

JAN 6 1981

ORIGINAL

Decision No. 92590

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Wm. David Neufeld, dba Neufeld Trans. Co., to transfer his Highway Common Carrier Certificate and Alliance Freightways, Inc., a California Corporation, to acquire said Certificate. (Public Utilities Code 851 and 1064.5.)

Application No. 59955 (Filed September 22, 1980)

O P I N I O N

Wm. David Neufeld (Neufeld), dba Neufeld Trans. Co., an individual, requests authority to transfer and Alliance Freightways, Inc. (Alliance), a California corporation, requests authority to acquire from Neufeld Highway Common Carrier Certificate GC 5460, File No. T-111673, issued April 30, 1980 pursuant to Section 1063.5 of the Public Utilities Code (the Code).

The application shows that Neufeld is engaged, among other operations, in the transportation of general commodities by motor vehicle in intrastate commerce under the certificate to be transferred. Neufeld has adopted the Commission Transition Tariff ~~Number 1~~ 2. *Ka*

Alliance was incorporated May 21, 1980 with authorized capital stock of 1,000 shares without par value. Neufeld owns 600 shares of Alliance, which is all of the issued and outstanding stock of Alliance. Upon transfer of the certificate, Alliance will adopt Commission Transition Tariff ~~Number 1~~ 2. A pro forma balance sheet, attached to the application, shows that as of March 31, 1980 Alliance would have total assets of \$68,713 and total liabilities of \$25,350 and a net worth of \$43,363. *Kr*

Discussion

The subject certificate was issued under Section 1063.5 of the Code. Section 1064.5 of the Code prohibits the transfer of such a certificate during the first five years after issuance except to the extent of operations actually conducted as a prime carrier. Commission Resolution No. 18049 dated July 31, 1979 recognizes that in the normal course of events many businesses change their legal form of organization from individual proprietorship to corporations and that if the prohibition against transfer of unexercised portions of such certificates is applied to such transfers where no substantial change in the identity of the beneficial owner occurs, the opportunity for the affected carriers to expand their operations as transferees will be denied. The resolution then went on to find that the limitation on the scope of operating rights to be transferred pursuant to Section 1064.5 of the Code is not intended to apply, as here pertinent to a change in the form of the business where the party who holds the majority beneficial interest in the certificates will continue to hold the majority interest in the corporation. In the case at hand, Neufeld, who presently owns the certificate will, upon transfer of the certificate to Alliance, own 100 percent of the stock of Alliance. The requested transfer is one which does not come within the meaning of Section 1064.5 of the Code, and the transfer will be authorized without the necessity of Neufeld's submitting any evidence of the activity under the certificate.

Findings of Fact

1. Neufeld requests authority to transfer and Alliance requests authority to acquire the subject certificate which was issued pursuant to Section 1063.5 of the Code.

2. Neufeld has adopted the Commission Transition Tariff ~~Number~~ 2 and upon completion of the proposed transfer Alliance will adopt such tariff.

3. The requested transfer will result in Neufeld's retaining 100 percent of the beneficial ownership of the subject certificate.

4. Alliance is fit, willing, and able to conduct the proposed operations.

5. The public interest will not be adversely affected by the proposed transfer.

6. A public hearing on the application is unnecessary.

Conclusions of Law

1. The proposed transfer does not constitute a transaction within the meaning of Section 1064.5 of the Code.

2. The application should be granted.

The order which follows will provide for, in the event the transfer is completed, the transfer of the certificate presently held by Neufeld to Alliance.

Alliance 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.

O R D E R

IT IS ORDERED that:

1. Wm. David Neufeld may transfer the operative rights referred to in the application to Alliance Freightways, Inc. (Alliance). This authorization shall expire if not exercised by April 1, 1981, or within such additional time as may be authorized by the Commission.

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

3. Alliance shall amend or reissue the adoption notice 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 adoption notice filed by Alliance 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 adoption notice shall be concurrent with the transfer. The adoption notice filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of adoption notices 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. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the adoption notice required by paragraph 3, the certificate of public convenience and necessity granted pursuant to Section 1063.5 of the Public Utilities Code is transferred to Alliance which authorizes it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code.

5. Alliance 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.

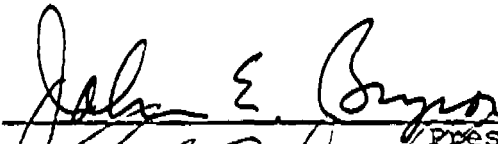
6. Alliance shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System


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.

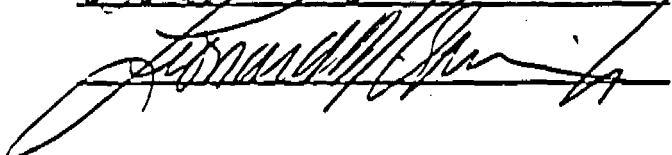
7. Alliance shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Alliance elects not to transport collect on delivery shipments, it shall make the appropriate filings as required by the General Order.

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

Dated JAN 6 1981, at San Francisco, California.



President




Commissioners