

ORIGINAL

Decision No. 75529

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)

V. J. REED, Trustee in Bankruptcy)
of the Estate of James Machado)
Soares, dba James M. Soares)
Aggregate and Cement Carriers)

to sell and transfer cement carrier)
certificate, and for)

T. & T. TRUCKING, INC.,)
a corporation)

to purchase said certificate.)

Application No. 50788
(Filed December 30, 1968)

O P I N I O N

Applicants join in a request for an order authorizing transfer to T & T Trucking, Inc., (T & T) a corporation, of the certificate of public convenience and necessity to operate as a cement carrier, in portions of Northern and Central California, issued to James M. Soares (Resol. No. 13821, Sub. No. 63, dated June 23, 1964, File No. T-53222, as amended by Resol. No. 15243, dated July 19, 1966 in Application No. 46404, File T-53222).

Soares, shortly before being adjudicated a bankrupt (Bankruptcy Matter No. BK-5-1842, U.S. Dist. Ct., East. Dist of Calif.), agreed to sell the certificate to T & T for \$7,000 cash (Application, Exhibit 2). V. J. Reed, Soares' Trustee in Bankruptcy, has been authorized by the Referee in Bankruptcy to proceed with the performance of the contract (Application, Exhibit 3). ✓

Applicants allege that the purchaser is experienced in transportation of commodities having the same characteristics as

cement, and has the equipment and financial ability to perform the service contemplated by acquisition of Soares' certificate.

Copies of the application were served on the California Trucking Association and on firms engaged in the cement industry in California. No protest has been received.

The staff has reviewed the application and has secured from applicants' counsel additional financial and other data concerning the purchaser. It recommends restatement of the operating right and restriction of the scope of the operating authority; otherwise, it has no objection to the transfer. T & T has acquiesced in the recommended restriction. The staff's report and recommendations, together with supporting documents are hereby included in this record as Exhibit 1. We adopt the staff's recommendations.

After consideration, the Commission finds that the proposed transfer, modified by the restriction contained in the appendix attached hereto with respect to the scope of the operating authority to be acquired by the purchaser, would not be adverse to the public interest. A public hearing is not necessary. The order which follows will provide, in the event the transfer is consummated, for the revocation of the certificate presently held by James M. Soares, or by V. J. Reed, Trustee, and the issuance of a certificate in appendix form to T & T Trucking, Inc.

T & T Trucking, 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, these rights extend to the holder a full or partial monopoly of a class of business. 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.

O R D E R

IT IS ORDERED that:

1. On or before December 31, 1969 James M. Soares, or V. J. Reed, Trustee, may sell and transfer and T & T Trucking, Inc. may purchase and acquire the operating rights referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, T & T Trucking, 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. T & T Trucking, 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. 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, T & T Trucking, 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 1 hereof is consummated, a certificate of public convenience and necessity is granted to T & T Trucking, Inc., a corporation, authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points particularly set forth in Appendix A attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Resolution No. 13821, Sub. 63, dated June 24, 1964, as amended by Resolution No. 15243, dated July 19, 1966, in Application No. 46404 and File T-53222, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant 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 the insurance requirements of the Commission's General Order No. 100-E.

- (b) Applicant 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.

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

Dated at San Francisco, California, this 8th
day of APRIL, 1969.

William S. Lyons, Jr.
President

Augustine
John P. Monussey
John P. Monussey
Commissioners

T&T Trucking, 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, from any and all points of origin to and within the counties of:

Butte, El Dorado, Lake, Merced, Napa, Placer, Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Shasta, Solano, Yolo and Yuba.

Restrictions:

1. "Whenever T&T Trucking, Inc. engages other carriers for the transportation of property of John M. Tyson or Anthony Cardoza, as individuals, or John M. Tyson, Anthony Cardoza and T&T Trucking, Inc., a joint venture, or Mario Dumlao, an individual, or Mario Dumlao and T&T Trucking, Inc., a partnership, or Stockton Sand and Gravel Co., Inc., or Tyson & Cardoza Partnership, a partnership, or 275 Partnership, a partnership, or customers or suppliers of said individuals, partnerships, joint venture, firms or corporations, T&T Trucking, Inc., shall not pay such other carriers rates and charges less than the rates and charges published in T&T Trucking, Inc.'s tariffs on file with the Commission."
2. This Certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 75529, Application No. 50788.