

MF-3022

INTERSTATE COMMERCE COMMISSION

No. MC-F-9517¹

GARRETT FREIGHTLINES—CONTROL AND MERGER— EASTERN OREGON FREIGHT, INC.

Decided April 12, 1968

1. Order staying the taking effect of the recommended report and order in No. MC-F-9517 and Finance Docket No. 24356 vacated and set aside, and the findings and conclusions therein affirmed.
2. In No. MC-263 (Sub-No. 172) public convenience and necessity found to require operations by Garrett Freightlines, Inc., as a common carrier by motor vehicle in interstate or foreign commerce, of general commodities, with exceptions, over regular routes, serving intermediate and certain specified off-route points in Oregon and Nevada. Issuance of a certificate approved upon compliance by Garrett Freightlines, Inc., with certain conditions, and application in all other respects denied.

Jerome Anderson and Maurice H. Greene for applicants.

*William B. Adams, John G. McLaughlin, Kenneth Y. Thomas and
Clarence A. Vogt for protestants.*

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS TUGGLE, BUSH, AND STAFFORD

Bush, Commissioner:

Exceptions were filed by the applicants only to the recommended report and order of the joint board which granted the application with a restriction in No. MC-263 (Sub-No. 172) and by one protestant, Vogt Transfer & Storage Co. (Vogt), to the report and order of the joint board in No. MC-263 (Sub-No. 172); replies were filed by certain protestants² to applicants' exceptions and applicants replied to the one protestant's exceptions. Our views differ somewhat from those recommended by the joint board.

¹This report also embraces Finance Docket No. 24356, Garrett Freightlines, Inc.—Stock and Assumption of Obligations, and No. MC-263 (Sub-No. 172), Application of Garrett Freightlines, Inc.

²End-Portland Truck Service, Inc., Exley Express, Inc., Oregon-Nevada California Fast Express, Inc., Valley Motor Lines, Inc., and Vogt Transfer & Storage Co.

Garrett Freightlines, Inc. (Garrett), of Pocatello, Idaho, and Eastern Oregon Freight, Inc. (Eastern Oregon), of John Day, Oreg., by joint application filed August 29, 1966, seek authority under section 5 of the Interstate Commerce Act for acquisition by Garrett of control of Eastern Oregon through purchase of all of the latter's outstanding capital stock and for merger of Eastern Oregon into Garrett.

In the embraced application, Finance Docket No. 24356, Garrett seeks authority under section 214 of the act to assume the outstanding obligations of Eastern Oregon and to issue a sufficient number of its shares of common stock having a value of \$175,000 as the purchase price due Eastern Oregon, for its issued and outstanding capital stock.

In the embraced application, No. MC-263 (Sub-No. 172), Garrett seeks a certificate of public convenience and necessity authorizing operation in interstate or foreign commerce, as a motor common carrier, transporting general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between McDermitt, Nev., and the Idaho-Oregon State line over U. S. Highway 95, serving all intermediate points; (2) between Burns Junction, Oreg., and Burns, Oreg., over Oregon Highway 78, serving all intermediate points; and (3) between the Junction of Oregon Highway 201 and U. S. Highway 20, near Ontario, Oreg., and Burns, Oreg., over U. S. Highway 20, serving all intermediate points and the off-route points of Drewsey and Harper, Oreg., and the Malheur Job Corps Conservation Center located approximately 32 miles south of Burns, Oreg.

A hearing was held before an examiner and a joint board at which time certain protestants¹ opposed the applications, and a recommended report and order was issued which approved all the applications, but a restriction was imposed as to the operating rights granted in No. MC-263 (Sub-No. 172) by the joint board and the examiner.

The findings of fact and conclusions in the report of the examiner and joint board, except as modified herein, are fully supported by the evidence, are adopted as our own, and will not be repeated herein except as necessary for clarity.

Since the exceptions filed relate solely to the restriction imposed and the application for operating authority in the subnumbered proceeding, our discussion is restricted thereto. In the absence of error of fact or law or exceptions in the titled and embraced finance proceeding, the order of division 3 dated January 8, 1968, staying the effective date of the recommended report and order therein, will be vacated and set aside, and the findings and conclusions therein affirmed.

¹The protestants herein, Ringsby-Pacific Ltd., Sitas-Silver Wheel Freightlines, Inc., and intervenor Public Utility Commission of Oregon.

GARRETT FREIGHTLINES—CONTROL & MERGER—EASTERN OREG. 521

Highway 26, and thence over U. S. Highway 26 to Portland, serving the intermediate points of Vale, Juntura, Burns and Bend, Oreg.

Between San Francisco, Calif., and Pocatello, Idaho over U. S. Highway 40 from San Francisco to Wells, Nev., thence over U. S. Highway 93 to Twin Falls, Idaho, and thence over U. S. Highway 30N to Pocatello, serving all intermediate points.

Between Winnemucca, Nev., and Boise, Idaho, from Winnemucca over U. S. Highway 95 to its junction with Idaho State Highway 72, thence over Idaho Highway 72 to its junction with U. S. Highway 30, and thence over U. S. Highway 30 to Boise, serving the intermediate point of McDermitt, Nev., also points in Nevada within 50 miles of U. S. Highway 95 between Winnemucca and McDermitt, but no service at intermediate points in Oregon.

Between Los Angeles, Calif., and Butte, Mont., over several routes, particularly U. S. Highway 91, serving all intermediate points.

Between Glendale, Nev., and Twin Falls, Idaho, over U. S. Highway 93, from Glendale to its junction with Idaho Highway 74; thence over Idaho Highway 74 to Twin Falls, serving no intermediate points between Glendale and Wells, Nev.

Between San Diego, Calif., and San Francisco, over U. S. Highway 101, serving all intermediate points and all off-route points within 20 miles of said highway.

Between San Diego, Calif., and Sacramento, Calif., over U. S. Highway 99, serving all intermediate points and all off-route points within 20 miles of said highway.

Between Spokane, Wash., and Pendleton, Oreg., over U. S. Highway 195 to its junction with U. S. Highway 295, thence over U. S. Highway 295 to its junction with U. S. Highway 410, thence over U. S. Highway 410 to its junction with Washington Highway 3, thence over Washington Highway 3 to its junction with Oregon Highway 11, thence over Oregon Highway 11 to Pendleton, Oreg., serving all intermediate points.

Between Bellingham, Wash., and Portland, Oreg., over U. S. Highway 99, serving all intermediate points.

Between Seattle, Wash., and Pendleton, Oreg., over U. S. Highway 10 to its junction with U. S. Highway 410, thence over U. S. Highway 410 to its junction with Washington Highway 3, thence over Washington Highway 3 to its junction with Oregon Highway 11, and thence over Oregon Highway 11 to Pendleton, Oreg.

Between Portland, Oreg., and Lewiston, Idaho over U. S. Highway 30 to Umatilla, Oreg., thence over U. S. Highway 730 to junction U. S. Highway 410 and thence over U. S. Highway 410 to Lewiston, service at intermediate points on U. S. Highway 30 in Oregon restricted to pickup only on eastbound traffic and delivery only on westbound traffic.

It also has temporary authority to serve the point of Burns Junction, Oreg., located at the junction of U. S. Highway 95 and Oregon Highway 78 in southeastern Oregon.

Garrett holds authority over many regular routes connecting with the above-described routes.

