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ORIGINAL

Decision 92959 APR 21 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Bush Trucking, Inc., a )  
corporation, to acquire, and )  
Bush Trucking, a partnership, to )  
transfer a Common Carrier )  
Certificate and order to issue )  
stock. )

Application 60230  
(Filed January 29, 1981;  
amended February 23, 1981)

O P I N I O N

Laurens A. Bush, Jr. and Laurens A. Bush III, doing business as Bush Trucking, request authority to transfer a certificate of public convenience and necessity to Bush Trucking, Inc., a newly formed California corporation, of which applicants are sole stockholders.

The certificate, as contained in File T-123-472, was issued on April 30, 1980 pursuant to § 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 89575 dated October 31, 1978, as amended, the Commission found that during the first 5-year period after the § 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, previously 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 § 1063.5 certificates during the first 5 years after issuance except to the extent of operation actually conducted as a prime carrier. By Resolution 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 § 1063.5 certificates were not transfers within the meaning of § 1064.5. Therefore, when a transfer of a § 1063.5 certificate is required by a change in the form of the entity, such as the incorporation of a proprietorship or partnership where the beneficial ownership interests remain substantially 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.

The new corporation will continue to conduct operations from its terminal in Santa Clara. As of December 31, 1980 it indicated a net worth in the amount of \$60,499.

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 guidelines in the Commission's Energy Efficiency Plan.

Conclusion of Law

The application should be granted.

Bush 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.

The authorization granted shall not be construed as a finding of the value of the rights and properties authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before September 30, 1981 Bush Trucking, a partnership, may transfer to Bush Trucking, Inc. the operating authority issued pursuant to § 1063.5 of the Public Utilities Code and as set forth in File T-132-472.
2. Within 30 days after the transfer Bush Trucking, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. Bush 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 5 days after the effective date of this order on not less than 5 days' notice to the Commission and the public,

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and the effective date of the adoption notice filing 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 Series 80. Failure to comply with the provisions of General Order Series 80 may result in cancellation of the operating authority granted by this decision.

This order becomes effect<sup>ive</sup> 30 days from today.

Dated APR 21 1981, at San Francisco, California. K

John E. Bryan President  
Richard W. Lovell  
Thomas M. Smith  
Victor Calvo  
Patricia C. Hunt Commissioners