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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
PETER J. KOOYMAN, d/b/a PETE KOOYMAN)
TRUCKING, to transfer a Certificate)
of Public Convenience and Necessity)
and Assets to PETE KOOYMAN TRUCKING,)
INC., a California corporation, and)
for PETE KOOYMAN TRUCKING, INC. to)
issue stock.)

Application No. 59584
(Filed April 11, 1980;
amended March 13, 1981)

O P I N I O N

Peter J. Kooyman, doing business as Pete Kooyman Trucking Company (company), requests authority to transfer, and Pete Kooyman Trucking, Inc. (corporation), a California corporation, to acquire the certificates of public convenience and necessity and related assets of company in exchange for the corporation's: (1) issuing capital stock to Peter J. Kooyman, and (2) assumption of company's liabilities by corporation.

The amendment to the application filed March 13, 1981 included in the authority sought to be transferred the certificate issued to company pursuant to Section 1063.5 of the Public Utilities Code, No. GC 9111 issued April 30, 1980.

A copy of the original and amended application was served on the California Trucking Association. Notice of the filing of the application and amendment appeared on the Commission's Daily Calendars of April 14, 1980 and March 17, 1981, respectively. No protests to the application have been received.

Company is authorized to transport general commodities statewide under the authority granted in No. GC 9111. In addition, company was issued a certificate of public convenience and necessity by Decision No. 84018, dated January 28, 1975 in Application No. 55296 to transport steel articles and plumbing supplies within and between points in the San Francisco Bay Area, on the one hand, and Sacramento and Stockton, on the other hand.

The assets to be transferred to corporation, in addition to operative rights, are described in a pro forma statement attached to the application. This statement indicates a net worth for corporation on January 1, 1980 of \$212,866. Company's annual report for 1979 shows operating revenue of \$5,145,893 and operating expenses of \$4,919,548.

Company has determined that it would be in its best interests and those of its family to conduct business as a corporation. Corporation was organized for the purpose of succeeding to and perpetuating the sole proprietorship conducted by company. No employees will be adversely affected, nor will any members of the public be adversely affected by reason of the proposed transfer.

Pursuant to the Articles of Incorporation, a copy of which is attached to the application, corporation is authorized to issue 100,000 shares of common stock and 1,000,000 shares of preferred stock. Company and corporation request authority from this Commission, pursuant to Sections 816-830 and 852 of the Public Utilities Code, to issue 21,286-2/3 shares of capital stock of corporation, deemed by its board of directors to have a par value of \$10.00 per share. The stock issuance will be in and for consideration of the transfer of the operating authority and

related assets from company to corporation. Any excess of assets over liabilities in addition to the above-described net worth as of the effective date of the transfer sought herein will be credited to earned surplus in the corporation.

Discussion

The company's Certificate No. GC 9111 was issued under Section 1063.5 of the Code. Section 1064.5 of the Code forbids the transfer of such certificate for a period of five years after issuance of the certificate, except to the extent of operations actually conducted in good faith. No showing of actual operations under GC 9111 was furnished. However, the Commission in Resolution No. 18049 dated July 31, 1979 ordered that a transfer under continuity of ownership is not a transaction within the meaning of Section 1064.5 where the following criteria are met:

"Individuals or partners incorporate their business. Applicants must submit articles of incorporation. The former individuals or partners must hold a majority of the shares of the outstanding common stock. New stockholders may not have such amounts of common stock so as to directly or indirectly control the corporation."

The transfer sought herein is due to a relatively simple incorporation of a sole proprietorship. Peter J. Kooyman will control 100 percent of the corporate stock. The proposed sale and transfer meet the criteria set out in Resolution 18049 and are not, therefore, a transfer within the meaning of Section 1064.5 of the Public Utilities Code.

Findings of Fact

1. Company operates pursuant to two certificates of public convenience and necessity issued by the Commission, one of which was issued pursuant to Section 1063.5 of the Code.
2. Company desires to incorporate, and to this end has caused the corporation to be formed.
3. Company proposes to transfer its assets and certificates of public convenience and necessity to corporation.
4. Concurrent with the transfer corporation will assume company's debts and issue to Peter J. Kooyman 21,286-2/3 shares of the corporation's capital stock.
5. Upon consummation of the transfer, Peter J. Kooyman will be the only owner of the corporation's stock.
6. The proposed transfer would not be adverse to the public interest.
7. A public hearing is not necessary.
8. The order which follows has no reasonably foreseeable impact upon the energy efficiency of highway carriers.
9. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The proposed transfer does not constitute a transfer within the meaning of Section 1064.5 of the Code.
 2. The application should be granted.
- Pete Kooyman 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 September 30, 1981, Peter J. Kooyman may sell and transfer the highway common carrier certificates of public convenience and necessity and related assets referred to in the application to Pete Kooyman Trucking, Inc.
2. Pete Kooyman Trucking, Inc. on or after the effective date hereof and on or before September 30, 1981, for the purpose specified in the application, may issue not exceeding 21,286-2/3 shares of its capital stock to Peter J. Kooyman at a stated value of \$10 per share.
3. Pete Kooyman Trucking, Inc. shall file with the Commission the report required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.
4. Within thirty days after the transfer, Pete Kooyman Trucking, Inc. shall file with the Commission written acceptance of the certificates and a true copy of the bill of sale or other instrument of transfer.
5. Pete Kooyman Trucking, Inc. shall amend or reissue the tariffs and affidavit of subhauling 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 tariff filings and affidavit of subhauling 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 tariff filings and affidavit of subhauling shall be concurrent with the transfer. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs and affidavits of subhauling set forth in the Commission's General Order No. 80-Series and Decision No. 89575 dated October 19, 1978 in Case No. 5432 (OSH 572), respectively. Failure to comply with the provisions of General Order No. 80-Series and Decision No. 89575 may result in a cancellation of the operating authority granted by this decision.

6. On or before the end of the third month after the transfer, Pete Kooyman Trucking, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of Pete Kooyman Trucking, Inc. for the period commencing with the first day of the current year to and including the effective date of the transfer.

7. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 5, the certificates of public convenience and necessity described herein are transferred to Pete Kooyman Trucking, Inc.

8. Pete Kooyman Trucking, Inc. shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

9. Pete Kooyman Trucking, Inc. shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before April 30 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

10. Pete Kooyman Trucking, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If Pete Kooyman Trucking, Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

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The authority granted by this order to issue stock will become effective when the issuer pays \$424 set by Public Utilities Code Section 1904.1.

In all other respects this order becomes effective 30 days from today.

Dated JUL 7 1981, at San Francisco, California.

John E. Ryan
President

Richard D. Gravelle
Richard D. Gravelle

Paul MacKinnon
Commissioners

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