It will be noted from the foregoing excerpts of Garrett's operating authorities that it presently may operate over all of the routes sought in the convenience and necessity application except over Oregon Highway 78. However, the only point on U. S. Highway 95 in Oregon it may serve is the point of Burns Junction under temporary authority. The points it may serve on U. S. Highway 20 in Oregon are Vale, Juntura, Burns and Bend on westbound traffic only. By the public convenience and necessity application, it seeks to serve all intermediate points on

522 MOTOR CARRIER CASES, INTERSTATE COMMERCE COMMISSION

U. S. Highway 95 in Oregon, all points on Oregon Highway 78 between Burns Junction and Burns, all intermediate points on U. S. Highway 20 between Burns and the junction of U. S. Highway 20 and Oregon Highway 201 near Ontario, Oreg., and the off-route points on U. S. Highway 20 between Burns and the junction of U. S. Highway 20 and Oregon Highway 201 near Ontario, Oreg., and the off-route points of Harper, Drewsey and the Malheur Job Corps Conservation Center near Burns, Oreg.

APPENDIX B

Partial routes of Eastern Oregon Freight, Inc.

Regular routes:

General commodities, except those of unusual value, classes A and B explosives, uncrated household goods, commodities in bulk, and those requiring special equipment,

Between John Day, Oreg., and Canyon City, Oreg., serving no intermediate points and serving off-route points within 1 mile of the above-specified route:

From John Day over U. S. Highway 395 to Canyon City, and return over the same route.

Between Canyon City, Oreg., and Burns, Oreg., serving the intermediate points of Seneca and Silvies, Oreg.:

From Canyon City over U. S. Highway 395 to Burns, and return over the same route.

Between Canyon City, Oreg., and Izee, Oreg., serving all intermediate points:

From Canyon City over U. S. Highway 395 to junction Grant County unnumbered highway (about 15 miles south of Canyon City), thence over Grant County unnumbered highway to Izee, and return over the same route.

Between Prairie City, Oreg., and Baker, Oreg., serving the intermediate points of Bates and Austin, Oreg.:

From Prairie City over U. S. Highway 26 to junction Oregon Highway 7, thence over Oregon Highway 7 to Baker, and return over the same route.

Between Mount Vernon, Oreg., and Pendleton, Oreg., serving the intermediate point of Pilot Rock, Oreg., and those between Pendleton and Pilot Rock, restricted to traffic moving to and from points south of Pilot Rock, and serving all other intermediate points without restriction:

From Mount Vernon over U. S. Highway 395 to Pendleton, and return over the same route.

Between Canyon City, Oreg., and The Dalles, Oreg., serving all intermediate points, provided, however, that no local service shall be rendered between The Dalles, on the one hand, and, on the other, points west thereof:

From Canyon City over U. S. Highway 395 to junction U. S. Highway 26, thence over U. S. Highway 26 to junction Oregon Highway 19, thence over Oregon Highway 19 to junction U. S. Highway 30, thence over U. S. Highway 30 to The Dalles, and return over the same route.

Restriction.—Service authorized hereinabove is restricted against the transportation of commodities, as follows:

Between points on U. S. Highway 30, including Portland, Oreg.

Between Pendleton and Pilot Rock, Oreg., on the one hand, and, on the other, points on U. S. Highway 30, including Portland, Oreg.

Between points on U. S. Highway 30, including Portland, on the one hand, and, on the other, points on Oregon Highway 19 between Arlington and Condon, Oreg., including Condon.

Garrett operates as a motor common carrier in interstate or foreign commerce, of general commodities, with exceptions, over regular routes in 13 States, including California, Nevada, Oregon, and Idaho as shown in appendix A. It is owned publicly with no one person having control; the 10 principal stockholders own 60.30 percent of the stock outstanding. Garrett also owns Garrett Terminal Corporation which owns and leases terminals to Garrett and has no motor carrier operating authority.

Eastern Oregon is a motor common carrier of general commodities, with exceptions, operating in interstate or foreign commerce, over regular routes, in northern Oregon as shown in appendix B.

The joint board approved the application in No. MC-263 (Sub-No. 172) subject to the following restriction or service limitation:

With no service authorized over Oregon State Highway No. 78 on traffic moving between points in California, on the one hand, and, on the other, Burns and points west thereof and points west of Heppner Junction, (Junction of Interstate 80N with Oregon State Highway Route No. 74) in Oregon and points in Washington west of the summit of the Cascade Mountain Range.

The applicants contend that the restriction imposed nullifies the operating rights granted as the country to be served is very sparsely settled and Garrett cannot give a regular-scheduled service dependent only on local traffic, but must additionally obtain overhead traffic in order to make the service feasible. Applicants further contend that the reason for the restriction is not for the benefit of the public, but solely for the protection of protestants' traffic which they have not shown to be seriously threatened.

Only one protestant, Vogt, takes exception to the entire recommended report and order in No. MC-263 (Sub-No. 172), except for service to the Burns Junction station and the Oregon State Highway road station, 15 miles north of McDermitt, Nev., claiming that the rights granted duplicate its authority in an area which will only support one carrier. The remaining protestants filed no exceptions, but in reply to those by applicants they object to removal of the restriction claiming that the evidence of necessity for local service does not justify the overhead traffic sought by the applicant Garrett. They further contend that to allow use of Burns for overhead traffic would constitute opening a new gateway, and it would be injurious to their operations.

Garrett has a past history of transporting traffic from California to Oregon and Washington. It operated at an earlier time in a piggyback arrangement with Southern Pacific Railroad Company and its wholly owned subsidiary, Pacific Motor Trucking Company, from southern California to Portland and western Oregon. It also interlined western

Washington traffic destined to points in California with other motor carriers at Portland.

At the present time Garrett is transporting traffic between California and Oregon. Its original route to Oregon from the Los Angeles and San Francisco areas was via Boise, Idaho, over which operations were commenced in September 1965. Beginning November 7, 1966, a new operation was begun with one origination at Los Angeles and one at its Emeryville terminal near Oakland, Calif. Loading at each of the California terminals is on a daily basis, Monday through Friday, to Oregon and Washington points. These operations traverse U. S. Highway 95 through the southwestern corner of Oregon and into Idaho to the intersection of U. S. Highway 26 and then on U. S. Highway 20 to Burns.

At Burns, the scheduled equipment is leased to Eastern Oregon which takes it north on Highway 395 to John Day and on to Pendleton, Oreg., where it is returned to Garrett for the trip to Portland and beyond.

This is northbound since Garrett had (prior to the present rights) only one-way authority over U. S. Highway 20 from Ontario to Burns, Oreg. Since September 13, 1965, Garrett has continuously rendered one-way service from Boise to Burns. The movement originates at Boise where it is assembled from the rest of Garrett's system and is transported to Burns.

Garrett heretofore operated under temporary authority to serve points between McDermitt and Burns, over U. S. Highway 95 to its junction with Oregon Highway 78 at Burns Junction, and then over Oregon Highway 78 to Burns. However, this authority was denied except to allow operation only to Burns Junction.

Thereafter Garrett agreed with Compton Transfer and Storage Company (Compton) of Boise to participate in a through movement of this California traffic under its authority over Oregon Highway 78, between Burns Junction and Burns, where it was interlined with Eastern Oregon and moved by Eastern Oregon using equipment leased from Garrett, to Pendleton, Oreg., where it was again transferred to Garrett. This was the operation when Garrett offered to purchase Eastern Oregon.

The effect of the purchase and merger of Eastern Oregon with Garrett in No. MC-F-9517, and the application herein in No. MC-263 (Sub-No. 172), would be to give Garrett two-way authority from McDermitt to which Garrett now has authority from California to Burns and Pendleton, where it would join the present Garrett authority into Portland and beyond.

DISCUSSION AND CONCLUSIONS

The operating rights applied for in No. MC-263 (Sub-No. 172) which cover a very *sparsely* populated area could not be operated profitably solely as a regular local service. Protestant Vogt, an irregular carrier, does provide service to some points in this area under its temporary authority. However, the very fact that the area does not have, and never has had, a regular and continuous service substantiates this view. There is adequate support to show a real and substantial need for the local service Garrett proposes. It is, therefore, in the public interest that such service be authorized.

