

ORIGINAL

Decision No. 92471 DEC 2- 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)
 DREISBACH EXPORT PACKING CO., INC.,)
 a California corporation, to transfer)
 its Section 1063.5 Certificate of)
 Public Convenience and Necessity as)
 a Highway Common Carrier to)
 DREISBACH ENTERPRISES, INC., a)
 California corporation, by means of)
 a merger, pursuant to the provi-)
 sions of Section 854 of the Public)
 Utilities Code of the State of)
 California.)

Application No. 59853
(Filed August 4, 1980)

O P I N I O N

Applicants Dreisbach Export Packing Co., Inc. and Dreisbach Enterprises, Inc. request an order authorizing the merger into and transfer to Dreisbach Enterprises, Inc. of the Public Utilities Code^{1/} Section 1063.5 certificate now held by Dreisbach Export Packing Co., Inc. under Commission file No. T-90882.

In their application, applicants allege that by D.90722 dated August 23, 1979 in A.58922 the Commission authorized the merger of Penguin Trucking Co., Inc. and applicant Dreisbach Export Packing Co., Inc. into a surviving

^{1/} All code references hereinafter will be to the Public Utilities Code unless otherwise stated.

entity named Dreisbach Enterprises, Inc.^{2/} According to applicants, the purpose of the present application is to complete the overall merger transaction by merging the Section 1063.5 certificate issued to applicant Dreisbach Export Packing Co., Inc. (T-90882) into applicant Dreisbach Enterprises, Inc.

The Section 1063.5 certificate issued to Dreisbach Export Packing Co., Inc. (T-90882) was issued on January 4, 1980, effective April 30, 1980, after D.90722 was issued.

Applicants allege that there is a unity of ownership, control, and management in Dreisbach Export Packing Co., Inc. and Dreisbach Enterprises, Inc., and that the requested transfer results in no change in beneficial ownership. ✓

Notice of the filing of this application appeared in the Commission's Daily Calendar of August 6, 1980. A copy of the application was also served upon the California Trucking Association. No protests have been received.

^{2/} A.58922 mentions that application as representing the last step in securing regulatory approval for the merger of Penguin Trucking Co., Inc. into Dreisbach (Enterprises). Although A.58922 states the merger as being part of a reorganizational effort to reduce to a single entity those operations that, in the past, had been conducted under three separate corporate entities, all with a unity of ownership, and spells out the manner of the complete contemplated merger, no request was made in A.58922 to merge Dreisbach Export Packing Co., Inc. into Dreisbach Enterprises, Inc., and such was not granted in D.90722.

Section 1064.5 provides, in part:

"No certificate...issued pursuant to Section 1063.5 may be...transferred...for a period of five years after issuance, ..."

In Resolution No. 18049 issued July 31, 1979 we ordered that the transfer of a Section 1063.5 highway common carrier certificate will not be considered to constitute a transfer within the meaning of Section 1064.5, inter alia, where the parties who hold the majority beneficial interest in the permit will, as transferee(s), continue to hold the majority interest therein.

Findings of Fact

1. Dreisbach Export Packing Co., Inc. is the holder of a Section 1063.5 certificate under Commission file No. T-90882.
2. Dreisbach Export Packing Co., Inc. and Dreisbach Enterprises, Inc. are under the same ownership, control, and management.
3. The requested transfer of the Section 1063.5 certificate from Dreisbach Export Packing Co., Inc. to Dreisbach Enterprises, Inc. will not result in a change in beneficial ownership. ✓

Conclusions of Law

1. Inasmuch as there remains a unity of ownership in the transferor entity and the transferee entity, the requested merger and transfer of the Section 1063.5 certificate from applicant Dreisbach Export Packing Co., Inc. would not be adverse to the public interest and the application should be granted.

2. A public hearing is not necessary.

3. The order which follows should provide for the direct transfer of the Section 1063.5 certificate currently held by Dreisbach Export Packing Co., Inc. under Commission file No. T-90882 to Dreisbach Enterprises, Inc.

Dreisbach Enterprises, Inc. 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. 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.

O R D E R

IT IS ORDERED that:

1. Dreisbach Export Packing Co., Inc., a California corporation, may merge and transfer the operating rights of its Section 1063.5 highway common carrier certificate along with the certificate under T-90882 to Dreisbach Enterprises, Inc., a California corporation. This authorization shall expire if not exercised by March 3, 1981, or within such additional time as may be authorized by this Commission.
2. Within thirty days after the transfer, Dreisbach Enterprises, Inc. shall file with the Commission written acceptance of the certificate and written notice that the transfer has been consummated.
3. Dreisbach Enterprises, Inc. shall adopt the tariffs of Dreisbach Export Packing Co., Inc., or file new tariffs with the Commission, naming rates and rules on the same level as heretofore governing the operations transferred. 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. 80-Series. Failure to comply with the provisions of General Order No. 80-Series may result in the 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 adoption of the transferee's tariffs or filing of new tariffs required by paragraph 3, the certificate of public convenience and necessity under T-90882 is transferred to Dreisbach Enterprises, Inc., a California corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code and as set forth in D.89575 dated October 31, 1978.

5. Dreisbach Enterprises, Inc. 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.

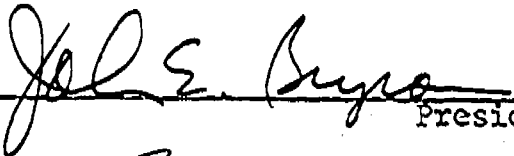
6. Dreisbach Enterprises, Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual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

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

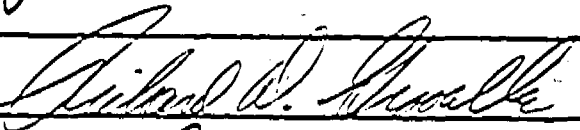
8. The applicants are granted a deviation from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application.

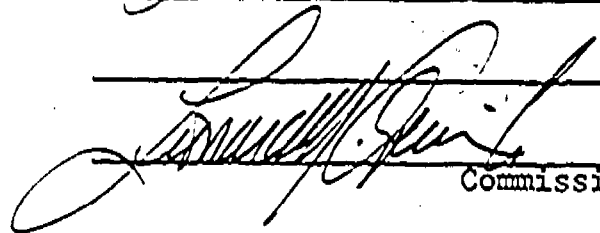
The effective date of this order shall be thirty days after the date hereof.

Dated DEC. 2 - 1980, at San Francisco, California.



President





Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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