

**ORIGINAL**Decision No. 75684

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 SAMUEL V. STROUD, an individual, to )  
 transfer and of MICHAEL J. ALLEC, )  
 an individual, doing business as )  
 M. J. ALLEC TRUCKING, to acquire a )  
 cement carrier certificate of public )  
 convenience and necessity and )  
 certain property of SAMUEL V. STROUD. )

Application No. 50859  
 (Filed February 4, 1969)

O P I N I O N

Samuel V. Stroud, an individual (seller), and Michael J. Allec, an individual, doing business as M. J. Allec Trucking (purchaser), seek authority to transfer authority as a cement carrier.

Seller maintains his principal place of business at Orange, California, where he is engaged in the business of real estate management, and the purchase and sale of real property. Seller, pursuant to Decision No. 74870, dated October 29, 1968, in Application No. 50554, filed September 17, 1968, has had his cement carrier certificate of public convenience and necessity suspended to August 31, 1969, unless sooner canceled, modified or extended by order of the Commission.

The aforesaid suspended authority was granted by Decision No. 74341, dated July 2, 1968, in Application No. 50161, and covers operations within the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino and San Diego; as of the date of the filing of the application seller is in compliance with all executory provisions of said Decision No. 74870.

Purchaser is an individual presently employed as a driver by Hertz Materials and Trucking of Garden Grove, and has been so employed for a period of ten years.

An oral purchase agreement has been entered into by the parties, by the terms of which seller proposes to sell and purchaser proposes to acquire: (1) the certificate of public convenience and necessity hereinabove mentioned and (2) certain motor vehicle equipment more particularly described in Exhibit "A" to the application. The total purchase price involved is \$6,750.

The transaction covered by the oral purchase agreement is a cash transaction, which will be consummated following the effective date of the authorization of the transfer sought. Purchaser has heretofore paid to seller the sum of \$1,500, by way of deposit in escrow. He contemplates that at time of consummation, he will have sufficient cash on hand to accomplish the payment of the balance of the purchase price without unduly jeopardizing working capital requirements. Applicants assert that the agreed purchase price of \$500 for the intrastate certificated authority represents less than the original cost of establishing the same; that the purchase price of the goodwill for the sum of \$2,250 is reasonable; and that the purchase price of \$4,000 for the equipment sought to be transferred is the fair market value thereof, and is corroborated by a statement from a qualified independent appraiser in the field supporting such allegation, all as more particularly set forth in Exhibit "B" to the application.

Exhibit "C" to the application is the latest available balance sheet of purchaser, as of December 31, 1968. Purchaser is unable to present any profit and loss statement because he is in the employ of the above-mentioned materials and trucking

business. Purchaser alleges that he is financially able to consummate the proposed transaction and to conduct the operations authorized by seller's certificate. All annual and quarterly reports have been filed by seller as required by law.

Exhibit "D" to the application is a list of equipment to be used by purchaser in the performance of service following acquisition of seller's operating authority. Should additional equipment be required to conduct his operations, purchaser will obtain the same.

Seller participates in the rates set forth in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17 (Cal.P.U.C. 21) and Distance Table No. 7 (Cal.P.U.C. 30). It is the plan and purpose of purchaser to adopt all such tariffs. Seller is not a party to through routes or joint rates with any other carrier.

There were no protests to the proposed transfer.

After consideration, the Commission finds that:

1. Purchaser possesses the ability and financial responsibility to provide the proposed operation.
2. Purchaser is a fit and proper person to receive such certification to operate as a cement carrier.
3. The proposed transfer will not be adverse to the public interest.
4. A public hearing is not necessary.

The Commission concludes that the proposed transfer should be authorized. However, the action taken herein shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Samuel V. Stroud and the issuance of a certificate in appendix form to Michael J. Allec.

Michael J. Allec 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, Samuel V. Stroud may sell and transfer, and Michael J. Allec may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, purchaser 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. Purchaser 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 ten days after the effective date of this order on not less than ten 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, purchaser 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 Michael J. Allec, authorizing him 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 Decision No. 74341, in Application No. 50161, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

7. Within thirty days after the effective date hereof, purchaser shall file a written acceptance of the certificate, the transfer of which is herein authorized. Purchaser is placed on notice that, if he accepts such certificate, he 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.

8. Purchaser shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

9. Purchaser is hereby placed on notice that if the certificate of public convenience and necessity to operate as a cement carrier, granted by ordering paragraph 5 hereof, is not exercised for a period of one year, it shall lapse and terminate.

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

Dated at San Francisco, California, this  
20<sup>th</sup> day of MAY, 1969.

William J. Lyons Jr.  
President

Paul P. Monsey  
Commissioner

[Signature]  
Commissioners

Michael J. Allec by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a cement carrier to and within the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, and San Diego.

1. 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 the California Public Utilities Commission

Decision No. 75684, Application No. 50859.