The protestants cite cases in support of their position that a strong carrier which elects to give a particular service does so at its own cost and cannot claim a need for additional rights in order to make expenses. This argument is offset here by the Commission's decision in *Fox-Smythe Transp. Co. Extension—Oklahoma*, 106 M.C.C. 1, (1957), wherein restrictions such as here involved prevent rendition of a needed or complete service where a public need therefor is shown to exist. The restriction herein would operate to curtail or prevent needed service. It was also shown in the supporting testimony that much of the traffic for local delivery originated in California, so that other overhead traffic from California would have some bearing on the total service.

The protestants also attack the application as a grant of a new gateway at Burns with resulting injury to the protestants. However, there are several fallacies to this argument. First, Garrett has used Burns as a point of interchange on a one-way basis out of Boise for some time and also in connection with its present operation with Compton. It could continue these operations regardless of the outcome of the present proceeding. Second, since the proposed operation has been shown to be in the public interest and that the use of overhead traffic would make the local service feasible, it is incumbent upon the protestants to show that the new service would be directly and materially injurious to them. This has not been shown by any of the protestants. Mere *fear* of a possible loss is not a lawful ground for denial of the application on this record.

Garrett, which has competed with protestants in the past on traffic between California, Oregon and Washington, has been handicapped by having a longer and more circuitous route through the interior. The coastal carriers, however, which include all the protestants except Vogt, have the much shorter coastal route. Even the mileage saved by routing through McDermitt and Burns' routes does not to any appreciable

extent make Garrett's route comparable in distance to the coastal route. Thus, there is very little likelihood of the coastal protestants losing traffic through diversion to Garrett.

Protestant Vogt would not be materially affected by the overhead traffic of Garrett. Moreover, Vogt has not shown any actual injury resulting from the operation by Garrett, but, like the other protestants, is *fearful* of loss of traffic. As stated, this is not sufficient legal justification for denial of the instant application.

We find the order staying the taking effect of the recommended report and order in No. MC-F-9517 and Finance Docket No. 24356 is unwarranted and unjustified; and it is hereby vacated and set aside and the findings and conclusions therein be, and are hereby, affirmed.

We find that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of general commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and those requiring special equipment, as described in the application herein, subject to the condition that, together with any other authority by applicant, the authority granted herein shall be construed as conferring only a single operating right; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the applicable rules and regulations thereunder; that a certificate authorizing such operations should be granted; and that the application in all other respects should be denied.

Upon compliance with the requirements of sections 215, 217, and 221(c) of the act, and with the applicable rules and regulations thereunder, within the time specified in the order entered concurrently herein, an appropriate certificate will be issued. An order in accord herewith will be entered.

APPENDIX A

Partial routes of Garrett Freightlines, Inc.

A brief summarization of the operating authorities relating to the instant proceeding is as follows:

Between Boise, Idaho and Portland, Oreg., over U. S. Highway 30, serving the intermediate points on that highway of Nampa, Caldwell and New Plymouth, Idaho, and Huntington, Baker, Union, Legrande and Pendleton, Oreg. It may also operate from Boise to Portland over Idaho Highway 44 to its junction with U. S. Highway 30, thence over U. S. Highway 30 to Ontario, Oreg., thence over Oregon Highway 201 to its junction with U. S. Highway 20, thence over U. S. Highway 20 to Bend, Oreg., thence over U. S. Highway 97 to its junction with U. S.

General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,

Serving Kinzua, Oreg., as an off-route point in connection with carrier's authorized regular-route operations between Portland, Oreg., and Prairie City, Oreg., over Oregon Highway 19.

General commodities, except those of unusual value, classes A and B explosives, uncrated household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

Between Portland, Oreg., and Prairie City, Oreg., serving all intermediate points between Condon and Prairie City, Oreg., and the off-route point of Canyon City, Oreg.:

From Portland over U. S. Highway 30 to Arlington, Oreg., thence over Oregon Highway 19 to junction U. S. Highway 26, thence over U. S. Highway 26 to Prairie City, and return over the same route.

Alternate route for operating convenience only:

General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading.

Between Portland, Oreg., and junction U. S. Highway 26 and Oregon Highway 19, approximately 7 miles west of Dayville, Oreg., serving no intermediate points:

From Portland over U. S. Highway 26 to junction Oregon Highway 19, and return over the same route.

It also holds authority to transport livestock, over irregular routes, between points in nine eastern Oregon counties, on the one hand, and, on the other, points in that part of Washington in and east of Chelan, Kittitas, Klickitat, Okanogan and Yakima Counties, Wash., and those in that part of Idaho on the west of U. S. Highway 93, and from points in the 9 counties in eastern Oregon to 12 specified destination points in Oregon.

It holds intrastate authority from the State of Oregon roughly paralleling its interstate authority and, in addition, intrastate irregular-route authority to transport general commodities, with a single exception, between points within 100-road miles of Dayville, Oreg., on the one hand, and, on the other, points in the State of Oregon.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION,
Division 3, held at its office in Washington, D. C., on the 12th day
of April 1968.

No. MC-F-9517

**GARRETT FREIGHTLINES, INC.—CONTROL AND MERGER—
EASTERN OREGON FREIGHT, INC.**

Finance Docket No. 24356

**GARRETT FREIGHTLINES, INC.—STOCK AND
ASSUMPTION OF OBLIGATIONS**

No. MC-263 (Sub-No. 172)

APPLICATION OF GARRETT FREIGHTLINES, INC.

Investigation of the matters and things involved in these proceedings having been made, and said division having made and filed its report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That the order of division 3 entered on January 8, 1968, staying the taking effect of the recommended report and order in docket No. MC-F-9517 and Finance Docket No. 24356, be, and it is hereby, vacated and set aside, and the findings and conclusions therein be, and they are hereby, affirmed;

It is further ordered, That said application, except to the extent granted in said report, be, and it is hereby, denied; and

And it is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act within 90 days after the date of service hereof, or within such additional time as may be authorized by the Commission, the grant of authority made in said report shall be null

and void and the application shall stand denied in its entirety effective upon the expiration of the compliance date.

By the Commission, division 3.

H. NEIL GARSON,

(SEAL)

Secretary.

BEFORE THE PUBLIC UTILITY COMMISSIONER
OF OREGON

FMC 3077 - (Sub 2)

In the matter of the application)
of GARRETT FREIGHTLINES, INC.,) ORDER
Pocatello, Idaho, pursuant to)
ORS chapter 767.)

The above-entitled matter was heard on April 17 and 18, 1968, at Ontario, Oregon, before Charles L. Wroton, examiner for the commissioner. The following appearances are of record herein:

For Applicant:

Maurice H. Green, Attorney
Boise, Idaho
and
Lawrence V. Smart, Attorney
Portland, Oregon
In behalf of Garrett
Freightlines, Inc.

For Protestants:

John G. McLaughlin, Attorney
Portland, Oregon
In behalf of Bend-Portland
Truck Service, Inc., dba
Trans-Western Express

Clarence Vogt
Ontario, Oregon
In behalf of Vogt Transfer &
Storage Co.

For Interested Parties:

John H. Socolofsky
Assistant Attorney General
Salem, Oregon
In behalf of the Public Utility
Commissioner of Oregon

Maurice H. Greene, Attorney
Boise, Idaho
and
Lawrence V. Smart, Attorney
Portland, Oregon
In behalf of Eastern Oregon
Freight, Inc.

