

ORIGINAL

Decision No. 75032

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application

of

CAL MOBILE, INC., a corporation,  
to transfer Cement Certificate  
to CONSUMERS CONCRETE, INC., a  
corporation.

Application No. 50205  
(Filed April 30, 1968)  
(Amendment filed  
October 23, 1968)

O P I N I O N

In this application Consumers Concrete, Inc., a corporation, designated as transferee, requests authority to acquire, and Cal Mobile, Inc., a California corporation, designated transferor, requests authority to transfer its cement carrier certificate authorizing the transportation of cement between points within Kern, Los Angeles, Orange, and Riverside Counties. Both parties maintain principal places of business at 3369 West Pomona Boulevard, Pomona, California. A certified copy of the Articles of Incorporation and amendments of transferee are attached to the application.

It is alleged that the transfer is to be made without consideration, but as an incident to a reorganization of the operations of the parties, and that both corporations are in good standing with the State of California, and have common ownership and management. It is alleged that R. E. Job, Jr., is sole

stockholder and owner of both corporations, and that he has been a licensed cement contractor for many years in the State of California and in addition to transferor and transferee corporations, Mr. Job owns and controls two cement construction corporations, R. E. Job Cement Contractor, Inc., a California corporation, and Job Concrete Construction Corporation, a California corporation.

The transferor is the owner of Cement Carrier Certificate Sub No. 18, pursuant to Resolution No. 13327, dated June 23, 1964, File No. T-71065, and transferee is owner of Contract Carrier Permit No. 30-4130, File No. T-78171.

Applicants allege that the transfer is in the public interest, and the transferee is financially able to continue the business, and has been a successful contract carrier for a number of years. The transfer will not have any adverse effect on any other carrier.

A statement of Financial Condition as of March 31, 1968, by a certified public accountant is attached to the application and lists transferee's total assets at \$1,094,798.98, with long term liabilities on plant and equipment of \$591,304.29, and net value of Auto and Mixers of \$213,979.94.

A list of equipment operated by Consumers on file with the Commission on February 5, 1968, describes 6 tractors,

two pickups, 24 transit mix, and 6 trailer vehicles owned, leased or operated by transferee. The amendment to the application describes nine units of equipment to be used in the operations: three tractors, three cement tank full trailers, and three semi-tank trailers.

R. E. Job, Jr., is the president of both corporations, and the directors are R. E. Job, Jr., Nola K. Job, and Robert H. Sanders. The tariff proposed are the rates filed in the Western Motor Tariff Bureau, Inc., Local Freight Tariff No. 17 and California Public Utilities Commission No. 21.

Applicant alleges service of a copy of the application on eight cement companies who are likely to be interested, and on the California Trucking Association, and requests that it be relieved from the provisions of Rule 29(a) of the Commission's Rules of Procedure which require service upon all competing carriers.

The application was listed on the Commission's Daily Calendar of May 2, 1968. 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 buyer possesses the experience, equipment, personnel, and financial resources to operate and maintain the proposed service.

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 Cal Mobile, Inc., and the issuance of a certificate in appendix form to Consumers Concrete, Inc.

Consumers Concrete, Inc., a California corporation, 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.

In issuing our order herein, we place Consumers Concrete, 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 90 days from the effective date hereof, Cal Mobile, Inc., a corporation, may sell and transfer, and Consumers Concrete, Inc., a California corporation, may purchase and acquire, the operative rights and property referred to in the application.

2. Consumers Concrete, 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.

3. Within thirty days after the consummation of the transfer herein authorized, Consumers 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. Consumers 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.

5. On or before the end of the third month after the consummation of the transfer as herein authorized, Consumers 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. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Consumers, a California 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.

7. The certificate of public convenience and necessity granted in paragraph 6 of this order shall supersede the certificate of public convenience and necessity granted by Resolution No. 13827, Sub. No. 18, dated June 23, 1964, in File No. T-71065, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 4.

8. Whenever Consumers engages other carriers for the transportation of property of Cal Mobile, Inc., a corporation, R.E. Job, Consumers Concrete, Inc., R.E. Job Cement Contractor, Inc., or Job Concrete Construction Corp., or Pomona Equipment Company, or customers or suppliers of said corporation, carrier shall not pay such other carriers rates and charges less than the rates and charges published in said carrier's tariffs on file with the Commission.

9. 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, Consumers shall file a written acceptance of the certificate herein granted. Consumers 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) Consumers 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.

10. Consumers is hereby relieved from the provisions of Rule 37(a), formerly Rule 29(a), of the Commission's Rules of Procedure.

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

Dated at San Francisco, California, this 3rd day of DECEMBER, 1968.

William J. Moore  
President  
William W. Bennett  
Augustin  
Harold P. Monrosey  
Commissioners

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

Consumers Concrete, 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 as defined in Section 214.1 of the Public Utilities Code, to and within the Counties of Kern, Los Angeles, Orange and Riverside from any and all points of origin subject to the following restriction:

Whenever Consumers Concrete, Inc. engages other carriers for the transportation of property of R. E. Job, or Consumers Concrete, Inc., or R. E. Job Cement Contractor, Inc., or Job Concrete Construction Corp., or Pomona Equipment Company, or Cal Mobile, Inc., or customers or suppliers of said individual or corporations or their subsidiaries, Consumers Concrete, Inc. shall not pay such other carriers rates and charges less than rates and charges published in Consumers Concrete, Inc.'s tariffs on file with this Commission.

(End of Appendix A)

Issued by California Public Utilities Commission.

Decision No. 75032, Application No. 50205.