1979 in Application No. 52637, pending the approval of the purchase of these and certain interstate and foreign operating rights and equipment by Whitfield from Roadway. The lease agreement was approved by the ICC by its decision served March 21, 1980 in Docket No. MC-F-14294-F. By Application No. 59699 Whitfield seeks authority to acquire the two certificates from Roadway upon approval of the purchase by the ICC.

The certificates in issue were granted to Gillette pursuant to Decision No. 79972 dated April 25, 1972, as amended by Decision No. 80109 dated May 31, 1972, in Application No. 52637. The highway common carrier certificate authorized the transportation of general commodities with certain exclusions as specified, over a large area of California located south of Lake Tahoe. It also authorizes the transportation of petroleum products in bulk, in tank vehicles, except liquefied petroleum gases and any other petroleum products requiring pressurized tanks, and except liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks. Service is authorized over a number of routes and all points within fifty statute miles of such routes in an area extending from the California-Oregon border to the California-Mexican border. The petroleum irregular route certificate authorizes the transportation of liquefied petroleum gases and liquid asphalt and hot road oils and any other petroleum products requiring insulated tanks, between all points and places in the State of California, and all other petroleum products in tank trucks and tank trailers between all points in the State of California other than points and places authorized in the highway common carrier certificate. No operating authority acquired pursuant to Section 1063.5 of the Public Utilities Code is involved in the lease and the sale proposed herein. Whitfield does not hold any operating authority from this Commission.

The application states that: (1) Roadway's business is oriented primarily toward interstate transportation of general commodities, and its operating system is designed to handle traffic of this nature; (2) Roadway purchased Gillette's operations in order to acquire that carrier's interstate general commodities rights and thereby extend its own interstate routes; (3) Roadway has concluded that it is in the best interests of itself and the shipping public that it dispose of its interstate bulk commodity

rights and other intrastate operating rights in the west which it acquired from Gillette; (4) Whitfield has been in the trucking business for approximately 37 years and has had considerable experience in handling both bulk and general commodity traffic in interstate and in intrastate commerce in certain states other than California; and (5) Whitfield has the necessary management and personnel to provide a viable transportation service within California.

A copy of the Agreement of Purchase and Sale is set forth in Exhibit G to both applications, and it was executed by Whitfield and Roadway on December 11, 1979. The agreement provides that Whitfield is to purchase certain trucking equipment from Roadway for a purchase price of \$1,200,000 and certain interstate and intrastate operating rights, which for the most part authorize transportation of bulk commodities, for a purchase price of \$570,000. All of Roadway's California intrastate rights are to be sold. No particular portion of the purchase price has been allocated to the purchase of the California rights. The purchase agreement further provides that pending approval of the sale by the ICC and consummation of the sale transaction, Whitfield shall lease all the involved operating rights and equipment from Roadway for the amount of \$22,000 a month, and the aggregate amount of such lease payments will be applied against the purchase price in the event the purchase is approved.

As we have pointed out in numerous prior decisions, including Decision No. 90639, supra, the lease or transfer of operating rights by carriers holding interstate operating authority is subject to the exclusive and plenary jurisdiction of the ICC

under Sections 11341, et seq. of the Interstate Commerce Act (formerly Section 5). As noted above, the federal commission has authorized the lease pending its decision on the application filed with it in the aforementioned docket for authorization of the purchase and sale.

Findings of Fact

1. The ICC has authorized the temporary lease by Whitfield of certain interstate, foreign, and intrastate operating authority, equipment, and facilities held by Roadway, including the California intrastate certificates acquired by Roadway pursuant to Decision No. 90639, pending the ICC's decision on the application filed with it for authorization of the purchase of this authority, equipment, and facilities by Whitfield from Roadway.

2. No operating authority acquired pursuant to Section 1063.5 of the Public Utilities Code is involved in the lease and the purchase involved herein.

3. The proposed temporary lease by Whitfield from Roadway of the California intrastate certificates, equipment, and facilities referred to in Finding 1 would not be adverse to the public interest.

4. It can be seen with certainty that there is no possibility that the lease activity referred to in Finding 2 would have a significant effect on the environment.

5. Upon notification by applicants that the ICC has authorized the purchase by Whitfield from Roadway of the operating authority in issue, we will give consideration to the proposed transfer of the California intrastate certificates referred to in Finding 1 from Roadway to Whitfield.

6. Since the ICC has already authorized the lease, the order which follows, which will authorize the intrastate lease operations only, should be made effective on the date it is issued.

7. A public hearing is not necessary.

Conclusions of Law

1. Whitfield should be granted the temporary authority sought in Application No. 59696 to lease and operate Roadway's California intrastate highway common carrier and petroleum irregular route carrier certificates, equipment, and facilities pending the ICC's decision on the application filed with it for authorization by Whitfield to purchase this and other authority, equipment, and facilities from Roadway.

2. Because of the exclusive and plenary jurisdiction of the ICC, this Commission is without jurisdiction over the purchase and sale of the California intrastate operating rights referred to in Conclusion 1 and thus should defer action on the request in Application No. 59699 to transfer this authority from Roadway to Whitfield until such time as the ICC has issued its decision on the application by Whitfield seeking to purchase this and other authority and certain equipment and facilities from Roadway.

Whitfield 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.

INTERIM ORDER

IT IS ORDERED that:

1. In accordance with the approval issued by the Interstate Commerce Commission in Docket No. MC-F-14294-F on March 21, 1980, Whitfield Tank Lines, Inc. is authorized to lease and operate the California highway common carrier and petroleum irregular route carrier certificates acquired by Roadway Express, Inc. pursuant to Decision No. 90639 and the equipment and facilities of Roadway Express, Inc. in accordance with the lease agreement set forth in Exhibit G to Application No. 59696 until one hundred eighty days following the final decision by the Interstate Commerce Commission on the purchase and sale request in the aforementioned docket.

2. Lessee shall immediately notify the Commission in writing upon its assuming the operations authorized by Ordering Paragraph 1 and file with the Commission a copy of any additional documents that may be executed by the lessor and lessee in connection therewith.

3. Lessee shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations leased 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 lease. 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 leasing authority granted by this decision.

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

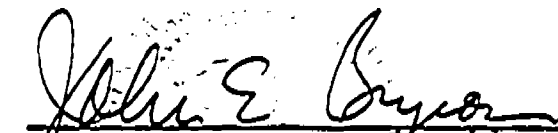
5. Lessee shall maintain the accounting records of the lessor on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of the operations of the lessor in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

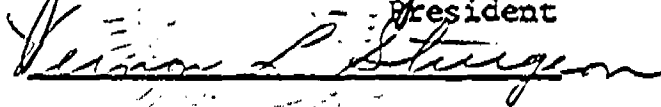
6. Lessee shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If lessee elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.


7. Within thirty days after the decision by the Interstate Commerce Commission in Docket No. MC-F-14294-F on the purchase and sale, applicants shall file a copy of the decision with this Commission, and consideration will then be given to the transfer of operating authority sought in Application No. 59699.

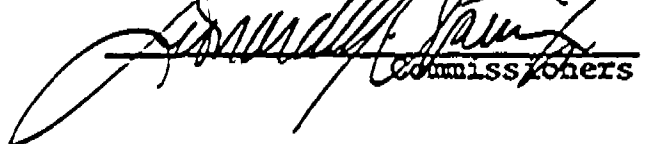
The effective date of this order is the date hereof.

Dated AUG 19 1980 , at San Francisco, California.



President





Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.