On June 23, 1967, Garrett Freightlines, Inc., of Pocatello, Idaho, referred to hereinafter as applicant, filed with the commissioner, pursuant to ORS chapter 767, its application as amended by letter dated October 31, 1967, for extension of authority, by transfer of Oregon PUC Permit No. AF 79208-1A, now held by Eastern Oregon Freight, Inc., called EOF hereinafter, of John Day, Oregon, to operate as a motor common carrier, in intrastate commerce in Oregon, in regular route scheduled service, of general commodities, except livestock, petroleum products in bulk, and bulk cement, over the routes and in accord with the limitations designated in said permit and, in irregular route service, of general commodities, except livestock and petroleum products in bulk in tank-type vehicles, within 100 road miles of Dayville; also, between Dayville or any point within 100 road miles thereof, on the one hand, and, on the other hand, any other point in Oregon.

On July 11, 1967, notice of the application was published and served on all persons having applications filed and pending before the commissioner to serve the territory proposed, or holding common or contract carrier operating privileges therein. Notices of protest and requests for hearing were timely filed, the matter was set for hearing and notice thereof was served upon applicant and protestants.

Evidence was adduced on behalf of the applicant and each of the protestants hereinbefore named, the hearing was concluded and the matter was taken under consideration for determination.

The examiner issued recommended findings of fact and conclusions of law in the within case on December 12, 1968. By Order No. 45381, dated January 3, 1969, the commissioner served the examiner's recommended findings of fact and conclusions of law upon all parties appearing at the hearing. Such order allowed the filing of exceptions to the recommendations.

The applicant filed its exceptions and protestant Bend-Portland Truck Service, Inc., filed a reply to the exceptions.

The recommendations found that EOF had improperly converted its irregular route operations to regular route operations, and suggested a reasonable time (three months) to allow EOF to conform its operations to its operating authority, and file an application asking that regular route authority which was improperly being exercised be allowed. After such passage of time, the recommendations were that a party by motion, or the commissioner on his own motion, would process the within application upon the record as it then stood, or would order further hearing.

The parties in their exceptions suggested that further proceedings were unnecessary. The commissioner finds that no reasons exist for further hearings in the matter and that the application should be disposed of on the basis of the record and exceptions as now constituted.

No further application as suggested by the examiner's recommendations has been filed by EOF.

Inasmuch as the examiner's recommendations were not definitive nor final, such recommended findings of fact and conclusions of law have not been adopted. This order shall constitute the full and complete order of the commissioner, notwithstanding the use of portions of the examiner's recommendations herein where such statements are applicable.

Based upon the evidence, the record, the briefs and exceptions filed, it is found that:

Applicant, an Idaho corporation with principal place of business in Pocatello, Idaho, has qualified to do business in Oregon and is in good standing. A motor common carrier in both interstate and intrastate commerce, Garrett holds, insofar as Oregon is here directly concerned, ICC Certificate No. MC 263, authorizing its transportation, over regular routes, in interstate commerce, of general commodities, with certain exceptions, between Boise, Idaho, and Portland, Oregon, serving the intermediate points of Baker, LaGrande, Pendleton, and Burns, westbound on Highway 20, among others. Applicant also holds Oregon PUC Certificate No. AF 18527-1A, authorizing it to transport, in intrastate commerce, general commodities, in regular route and scheduled service, between the Oregon-Washington state line and Pendleton; in irregular route service, within 60 road miles of Pendleton, solely in connection with its regular route operations; and in local cartage service,* within the City of Portland.

*Excepted from Garrett's general commodities authority at Portland, in local cartage service, are petroleum products in bulk in tank trucks, cement in bulk and household goods.

Owned and licensed for operation in Oregon by Garrett are some 2,200 units of motor vehicle equipment, in addition to which applicant proposes to acquire the motor vehicles heretofore and now operated by EOF in performing the operation licensed by the subject certificate. Applicant has an excess of current assets over current liabilities amounting to approximately \$3,700,000. Applicant is financially responsible and adequately equipped to perform the service proposed.

Applicant has certified that the vehicles listed on the within application are in such operating order and so equipped as to comply with all Oregon laws, rules and regulations covering vehicle safety and will be so maintained. The service proposed by applicant, and heretofore and now performed by EOF, will not be attended with substantial damage to the highways or danger to other users thereof or to the public.

Applicant has adopted the tariffs on file by EOF which are approved. Applicant has furnished insurance as required by statute. Applicant has agreed to pay fees and taxes required by and provided for in ORS chapter 767, comply with the provisions thereof, and obey all the rules and regulations of the commissioner. Applicant has also guaranteed payment to the commissioner of any and all fees, taxes, penalties or other moneys now due or which may hereafter be determined to be due in consequence of the operation of EOF under the provisions of ORS chapter 767.

The written consent and request of EOF to effect the proposed transfer of Oregon PUC Certificate No. AF 79208-1A is of record.

There remain for decision two additional findings, both of which, together with those hereinbefore made, are essential to a grant of this application; namely, that (1) the granting of the permit will not result in the impairment of the ability of existing operators adequately to serve the public, and (2) that the operation proposed is in the public interest.

EOF, by virtue of PUC Certificate No. AF 79208-1A, is authorized to provide, in intrastate commerce, regular route scheduled service between Portland, on the one hand, and, on the other, John Day; also, between John Day, on the one hand, and, on the other, Burns.

Standing alone, such authority would appear to permit EOF to provide a regular route scheduled service between Portland, on the one hand, and, on the other, Burns via John Day.

However, on the face of EOF's referenced certificate, an exception, applicable only to such service, specifically prohibits Portland-Burns regular route scheduled service by EOF in the following language:

"No (regular route scheduled) service authorized between Portland, on the one hand, and, on the other, . . . Burns."

Thus, by the very terms of its certificate, EOF is prohibited from providing regular route scheduled service for traffic originating at Portland destined for Burns, and vice versa.

EOF, by virtue of the same certificate, is authorized to provide, in intrastate commerce, irregular route service within 100 road miles of Dayville; also, between said Dayville or any other point within 100 road miles thereof, on the one hand, and, on the other, any other point in Oregon.

Burns is within 100 road miles of Dayville; Portland, on the other hand, obviously is not. EOF may, under its certificate, transport authorized commodities in irregular route service between Portland and Burns.

Protestant Bend-Portland Truck Service, now known as Trans-Western Express, makes it clear that it protests only that portion of the application which relates to the transportation of commodities allegedly under irregular route authority from Portland to Burns, Oregon.

Vogt Transfer proposes that any authority granted be restricted against service within or from or to a 50-mile radius of Malheur County on the grounds that EOF has not rendered any service in this area.

The evidence reveals that, insofar as the regular route portion of the authority is concerned, there has been extensive and continuous exercise of this authority and it would be in the public interest to transfer this portion of the authority.

Based on the findings and order herein, there is no reason to further consider Vogt Transfer's request for restriction. Although it is noted that the evidence does not reveal any irregular route transportation of property within the area of the proposed restriction.

By amendment, transportation of livestock was removed from the scope of the transfer, and official notice is taken of the fact that the livestock authority has been transferred to another entity. The movement of the specialized commodity of livestock cannot be used to show the scope of irregular route transportation of general commodities.

One issue to be resolved is the scope of the exercise of the irregular route authority within, from and to 100 road miles of Dayville. The applicant relies solely upon past use of such authority to establish the public interest in the transfer of the authority. The exhibits submitted to support this exercise are basically exhibits 14 and 15.

Other movements from Portland to Burns were testified to in the record.

Exhibit 14 is an abstract of shipments for the month of October, 1967, and exhibit 15 for the month of April, 1967. Exhibit 14 lists 62 shipments, Exhibit 15 lists 61 shipments. Fifty-six shipments of 62 listed on Exhibit 14 are from Portland to Burns or the contiguous City of Hines. Fifty-five of 61 shipments listed on Exhibit 16 are from the Portland area to Burns or Hines or from Burns or Hines to the Portland area.

