

Decision No. 76381**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of M. E. DAVIS TRUCKING CO., a )  
corporation, to transfer and )  
LOUIS R. GOMEZ, JR., an individ- )  
ual, to acquire a cement carrier )  
certificate. )

Application No. 51297  
Filed August 6, 1969

O P I N I O N

M. E. Davis Trucking Co., a corporation, hereinafter referred to as seller, seeks to transfer, and Louis R. Gomez, Jr., an individual, hereinafter referred to as buyer, seeks to purchase a certificate of public convenience and necessity as a cement carrier.

Seller maintains its principal place of business at Camarillo, California, where it is engaged in the transportation of cement by motor vehicle, in intrastate commerce, as a cement carrier under a certificate of public convenience and necessity issued by this Commission by Resolution No. 13821, Sub. 18, dated June 23, 1964, in Application No. 46366, and as amended by Resolution No. 15031, dated March 22, 1966, in said application. Seller is also engaged in the transportation of property in intrastate commerce under permits issued by the California Public Utilities Commission.

Buyer is an individual maintaining his principal place of business at 409 Valmore Avenue, Ventura, California. He is engaged in the transportation of aggregates under Radial Highway Common Carrier Permit No. T-82,128, issued July 27, 1965; buyer has been

engaged in such transportation continuously since date of issuance of said permit.

An oral purchase agreement has been entered into by and between the parties by the terms of which seller proposes to sell, and buyer proposes to acquire, the cement carrier certificate, as amended, and other intangible personal property. The total purchase price of the aforesaid certificate and property is \$4,000.

The transaction covered by the oral purchase agreement contemplates a cash down payment in the sum of \$1,300 deposited with an escrow holder and the balance to be evidenced by way of buyer's noninterest bearing promissory note in the principal sum of \$2,700 payable 30 days after the consummation of the contemplated transaction subject to approval by this Commission. Buyer contemplates that, within 30 days after 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 \$4,000 is allocated as follows:

1. \$1,000 for the intrastate certificated authority, as amended;
2. \$1,000 for seller's covenant not to compete; and
3. \$2,000 as and for seller's assignment of customer list and goodwill.

Applicants assert that the agreed purchase price of \$1,000, for the intrastate certificated authority, represents less than the original cost of establishing the same.

Attached to the application, as Exhibit A, is the latest available Balance Sheet and Profit and Loss Statement of buyer as of July 1, 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. Exhibit B, is a list of equipment to be used by buyer in the performance of transportation under the certificate proposed to be transferred.

Seller participates in the rates set forth in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17 (Cal. P.U.C. No. 21). 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; and
- 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 having a full knowledge of the Commission's rules and regulations, and of the other requirements of this Commission respecting for-hire transportation of cement, in bulk or in sacks.

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, M. E. Davis Trucking Co. may sell and transfer, and Louis R. Gomez, Jr., 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. In the event the transfer authorized in paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Louis R. Gomez, Jr., an individual, authorizing him to 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.

5. 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 of June 23, 1964, Sub. 18, as amended by Resolution No. 15031 of March 22, 1966, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

6. 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.
- 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 4<sup>th</sup> day of NOVEMBER, 1969.

William J. ...  
President

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Yessan L. Sturgeon  
Commissioners

Louis R. Gomez, Jr., an individual, 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 from any and all points of origin to and within the counties of Los Angeles, San Luis Obispo, Santa Barbara and Ventura subject to the following:

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. 76381, Application No. 51297.