

APR 21 1981

ORIGINAL

Decision No. 92958

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of L. R. Collier and)
 Don L. Collier, dba Collier's)
 Refrigerated Trucking Service,)
 to transfer his Highway Common)
 Carrier Certificate and Collier)
 Refrigerated Trucking Service,)
 Inc., a California corporation,)
 to acquire said Certificate.)
 (Public Utilities Code 851 and)
 1064.5.))

Application No. 60229
(Filed January 29, 1981)

O P I N I O N

L. R. Collier and Don L. Collier, co-partners, doing business as Collier's Refrigerated Trucking Service, request authority to transfer a highway common carrier certificate of public convenience and necessity to Collier Refrigerated Trucking Service, Inc., a newly formed California corporation of which L. R. Collier is president. The certificate, issued April 30, 1980 under Public Utilities Code Section 1063.5 in Application No. GC 2825, File No. T-106303, 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. In Decision No. 89575 dated October 31, 1978, as amended, the Commission held that during the five-year period after their Section 1063.5 certificates become effective, carriers should be allowed to expand or contract their operations conducted under such certificates by making appropriate tariff filings. This procedure preserves the carriers' opportunity, formerly available to radial highway common carrier permit holders, to develop and shape their operations based upon managerial objectives. Public Utilities Code

Section 1064.5 prohibits the transfer of Section 1063.5 certificates during that five-year period except to the extent of operations actually conducted as a prime carrier. By Resolution No. 18049 dated July 31, 1979 the Commission recognized that businesses often change their legal form while continuing the same operations, and it held that some transfers of Section 1063.5 certificates were not transfers within the meaning of Section 1064.5. Therefore, when a transfer of a Section 1063.5 certificate is required by a change in the form of the business entity, such as the incorporation of a proprietorship or partnership where the ownership interests remain the same, the transfer will be authorized without compliance by the applicants with the service rules relating to transfers. This application involves such a transfer since by letter dated February 9, 1981, received in evidence as Exhibit No. 1, applicants state that incorporation of the firm has not resulted in any change in interest of the owners.

Findings of Fact

1. 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 has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

Conclusion of Law

The application should be granted.

Collier Refrigerated Trucking Service, 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 L. R. Collier and Don L. Collier, co-partners, doing business as Collier's Refrigerated Trucking Service, may transfer to Collier Refrigerated Trucking Service, Inc. the operating authority issued under Public Utilities Code Section 1063.5 in Application No. GC 2825.
2. Within thirty days after the transfer Collier Refrigerated Trucking Service, Inc., shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. Collier Refrigerated Trucking Service, 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 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.

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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 21 1981, at San Francisco, California.

John E. Bayne
President
Richard D. Lovell
Donald W. Jones
Arthur Colby
Priscilla C. Green
Commissioners