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ORIGINAL

Decision No. ~~76168~~

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of PHILLIPS TRUCKING CORP., a corporation, to sell and transfer a certificate of public convenience and necessity authorizing the transportation of cement to BIG PINE TRUCKING COMPANY, INC.

Application No. 51356
(Filed September 11, 1969;
Amended October 1, 1969)

O P I N I O N

This is an application by Phillips Trucking Corp. (hereinafter referred to as Phillips) and Big Pine Trucking Company, Inc. (hereinafter referred to as Big Pine) in which applicants seek authority for Phillips to sell, and Big Pine to acquire, that portion of Phillips' cement carrier certificate of public convenience and necessity which authorizes it to transport cement in Mono County.

Phillips presently holds a certificate of public convenience and necessity from this Commission authorizing it to operate as a cement carrier in and between 33 specified counties in the State of California. Big Pine presently holds a certificate of public convenience and necessity authorizing it to operate as a highway common carrier between Los Angeles and places within 10 miles, on the one hand, and Bishop, Lone Pine, Independence, Big Pine and places within 5 miles thereof, on the other hand. Big Pine also holds contract and radial highway common carrier permits.

The verified application avers that Phillips conducts substantial operations in the transportation of cement in California;

that it determined that its best interests would be served if it ceased the transportation of cement in Mono County; that Phillips entered into negotiations with Big Pine which presently conducts highway common carrier operations in Mono County and that the parties entered into an agreement whereby, subject to Commission approval, Big Pine agreed to purchase the operating rights here involved for \$1,000. The application also avers that Big Pine has the ability, including financial ability, to conduct the operations sought to be transferred; that Big Pine's employees are familiar with the transportation of cement and that it is willing and able to continue the service provided by Phillips.

The Commission has received no protests to the granting of the application. The Commission makes the following findings and conclusions.

Findings of Fact

1. A public hearing is not necessary in this matter.
2. The transfer and sale from Phillips to Big Pine of that portion of Phillips' certificate of public convenience and necessity authorizing Phillips to operate as a cement carrier in Mono County would not be adverse to the public interest.
3. In the light of the transfer hereinafter authorized, in order to avoid confusion among the shipping public and assist the Commission in its regulatory functions, the certificate of public convenience and necessity authorizing Phillips to operate as a cement carrier should be restated in appendix form.

Conclusions of Law

1. Phillips should be authorized to sell and transfer to Big Pine that portion of its cement carrier certificate of public convenience and necessity authorizing operations in Mono County.

2. In the event the transfer herein authorized is consummated, Phillips' cement carrier certificate of public convenience and necessity should be restated in appendix form.

Big Pine Trucking Company, 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 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. 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 June 1, 1970, Phillips Trucking Corp., may sell and transfer, and Big Pine Trucking Company, Inc. may purchase and acquire, the operative rights 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 and seller shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that each has adopted or

established, as its own, said rates and rules. The tariff filings shall be made effective not earlier than five days after the effective date of this order on not less than five 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 Big Pine Trucking Company, Inc., authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A, attached hereto and made a part hereof.

5. In the event the transfer authorized in paragraph 1 hereof is consummated, the certificate of public convenience and necessity to operate as a cement carrier granted to Phillips Trucking Corp. in Resolution No. 13823, Sub. No. 8, dated June 23, 1964, is hereby superseded and revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof. In such event Phillips Trucking Corp. is hereby granted a certificate of public convenience and necessity 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 B attached hereto and made a part hereof.

6. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser 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-E.

7. Applicants shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they 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 25th day of NOVEMBER, 1969.

William Sproull
President
William J. [unclear]
[unclear]
William L. [unclear]
Commissioners

Big Pine Trucking Co., Inc. 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 county of Mono subject to the following restrictions:

1. Whenever Big Pine Trucking Co., Inc. engages other carriers for the transportation of property of Big Pine Trucking Co., Inc. or customers or suppliers of said corporation, Big Pine Trucking Co., Inc. shall not pay such other carriers' rates and charges less than the rates and charges published in Big Pine Trucking Co., 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 the California Public Utilities Commission.

Decision No. 76468, Application No. 51356.

Phillips Trucking Corp., a corporation, 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 Alameda, Contra Costa, Fresno, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Los Angeles, Madera, Marin, Merced, Monterey, Napa, Orange, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Solano, Sonoma, Tulare, Ventura, and Yolo subject to the following restrictions:

1. Whenever Phillips Trucking Corp, engages other carriers for the transportation of property of S.M.P. Corporation or Phillips Trucking Corp. or Redi Ready Mix Co. or customers or suppliers of said corporations or company, Phillips Trucking Corp. shall not pay such other carriers' rates and charges less than the rates and charges published in Phillips Trucking Corp.'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 B

Issued by the California Public Utilities Commission.

Decision No. 76468, Application No. 51356.