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ORIGINAL

Decision No. 92381 NOV 4 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application )  
of: R & M Services, Inc., a )  
corporation, to purchase; and )  
Huskie Freightways, Inc., a )  
California corporation, to sell )  
a certificate of Public Con- )  
venience and Necessity for the )  
transport of commodities between )  
points in the Los Angeles Terri- )  
tory pursuant to Section 851-854 )  
of the California Public Utili- )  
ties Code. )

Application No. 59815  
(Filed July 16, 1980)

O P I N I O N

Huskie Freightways, Inc., a California corporation (seller), requests authority to sell and transfer and R & M Services, Inc., a California corporation (purchaser), seeks authority to purchase and acquire a certificate of public convenience and necessity as a highway common carrier.

The certificate was granted by Decision 60397 dated January 12, 1960 in Application 41556 and acquired by the seller pursuant to Decision 76590 dated December 23, 1969 in Application 51442. It authorizes the transportation of general commodities in an area including the central portion of Los Angeles County and the northwestern portion of Orange County. The certificate is the subject of a coextensive Certificate of Registration issued by the Interstate Commerce Commission in Docket No. MC-120762 dated July 14, 1970.

Purchaser holds a certificate of public convenience and necessity as a highway common carrier authorizing transportation of general commodities between all points in the State of California, issued pursuant to Section 1063.5 of the Public Utilities Code in Application GC 3493 and a highway contract carrier permit issued under File T-129,038.

*Purchaser's Office*  
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The seller also holds a highway common carrier certificate converted from its radial highway common carrier permit pursuant to Section 1063.5 of the Public Utilities Code. It authorizes the transportation of general commodities between all points and places in the State of California.

Purchaser proposes to purchase the highway common carrier certificate of the seller, which was acquired pursuant to Decision 76590, for the sum of \$15,000 allocated as follows: \$14,000 for the interstate certificate of registration and \$1,000 for the intrastate authority. These amounts are to be paid in accordance with the purchase and sale agreement entered into by the parties on March 14, 1980, a copy of which was filed as Exhibit 3 of the application. Payment by purchaser to seller is allocated as follows: \$500 as a deposit upon signing the agreement and the balance of \$14,500 upon approval of the transfer by this Commission and the Interstate Commerce Commission.

The net result of the transfer of the intrastate certificate acquired by the seller pursuant to Decision 76590 will be to effect the transfer of the coextensive Certificate of Registration. No additional intrastate operating authority will accrue to the purchaser in that it already holds a highway common carrier certificate issued pursuant to Section 1063.5 of the Public Utilities Code as noted above, which completely overlaps the certificate being transferred.

Seller is presently a party to all Western Motor Tariff Bureau, Inc., Agent, tariff publications as are necessary for publication of rates to cover its intrastate and interstate and foreign commerce operations. Purchaser proposes to adopt said tariffs effective upon consummation of this transfer.

Purchaser's balance sheet, filed as Exhibit 4 of the application, shows a net worth of \$29,061.33 with a net profit of \$27,061.33 as of May 31, 1980. Exhibit 6 of the application shows that the purchaser has ten pieces of highway equipment consisting of 2 tractors, 3 flat-bed trailers, and 5 van trailers.

Applicants allege that the proposal herein is consistent with the public interest because: (a) Seller desires to withdraw from transportation operations in the area of the certificate acquired by Decision 76590. There will be no adverse effect upon any carrier nor the shipping public resulting from the transfer of the operating rights now held by the seller, (b) Purchaser is adequately financed and possesses the necessary equipment and experience to conduct the proposed operation.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide distribution of the application. A copy of the application was furnished to the California Trucking Association and notice of the filing of the application appeared in the Commission's Daily Calendar of July 21, 1980. No protests have been received.

The two certificates held by the seller were acquired under different provisions of the Public Utilities Code. They are considered as one authority inasmuch as the certificate acquired under Section 1063.5 totally overlaps the certificate requested to be transferred by the application herein. We have held on numerous occasions that to the extent that one certificate duplicates, in whole or in part, any other certificated authority held by a carrier, such operative rights may not be separated to allow the sale or transfer of one or more of such duplicating rights or portion thereof and the retention of another certificated right to perform the same service. This requirement is specifically set forth in paragraph (2) of the Section 1063.5 certificate. Accordingly, the certificated authority which is retained by the seller will be amended to reflect the transfer of the operating rights which are the subject of this application.

After consideration the Commission finds:

1. The proposed transfer of the certificate acquired by the seller pursuant to Decision 76590 would not be adverse to the public interest.

2. 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 Huskie Freightways, Inc., which was acquired by Decision 76590 and the issuance of an in-lieu certificate of public convenience and necessity in appendix form to R & M Services, Inc., a California corporation. The new certificate will not broaden or change the interstate or foreign commerce rights now held by the seller. The certificate held by Huskie Freightways, Inc., acquired pursuant to Section 1063.5 of the Public Utilities Code, will be amended to delete the authority transferred pursuant to the order herein.

