

ORIGINAL

Decision No. 93075 May 19, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of BIGGE DRAYAGE CO., and the )  
Stockholders of BIGGE DRAYAGE )  
CO. for Authority to Issue a )  
Promissory Note to Redeem )  
Outstanding Stock, and for )  
Approval of the Acquisition of )  
Control of the Corporation by )  
the Remaining Stockholders. )

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Application No. 59995  
(Filed October 7, 1980)

ORDER OF DISMISSAL

Bigge Drayage Company (Bigge) is a highway common carrier, as defined by Section 213 of the Public Utilities Code, holding operating authority issued both by this Commission<sup>1/</sup> and the Interstate Commerce Commission (ICC). Bigge's wholly owned subsidiary, B. D. Trucking, also operates pursuant to California and ICC authority.

By this application, Bigge seeks Commission authorization pursuant to Public Utilities Code Sections 816-830 and 851-854 to accomplish the following: (1) issuance of an unsecured promissory note of \$3,450,000 to its stockholders Henry W. Bigge and Bernice M. Bigge in exchange for all of their Bigge stock and (2) acquisition of control of Bigge and its wholly owned subsidiary B. D. Trucking by the remaining Bigge stockholders. Simultaneously with the filing of its application, however, Bigge also filed a Motion

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<sup>1/</sup> In addition to a certificate of public convenience and necessity, Bigge has also been issued heavy specialized carrier and contract carrier permits by this Commission. ✓

to Dismiss the application. This motion is based on the ground that the ICC has exclusive jurisdiction over the approval of the acquisition of control of or issuance of securities by an ICC certificated carrier. On November 21, 1980, a supplement to this motion was filed.

We have previously dismissed applications similar to the present one after finding that "the applicant's assertion of the exclusive and plenary jurisdiction of the Interstate Commerce Commission in this matter is correct..." (Decision No. 89702 (1978); see also Decision No. 90158 (1979).) While the applicable statutory provisions which have led to this conclusion have been recodified, the authority and jurisdiction of the ICC have remained the same.

Under 49 U.S.C. Section 11343(a), formerly 49 U.S.C. Section 5, the following is provided:

- "(a) The following transactions involving carriers providing transportation subject to the jurisdiction of the Interstate Commerce Commission...may be carried out only with the approval and authorization of the Commission:"

\* \* \*

- "(4) Acquisition of control of at least 2 carriers by a person that is not a carrier."

With respect to the issuance of securities, 49 U.S.C. Section 11301(b)(1) states that "the Commission [ICC] has exclusive jurisdiction to approve the issuance of securities by a carrier and the assumption of an obligation or liability related to the securities of another person or a carrier." The provisions of Section 11301 have been made applicable to motor carriers by 49 U.S.C. Section 11302(a).

Bigge's supplement to its Motion to Dismiss includes the decision of the ICC authorizing Bigge to issue the "10-year unsecured promissory note in the principal amount of \$3,450,000 upon the terms

and for the purposes stated above." Among these purposes is Bigge's use of the proceeds to retire 5,796 shares of its 8,280 outstanding shares of common stock. As correctly stated by Bigge, the ICC has the authority to determine whether a transaction constitutes a transfer. (49 U.S.C. Sections 11343(a) and 11343(a)(4).) In this case, the ICC has determined that Bigge's request does not involve a transfer, but rather the issuance of a promissory note which it also has the exclusive jurisdiction to approve. (49 U.S.C. Section 11301(b)(1).)

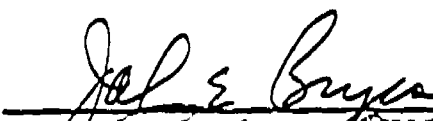

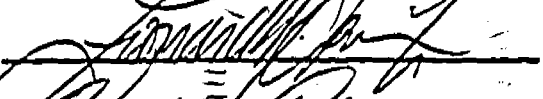


It is obvious that not only is this Commission without jurisdiction to entertain the present application, but that Bigge has sought and obtained the authority needed for its proposed transaction. We therefore conclude that the application should be dismissed. Bigge is directed to file with this Commission a copy of the ICC's order approving the transaction.

A.59995 ALJ/km

IT IS ORDERED that Application No. 59995 is dismissed.

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

Dated MAY 19 1981, at San Francisco, California.

  
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President  
  
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Commissioners