

Decision 93088 MAY 19 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of HENRY AYALA to transfer his highway common carrier certificate and TRANS TRUX, INC., a California corporation, to acquire said certificate (Public Utilities Code 851 and 1064.5).

Application 60239
(Filed February 5, 1981)

O P I N I O N

Henry Ayala requests authority to transfer a certificate of public convenience and necessity to Trans Trux, Inc., a newly formed California corporation of which Henry Ayala is president and sole stockholder. The certificate, issued April 30, 1980 under Public Utilities (PU) Code Section 1063.5 in Application GC 8129, File T-100181, authorizes 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. In Decision (D.) 89575 dated October 31, 1978, as amended, the Commission held that during the 5-year period after their Section 1063.5 certificates become effective, carriers should be allowed to expand or contract their operations conducted under such certificates by making appropriate tariff filings. This procedure preserves the carriers' opportunity, formerly available to radial highway common carriers, to develop and shape their operations based upon managerial objectives. PU Code Section 1064.5 prohibits the transfer of Section 1063.5 certificates during that 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 such a transfer.

Findings of Fact

1. There is no change in the beneficial ownership of the Section 1063.5 common carrier authority.
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. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

The application should be granted.

ORDER

IT IS ORDERED that:

1. On or before September 30, 1981 Henry Ayala may transfer to Trans Trux, Inc. the operating authority issued under PU Code Section 1063.5 in Application GC 8129.
2. Within 30 days after the transfer Trans Trux, Inc. shall file with the Transportation Division written acceptance of the certificate and a copy of the instrument of transfer.

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3. Trans Trux, Inc. shall amend or reissue the subhaul affidavit on file with the Commission. The subhaul affidavit shall not be effective before the date of transfer nor before 5 days' notice is given to the Commission.

4. The subhaul affidavit shall comply with the regulations governing the filing of subhaul affidavits set forth in the Commission's D.89575, as amended. Failure to comply with the provisions of D.89575, as amended, may result in cancellation of the operating authority granted by this decision.

This order becomes effective 30 days from today.

Dated MAY 19 1981, at San Francisco, California.

John E. Guyon President
Richard N. Stravella
Thomas W. Smith
Walter T. Calver
Prudence C. Myers Commissioners