

ORIGINAL

93089

MAY 19 1981

Decision \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of WILLIAM Y. BARRY )  
 and FRANK A. VASSALLO dba SUN )  
 VALLEY TRUCKING, to transfer )  
 their Highway Common Carrier )  
 Certificate and SUN VALLEY )  
 TRUCKING, INC., a California )  
 corporation, to acquire said )  
 Certificate. (Public Utilities )  
 Code 851 and 1064.5.) )

Application 60274  
 (Filed February 18, 1981)

O P I N I O N

William Y. Barry and Frank A. Vassallo as partners,  
 doing business as Sun Valley Trucking, request authority to transfer  
 a highway common carrier certificate of public convenience and  
 necessity to Sun Valley Trucking, Inc., a newly formed California  
 corporation of which the partners are officers and sole stockholders.

The certificate as contained in GC 2664, File No. T-125,515  
 was issued on April 30, 1980 pursuant to Section 1063.5 of the Public  
 Utilities Code and authorizes the transportation of general  
 commodities within the State.

Section 1063.5 authorizes holders of radial highway common  
 carrier permits to convert their permits into highway common carrier  
 certificates of public convenience and necessity. By Decision  
 89575 dated October 31, 1978, as amended, the Commission found that  
 during the first five-year period after the Section 1063.5 certificates  
 become operational, the carriers may expand or contract operations  
 conducted pursuant thereto by making appropriate tariff filings.

This procedure preserves the opportunity, formerly available under radial highway common carrier permits, for carriers to develop and shape their operations based upon managerial objectives. Section 1064.5 of the Public Utilities Code prohibits the transfer of Section 1063.5 certificates during the first five years after issuance except to the extent of operations actually conducted as a prime carrier. By Resolution 18049 dated July 31, 1979, this Commission recognized that in the normal course of events many businesses transform their legal form while continuing the same operations. As a result, certain types of transfers of Section 1063.5 highway common carrier certificates were held not to be transfers within the meaning of Section 1064.5, including a change in the form or makeup of the business entity where a partnership is dissolved and one or more of the surviving partners wish to remain in business. Because the instant application falls within this category, the transfer will be authorized without need for compliance with certain of the usual service regulations relating to transfers.

Findings of Fact

1. The proposed transfer would not be adverse to the public interest. A public hearing is not necessary.
2. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
3. The following order complies with the guidelines of the Commission's Energy Efficiency Plan.

Conclusion of Law

The application should be granted.

Sun Valley Trucking, 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. On or before February 1, 1982, William Y. Barry and Frank A. Vassallo, doing business as Sun Valley Trucking, may transfer to Sun Valley Trucking, Inc., the operating authority issued pursuant to Section 1063.5 of the Public Utilities Code and as set forth in File No. T-125,515. ✓
2. Within thirty days after the transfer Sun Valley Trucking, Inc., shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. Sun Valley Trucking, Inc., shall amend or reissue the adoption notices 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 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 adoption notice filings shall be concurrent with the transfer. The adoption notice filings 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 Series 80. Failure to comply with the provisions of General Order Series 80 may result in a 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.

          Jul E. Boyer            
President  
          Michael D. ...            
          Thomas M. ...            
          Arthur ...            
          Russell C. ...            
Commissioners