

ORIGINAL

Decision No. 92886 APR 7 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Clifford M. Hayter, dba Hayter Trucking, to transfer his Highway Common Carrier Certificate and Hayter Trucking, Inc., a California Corporation, to acquire said Certificate (Public Utilities Code 851 and 1064.5).

Application No. 60170 (Filed January 5, 1981; amended January 23, 1981)

O P I N I O N

Clifford M. Hayter, dba Hayter Trucking, requests authority to transfer a certificate of public convenience and necessity to Hayter Trucking, Inc., a California corporation. Clifford M. Hayter will hold 100 percent of the stock of Hayter Trucking, Inc.

The certificate as contained in GC 3325, File No. T-71413, was issued on April 30, 1980 pursuant to Section 1063.5 of the Public Utilities Code and authorized the transportation of general commodities within the State.

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 such 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 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 transform their legal form while continuing the same operations. 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 this application falls within this category, the transfer will be authorized without need for compliance with the provisions of Section 1064.5 of the Public Utilities Code.

Findings of Fact

1. After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary.

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

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

Conclusion of Law

We conclude that the application should be granted.

Hayter Trucking, Inc. 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 Clifford M. Hayter, dba Hayter Trucking, may transfer to Hayter Trucking, Inc. the operating authority issued pursuant to Section 1063.5 of the Public Utilities Code and as set forth in Application No. GC 3325.

2. Within thirty days after the transfer Hayter Trucking, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

3. Hayter Trucking, Inc. shall amend or reissue the adoption notices 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 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 adoption notice filings shall be concurrent with the transfer. The adoption

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noted filings

~~filings~~ made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of ~~tariffs~~ *adaptation notice* 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 APR 7 1981, at San Francisco, California.

John E. Guyon President
William D. Howell
Thomas M. Smith
Robert E. Adams
Priscilla C. Grew Commissioners