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Decision No. 93072 MAY 19 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:
Expedite Truck Lines, a corporation,
to purchase; and Royal Transporta-
tion Co., Inc., a California
Corporation to sell a certificate of
Public Convenience and Necessity for
the transport of commodities between
points in the Los Angeles Territory,
Pursuant to Section 851-854 of the
California Public Utilities Code.

Application No. 59941
(Filed September 15, 1980)

O P I N I O N

Royal Transportation Co., Inc., a California corporation (seller), requests authority to sell and transfer and Expedite Truck Lines, a California corporation (purchaser), seeks authority to purchase and acquire two certificates of public convenience and necessity as a highway common carrier.

The certificates were granted pursuant to Decision No. 62484 dated August 29, 1961 in Application No. 43047 and Decision No. 69646 dated September 8, 1965 in Application No. 47775 and amended by Decision No. 74082 dated May 7, 1968 in the aforementioned proceedings. The certificates authorize the transportation of general commodities in the Los Angeles Basin Territory and between Los Angeles Territory and San Diego Territory. The certificates are the subject of certificates of registration issued by the Interstate Commerce Commission in Docket No. MC120764 Sub No. 1 dated February 11, 1964 and Sub No. 2 dated June 13, 1966, respectively.

Purchaser holds a certificate of public convenience and necessity as a highway common carrier authorizing transportation of general commodities between all points in the State of California issued pursuant to Section 1063.5 of the Public Utilities Code in Application No. GC 3009 and a highway contract carrier and a heavy specialized carrier permit under File T-120,236.

The seller also holds a highway common carrier certificate converted from its radial highway common carrier permit pursuant to Section 1063.5 of the Public Utilities Code. It authorizes the transportation of general commodities between all points and places in the State of California.

Purchaser proposes to purchase the highway common carrier certificates of the seller, which were acquired pursuant to Decisions Nos. 62484 and 69646, respectively, for the sum of \$11,000 allocated as follows: \$10,000 for the interstate certificates of registration and \$1,000 for the intrastate authority. These amounts are to be paid in accordance with the purchase and sale agreement entered into by the parties on September 9, 1980, a copy of which is filed as Exhibit 3 of the application. Payment by purchaser to seller is allocated as follows: \$1,000 to be paid upon the filing of this application and the balance of \$10,000 on the date the transfer is consummated.

The net result of the transfer of the intrastate certificates, acquired by the seller pursuant to Decisions Nos. 62484 and 69646, will be to effect the transfer of the co-extensive

Certificate of Registration. No additional intrastate operating authority will accrue to the purchaser in that it already holds a highway common carrier certificate issued pursuant to Section 1063.5 of the Public Utilities Code as noted above, which completely overlaps the certificate being transferred.

Seller is presently a party to all Western Motor Tariff Bureau, Agent, tariff publications as are necessary for publication of rates to cover its intrastate and interstate and foreign commerce operations. Purchaser proposes to adopt said tariffs effective upon consummation of this transfer.

Purchaser's balance sheet, dated June 30, 1980, filed as Exhibit 4 to the application, shows a net worth of \$34,246 with a net profit of \$27,166 as of that date. Exhibit 6 of the application shows that the purchaser has 39 pieces of highway equipment consisting of 13 tractors and 26 trailers.

Applicants allege that the proposal herein is consistent with the public interest because: (a) seller desires to withdraw from transportation operations in the area of the certificates granted by Decisions Nos. 62484 and 69646, with no adverse effect upon any carrier nor the shipping public resulting from the transfer of the operating rights now held by the seller; and (b) purchaser is adequately financed and possesses the necessary equipment and experience to conduct the proposed operation.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. A copy of the application was furnished to the California Trucking Association, the Highway Carriers Association and certain common carriers with whom the service is likely to compete as shown in a certificate of service attached to the application. Notice of the filing of the application appeared in the Commission's Daily Calendar of September 19, 1980. No protests have been received.

