

Decision No. 70061**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 of JOSEPH S. LUIZ, doing business
 as LUIZ MILK TRANSPORTATION to
 sell and transfer to F. L. MARTIN,
 doing business as F. L. MARTIN
 TRUCKING, and for F. L. MARTIN to
 purchase and acquire a cement
 carrier certificate.

Application No. 47922
 (Filed September 27, 1965)

O P I N I O N

Joseph S. Luiz requests authority to sell and transfer and F. L. Martin requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier to and within the Counties of Santa Clara, Tulare, Fresno, Kern, Kings, Madera and Merced, from any and all points of origin and four cement trailers.

The operating authority is prescriptive in nature and was set forth by the Commission in Ex Parte Resolution No. 13821 Sub. No. 80. The agreed cash consideration is \$700 for the certificate and \$7,011.23 for the equipment plus tax in the amount of \$288.77. The total consideration being \$8,000.

Applicant purchaser is presently engaged as a certificated cement carrier to and within the following counties: Fresno, Kern, Kings, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Mateo, Siskiyou and Tulare from any and all points of origin. He owns and operates seventeen pieces of equipment including ten hopper-type units. As of December 31, 1964, applicant purchaser indicated a net worth in the amount of \$160,504.31.

It is alleged applicant seller desires to terminate business as a cement carrier and that applicant purchaser has the

necessary equipment, facilities and experience to provide the extended service.

F. L. Martin is hereby 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 over a particular route. 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.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

After consideration the Commission finds that the proposed sale would not be adverse to the public interest. A public hearing is not necessary. To avoid duplication, the operative rights of both applicants will be revoked and a new certificate will be issued to applicant buyer in appendix form.

O R D E R

IT IS ORDERED that:

1. On or before April 1, 1966, Joseph S. Luiz may sell and transfer, and F. L. Martin may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, F. L. Martin shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. F. L. Martin shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the cement carrier operations herein to show that he has adopted or established, as his own, said rates, rules and regulations. The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the consummation of the transfer herein authorized. The tariff filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, F. L. Martin 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 the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. Concurrently with the effective date of the tariff filings required by Ordering Paragraph 3 hereof, the operative rights granted by Resolutions Nos. 13821 and 13825, Sub. Nos. 80 and 47, respectively, are hereby revoked and, in place and stead thereof, a certificate of public convenience and necessity to operate as a cement carrier is hereby granted to F. L. Martin, as more particularly set forth in Appendix A attached hereto and made a part hereof.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 7th day of DECEMBER, 1965.

Fredrick B. Holshoff
President
John S. White
George E. Grover
Augustin
William L. Brown
Commissioners

F. L. MARTIN by the certificate of public convenience and necessity granted in the decision noted in the margin is authorized to operate as a cement carrier to and within the Counties of Fresno, Kern, Kings, Los Angeles, Madera, Merced, Orange, Riverside, Sacramento, San Bernardino, San Mateo, Santa Clara, Siskiyou and Tulare from any and all points of origin subject to the following restriction:

Whenever F. L. Martin, dba F. L. Martin Trucking, engages other carriers for the transportation of property of F. L. Martin or F. L. Martin Trucking or Martin Trucking and Ready Mix or Visalia Ready Mix or Porterville Ready Mix or Selma Ready Mix, or customers or suppliers of said individual or corporations, F. L. Martin, dba F. L. Martin Trucking, shall not pay such other carriers rates and charges less than rates and charges published in F. L. Martin, dba F. L. Martin Trucking, tariffs on file with this Commission.

END OF APPENDIX A

Issued by California Public Utilities Commission.

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