

ORIGINALDecision No. 70381

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 P. R. McCutchen, Incorporated to sell,
 and Thomas W. Haubrich and Bernardine
 A. Haubrich, doing business as R. G.
 Brown Trucking, to purchase, a cement
 carrier certificate, authorizing
 service to and within Mono and Inyo
 Counties, State of California, pursuant
 to Sections 851-853 of the California
 Public Utilities Code.

Application No. 48118
 (Filed December 13, 1965)

O P I N I O N

P. R. McCutchen, Incorporated, (McCutchen), requests authority to sell and transfer, and Thomas W. Haubrich and Bernardine A. Haubrich, a copartnership, doing business as R. G. Brown Trucking (Brown), request authority to purchase and acquire the operating authority in Inyo County described in the prescriptive cement carrier certificate acquired by McCutchen pursuant to Commission Resolution No. 13825, Sub. No. 7, dated June 23, 1964. Said certificate authorizes the transportation of cement by McCutchen to and within Mono and Inyo Counties.

Brown holds authority as a cement carrier pursuant to Resolution No. 14536, Sub. No. 1, dated July 7, 1965, to transport cement to and within the Counties of Fresno, Imperial, Kern, Kings, Los Angeles, Madera, Merced, Mono, Monterey, Orange, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Stanislaus, Tulare and Ventura. In addition, Brown holds a contract carrier permit from this Commission.

As Brown now has authority for Mono County, only authority to purchase the cement authority of McCutchen in Inyo County is requested.

The consideration to be paid by Brown to McCutchen for the certificate to be transferred is \$750. No other property is to be transferred.

The application contains a list of Brown's motor carrier equipment devoted to the transportation of cement. This list indicates Brown possesses 5 tractors and 8 sets of trailer equipment which, it is alleged, will be adequate and suitable to perform the service under the operative right to be transferred.

Also attached to the application is Brown's balance sheet as of November 1, 1965 and an income statement covering the six months' period ended July 1, 1965. The statements indicate that Brown has adequate financial resources to provide service under the operative right sought to be transferred.

Copies of the application were served upon the cement mills listed in the application and upon California Trucking Association. No protests have been received. Because of the expense involved in serving copies of the application on approximately 150 existing carriers, it is requested that applicants be authorized to deviate from Rule 29(a) of the Commission's Rules of Procedure. The sought deviation is granted.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary. The Commission concludes that the application should be granted to the extent set forth in the ensuing order. Certificates heretofore issued to McCutchen and Brown will be revoked and an in-lieu certificate will be issued to Brown as set forth in Appendix A attached hereto. As requested in the application the operating right to be transferred will be suspended until the transfer is completed.

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

Thomas W. Haubrich and Bernardine A. Haubrich are 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.

O R D E R

IT IS ORDERED that:

1. On or before August 1, 1966, P. R. McCutchen, Incorporated, may sell and transfer and Thomas W. Haubrich and Bernardine A. Haubrich may purchase and acquire, the operative right referred to in the application.
2. Pending the completion of the transfer and acquisition authorized in ordering paragraph 1 hereof, the prescriptive cement carrier operative right issued to P. R. McCutchen, Incorporated, is suspended.
3. Within thirty days after the consummation of the transfer herein authorized, Thomas W. Haubrich and Bernardine A. Haubrich 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.

4. Thomas W. Haubrich and Bernardine A. Haubrich shall amend or reissue the tariffs on file with the Commission, naming rates, rules and regulations governing the common carrier operations herein to show that they have adopted or established, as their 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.

5. On or before the end of the third month after the consummation of the transfer as herein authorized, Thomas W. Haubrich and Bernardine A. Haubrich 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.

6. Concurrently with the effective date of tariff filings required by ordering paragraph 4 hereof, the operative rights granted by Resolution No. 13825, Sub. No. 7, dated June 23, 1964, and Resolution No. 14536, Sub. No. 1, dated July 7, 1965, are hereby revoked and, in place and stead thereof, a certificate of public convenience and necessity to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, is hereby

granted to Thomas W. Haubrich and Bernardine A. Haubrich, as particularly set forth in Appendix A attached hereto.

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

Dated at San Francisco, California, this 23rd day of FEBRUARY, 1966.

Frederick B. Hallock
President
Robert E. Aguilera
George F. Hoover
Margaret
William W. Bennett
Commissioners

Appendix A

THOMAS W. HAUBRICH and
BERNARDINE A. HAUBRICH
(a copartnership)

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Thomas W. Haubrich and Bernardine A. Haubrich, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to operate as a cement carrier to and within the Counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Mono, Monterey, Orange, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Stanislaus, Tulare, and Ventura, from any and all points of origin.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 70381, Application No. 48118.