

Decision No. 74001

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
ELMER G. FILOMEO and BRUNO NARDI, )  
copartners, doing business as )  
Diablo Transportation Co., to sell )  
and transfer a certificate of pub- )  
lic convenience and necessity )  
authorizing the transportation of )  
cement to TED A LEWIS, doing busi- )  
ness as Lewis Trucking Co. )

Application No. 50013  
Filed February 13, 1968

O P I N I O N

The application alleges that Elmer G. Filomeo and Bruno Nardi (Diablo Transportation Co.) are the owners of a cement carrier certificate to operate in and to the County of Contra Costa from any and all points of origin under Commission Resolution No. 13825, Sub.30, dated June 23, 1964.

Ted a Lewis has agreed to pay \$1,000 in cash for the Filomeo and Nardi right. The agreement between the parties is attached to the application and is designated as Exhibit A. Financial statements attached to the application indicate that Lewis has the financial resources to operate under the right whose transfer is sought. It is alleged that Lewis has the employees and equipment necessary to provide service under the certificates.

The Commission is of the opinion that the application should be granted. The method of grant will be to cancel Filomeo and Nardi's present right and to grant Lewis a new appendix-type certificate for Contra Costa County.

The Commission finds that:

1. The transfer proposed in Application No. 50013 would not be adverse to the public interest.

2. Ted A. Lewis has the financial resources, facilities, equipment and personnel to transport cement to and within Contra Costa County from any and all points of origin.

3. Public convenience and necessity require that a certificate be granted to Ted A. Lewis to transport property as a cement carrier to and within the County of Contra Costa from any and all points of origin.

4. A public hearing is not necessary.

The Commission concludes that:

1. The sought transfer should be granted.
2. The present operating authority of Elmer G. Filomeo and Bruno Nardi should be revoked upon consummation of the transfer.
3. A certificate of public convenience and necessity as a cement carrier should be granted to Ted A. Lewis as provided by the following order.

Ted A. Lewis 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 herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before October 1, 1968, Elmer G. Filomeo and Bruno Nardi may sell and transfer, and Ted A. Lewis may purchase and acquire, the cement carrier certificate of public convenience and necessity referred to in the application, in accordance with the terms set forth in the agreement attached to the application, but subject to the terms of this order.

2. Within thirty days after the consummation of the transfer herein authorized, Ted A. Lewis 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. Ted A. Lewis shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that he has adopted or established, as his own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five 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. Failure to comply with and observe the provisions of General Order No. 117 may result in a cancellation of the operating authority granted by this decision.

4. On or before the end of the third month after the consummation of the transfer as herein authorized, Ted A. Lewis 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 right granted by Resolution No. 13825, Sub. No. 30, dated June 23, 1964, is revoked and, in place and stead thereof, a certificate of public convenience and necessity to operate as a cement carrier is granted to Ted A. Lewis, as particularly set forth in Appendix A, attached hereto and made a part hereof.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of APRIL, 1968.

*John L. ...*  
President

*William ...*

*August ...*

*William ...*

*Paul P. ...*  
Commissioners

NB

Appendix A

TED A. LEWIS  
dba  
Lewis Trucking Co.

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Ted A. Lewis, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a cement carrier to and within the County of Contra Costa from any and all points of origin.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 74001, Application No. 50013.