

Decision 93754 NOV 13 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of CENTRAL FREIGHT, INC., a)
California corporation, to acquire)
from SEA TRUCK, INC., a California)
corporation, a certificate of)
public convenience and necessity.)

Application 60720
(Filed July 8, 1981)

O P I N I O N

Central Freight, Inc. (Central) and Sea Truck, Inc. (Sea Truck), California corporations, jointly request authority under Public Utilities (PU) Code Section 851 to transfer to Central one of the highway common carrier certificates presently held by Sea Truck. The certificate was granted by the Commission in Decision (D.)82434 dated February 5, 1974 in Application (A.)54168. It authorizes the transportation of general commodities between all points and places in San Francisco Territory and between all points and places on or within 10 statute miles of eleven routes located in an area extending from Sacramento on the north to Visalia-Tulare on the south. This authority was registered with the Interstate Commerce Commission (ICC) and a Certificate of Registration was issued under Docket No. MC-121731.

Sea Truck, in addition to the highway common carrier certificate issued by D.82434, holds a highway contract carrier permit in File T-109,971 which it will retain. It also holds a highway common carrier certificate converted from its radial highway common carrier permit under PU Code Section 1063.5 that authorizes the transportation of general commodities between all points and places in the State of California. This certificate will also be retained. Central operates as a highway common carrier certified under Section 1063.5 and as a contract carrier in File T-126,506.

Sea Truck also holds a certificate of public convenience and necessity from the ICC to transport asbestos containers between Copperopolis and other California points. Applications are concurrently being filed with the ICC for authority to transfer this certificate and the certificate of registration to Central.

Sea Truck states that it is determined to reduce the scope of its authorized motor carrier service and to concentrate upon other of its business activities. It will continue to operate under its highway contract carrier permit. Central is operating under its permit and in addition, performs service in the transportation of shipments moving in interstate and foreign commerce within the exempt commercial zones on San Francisco Bay. Central states that its business has been growing, that the expansion of its business is hampered by a lack of operating authority and that for its business to increase it must acquire the highway common carrier certificate of Sea Truck. Central asserts that the granting of the application and the transfer by the ICC of the certificate of registration are in the public interest since Central will then be able to fully respond to requests for service from the general public within the territory involved in the certificate.

Central's operating equipment consists of four conventional tractors. The carrier proposes to lease trailers to be utilized in the proposed operation. Central's income statement for the quarter ended March 31, 1981 shows total operating revenue of \$91,315.58, total operating expenses of \$89,232.68, and net profit of \$2,082.90. Central's balance sheet on the same date shows total assets of \$61,760.65 with net worth of \$17,064.80.

The net result of the transfer of the intrastate certificate acquired by Sea Truck under D.82434 will be to effect the transfer of the coextensive Certificate of Registration. No additional intrastate operating authority will accrue to Central in that it already holds a highway common carrier certificate issued under PU Code Section 1063.5, as noted above, which completely overlaps the certificate being transferred.

Notice of the filing of the application appeared in the Commission's Daily Calendar of July 10, 1981. A copy of the application was served upon the California Trucking Association. Central and Sea Truck jointly request waiver of service under Rules of Practice and Procedure 21(f) and 37 since this is a transfer of an existing certificate and there will be no adverse effect on other carriers. The request is reasonable and is granted. No protest to the application has been received.

The two certificates held by Sea Truck were acquired under different provisions of the PU Code. They are considered as one authority inasmuch as the certificate acquired under Section 1063.5 totally overlaps the certificate requested to be transferred by this application. We have held on numerous occasions that to the extent that one certificate duplicates, in whole or in part, any other certificated authority held by a carrier, such operative rights may not be separated to allow the sale or transfer of one or more of such duplicating rights or portion of them and the retention of another certificated right to perform the same service. This requirement is specifically set forth in paragraph (2) of the Section 1063.5 certificate. Accordingly, the certificated authority which is retained by the seller will be amended to reflect the transfer of the operating rights which are the subject of this application.

Findings of Fact

1. The proposed transfer is in the public interest.
2. Central is a fit and proper entity to operate as a highway common carrier and has sufficient knowledge and financial resources to perform the operation proposed to be transferred.
3. The following order complies with the guidelines in the Commission's Energy Efficiency Plan.