The three certificates held by the seller were acquired under different provisions of the Public Utilities Code. They are considered as one authority inasmuch as the certificate acquired under Section 1063.5 totally overlaps the certificates requested to be transferred by this application. We have held on numerous occasions that to the extent one certificate duplicates, in whole or in part, any other certificated authority held by a carrier, such operative rights may not be separated to allow the sale or transfer of one or more of such duplicating rights or portion thereof and the retention of another certificated right to perform the same service. This requirement is specifically set forth in paragraph(2) of the Section 1063.5 certificate. Accordingly, the certificated authority which is retained by the seller will be amended to reflect the transfer of the operating rights which are the subject of this application.

Findings of Fact

1. The proposed transfer of the certificates acquired by the seller pursuant to Decisions 62484 and 69646 would not be adverse to the public interest.

2. The requested deviation from the Commission's Rules of Practice and Procedure should be authorized.

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 guidelines of the Commission's Energy Efficiency Plan.

Conclusion of Law

The application should be granted as set forth in the ensuing order. A public hearing is not necessary.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificates presently held by Royal Transportation Co. Inc., which were acquired pursuant to Decisions Nos. 62484 and 69646, respectively, and the issuance of an in lieu certificate of public convenience and necessity in appendix form to Expedite Truck Lines, a California corporation. The new certificate will not broaden or change the interstate or foreign commerce rights now held by the seller. The certificate of public convenience and necessity held by Royal Transportation Co., Inc., acquired pursuant to Section 1063.5 of the Public Utilities Code, will

be amended to delete the authority transferred pursuant to the order herein.

Purchaser is placed on notice that operating 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 a consideration for the grant of such rights. Apart 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 September 30, 1981, Royal Transportation Co., Inc., (seller), a California corporation. may sell and transfer the operating authorities acquired by Decision No. 62484 dated August 29, 1961, in Application No. 43047 and Decision No. 69646 dated September 8, 1965, in Application No. 47775, to Expedite Truck Lines, (purchaser) a California corporation.
2. Within thirty days after the transfer, purchaser shall file with the Commission a written acceptance of the certificate and shall file with the Commission a true copy of the bill of sale or other instrument of transfer.

3. Applicants shall amend or reissue their tariffs or adoption notices on file with the Commission, naming rates and rules governing the common carrier operations transferred or amended to show that they have adopted or established, as their own, the rates and rules. The tariff filings or adoption notices 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 or adoption notices shall be concurrent with the transfer. The tariff filings or adoption notices made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs or adoption notices set forth in the Commission's General Order Series 80 or Decision No. 89575, as amended, as the case may be. Failure to comply with the provisions of General Order Series 80 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 tariff filings or adoption notices required by paragraph 3:

- (a) A certificate of public convenience and necessity is granted to Expedite Truck Lines as set forth in Appendix A hereof.
- (b) The certificate of public convenience and necessity issued to Royal Transportation Co., Inc. by Section 1063.5 of the Public Utilities Code, effective April 30, 1980, in Application No. GC 736 is hereby amended as set forth in Appendix B hereof.

- (c) The certificates of public convenience and necessity granted by Decision No. 62484 dated August 29, 1961, in Application No. 43047 and Decision No. 69646 dated September 8, 1965, in Application No. 47775, are revoked.

5. Purchaser shall comply with the safety rules administered by the California Highway Patrol, and the insurance requirements of Commission's General Order Series 100.

6. 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.

7. Purchaser shall comply with the requirements of the Commission's General Order Series 84 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.

8. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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

Dated MAY 19 1981 , at San Francisco, California.

 J. E. Boyce
President
 Richard D. Gandy
 Donald W. Jones
 Walter C. Carter
 Pamela C. Myers
Commissioners

Expedite Truck Lines 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:

- I. Between all points in the Los Angeles Basin Territory as, described in Note A hereof

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 salesmen'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).
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.

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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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
- II. Between all points in Los Angeles Territory as described in Note B hereof, and San Diego Territory as described in Note C hereof.

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

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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).

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. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.

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Decision 93072, Application No. 59441.

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.