An analysis of the shipments on Exhibit No. 14 to points other than Burns or Hines indicates that 200 pounds and 151 pounds of crackers moved from Portland to Mitchell, 994 pounds of crackers moved from Portland to Paulina, 630 pounds of toilet preparations and 260 pounds of knives moved from Portland, to Prineville, and one truckload of cement moved from Lime, to John Day. With the exception of the Paulina move and the cement move from Lime, all shipments were carried on EOF's regular route schedules from and to points on EOF's regular routes.

The 56 shipments on Exhibit 14 moving from Portland to Burns or Hines were all LTL shipments with the exception of one truckload shipment.

An analysis of the shipments on Exhibit 15, from or to points other than Burns or Hines, indicates that 100 pounds of Alfalfa seed went from Portland to Mitchell, 520 pounds of antifreeze and tables went from Portland to Crane, 100 pounds

of onions from The Dalles to Fossil, a caterpillar with blade (50,000 pounds) went from Dearoff Summit to John Day, one caterpillar tractor apparently in local cartage service in John Day, and one caterpillar tractor from Crane Creek to Burns. With the exception of the heavy equipment moves, all other shipments moved on applicant's regular route schedules.

The 55 shipments on Exhibit 15, from or to the Portland area and the Burns-Hines area, were all LTL shipments with the exception of five truckloads of petroleum products or empty barrels.

Exhibits 14 and 15 are abstracts of the alleged irregular route movements for the months of April and October, 1967, and are submitted as representative of the scope of the exercise of the irregular route authority.

The nature of and the extent of the movement of commodities other than between Portland and Burns or Hines reveals a very minimal and very restricted exercise of general commodity irregular route authority. These movements are not significant enough to show a general public interest in an irregular route transportation service as broad as that now held by EOF. In this respect, consideration has been given to the geographic factors of the area which would indicate that transportation between points in this area or from or to points in the area would not be in the volume which would be expected in more populated areas.

The next issue raised which relates to the balance of defendant's irregular route authority and the exercise thereof is the character of service provided between Portland and Burns.

Such service would, technically, be within the terms of the said certificate. The challenge, however, is directed, not to the operating authority, but rather to the character of the service actually provided. Protestants contend that, in violation of its certificate, EOF is routinely providing regular route scheduled service, Portland to Burns.

As noted above, EOF is restricted from serving Burns from Portland under its regular route authority, although EOF does have regular route authority from Portland to John Day and from John Day to Burns. The restriction was for the purpose of protecting existing service to a small, rather isolated area where traffic flowing into the area would not support two transportation services.

The characteristics of the transportation service furnished by EOF for its Portland-Burns traffic are quite clear.

EOF operates daily in regular route scheduled service from Portland (via U.S. Highway Route 30, Oregon State Highway Routes 206 and 19, and U.S. Highway Route 26) to John Day. EOF operates daily in regular route scheduled service from John Day (via U.S. Highway Route 395) to Burns. The same service in the reverse direction over the same routes is provided.

Except truckload shipments, Portland to Burns, which in a two-month period totaled five movements of petroleum products or empty barrels, all of EOF's traffic between those two points was handled by EOF in regular route scheduled service.

Six days weekly EOF operates a diesel van delivering mail, under contract with the federal government, and freight, and backhauling the same, on this schedule:

8:45 a.m.	depart	John Day	return	4:30 p.m.
11:30 a.m.	arrive	Burns	depart	2:00 p.m.

EOF is unable to identify any LTL shipment, Portland to Burns or reverse, that was not transported and delivered in this regular route scheduled service.

The applicant's contention is that it has authority under its irregular route authority to serve between Portland and Burns as Burns is within 100 road miles of Dayville, and that the movements between Portland and Burns or Hines have been under this authority even though it has been carrying these shipments on its regular route schedules.

Irregular route service is designed to be rendered in an area where the frequency of movements will not support the regular maintenance of schedules, for the occasional on-call type of traffic that requires unscheduled movements or where the points of origin or destination vary widely, and for the more bulky or heavy truckload-type movements. It would be extremely uneconomical for any carrier to solicit and accept small shipments on an on-call basis between Portland and Burns. The applicant does not deny this. It is obvious that, but for being able to use its regular route vehicles, EOF would not be handling the small shipments shown between Portland and Burns with the frequency shown, or at all in irregular route service. Simply -- the small shipments do not return sufficient revenue to cover the costs of operation between Portland and Burns.

In addition to the movements abstracted on Exhibit 12, which cover movements from Portland to the Baker-LaGrande area, the applicant admitted it abstracted only one of two groups of freight bills. The non-abstracted bills were examined and read into the record covering the John Day area for the week of May 8, 1967. The bills read into the record were for shipments from Portland to Seneca, Burns and Hines. (Transcript Vol. 2, pages 112, et seq.)

These bills were in most instances signed by persons by the names of Kalin or Blue, both identified as drivers exclusively of EOF's regular route schedule from John Day to Burns.

It was also established that, with the exception of the few volume movements or other movements hereinbefore mentioned, the bills reported in Exhibits 14 and 15 from Portland to Burns or Hines were signed by one of the two named persons or by one Harry Zimmerman, a replacement driver for Blue or Kalin. (Transcript, Vol. 2, pages 110 and 161.)

It was also established that, on the freight bills reviewed on the record, each freight bill covered from one to 16 or 18 packages and some up to 50 and 60 packages. All bills read into the record (for the week of May 8, 1967) being 35 in number, were all LTL movements.

Also read into the record for the period November 1 to 15, 1966, were 26 bills from Portland to Burns or Hines. The same facts apply to these bills as to the others previously mentioned.

During the week of November 7, 1966, and the week of May 8, 1967, (bills above referred to) none of the LTL movements moved on other than EOF's regular route schedules. As to the bills testified to, the bills represent many more shipments than one single shipment. The shipments are from a number of consignors to a number of consignees, rather than one commodity movement from one consignor to one consignee.

Also, insofar as Portland is concerned, the packages were all picked up on EOF's pickup and delivery rigs, brought into the Portland terminal and moved on schedule via regular route vehicles over regular routes. This was stated to be the pattern of operation under normal circumstances. (Transcript, Vol. 2, pages 129 and 130). It is a proper inference that the shipments represented on Exhibits 14 and 15 were handled under the normal pattern of operation. It is noted that EOF's pickup and delivery authority is in connection with its regular route authority.

To applicant's argument that the volume of so-called irregular route movements to total operations is rather insignificant, it must be observed that, in fact, mere counting of freight bills does not represent the total volume of LTL shipments handled. The total number of individual shipments is substantially in excess of first appearances.

EOF alleges that it has never solicited Portland to Burns traffic on the basis of a regular route operation. Neither does the record reveal that any shipper was told that EOF did not have the authority to serve Burns on a regular scheduled basis. Without explanation, the advertising at least implied that EOF served Portland to John Day with daily schedules and served John Day to Burns with daily schedules. Anyone not knowing of the restriction would normally assume that his shipment would go from Portland to Burns on the time schedules filed by EOF. Remaining silent and developing a regular route pattern of operations can be tantamount to inducing a belief or reliance in the shipper's mind. The advertising and method of operation was sufficient in combination to constitute a holding out of regular route scheduled service.

In excess of 90% of the alleged irregular route traffic (Exhibits 14 and 15) is between Portland and Burns or Hines. Virtually all of this traffic has been handled in a regular route manner; i.e., picked up and delivered by EOF's pickup and delivery vehicles, delivered to the terminal and shipped out on regular route vehicles over regular routes on schedule. This method of operation was testified to as being the normal method of operation, and as having been consistent and continuous for a number of years. In fact, some of the minimal traffic not falling into the Portland to Burns-Hines portion moved between points on such routes. Even had EOF had no regular route authority, the regularity of the movements and the volume thereof between Portland and points on the route traveled would have been tantamount to a regular route operation.