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 proposed transfer should be authorized. A public hearing is not necessary.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Sea Truck, which was acquired by D.82434 and the issuance of an in-lieu certificate of public convenience and necessity in appendix form to Central. The new certificate will not broaden or change the interstate or foreign commerce rights now held by Sea Truck. The certificate held by Sea Truck, acquired by PU Code Section 1063.5, will be amended to delete the authority transferred.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. Sea Truck, Inc., may sell and transfer the operative rights specified in the application to Central Freight, Inc. This authorization shall expire if not exercised by December 31, 1981, or within such additional time as the Commission may authorize.
2. Applicants shall:
 - a. File with the Transportation Division written acceptance of the certificates and copies of the bill of sale or other transfer documents within 30 days after transfer.

- b. Amend or reissue their tariffs. The tariffs shall not be effective before the date of transfer or before 5 days' notice is given to the Commission.
- c. Comply with General Orders Series 80, 100, and 104, and the California Highway Patrol safety rules.
- d. Maintain accounting records in conformity with the Uniform System of Accounts.
- e. Comply with General Order Series 84 (collect-on-delivery shipments). If applicants elect not to transport collect-on-delivery shipments, they shall file the tariffs required by that General Order.

3. When the transfer is completed, and on the effective date of the tariffs, a certificate of public convenience and necessity is granted to Central Freight, Inc., authorizing it to operate as a highway common carrier, as defined in PU Code Section 213, between the points and over the routes listed in Appendix A.

4. The certificate of public convenience and necessity issued to Sea Truck, Inc. under PU Code Section 1063.5, effective April 30, 1980 in Application GC-2926, is amended as set forth in Appendix B.

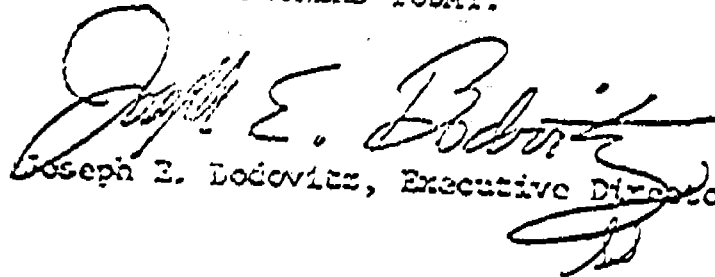
5. The certificate of public convenience and necessity granted by D.82434 and subsequently transferred by D.87389 is revoked on the effective date of the tariffs.

This order becomes effective 30 days from today.

Dated NOV 13 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Lodovitz, Executive Director

Central Freight, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

- I. Between all points and places in the San Francisco Territory as described in Note A.
- II. Between all points and places on or within 10 statute miles laterally of the following routes:
 - a. Interstate Highway 80 between San Francisco and Sacramento, inclusive;
 - b. State Highway 4 between its junction with Interstate Highway 80 near Pinole, and Stockton, inclusive;
 - c. Interstate Highway 580 between its intersection with State Highway 17 and its intersection with Interstate Highway 5, inclusive;
 - d. Interstate Highway 5 between its intersection with State Highway 4 at Stockton and its intersection with State Highway 198, inclusive;
 - e. State Highway 120 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;
 - f. State Highway 198 between its intersection with Interstate Highway 5 and its intersection with State Highway 99 near Visalia, inclusive;

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- g. State Highway 99 between Sacramento and Tulare, inclusive.
- h. State Highway 152 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;
- i. State Highway 33 between its intersection with State Highway 152 at the Dos Palos Wye and its intersection with Interstate Highway 5, via Firebaugh, inclusive;
- j. State Highway 180 between its intersection with State Highway 33 and its intersection with State Highway 99, inclusive, and
- k. State Highway 140 between its intersection with Interstate Highway 5 and State Highway 99, inclusive;

In performing the service authorized, carrier may make use of any and all streets, roads, highways, and bridges necessary or convenient for the performance of the service.

Except that under the authority granted, carrier shall not transport any shipments of:

- 1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesman's hand sample cases, suitcases, overnight or boston bags, briefcases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).

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2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis, freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump-type trucks or trailers or in hopper-type trucks or trailers.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
8. Logs.
9. Articles of extraordinary value.

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NOTE A

SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; then easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific Company right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwestly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the campus boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid

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NOTE A (continued)

SAN FRANCISCO TERRITORY

Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to the point of beginning.

(END OF APPENDIX A)

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/ALJ/FF
Appendix B
Amendment to
Section 1063.5
Certificate

SEA TRUCK, INC.
(a California corporation)

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Sea Truck Inc., by the certificate of public convenience and necessity issued under Section 1063.5 of the Public Utilities Code under Application GC 2926, is authorized to conduct operations to the extent set forth in such certificate, as a highway common carrier as defined in Section 213 of the Public Utilities Code, except within the territory described in Appendix A of the decision noted in the margin.

(END OF APPENDIX B)

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