

ORIGINAL

Decision No. 92883 APR 7 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Robert L. Davis and)
Melba L. Davis (surviving spouse),)
dba Robert Davis Trucking, to)
transfer their Highway Common)
Carrier Certificate and Robert L.)
Davis and Melba L. Davis, a)
California partnership, to acquire)
said Certificate. (Public)
Utilities Code 851 and 1064.5))

Application No. 60133
(Filed December 9, 1980)

O P I N I O N

Robert L. Davis and Melba L. Davis (as surviving spouse of LeRoy Davis, deceased), dba Robert Davis Trucking, have applied to transfer their highway common carrier authority to Robert L. Davis and Melba L. Davis, a partnership. The certificate was issued pursuant to Section 1063.5 of the Public Utilities Code, in GC 2356, under File No. T-121,116.

Section 1063.5 authorizes 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, formerly available under radial highway common carrier 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 certain of the usual service regulations relating to transfers.

Findings of Fact

1. The proposed transfer would not be adverse to the public interest.
2. A public hearing is not necessary.

3. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

4. The following order complies with the Commission's Energy Efficiency Plan.

Conclusion of Law

The application should be granted.

Robert L. Davis and Melba L. Davis are 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 July 1, 1981, Robert L. Davis and Melba L. Davis (as surviving spouse of LeRoy Davis, deceased) dba Robert Davis Trucking, may transfer to Robert L. Davis and Melba L. Davis, a

partnership, the operating authority issued pursuant to Section 1063.5 of the Public Utilities Code and as set forth in Application No. GC-2356.

2. Within thirty days after the transfer Robert L. Davis and Melba L. Davis shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. Robert L. Davis and Melba L. Davis shall amend or reissue the affidavit of subhauling on file with the Commission, governing the common carrier operations transferred to show that they have adopted or established, as their own, the affidavit. The affidavit of subhauling filing 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 affidavit of subhauling shall be concurrent with the transfer. The affidavit of subhauling filing made pursuant to this order shall

comply in all respects with the regulations governing the construction and filing of affidavits of subhauling set forth in Decision No. 89575 dated October 31, 1978 in Case No. 5432, OSH 957. Failure to comply with the provisions of Decision No. 89575 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 APR 7 1981, at San Francisco, California.

John E. Bryan
President
Richard D. K... ..
Leonard W.
Clifton
Priscilla C. Brew
Commissioners