In this case, because of the size of the shipments, the mileage and the volume involved, experience would indicate that it would be uneconomical to conduct a small-shipment, irregular-route service between Portland and Burns, and that the present traffic pattern would never have evolved but for EOF's regular route authority. It has evolved to the virtual exclusion of any other irregular route activity. The irregular route authority has been used to circumvent regular route restrictions and to thwart the purpose and intent of such restrictions. In so doing, the purpose and intent of irregular route service has likewise been ignored.

ORS 767.415 (2) defines regular route scheduled service as follows:

"A carrier operating in the regular route, scheduled service class is any person who undertakes to transport persons or property, or both, or any class of property, by motor vehicle for compensation between fixed termini and over a regular route upon established or fixed schedules." (emphasis supplied.)

The service between Portland and the Burns-Hines area is regular route service. EOF has, without authority, converted its irregular route service to a regular route scheduled service without showing that such was in the public interest and contrary to an express restriction against service between Portland and Burns. Giving consideration to the geographic factors of the area involved affecting transportation of commodities, there has been no significant exercise of irregular route authority. Accordingly, irregular route authority held by EOF should be removed from any authority transferred herein.

Neither can the authority be conformed to allow regular route authority between Portland and Burns, thus, in effect, deleting the present no service restriction. This type of conversion is a broadening of regular route authority and is beyond the scope of the notice given in this case, thus protestants were not informed that this would be a consideration. Protestant Bend-Portland Truck Service's evidence is that it is a regular route carrier which has authority to serve Burns to Portland on a regular scheduled route basis, and has done so for at least 30 years. It is required to run schedules into this area, regardless of the amount of traffic it has for the area. It has experienced a serious reduction in its traffic volume into Burns and service to the Burns area is marginal at best because of the size of the communities involved and the amount of traffic flowing into the area. It is noted that Burns and Hines are the only points of any size on protestant's routes for 130 miles east of Bend. The protestants consistently operate their schedules at less than capacity. There is virtually no return traffic which is verified by applicant's own exhibits. In the face of this evidence, which is unrefuted, the commissioner cannot, in this case based on the evidence herein, say that the sense and purpose of the restriction placed on EOF's authority to serve Burns on a regular scheduled basis in the first instance is still not justified.

The transfer herein involves the question of local cartage rights by virtue of the Supreme Court decision entitled Berry Transport, Inc., vs. Charles H. Heltzel, (1954) 202 Or. 162. By letter dated August 31, 1970, applicant waived and disclaimed any local cartage authority which might attach to transferor's authority by virtue of that decision. There is no evidence herein of the rendering of any local cartage service except as specifically granted herein. Based on the evidence and transferee's disclaimer, no so-called "Berry Rights" attach to transferor's authority, none are subject to transfer and no such rights reside in transferor or by this order vest in transferee.

From the foregoing, it is concluded that the application should be granted and that transfer of the operating rights of Eastern Oregon Freight Lines, Inc., conformed to operations shown to have been properly rendered herein, be authorized. It is further concluded that the irregular route service within, from and to 100 road miles of Dayville has not been exercised or shown to be in the public interest and should be stricken from any operating rights transferred herein. It is therefore

ORDERED that transfer of Eastern Oregon Freight, Inc.'s operating rights to Garrett Freightlines, Inc., in accordance with the above findings and conclusions, is hereby authorized, and certificate may issue on the effective date hereof authorizing the following complete transportation service:

COMMON CARRIER OF PROPERTY IN INTRASTATE
COMMERCE IN OREGON, RESTRICTED AS FOLLOWS:

DIVISION I

REGULAR ROUTE SCHEDULED SERVICE:

AUTHORIZED ROUTES:

<u>BETWEEN</u>	<u>AND</u>	<u>VIA</u>
OREGON-WASHINGTON STATE LINE	PENDLETON	O.S.H.R. NO. 11
PENDLETON	PENDLETON AIRPORT (FORMERLY USAF BASE - WEST OF PENDLETON)	U.S.H.R. NO. 30 AND CONNECTING ROADS

AUTHORIZED SERVICE:**GENERAL COMMODITIES;**

**SERVICE AUTHORIZED IN BOTH DIRECTIONS
BETWEEN ALL POINTS ON ABOVE-AUTHORIZED
ROUTES.**

IRREGULAR ROUTE SERVICE:

**GENERAL COMMODITIES WITHIN 60 ROAD MILES OF
PENDLETON, SOLELY IN CONNECTION WITH PERMITTEE'S
AUTHORIZED REGULAR ROUTE OPERATIONS.**

LOCAL CARTAGE SERVICE:

**GENERAL COMMODITIES, EXCEPT PETROLEUM PRODUCTS,
IN BULK IN TANK TRUCKS, CEMENT IN BULK, AND
HOUSEHOLD GOODS, WITHIN THE CORPORATE LIMITS
OF THE CITY OF PORTLAND.**

DIVISION II**REGULAR ROUTE SCHEDULED SERVICE:****AUTHORIZED ROUTES:**

<u>BETWEEN</u>	<u>AND</u>	<u>VIA</u>	<u>SEE EX- CEPTIONS</u>
PORTLAND	O.S.H.R. NO. 206	U.S.H.R. NO. 30	A & G
JCT. O.S.H.R. NO. 206	BAKER	U.S.H.R. NO. 30 AND INTERSTATE NO. 80N	E, J, K
LA GRANDE	BAKER (VIA MEDICAL SPRINGS)	O.S.H.R. NOS. 203 AND 86	J & K
UNION	JCT. U.S.H.R. NO. 30 AND O.S.H.R. NO. 237 (NEAR NORTH POWDER)	O.S.H.R. NO. 237	J & K
JCT. U.S.H.R. NO. 30	CONDON	O.S.H.R. NO. 206	A, G, I
JCT. O.S.H.R. NO. 206	CONDON AIR FORCE BASE	GILLIAM COUNTY RD.	
CONDON	JCT. U.S.H.R. NO. 26	O.S.H.R. NO. 19	G

JCT. O.S.H.R. NO. 19	JCT. O.S.H.R. NO. 7	U.S.H.R. NO. 26	G
JCT. O.S.H.R. NO. 19	KINZUA	WHEELER CO. RD.	D, G, H
JOHN DAY	BURNS	U.S.H.R. NO. 395	D, E, G, H
JCT. U.S.H.R. NO. 26	PENDLETON	U.S.H.R. NO. 395 B,	D, E, G, H
JCT. U.S.H.R. NO. 26	BAKER	O.S.H.R. NO. 7	C, D, E, G, H
JCT. U.S.H.R. NO. 7	UNITY	U.S.H.R. NO. 26	
PORTLAND	JCT. O.S.H.R. NO. 19	U.S.H.R. NO. 26	F, G, H

SERVICE TO THE FOLLOWING NAMED POINTS SHALL BE BY THE NEAREST AND/OR THE MOST CONVENIENT ACCESS ROADS FROM THE NEAREST AUTHORIZED REGULAR ROUTE WITH SERVICE TO SUCH POINTS TO BE RENDERED SUBJECT TO RESTRICTIONS AND LIMITATIONS APPLICABLE TO REGULAR ROUTE FROM WHICH ACCESS IS MADE. (SEE AUTHORIZED ROUTES AND APPLICABLE EXCEPTIONS.)

MEACHAM - KAMELA

AUTHORIZED SERVICE:

GENERAL COMMODITIES, EXCEPT AS HEREINAFTER NOTED (EXCEPTION H).