NOTE A

LOS ANGELES BASIN TERRITORY

Los Angeles Basin Territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County Boundary Line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway 118, approximately two miles west of Chatsworth; easterly along State Highway 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the City of San Fernando; westerly and northerly along said corporate boundary of the City of San Fernando to Maclay Avenue; northeasterly along Maclay Avenue and its prolongation to the Angeles National Forest Boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest Boundary to Mill Creek Road (State Highway 38); westerly along Mill Creek Road to Bryant Street; southerly along Bryant Street to and including the unincorporated community of Yucaipa; westerly along Yucaipa Boulevard to Interstate Highway 10; northwesterly along Interstate Highway 10 to Redlands Boulevard; northwesterly along Redlands Boulevard to Barton Road; westerly along Barton Road to La Cadena Drive; southerly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to State Highway 60; southeasterly along State Highway 60 and U.S. Highway 395 to Nuevo Road; easterly along Nuevo Road via Nuevo and Lakeview to State Highway 79; southerly along State Highway 79 to State Highway 74; thence westerly to the corporate boundary of the City of Hemet; southerly, westerly and northerly along said corporate boundary to The Atchison, Topeka & Santa Fe right-of-way; southerly along said right-of-way to Washington Road; southerly along Washington Road through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to Winchester Road (State Highway 79) to Jefferson Avenue; southerly along Jefferson Avenue to U.S. Highway 395; southerly along U.S. Highway 395 to the Riverside County-San Diego County Boundary Line; westerly along said boundary line to the Orange County-San Diego County Boundary Line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning, including the point of March Air Force Base.

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NOTE B

LOS ANGELES TERRITORY

The Los Angeles Territory includes that area embraced by the following boundary: Beginning at the intersection of Sunset Boulevard and State Highway 1; thence northeasterly on Sunset Boulevard to Interstate Highway 405; thence northerly along Interstate Highway 405 to State Highway 118 at San Fernando (including the City of San Fernando); thence southeasterly along State Highway 118 to and including the City of Pasadena; thence easterly along Foothill Boulevard from the intersection of Foothill Boulevard and Michillinda Avenue to Valencia Way; northerly on Valencia Way to Hillcrest Boulevard; easterly and northerly along Hillcrest Boulevard to Grand Avenue; easterly and southerly along Grand Avenue to Greystone Avenue; easterly on Greystone Avenue and the prolongation thereof to the west side of Sawpit Wash; southerly on Sawpit Wash to the intersection of Mountain Avenue and Royal Oaks Drive; easterly along Royal Oaks Drive to Buena Vista Street; south on Buena Vista Street and due south on a prolongation thereof to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Beverly Boulevard; southeasterly on Beverly Boulevard to Painter Avenue in the City of Whittier; southerly on Painter Avenue to Telegraph Road; westerly on Telegraph Road to the west bank of the San Gabriel River; southerly along the west bank of the San Gabriel River to Imperial Highway (State Highway 90); westerly on Imperial Highway to Lakewood Boulevard (State Highway 19); southerly along Lakewood Boulevard to its intersection with State Highway 1 at Ximeno Street; southerly along Ximeno Street and its prolongation to the Pacific Ocean; westerly and northerly along the shoreline of the Pacific Ocean to a point directly south of the intersection of Sunset Boulevard and State Highway 1; thence northerly along an imaginary line to the point of beginning.

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NOTE C

SAN DIEGO TERRITORY

The San Diego Territory includes that area embraced by following an imaginary line starting at a point approximately four miles north of La Jolla on the Pacific Coast shoreline running east to Miramar on U.S. Highway 395; thence following an imaginary line running south-easterly to Lakeside on State Highway 67; thence southerly on County Road S-17 (San Diego County) and its prolongation to State Highway 94; easterly on State Highway 94 to Jamul; thence due south following an imaginary line to the California-Mexican Boundary Line; thence westerly along the boundary line to the Pacific Ocean and north along the shoreline to the point of beginning.

(END OF APPENDIX A)

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Royal Transportation Co., Inc. by the certificate of public convenience and necessity issued pursuant to Section 1063.5 of the Public Utilities Code under Application No. GC 736, is authorized to conduct operations to the extent set forth in such certificate, as a highway common carrier as defined in Section 213 of the Public Utilities Code, except within the territory described in Appendix A of the decision noted in the margin.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

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