

ORIGINAL

Decision No. 71090

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In The Matter of The Application of:)

(a) DE LYN TRANSPORTATION, INC.)
a corporation, to purchase, and)
of S. R. WARD, an individual,)
to sell, a certificate of public)
convenience and necessity)
authorizing him to operate as a)
cement carrier to all points in)
the Counties of Los Angeles,)
Orange and San Bernardino)
pursuant to Sections 851-853 of)
the California Public Utilities)
Code.)

Application No. 48619
Filed July 11, 1966

(b) DE LYN TRANSPORTATION, INC.,)
a corporation, to issue shares)
of its common capital stock,)
pursuant to Sections 816-830 of)
the California Public Utilities)
Code.)

O P I N I O N

This is an application for an order of the Commission authorizing S. R. Ward, an individual, to sell and transfer a cement carrier certificate to De Lyn Transportation, Inc., and authorizing the latter to issue 50 shares of its \$100 par value capital stock.

By Resolution No. 13823, Sub. No. 24, dated June 23, 1964, as amended by Decision No. 69615, dated February 16, 1965, in Application No. 46529, the Commission granted S. R. Ward a certificate to operate as a cement carrier to and

within the Counties of Los Angeles, Orange and San Bernardino. In the present proceeding, he seeks authority to sell and transfer his cement carrier certificate to De Lyn Transportation, Inc., a California corporation organized on or about June 21, 1966. It appears that the \$150 purchase price for said certificate will be paid from the personal funds of the company's president and that no value will be assigned to the operative rights by the corporation.

De Lyn Transportation, Inc. requests permission to issue and sell 50 shares of its \$100 par value capital stock, at par, for \$5,000 cash, which will be used exclusively for working capital purposes. The application shows that the corporation plans to purchase, on an installment basis, motor vehicle equipment which will be adequate and suitable for transporting cement in bulk.

The Commission has considered this matter and finds that: (1) the proposed sale and transfer of the cement carrier certificate will not be adverse to the public interest; (2) the money, property or labor to be procured or paid for by the issue of the stock herein authorized is reasonably required for the purpose specified herein; and (3) such purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

On the basis of the foregoing findings we conclude that the application should be granted. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the

certificate presently held by S. R. Ward and the issuance of a certificate in appendix form to De Lyn Transportation, Inc.

De Lyn Transportation, Inc. 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 action taken herein shall not be construed as a finding of the value of the operative rights to be transferred. So far as the rights are concerned, the authorization herein granted is for the transfer of the cement carrier certificate. Any transfer of permitted operative rights must be the subject of a separate application or applications.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1966, S. R. Ward may sell and transfer, and De Lyn Transportation, Inc. may purchase and acquire, the cement carrier certificate referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, De Lyn Transportation, Inc. 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. De Lyn Transportation, Inc. shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the cement carrier operations herein to show that it has adopted or established, as its own, said rates and rules. 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, De Lyn Transportation, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. In the event the transfer authorized in Paragraph No. 1 hereof is consummated, a certificate of public convenience and necessity is granted to De Lyn Transportation, Inc. authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in Paragraph No. 5 of this order shall supersede the certificate of public convenience and necessity granted by Resolution No. 13823, Sub. No. 24, as amended, which certificate shall be revoked effective concurrently with the effective date of the tariff filings required by Paragraph No. 3 hereof.

7. In providing service pursuant to the certificate herein granted, De Lyn Transportation, Inc. shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, the company shall file a written acceptance of the certificate herein granted. The corporation is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, and insurance requirements of the Commission's General Order No. 100 series. Failure to comply with and observe the provisions of General Order No. 100 series may result in a cancellation of the operating authority granted by this decision.

- b. Within one hundred twenty days after the effective date hereof, the company shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- c. The corporation shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. De Lyn Transportation, Inc., on or before December 31, 1966, for the purpose of obtaining \$5,000 working capital, may issue and sell, at par, not to exceed 50 shares of its \$100 par value capital stock.

9. De Lyn Transportation, Inc. shall file with the Commission a report, or reports, as required by General Order No. 24-B, which order, insofar as applicable, is hereby made a part of this order.

10. The effective date of this order is the date hereof.

San Francisco

Dated at _____, California,
 this 9th day of AUGUST, 1966.

[Signature]
 President

[Signature]

[Signature]
 Commissioners

Commissioner Frederick E. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.

- 6 - Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

De Lyn Transportation, Inc., by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a cement carrier from any and all points of origin within the State of California to and within the Counties of Los Angeles, Orange and San Bernardino.

(End of Appendix A)

Issued by California Public Utilities Commission.
Decision No. 71090, Application No. 48619.