SERVICE AUTHORIZED IN BOTH DIRECTIONS BETWEEN ALL POINTS ON ABOVE AUTHORIZED ROUTES, EXCEPT AS FOLLOWS:

EXCEPTIONS:

- A - NO LOCAL SERVICE IN EITHER DIRECTION BETWEEN ANY POINT, PORTLAND TO THE NORTH AND/OR WEST CITY LIMITS OF CONDON.
- B - NO LOCAL SERVICE IN EITHER DIRECTION BETWEEN ANY POINTS, PILOT ROCK TO PENDLETON, BOTH INCLUSIVE.
- C - NO LOCAL SERVICE IN EITHER DIRECTION BETWEEN ANY POINTS ON O.S.H.R. NO. 7 EAST OF HEREFORD.

D - NO SERVICE AUTHORIZED BETWEEN POINTS INTERMEDIATELY LOCATED BETWEEN PORTLAND AND THE WEST CITY LIMITS OF THE DALLES, ON THE ONE HAND, AND POINTS ON

- (1) O.S.H.R. NO. 7, UNITY JCT. TO BAKER, BOTH INCLUSIVE;**
- (2) ON WHEELER COUNTY ROAD BEYOND ITS JUNCTION WITH O.S.H.R. NO. 19 TO AND INCLUDING KINZUA;**
- (3) ON U.S.H.R. NO. 395 BEYOND ITS JUNCTION WITH U.S.H.R. NO. 26 TO AND INCLUDING BURNS;**
- (4) ON U.S.H.R. NO. 395 BEYOND THE JUNCTION WITH U.S.H.R. NO. 26, TO AND INCLUDING PENDLETON.**

E - NO SERVICE AUTHORIZED BETWEEN PORTLAND, ON THE ONE HAND, AND PENDLETON AND BURNS, ON THE OTHER HAND.

F - NO LOCAL SERVICE AUTHORIZED IN EITHER DIRECTION, PORTLAND TO PRINEVILLE, BOTH INCLUSIVE.

G - NO SERVICE AUTHORIZED BETWEEN POINTS INTERMEDIATELY LOCATED BETWEEN PORTLAND AND THE WEST CITY LIMITS OF PRINEVILLE, ON THE ONE HAND, AND POINTS EAST OF PRINEVILLE, ON THE OTHER HAND.

H - THE TRANSPORTATION OF PETROLEUM PRODUCTS IN BULK AND BULK CEMENT IS NOT AUTHORIZED TO, FROM OR BETWEEN POINTS ON ROUTES DESIGNATED, WITH THE EXCEPTION OF JOHN DAY AND CANYON CITY WHERE SUCH TRANSPORTATION IS AUTHORIZED.

I - NO SERVICE AUTHORIZED TO OR FROM ANY POINTS ON O.S.H.R. NO. 206 BETWEEN THE WEST CITY LIMITS OF CONDON AND THE JUNCTION OF O.S.H.R. NO. 206 AND U.S.H.R. NO. 30.

J - NO SERVICE AUTHORIZED TO, FROM OR BETWEEN POINTS AND PLACES INTERMEDIATELY LOCATED BETWEEN PORTLAND AND THE JUNCTION OF O.S.H.R. NO. 11 WITH U.S.H.R. NO. 30.

K - THE TRANSPORTATION OF LIVESTOCK IS NOT AUTHORIZED.

PICKUP AND DELIVERY SERVICE IN CONNECTION WITH AUTHORIZED REGULAR ROUTE SERVICE VIA CONNECTING ROADS, BETWEEN ALL POINTS WITHIN ONE (1) MILE ON EACH SIDE OF ABOVE AUTHORIZED ROUTES; ALSO, WITHIN A THREE (3) MILE RADIUS OF THE CORPORATE LIMITS OF ALL CITIES OR TOWNS WHERE SERVICE IS AUTHORIZED.

ALTERNATE ROUTES: (FOR OPERATING CONVENIENCE ONLY)

<u>BETWEEN</u>	<u>AND</u>	<u>VIA</u>
JCT. U.S.H.R. NO. 97	ARLINGTON	U.S.H.R. NO. 30
ARLINGTON	CONDON	O.S.H.R. NO. 19

U.S.H.R. designates UNITED STATES HIGHWAY ROUTE.
O.S.H.R. designates OREGON STATE HIGHWAY ROUTE.

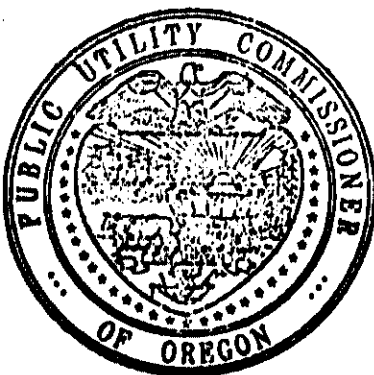
It is further

ORDERED that, upon transfer, Certificate No. AF 79208-1A, standing in the name of Eastern Oregon Freight, Inc., be of no further force or effect.

And it is further

ORDERED that the within order and amended authority issuing hereunder shall be effective SEPTEMBER 15 1970.

Made and entered SEPTEMBER 2 1970.



Sam R. Haley
Public Utility Commissioner

AGREEMENT OF MERGER

THIS AGREEMENT Made and entered into this 24 day of August 1970, by and between GARRETT FREIGHTLINES, INC., an Idaho corporation, with principal place of business at Pocatello, Bannock County, Idaho, the party of the first part, (hereinafter sometimes referred to as "Garrett"), and EASTERN OREGON FREIGHT, INC., an Oregon corporation, with principal place of business at John Day, Grant County, Oregon, the party of the second part, (hereinafter sometimes referred to as "Eastern Oregon Freight"), WITNESSETH:

WHEREAS, the party of the first part and the party of the second part hereto deem it desirable to merge Eastern Oregon Freight, Inc. into Garrett Freightlines, Inc., with the Garrett Freightlines, Inc. being and becoming the surviving corporation, and for that purpose to enter into a merger agreement fixing and determining the terms and conditions of said merger as provided by the laws of the respective states of Idaho and Oregon, being the states under whose laws the party of the first part and the party of the second part were organized,

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED by and between the parties hereto that Eastern Oregon Freight, Inc. be and the same is hereby merged into Garrett Freightlines, Inc., with Garrett Freightlines, Inc., as the surviving corporation, subject to the following terms and conditions:

I.

The surviving corporation shall be GARRETT FREIGHTLINES, INC., an Idaho corporation.

II.

All of the issued and outstanding capital stock of Eastern Oregon Freight, Inc., shall be surrendered to the corporate officers of the corporation and cancelled. In lieu of the stock of Eastern Oregon Freight, Garrett shall deliver to the owners and holders of

the stock of Eastern Oregon Freight, 5757 shares of its \$1.66 per share par value common capital stock at the agreed upon price of \$29.25 per share.

III.

All of the obligations and liabilities of Eastern Oregon Freight shall become the obligations and liabilities of Garrett for all purposes and with like effect as if said obligations and liabilities, and each of them, were originally incurred by Garrett Freightlines, Inc., save and except that any indebtedness or liability of any character existing between the merging corporation at the time this agreement of merger becomes effective shall be cancelled and be of no further force and effect whatsoever.

IV.

All of the assets of every kind or character of Eastern Oregon Freight shall become the assets of Garrett Freightlines, Inc., the same as if such assets were originally owned by Garrett Freightlines, Inc., and Eastern Oregon Freight shall, upon said merger becoming effective, make and execute such conveyances as are necessary to merge the assets of Eastern Oregon Freight, Inc. into Garrett Freightlines, Inc.

V.

The authorized capital stock of Garrett Freightlines, Inc., shall not be changed or increased in any manner by said merger.

VI.

The officers and directors of Garrett Freightlines, Inc., at the time said merger becomes effective shall be and remain the officers and directors of the surviving corporation.

VII.

The articles of incorporation and by-laws of Garrett Freightlines, Inc., in force and effect at the time this agreement of merger becomes effective shall become and be the articles of incorporation and by-laws of the surviving corporation.

VIII.

In all matters and things not specifically provided for in

this agreement of merger the laws of the State of Idaho relating to the merger of corporations, insofar as may legally be done, shall apply to this merger and to the rights, powers and duties of the surviving corporation, Garrett Freightlines, Inc.

IX.

The proposed merger of Eastern Oregon Freight, Inc., must be approved by the Interstate Commerce Commission under the Interstate Commerce Act and by the Public Utility Commissioner of the State of Oregon under the motor carrier regulatory laws of said state. To obtain such approval, applications have been filed with the Interstate Commerce Commission and the Public Utility Commissioner of the State of Oregon. Upon approval by the Interstate Commerce Commission and the Public Utility Commissioner of the State of Oregon, this agreement shall be recorded in the office of the appropriate corporate officials of the states of Idaho and Oregon, being the states under the laws of which said corporations were organized, and shall be in full force and effect from and after the date of such recording. In the event the Interstate Commerce Commission or the Public Utility Commissioner of the State of Oregon disapprove said merger, then this agreement shall be void for all purposes and of no further force and effect whatsoever.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective Boards of Directors. After approval by the holders of two-thirds of the voting power of all shareholders of each corporation in the manner provided by law, the fact of such approval shall be certified on this agreement by the Secretary of each of the corporations parties to this agreement. The agreement so adopted and certified shall be signed by the President and Secretary of each of said corporations, acknowledged by their respective presidents, and their respective corporate seals affixed, and shall be in full force and effect from and after the date of signature by the President and Secretary and acknowledgement by the President of each of the parties hereto and filing with the proper officers of the states of Idaho and Oregon.

GARRETT FREIGHTLINES, INC.

W. J. Wilson
W. J. WILSON, Director

Wain Garrett
WAIN GARRETT, Director

L. M. Allsberry
L. M. ALLSBERRY, Director

R. M. Wallace
R. M. WALLACE, Director

M. H. Greene
M. H. GREENE, Director

J. Grant Bickmore
J. GRANT BICKMORE, Director

N. V. Stedtfeld
N. V. STEDTFELD, Director

F. J. Arsenault
F. J. ARSENAULT, Director

DON JONES
DON JONES, Director

Being and constituting the members of
the Board of Directors of Garrett Freight-
lines, Inc., the party of the first part.

ATTEST:

Frederick C. Lyon
FREDERICK C. LYON
Acting Secretary

(CORPORATE SEAL)

EASTERN OREGON FREIGHT, INC.

Hollis W. Owens
HOLLIS W. OWENS, Director

RAY MEDICI
RAY MEDICI, Director

Marguerite Owens
MARGUERITE OWENS, Director

Being and constituting all of the members
of the Board of Directors of Eastern Oregon
Freight, Inc., party of the second part.

ATTEST:

Marguerite Owens
MARGUERITE OWENS
Secretary

(CORPORATE SEAL)

STATE OF IDAHO)
) ss.
COUNTY OF BANNOCK)

I, Frederick C. Lyon, do hereby certify that I am the duly elected, qualified and acting Secretary of Garrett Freightlines, Inc., an Idaho corporation, the party of the first part named in the foregoing Agreement of Merger; that as such secretary, I have in my possession and custody the minutes of the proceedings of the Board of Directors and stockholders of said corporation; that the foregoing Agreement of Merger was adopted by a majority vote of the Board of Directors of Garrett Freightlines, Inc. at a meeting of said Board held on the 1st day of May 1970, at which meeting a majority of said Directors were present in person, and, after adoption, said Agreement of Merger was entered into by said Board by affixing their respective signatures thereto; that said Agreement of Merger was thereafter and on the 12th day of August, 1970, submitted to the stockholders of said Garrett Freightlines, Inc. at a special meeting of said stockholders, and that at said meeting more than two-thirds of the voting power of said stockholders of Garrett Freightlines, Inc. voted for the adoption of said Agreement of Merger and directed the fact of such adoption to be certified on said agreement by me as the Secretary of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official corporate seal of said Garrett Freightlines, Inc. at Pocatello, Bannock County, Idaho, this 14th day of August, 1970.


FREDERICK C. LYON, SECRETARY

GARRETT FREIGHTLINES, INC.

(CORPORATE SEAL)

The foregoing Agreement of Merger is hereby signed by the President and Secretary of Garrett Freightlines, Inc. and the corporate seal of said corporation affixed this 14th day of August, 1970, pursuant to resolutions of the Board of Directors and stockholders of said corporation.

GARRETT FREIGHTLINES, INC.

(CORPORATE SEAL)

By: W. J. Wilson
W. J. WILSON, PRESIDENT

ATTEST:

Frederick C. Lyon
FREDERICK C. LYON, SECRETARY

STATE OF IDAHO)
) ss.
COUNTY OF BANNOCK)

On this 14 day of August, 1970, before me, Louise E. Cooper, a Notary Public in and for said state, personally appeared W. J. Wilson, know to me to be the President of Garrett Freightlines, Inc., one of the corporations whose name is affixed to the within and foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


Louise E. Cooper
Notary Public for Idaho
Residence: Pocatello, Idaho
My Commission Expires: July 15, 1973.

(NOTARIAL SEAL)

STATE OF OREGON)
) ss.
COUNTY OF GRANT)

I, Marguerite Owens, do hereby certify that I am the duly elected, qualified and acting Secretary of Eastern Oregon Freight, Inc., an Oregon corporation, one of the parties of the second part named in the foregoing Agreement of Merger; that as such Secretary I have in my possession and custody the minutes of the proceedings of the Board of Directors and stockholders of said corporation; that the foregoing Agreement of Merger was adopted by majority vote of those members present of the Board of Directors of Eastern Oregon Freight, Inc. at a meeting of said Board held on the 21 day of August, 1970, at which meeting a majority of said Directors were present in person, and, after adoption of said agreement, said Agreement of Merger was entered into by said Board by affixing their respective signatures thereto; that said Agreement of Merger was thereafter and on the 21 day of August, 1970, submitted to the shareholders of said Eastern Oregon Freight, Inc. at a meeting of said shareholders, and that at said meeting more than two-thirds of the voting power of said shareholders of Eastern Oregon Freight, Inc. voted for the adoption of said Agreement of Merger and directed the fact of such adoption to be certified on said agreement by me as the Secretary of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official corporate seal of said Eastern Oregon Freight, Inc. at John Day, Grant County, Oregon, this 21 day of August, 1970.


MARGUERITE OWENS, SECRETARY
EASTERN OREGON FREIGHT, INC.

(CORPORATE SEAL)

The foregoing Agreement of Merger is hereby signed by the President and Secretary of Eastern Oregon Freight, Inc. and the corporate seal of said corporation affixed this 24 day of August, 1970, pursuant to resolutions of the Board of Directors and shareholders of said corporation.

EASTERN OREGON FREIGHT, INC.

BY Hollis W. Owens
HOLLIS W. OWENS, PRESIDENT

(CORPORATE SEAL)

ATTEST:

Marguerite Owens
MARGUERITE OWENS, SECRETARY

STATE OF OREGON)
) ss
COUNTY OF GRANT)

On this 24 day of August, 1970, before me, the undersigned, a Notary Public in and for said state, personally appeared Hollis W. Owens, known to me to be the President of Eastern Oregon Freight, Inc., one of the corporations whose name is affixed to the within and foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

John H. Hargrave
Notary Public for the State of Oregon
Residing at John Day, Oregon
My Commission Expires: 10-12-73

(NOTARIAL SEAL)