

ORIGINAL

Decision No. 92821 MAR 17 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)	
for an order approving transfer)	
of ownership of George Patrick)	Application No. 59998
Milligan, a Highway Common Carrier,)	(Filed October 8, 1980)
from George Patrick Milligan to)	
Milligan Trucking, Inc. under)	
the provisions of Section 851 of)	
the Public Utilities Code.)	

O P I N I O N

This is an application by George Patrick Milligan (Milligan) seeking authority to transfer his certificate of public convenience and necessity to Milligan Trucking, Inc., (Trucking), a newly formed corporation of which Milligan will be president and chairman of the board of directors. He will also hold at least 55 percent of the common stock of the corporation.

Milligan holds certificate GC-4336 in File No. T-120235 which was issued pursuant to Section 1063.5 of the Public Utilities Code and authorizes the transportation of general commodities within the State.

Section 1063.5 authorized holders of radial highway common carrier permits to convert their permits to highway common carrier certificates of public convenience and necessity. By Decision No. 89575 dated October 31, 1978, as amended, the Commission found that during the first five-year period after the Section 1063.5

certificates become operational, the carriers may expand or contract operations conducted pursuant thereto by making appropriate tariff filings. This procedure preserves the opportunity, presently available under radial permits, for carriers to develop and shape their operations based upon managerial objectives. Section 1064.5 of the Public Utilities Code prohibits the transfer of Section 1063.5 certificates during the first five years after issuance except to the extent of operation actually conducted as a prime carrier. By Resolution No. 18049 dated July 31, 1979 this Commission recognized that in the normal course of events many businesses experience transformations of their legal form while maintaining a continuation of the same business concern. As a result, certain types of transfers of Section 1063.5 highway common carrier certificates were held not to be transfers within the meaning of Section 1064.5, including a change in the form or makeup of the business entity such as incorporation when the vested interests remain the same. Because the instant application falls within this category, the transfer will be authorized without need for compliance with all of the usual service regulations relating to transfers.

Findings of Fact

1. A copy of the application was served on the California Trucking Association. Notice that it was filed appeared in the Commission's Daily Calendar. There have been no protests to the application.
2. A public hearing is not necessary in this matter.
3. The proposed transfer would not be adverse to the public interest.
4. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
5. The following order complies with the Commission's Energy Efficiency Plan.

Conclusion of Law

The application should be granted.

Trucking 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. On or before August 1, 1981 George Patrick Milligan may transfer to Milligan Trucking, Inc. the operating authority issued pursuant to Section 1063.5 of the Public Utilities Code and as set forth in Application No. GC-4336.
2. Within thirty days after the transfer Milligan Trucking, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. Milligan Trucking, Inc. shall amend or reissue the tariffs 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 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

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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 cancellation of the operating authority granted by this decision.

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

Dated MAR 17 1981, at San Francisco, California.

John E. Byrne President
Richard W. ...
Edward W. ...
Antonio ...
Commissioners