

Decision No. 92965 APR 21 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:)

(a) COUNTRY ROAD FREIGHTLINES, INC., a California corporation, to purchase from HARDING'S FREIGHT SERVICE, a California corporation, a certificate of public convenience and necessity authorizing the transportation of general commodities, with specified exceptions, (1) between all points and places within the County of San Diego, (2) between San Diego and Devore, serving all intermediate points on Interstate 15.)

Application No. 60147
(Filed December 15, 1980)

(b) COUNTRY ROAD FREIGHTLINES, INC., a California corporation, to issue shares of its common capital stock.)

O P I N I O N

Country Road Freightlines, Inc. (Country Road) is a California corporation. It was incorporated on September 25, 1980. At the present time it has neither assets nor liabilities, and has not yet conducted any business operations of any kind. It has recently been issued Agricultural and Contract Carrier permits (T-133,233).

Harding's Freight Service (Harding), is a dissolved California corporation which continues to exist for the purpose of winding up its affairs pursuant to Section 2010 of the California Corporations Code.

Harding holds a certificate of public convenience and necessity issued by this Commission in Decision No. 80939 dated January 9, 1973 in Application No. 53383 and a coextensive certificate of registration issued by the Interstate Commerce Commission in Docket No. MC-120782, Sub-No. 2. This certificate authorizes the transportation of general commodities, with specified exceptions, (1) between all points and places in the county of San Diego and (2) between San Diego and Devore, serving all intermediate points on Interstate Highway 15 and all off-route points located within ten miles laterally of said highway (except those in the San Bernardino National Forest). In addition, Harding has been engaged in the transportation of property under highway carrier permits issued by this Commission under File No. T-69,354. Said permits are the subject of a transfer application pending before this Commission.

By this application Country Road seeks authority to purchase and Harding requests authority to sell, the certificate (Sections 851-854, Public Utilities Code).

Harding participates in the rates set forth in tariffs of Western Motor Tariff Bureau, Inc., Agent. Country Road proposes to adopt the applicable tariffs of Harding.

The agreement between the parties provides for the purchase and sale of the described certificate and the coextensive certificate of registration, for the total sum of \$15,000. The terms of the sale provide for the payment of \$8,500 upon the transfer of the authority and of \$6,500 including interest at the rate of 10 percent per annum on the first anniversary of the transfer. No other asset is involved in this sale.^{1/}

The articles of incorporation of Country Road authorize the issuance of 50,000 shares of common capital stock, with no par value. This is the only class of shares authorized, and the corporation presently has no shares of stock issued or outstanding. By this application, Country Road, pursuant to Sections 816-830 of the California Public Utilities Code, seeks authority to issue 35,000 shares of stock as follows:

<u>Name</u>	<u>Position</u>	<u>Number of Shares</u>
Paul V. Mitchell	President, Chief Executive	15,750
Mary J. Wolfe	Secretary/Treasurer	15,750
Kelly N. Mitchell	-	<u>3,500</u>
		35,000

^{1/} During the pendency of this application, the contract was modified. The terms are now \$3,000 down with \$3,000 annual payments. Interest is now set at 6 percent.

The stated consideration for the issuance is \$1.00 per share, which will be used for Country Road's initial capital.

Country Road asserts that the initial capitalization of \$35,000, less the operating rights payment of \$8,500, will be sufficient capitalization for the corporation. First, no installment is due for one year during which time the company will be enabled to establish itself. In addition, Country Road proposes to use the services of owner-operators almost exclusively and to purchase only a minimal amount of equipment. Therefore a substantial portion of the initial capitalization can be retained as working capital; the amount retained should be adequate to establish and maintain operations for a period of at least six months. In the event that additional funds are required, Paul V. Mitchell and Mary J. Wolfe will make such funds available to Country Road as a loan to the corporation, secured by a demand note.

Kelly Mitchell has experience in and knowledge of carrier operations through three years employment as a driver and freight dock worker with I.C.C. Class I carriers. Mitchell has also been involved as follows: terminal manager for two years with a firm specializing in consolidation of containerized shipments of general commodities to Guam, Japan, and Hawaii; one year's employment as operations manager of an equipment pool controlling location, dispatch, maintenance and repair of 700 trailers in local and international rental fleets; two years' employment as warehouse

supervisor in charge of dispersal of containerized construction material to Eniwetok Atoll; and most recently, one year's employment as night operations manager for a Class II California intrastate carrier.

It is alleged that each of the above prospective shareholders of applicant Country Road desire to provide carrier operations to the public and dedicate their full-time activities to the conduct of business of Country Road in that capacity. Applicants claim that the transaction proposed herein is in the public interest.

They also claim that operation of Country Road will be feasible because of the combined knowledge and experience of the proposed management. Applicants allege that the proposed transfer and stock issue will be in the public interest for the following reasons:

1. There will be no change in the competitive relationship among carriers for the reason that Country Road will simply replace Harding as a general commodity carrier between the points involved herein.
2. There will be no change in the rates and other charges now assessed to the public.
3. There is adequate financing to support the proposed transaction and proposed operation for the reason that the consideration to be paid for the certificate is reasonable and well within the financial ability of Country Road and since the initial capitalization of the corporation is to be utilized for the provisions of highway common carrier service through the use of leased equipment and subhaulers.

Applicants allege that the cost of reproducing and mailing copies of this application to all of the general commodity carriers authorized to provide service between the points and places involved would cause considerable expense to the parties. Applicants have mailed copies of this application to the California Trucking Association, and allege that publication in its publication Caltrux will give adequate notice to all highway common carriers engaged in highway common carrier services within the scope of the operations of Harding. Notice of the filing of the application appeared in the Commission's Daily Calendar on December 22, 1980. No protests have ✓ been received.

Findings of Fact

1. The proposed transfer and issue of stock in the amount of 35,000 shares at \$1.00 per share, would not be adverse to the public interest.
2. The proposed security issue is for proper purposes and the money, property, or labor to be procured or paid for by the issue of the security authorized by this decision is reasonably required for the purposes specified, which purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.
3. There is no known opposition and no reason to delay granting the authority requested. No hearing is necessary.
4. The following order has no reasonably foreseeable impact on the energy efficiency of highway carriers.

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

We conclude that the proposed transfer should be authorized to the extent set forth in the order which follows, which will be effective thirty days after transferee's compliance with Ordering Paragraph 5, hereof. ✓

The authorization granted by this decision is for the purpose of this proceeding only and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Harding and the issuance of a certificate in appendix form to Country Road. This certificate will be restated, but such restatement will not change or broaden the authority transferred.

Country Road 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 after the effective date hereof and on or before September 30, 1981, for the purpose specified in the application, Country Road Freightlines, Inc. may issue 35,000 shares of stock in exchange for \$35,000 in cash.
2. Country Road Freightlines, Inc. shall file with the Commission a report, or reports as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.
3. Harding's Freight Service may sell and transfer the operative rights and property referred to in the application to Country Road Freightlines, Inc. This authorization shall expire if not exercised by September 30, 1981, or within such additional time as may be authorized by the Commission.
4. Within thirty days after the transfer purchaser shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
5. Purchaser shall amend or reissue the tariffs 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 tariff 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 tariff filings shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs 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 a cancellation of the operating authority granted by this decision.

6. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Country Road Freightlines, Inc., a corporation, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.

7. The certificate of public convenience and necessity granted by Decision No. 80939 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5.

8. Purchaser shall comply with the safety rules of the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

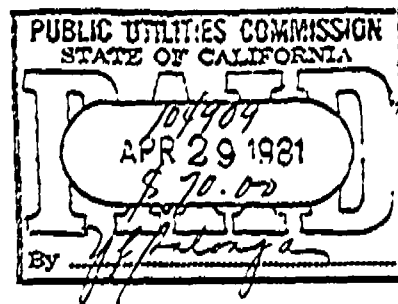
9. Purchaser shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

10. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

11. The authority granted in this order to issue stock will become effective when the issuer has paid the fee prescribed by Section 1904.1 of the Public Utilities Code which fee is \$70. In all other respects the effective date of this order shall be thirty days after the date hereof.

Dated APR 21 1981, at San Francisco, California.

John E. Byrnes President
Richard D. ...
...
...
... Commissioners



Country Road Freightlines, Inc. by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

1. Between all points and places within the county of San Diego.
2. Between San Diego and Devore serving all intermediate points on Interstate Highways 15 and 15-E and all off-route points located within ten (10) statute miles laterally of said highways (except those in the San Bernardino National Forest).
3. Through routes and rates may be established between any and all points specified in sub-paragraphs 1 and 2 above.

Except that pursuant to the authority herein granted, carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesman's hand sample cases, suitcases, overnight or boston bags, briefcases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).

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2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. ✓
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks) sheep, sheep camp outfits, sows, steers, stags, swine or wethers. ✓
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. ✓
5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers. ✓
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit. ✓
7. Logs. ✓
8. Newspapers ✓

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Appendix A

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(a California corporation)

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9. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment. ✓
10. Explosives subject to U.S. Department of Transportation Regulations governing the Transportation of Hazardous Materials. ✓

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways, and bridges necessary or convenient for the performance of said service.

(END OF APPENDIX A)

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