

ALJ/afm/hh

Decision No. 92955 APR 21 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JOE CHASTAIN and )  
 RUSSELL CHASTAIN, dba CHASTAIN )  
 TRUCKING COMPANY, to transfer )  
 their Highway Common Carrier )  
 Certificate and CHASTAIN )  
 TRUCKING, INC., a California )  
 corporation, to acquire said )  
 Certificate. )  
 (Public Utilities Code 851 and )  
 1064.5) )

Application No. 60145  
(Filed December 12, 1980)

O P I N I O N

Joe and Russell Chastain (the Chastains), dba Chastain Trucking Company, operate a Sacramento-based trucking company. They are engaged, among other operations, in the transportation of general commodities by motor vehicle, in intrastate commerce, as a common carrier under a Common Carrier Certificate GC 2716 (File No. T-113144) issued April 30, 1980 by the Public Utilities Commission of the State of California, under Section 1063.5 of the Public Utilities Code of the State of California. The Chastains seek to transfer their highway common carrier operative certificate to Chastain Trucking, Inc. (transferee), a corporation duly organized and validly existing under the laws of the State of California.

The Chastains hold 100 percent of transferee's stock. It is proposed to transfer the certificate to the corporation. The Chastains do not participate in any of the Commission's Transition Tariffs; their file indicates that they are presently engaged in subhauling only.

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, 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 operations 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. The proposed transfer would not be adverse to the public interest.
2. A public hearing is not necessary, and the following order should be effective the date of signature to enable expeditious reorganization of the Chastains' business.
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.

Chastain 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 July 1, 1981, Joe and Russell Chastain may transfer to Chastain Trucking, Inc. the operating authority issued pursuant to Section 1063.5 of the Public Utilities Code and as set forth in Application No. GC 2716.

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

3. Chastain Trucking, Inc. shall amend or reissue the affidavit of subhauling on file with the Commission, covering the common carrier subhauling operations transferred to show that it has adopted

or established, as its own, the affidavit of subhauling. 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 filing shall be concurrent with the transfer. The affidavit of subhauling 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 November 30, 1978 in Case No. 5432 (OSH957). 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 is the date hereof.

Dated APR 21 1981, at San Francisco, California.

John S. Bryan  
President  
William D. Gately  
Thomas W. King  
Victor K. Adams  
Isabella C. Green  
Commissioners