

Decision No. 77066

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of A. W. HAYS TRUCKING INC., a  
corporation, to sell and transfer  
a Certificate of Public Convenience  
and Necessity as a cement  
carrier to TRANSMIX CORPORATION,  
a California corporation, doing  
business as FOOTHILL TRANSPORTA-  
TION COMPANY.

Application No. 51241  
(Filed July 11, 1969)

R. Noel Hatch, for A. W. Hays Trucking Inc. and  
Transmix Corporation, applicants.

Russell & Schureman, by R. Y. Schureman, for L. R.  
Denney Inc.; Handler, Baker & Greene, by Ray  
Greene, for Applegate Drayage Company, Miles &  
Sons Trucking Service, Morosa Bros. Transporta-  
tion Co. and Universal Transport System Inc.;  
protestants.

Joe S. Tedesco, for T.T.T. Inc.; George B. Shannon,  
for Southwestern Portland Cement Company; David  
K. Graham and John P. Rohrer, for Kaiser Cement  
and Gypsum Corporation; Overton, Lyman & Prince,  
by Donald H. Ford, for Southwestern Portland  
Cement Company; Eugene A. Feise, for Calaveras  
Cement Division of the Flintkote Company;  
E. J. Bertana, for Pacific Cement & Aggregates;  
interested parties.

J. B. Hannigan, for the Commission staff.

O P I N I O N

By this application, A. W. Hays Trucking Inc. (Hays)  
requests authority to sell and transfer a portion of its certificate  
of public convenience and necessity authorizing operations as a  
cement carrier to Transmix Corporation, doing business as Foothill  
Transportation Company (Transmix).

Public hearing was held before Examiner O'Leary at Los  
Angeles on October 6, 7 and 8, 1969, and at San Francisco on  
October 9, 1969. The matter was submitted upon the receipt of  
concurrent briefs which were filed December 19, 1969.

Hays holds a certificate of public convenience and necessity authorizing operations as a cement carrier from any and all points and places to and within the Counties of Alameda, