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MAY 5 1981

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
Nancy S. Lyons, dba LYONS' ROARING)
EXPRESS, for authority to transfer)
the certificate of public convenience)
and necessity of Nancy S. Lyons to)
Lyons' Roaring Express, Inc., a)
California corporation.)

Application No. 59657
(Filed May 15, 1980;
amended September 29, 1980)

O P I N I O N

Nancy S. Lyons, doing business as Lyons' Roaring Express, was granted a certificate of public convenience and necessity in Application No. 56394, pursuant to Decision No. 87230 dated April 19, 1977 to operate as a highway common carrier for the transportation of general commodities between all points within a defined San Francisco Territory and points within five miles thereof. This certificate has been registered with the Interstate Commerce Commission. Applicant has also been issued a certificate of public convenience and necessity in Application GC 3758, effective April 30, 1980, pursuant to Section 1063.5 of the Public Utilities Code, to operate statewide as a highway common carrier of general commodities.

On October 2, 1978, Articles of Incorporation were filed with the Secretary of State for Lyons' Roaring Express, Inc., in which Nancy S. Lyons owns 51 percent of the stock and her husband owns 49 percent. Applicant requests authority in this application to transfer the above-described certificates to the corporation.

A copy of the Articles of Incorporation is attached to the application. Copies of the original and amended application were mailed to the California Trucking Association. The filings of the original and amended application were duly listed in the Commission's Daily Calendar on May 19, 1980. No protests to the transfer have been received.

Public Utilities Code Section 1064.5 provides that no certificate held pursuant to Code Section 1063.5 may be transferred during an initial 5-year period except to the extent of operations 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 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 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, in part, such a transfer.

Findings of Fact

1. There is no change in the beneficial ownership of the common carrier authorities involved in this application.
2. The proposed transfer would not be adverse to the public interest. A public hearing is not necessary.
3. The following order has no reasonably foreseeable impact upon the energy efficiency of highway carriers.

4. We find with reasonable certainty that the transfer involved in this proceeding will not have a significant effect on the environment.

Conclusion of Law

The application should be granted.

Lyons' Roaring Express, 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. Nancy S. Lyons, doing business as Lyons' Roaring Express, may transfer the operative rights referred to in the application to Lyons' Roaring Express, Inc. This authorization shall expire if not exercised by September 30, 1981, or within such additional time as may be authorized by the Commission.
2. Within thirty days after the transfer the transferee shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. Transferee shall amend or reissue the adoption notice 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 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 adoption notice filing shall be concurrent with the transfer. The adoption notice filing 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. 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.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the adoption notice filing required by paragraph 3, the certificates of public convenience and necessity referred to in paragraph 1 hereof are transferred to Lyons' Roaring Express, Inc.

5. Transferee is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

6. Transferee 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.

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

The effective date of this order shall be thirty days after the date hereof.

Dated MAY 5 1981, at San Francisco, California.

John G. Conroy
President
Michael D. Barak
Lawrence M. Smith
Walter Cohen
Isabelle C. Green
Commissioners