Purchaser 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 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 December 31, 1980 Huskie Freightways, Inc. (seller), a California corporation, may sell and transfer the operating rights acquired by Decision 76590 dated December 23, 1969, in Application 51442 and referred to in the application, to R & M Services, Inc. (purchaser), a California corporation.

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

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3. Applicants shall amend or reissue their tariffs or affidavit of subhauling on file with the Commission, naming rates and rules governing the common carrier operations transferred or amended to show that they have adopted or established, as their own, the rates and rules. The tariff filings or affidavit of subhauling 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 or affidavit shall be concurrent with the transfer. The tariff filings or affidavits of subhauling made pursuant to this order shall comply in all respects with the regulations governing the construction or adoption and filing of tariffs or affidavits of subhauling set forth in the Commission's General Order 80-Series or Decision 89575, as amended, as the case may be. 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 or affidavit of subhauling required by paragraph 3:

- a. A certificate of public convenience and necessity is granted to R & M Services, Inc. as set forth in Appendix A hereof.
- b. The certificate of public convenience and necessity issued to Huskie Freightways, Inc., by Section 1063.5 of the Public Utilities Code, effective April 30, 1980, in Application GC 2969, is hereby amended as set forth in Appendix B hereof.
- c. The certificate of public convenience and necessity granted by Decision 60397 dated January 12, 1960, in Application 41556, is revoked.

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

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6. 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 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.

7. Purchaser 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.

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

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

Dated NOV 4 1980, at San Francisco, California.

*John E. Bryan*  
*Thomas L. Strington*  
*Michael D. Rowell*  
*Alfred J. Pedrick*  
*James H. Smith*

R & M Services, 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 in the following described territory:

Beginning at the junction of Sunset Boulevard and State Highway 1 in the County of Los Angeles; thence northeasterly on Sunset Boulevard to its junction with Interstate Highway 405; northerly on Interstate Highway 405 to its junction with State Highway 118; thence northeasterly along State Highway 118, through and including the City of San Fernando, to its junction with Interstate Highway 210; thence via Interstate Highway 210 to its junction with State Highway 118; thence via State Highway 118 to its junction with Interstate Highway 210; thence via Interstate Highway 210 to its junction with Colorado Boulevard in the City of Pasadena; thence via Colorado Boulevard to its junction with Huntington Drive, in the City of Arcadia; thence via Huntington Drive to its junction with Foothill Boulevard near the City of Azusa; thence via Foothill Boulevard, Alostia Avenue and Foothill Boulevard to its junction with Garey Avenue near the City of La Verne; thence southerly on Garey Avenue to its junction with State Highway 71, south of the City of Pomona; thence southeasterly on State Highway 71 to its junction with State Highway 91, westerly along State Highway 91 to its junction with State Highway 55; southerly along State Highway 55 and a projected prolongation thereof to the shoreline of the Pacific Ocean; thence along said shoreline to a point immediately opposite the junction of Sunset Boulevard and State Highway 1; thence on an imaginary line from such point to the point of beginning.

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,

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- 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.
  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. Logs.
  8. Articles of extraordinary value.
  9. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
  10. Commodities likely to damage or contaminate other freight.
  11. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.

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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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Huskie Freightways, Inc., by the certificate of public convenience and necessity issued pursuant to Section 1063.5 of the Public Utilities Code, under Application GC 2969, is authorized to conduct operations to the extent set forth in such certificate, as a highway common carrier as defined in Section 213 of the Public Utilities Code, except within the following described territory:

Beginning at the junction of Sunset Boulevard and State Highway 1 in the County of Los Angeles; thence northeasterly on Sunset Boulevard to its junction with Interstate Highway 405; northerly on Interstate Highway 405 to its junction with State Highway 118; thence northeasterly along State Highway 118, through and including the City of San Fernando, to its junction with Interstate Highway 210; thence via Interstate Highway 210 to its junction with State Highway 118; thence via State Highway 118 to its junction with Interstate Highway 210; thence via Interstate Highway 210 to its junction with Colorado Boulevard in the City of Pasadena; thence via Colorado Boulevard to its junction with Huntington Drive, in the City of Arcadia; thence via Huntington Drive to its junction with Foothill Boulevard near the City of Azusa; thence via Foothill Boulevard, Alost Avenue and Foothill Boulevard to its junction with Garey Avenue near the City of La Verne; thence southerly on Garey Avenue to its junction with State Highway 71, south of the City of Pomona; thence southeasterly on State Highway 71 to its junction with State Highway 91, westerly along along State Highway 91 to its junction with State Highway 55; southerly along State Highway 55 and a projected prolongation thereof to the shoreline of the Pacific Ocean; thence along said shoreline to a point immediately opposite the junction of Sunset Boulevard and State Highway 1; thence on an imaginary line from such point to the point of beginning.

(END OF APPENDIX B)

Issued by California Public Utilities Commission, original issue dated, April 30, 1980, GC 2969.

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