

ORIGINAL

Decision No. 73697

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of (a) RAY SHARP, d.b.a. RAY SHARP)
BUILDING MATERIALS, to transfer)
his cement carrier certificate;)
and (b) SHAMROCK TRANSPORTATION)
COMPANY, a California corporation,)
to acquire cement carrier)
certificate and other property,)
and to issue shares.)

Application No. 49832
Filed November 29, 1967

INTERIM OPINION

This is an application for an order of the Commission authorizing Ray Sharp, doing business as Ray Sharp Building Materials, to transfer a certificate of public convenience and necessity to Shamrock Transportation Company and authorizing the latter to issue and sell 19,000 shares of its \$1 par value capital stock. In addition, applicants request to be relieved of the obligation of sending copies of the application to all competing common carriers as required by Rule 37(a) of the Commission's Rules of Practice and Procedure.

By Resolution No. 13823, Sub. No. 33, dated June 23, 1964, in Application No. 46434, the Commission granted Ray Sharp a certificate of public convenience and necessity to operate as a cement carrier to and within the Counties of Inyo, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura from any and all points of origin. In the

present proceeding Ray Sharp proposes to transfer said certificate to Shamrock Transportation Company, a California corporation organized on or about August 10, 1967.

Applicants allege that on or about December 15, 1965, Ray Sharp entered into an agreement with Pacific Western Industries, Inc. pertaining to the transfer of certain assets including said certificate, and that neither party was aware of the necessity for Commission authorization in order to transfer the certificate. They allege further that the requirement for such authorization was brought to the attention of the parties upon subsequent inquiry at the Commission's office in Los Angeles, that since that time no attempt has been made by either party to exercise any rights under the certificate, and that no transfer thereof would become effective without proper authority. It is intended that all right, title and interest of Pacific Western Industries, Inc. in and to said cement carrier certificate are to pass to Shamrock Transportation Company.

The 1966 annual reports to this Commission of Mountain Rock Products, a corporation, and Glenn E. Walker, a corporation, show Pacific Western Industries, Inc. as the sole shareholder of both corporations. Moreover, both of the subsidiaries possess cement carrier certificates authorizing them to operate as cement carriers to and within the Counties of Fresno, Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura from any and all points of origin. Except for the inclusion of the County of Inyo and

the exclusion of the Counties of Fresno, Imperial and San Luis Obispo, the cement carrier certificate of Ray Sharp embraces the same counties as those possessed by Mountain Rock Products and Glenn E. Walker.

Pacific Western Industries, Inc. has concluded that for it to acquire the cement carrier certificate of Ray Sharp would substantially duplicate rights which it already possesses through its subsidiaries. Instead, it desires said certificate to be acquired by Shamrock Transportation Company, whose contemplated shareholders consist of Wayne T. French, E. Holt French, Glynn French and John P. French. The latter, known as the French brothers, serve as principal officers of E. W. French & Sons, Inc., a corporation which, according to the application, has been engaged in the business of hauling sand and gravel in the Los Angeles area since 1914, and in the ready mix business since 1935. On September 23, 1963, this Commission issued permits authorizing E. W. French & Sons, Inc. to operate as a radial highway common carrier and a city carrier of concrete mixed in transit, cement and foundation bolts, excluding transportation subject to yearly, monthly and weekly vehicle unit rates, all within a radius of 50 miles from Los Angeles. The latter corporation possesses neither a cement carrier certificate of public convenience and necessity nor a permit to operate as a cement contract carrier.

On July 17, 1967, the Governor signed Assembly Bill No. 627, which became effective on November 8, 1967, as Chapter 765 of the California Statutes of 1967. Among other things, said bill added Section 1065.2 to the Public Utilities Code, as follows:

"A certificate of public convenience and necessity to operate as a cement carrier shall remain in effect until it is suspended or terminated by the commission, except that any such certificate not exercised for a period of one year shall lapse and terminate."

It appears that the cement carrier certificate of Ray Sharp had not been exercised for a period of more than one year prior to the effective date of said Chapter 765. In addition, records of the Commission disclose that, although the Commission suspended said certificate, effective December 16, 1967, for failure to maintain on deposit adequate liability insurance, the carrier had not filed a formal application, nor received authority, to suspend his cement carrier operations prior to the effective date of said Section 1065.2 of the Public Utilities Code. Moreover, the 1966 annual report of Ray Sharp filed with this Commission on April 26, 1967, contains a statement reading, in part, as follows:

"Action to apply to the Commission for authority to complete the transfer of the cement certificate has been held up pending a determination by Pacific Western Industries, Inc. of the ultimate organization of that company and its various subsidiaries and divisions. It is expected that some action will be taken to seek authority for the transfer within the next few weeks."

The Commission has considered applicants' request to be relieved of the obligation of sending copies of the application to all competing common carriers, and finds that: (1) the proceeding involves a cement carrier certificate which has not been exercised for a period exceeding one year prior to the effective date of Section 1065.2 of the Public Utilities Code; (2) the holder of said certificate had neither applied for, nor received, authority to suspend operations during said period; and (3) competing common carriers may desire to assist in developing a record as to whether or not Shamrock Transportation Company should be enabled to enter into cement carrier operations in an area encompassing most of southern California.

On the basis of the foregoing findings we conclude that: (a) applicants' request to be relieved of the obligation of sending copies of the application to all competing common carriers should be denied, and (b) applicants should be required to comply fully with Rule 37(a) of the Commission's Rules of Practice and Procedure and, in addition, to include a copy of this decision in each mailing. A public hearing on this phase of the proceeding is not necessary.

INTERIM ORDER

IT IS ORDERED that:

1. Applicants' request to be relieved of the obligation of sending copies of the application filed in this proceeding to all competing carriers, as required by Rule 37(a) of the Commission's Rules of Practice and Procedure, is hereby denied.

2. In addition to a copy of the application, applicants shall include a copy of this decision with each transmittal required by said Rule 37(a).

3. Applicants shall complete their compliance with said Rule 37(a) within fifteen days after the date of this order.

4. The Commission will consider representations filed in this proceeding on or before March 15, 1968, in determining whether or not to hold a public hearing before entering a final order.

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

Dated at San Francisco, California, this 6th day of FEBRUARY, 1968.

President

Stallman *Bernard*

Augusta

William Synovis, Jr.

Jack P. Monseif
Commissioners

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