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Decision _____

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Gary G. Moore, dba Gary Moore Trucking, to transfer his highway common carrier certificate and Gary G. Moore and William J. Allen, a partnership, to acquire said certificate. (Public Utilities Code 851 and 1064.5)

Application 60254 (Filed February 5, 1981)

O P I N I O N

Gary G. Moore, an individual doing business as Gary Moore Trucking, has applied to transfer a highway common carrier certificate to Gary G. Moore and William J. Allen. A copy of the partnership agreement is attached to the application, along with the financial statements of both partners. Gary G. Moore will hold a majority interest in the partnership, which will operate as the A and M Refrigerated Transportation Co. No consideration will be paid for the transfer of authority. The certificate, issued on April 30, 1980 under Public Utilities (PU) Code 1063.5 in GC 8000, File T-105502, 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 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 substantial 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 Gary G. Moore may transfer to Gary G. Moore and William J. Allen the operating authority issued under PU Code § 1063.5 in GC 8000.
2. Within 30 days after the transfer Gary G. Moore and William J. Allen shall file with the Commission written acceptance of the certificate and a true copy of the instrument of transfer.
3. Gary G. Moore and William J. Allen 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 they have adopted or established, as their own, the rates and rules. The adoption notice tariff filing 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 filing shall be concurrent with the transfer. The adoption notice filing 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.

Jul E. Bryson
President
Philip D. W. Hooley
Terrence W. Jensen
Walter P. ...

Commissioners

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