

ORIGINAL

Decision 93153 JUN 2 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of GLENN K. NILMEIER, dba GLENN K. NILMEIER TRUCKING, to transfer his Highway Common Carrier Certificate and GLENN K. NILMEIER TRUCKING, INC., a California Corporation, to acquire said Certificate (Public Utilities Code 851 and 1064.5).

Application 60226
(Filed January 28, 1981)

O P I N I O N

Glenn K. Nilmeier, doing business as Glenn K. Nilmeier Trucking, requests authority to transfer a certificate of public convenience and necessity to Glenn K. Nilmeier Trucking, Inc., a California corporation of which Glenn K. Nilmeier is president and sole stockholder. The certificate, issued April 30, 1980, under Public Utilities (PU) Code § 1063.5 in GC 3317, File T-63769, 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 89575 dated October 31, 1978, as amended, the Commission held that during the 5-year period after their § 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 carrier permit holders, to develop and shape their operations based upon managerial objectives. PU Code § 1064.5 prohibits the transfer of § 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 § 1063.5 certificates were not transfers within the meaning of § 1064.5. Therefore, when a transfer of a § 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 substantive change in the beneficial ownership of the § 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.

Conclusion of Law

The application should be granted.

O R D E R

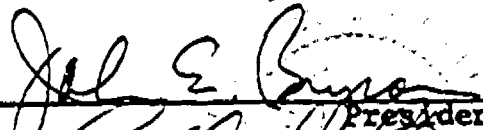
IT IS ORDERED that:

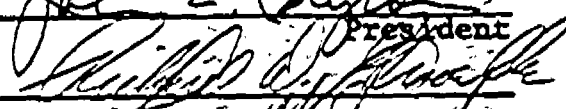
1. On or before September 30, 1981, Glenn K. Nilmeier may transfer to Glenn K. Nilmeier Trucking, Inc., the operating authority issued under PU Code § 1063.5 in GC 3317.
2. Within 30 days after the transfer Glenn K. Nilmeier Trucking, Inc. shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.

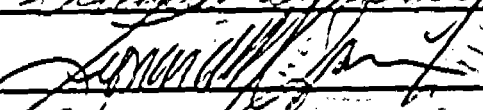
3. Glenn K. Nilmeier Trucking, Inc. shall amend or reissue the adoption notice on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the rates and rules. The adoption notice filings shall be made effective not earlier than 5 days after the effective date of this order on not less than 5 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 cancellation of the operating authority granted by this decision.


This order becomes effective 30 days from today.

Dated JUN 2 1981, at San Francisco, California.



President






Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.