

ORIGINAL

Decision No. 76275

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
JOHN B. DERR, an individual, to)
transfer and WARREN S. HARROD, an)
individual, to acquire a certificate)
of public convenience and necessity.)

Application No. 51298
(Filed August 6, 1969)

O P I N I O N

John B. Derr (hereinafter referred to as seller) seeks to sell and transfer, and Warren S. Harrod (hereinafter referred to as buyer) to acquire, a certificate of public convenience and necessity as a cement carrier. Said certificate was granted to seller by Commission Resolution No. 13825, Sub. 31, dated June 23, 1964.^{1/}

Buyer is presently engaged in the transportation of aggregates pursuant to a radial highway common carrier permit issued November 17, 1958; buyer has been engaged in said business operations continuously since date of issuance of said permit.

An oral purchase agreement between buyer and seller was entered into, the agreed upon total purchase price being \$3,000. Applicants assert that the agreed purchase price of \$3,000.00 is allocated as follows: (1) \$500.00 as and for the intrastate certificated authority, (2) \$1,000.00 as and for seller's covenant not to compete, and (3) \$1,500.00 as and for seller's assignment of customer list and good will. Applicants assert that the agreed purchase price of \$500.00 for the intrastate certificate authority represents less than the original cost of establishing same.

^{1/} The certificate was subsequently amended by Resolution No. 16346 of November 26, 1968.

Attached to the application, as Exhibit "A", is the latest available Balance Sheet and Profit and Loss Statement of buyer as of March 31, 1969. Buyer alleges that he is financially able to consummate the proposed transaction and to conduct the operation authorized by seller's certificate. All annual reports have been filed by applicants as required by law.

Attached to the application, as Exhibit "B", is a list of equipment to be used by buyer in the performance of service following acquisition of seller's operating authority.

Seller participates in the rates set forth in Pacific Coast Tariff Bureau, Inc., Tariff Publication covering the operations performed under the said certificate. It is the plan and purpose of the buyer to adopt such tariff; seller is not a party to through routes or joint rates with any other carrier.

Applicants allege that the proposal herein made is consistent with the public interest and will promote the same for the following reasons, among others:

- (a) Buyer is adequately financed and possesses the necessary experience and equipment to carry on and conduct the common carrier activities heretofore carried on by the seller.
- (b) There will be no adverse effect upon any other carrier, nor upon the shipping public, resulting from the transfer of the instant certificate. Seller merely intends to retire from certificated cement common carrier activities, and buyer seeks to carry on such cement common carrier activity in the future.
- (c) Buyer is now and will continue to be staffed by experienced and trained personnel, having full knowledge of the technicalities of the physical transportation of the commodities described in the certificate to be transferred and they have a full knowledge of the Commission's Safety Rules and Regulations, and with respect to the other requirements of this Commission respecting for-hire transportation of cement, in bulk or in sacks.

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A copy of the application was served on California Trucking Association and the application was listed on the Commission's Daily Calendar of August 7, 1969. No protests have been received. A public hearing is not necessary.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by seller and the issuance of a certificate in appendix form to buyer.

Buyer 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.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before January 1, 1970 John B. Derr may sell and transfer, and Warren S. Harrod 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, buyer 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. In the event the transfer herein authorized is consummated, buyer shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the cement carrier operations herein described 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 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, buyer 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 Warren S. Harrod, an individual, authorizing him to

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operate as a cement carrier as defined by 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. Within thirty days after consummation of the transfer herein authorized buyer shall file a written acceptance of said certificate and shall establish the service authorized thereby.

7. 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. 13825 of July 23, 1964, Sub. 31, as amended, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

8. In providing service pursuant to the certificate herein granted, buyer 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 consummation of transfer, buyer shall file a written acceptance of the certificate herein granted. Buyer is placed on notice that, if he accepts the certificate of public convenience and necessity herein granted, 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.
- (b) Buyer 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.

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- (c) Buyer shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If buyer elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

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

Dated at San Francisco, California, this 15th day of OCTOBER, 1969.

William J. Lyons, Jr.
President

[Signature]

[Signature]

Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Warren S. Harrod, an individual, by the certificate of public convenience and necessity noted in the margin is authorized to conduct operations as a cement carrier from any and all points of origin to and within the counties of Santa Barbara and Ventuza subject to the following:

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 California Public Utilities Commission.

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