

Decision No. 72389

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JACK W. AKE, an individual to: (1) Transfer his assets to Ake Transportation Company, Inc., a California corporation, and (2) Transfer Certificate of Public Convenience and Necessity to Operate as a Cement Carrier to Ake Transportation Company, Inc.

Application No. 49105
(Filed January 25, 1967;
Amended March 8, 1967)

Application of AKE TRANSPORTATION COMPANY, INC., a California corporation, (1) For permission to sell and issue shares of stock, and (2) To assume the liabilities of Jack W. Ake, an individual.

O P I N I O N

This is an application for an order of the Commission (1) authorizing Jack W. Ake to sell and transfer a cement carrier certificate of public convenience and necessity and his assets (other than the 1959 Chris Craft listed in Schedule C) consisting of bank deposits, cash, merchandise, machinery and fixtures, automobiles and trucks to Ake Transportation Company, Inc., a California corporation, and (2) authorizing Ake Transportation Company, Inc., to issue 100 shares of its common stock having a par value of \$100 per share to Jack W. Ake and Mrs. Alice E. Ake, or either of them, and to assume the obligations and liabilities of Jack W. Ake (except the liability in connection with the 1959 Chris Craft) in exchange for said certificate and other assets.

Jack W. Ake operates as a cement carrier pursuant to authority granted by this Commission by Resolution No. 13821,

A. 49105 ds

Sub. No. 83, dated June 23, 1964, in File No. T-21451, as amended by Decision No. 68071, dated October 20, 1964, in Application No. 46448.

Jack W. Ake's general business is the hauling of cement pipe from El Rio, California, to various cities within approximately fifty miles from El Rio. Approximately ten percent of his business is the hauling of bulk and sack cement in the following California counties: Ventura, Los Angeles, Santa Barbara, San Bernardino, Kern and San Luis Obispo.

Jack W. Ake's Balance Sheet as of October 31, 1966, attached to the application as Exhibit "A", shows total assets of \$126,521.44 consisting of current assets in the amount of \$36,939.48, machinery and fixtures less depreciation in the amount of \$15,933.38, and automobiles and trucks less depreciation in the amount of \$73,648.58. The current liabilities amount to \$42,647.16 and the long-term liabilities amount to \$39,637.17, leaving a capital or net worth of \$44,237.11. Mr. Ake's Profit and Loss Statement for the period January 1, 1966 to October 1, 1966, attached to the application as Exhibit "B", shows a net profit before income tax of \$32,640.57.

The list of contracts payable by Mr. Ake is attached to the application as Exhibit "C" and the list of equipment owned, other than those items purchased under contracts payable, is attached thereto as Exhibit "D".

Ake Transportation Company, Inc., was incorporated in the State of California on November 18, 1966. A certified copy of the Articles of Incorporation is attached to the application as Exhibit "E". The officers and directors of the corporation are as follows:

<u>Name</u>	<u>Office</u>
Jack W. Ake	President and Director
Rock W. Ake	Vice-President and Director
Mrs. Alice E. Ake	Secretary-Treasurer and Director

No protests have been received.

The Commission has considered this matter and finds that:

(1) the proposed sale and transfer would 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. A public hearing is not necessary.

On the basis of the foregoing findings we conclude that the application should be granted. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Jack W. Ake and the issuance of a certificate in appendix form to Ake Transportation Company, Inc.

Ake Transportation Company, 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 as cement carrier. 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.

A. 49105 ds

In issuing our order herein, we place Ake Transportation Company, Inc., and its shareholders on notice that we do not regard the number of shares outstanding, the total par value of the shares nor the dividends paid as measuring the return said corporation should be allowed to earn on its investment in facilities and that the authorization herein given is not to be construed as a finding of value of applicant's stock or properties nor as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

1. On or before August 1, 1967, Jack W. Ake may sell and transfer, and Ake Transportation Company, Inc., a corporation, may purchase and acquire, the operative rights and property referred to in the application as amended.
2. Ake Transportation Company, Inc., on or before August 1, 1967, for the purpose specified in this proceeding, may issue, at not less than par, not to exceed \$10,000 par value of its capital stock.
3. Ake Transportation Company, 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.
4. Ake Transportation Company, Inc., on and after the effective date hereof and on or before August 1, 1967, for the purposes specified in this proceeding may assume payment of the outstanding obligations of Jack W. Ake as requested in the application herein, as amended.

A. 49105 ds

5. Within thirty days after the consummation of the transfer herein authorized, Ake Transportation Company, 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.

6. Ake Transportation Company, Inc., shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common 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.

7. On or before the end of the third month after the consummation of the transfer as herein authorized, Ake Transportation Company, 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.

8. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Ake Transportation Company, Inc., a corporation, authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, and as provided in Appendix A attached hereto and made a part hereof.

9. The certificate of public convenience and necessity granted in paragraph 8 of this order shall supersede the certificate of public convenience and necessity granted by Resolution No. 13821, Sub. No. 83, dated June 23, 1964, in File No. T-21451, as amended by Decision No. 68071, dated October 20, 1964, in Application No. 46448, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 6 hereof.

10. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the consummation of the transfer herein authorized, Ake Transportation Company, Inc., shall file a written acceptance of the certificate herein granted. Ake Transportation Company, Inc., 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) Ake Transportation Company, Inc., 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

A. 49105 ds

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.

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

Dated at San Francisco, California, this 4th day of MAY, 1967.

[Signature]
President

[Signature]
[Signature]
Commissioners

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

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APPENDIX A AKE TRANSPORTATION COMPANY, INC. Original Page 1
(a corporation)

Ake Transportation Company, 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 between the following points:

From any and all points of origin to all points and places within the Counties of Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura and Los Angeles.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 72389, Application No. 49105.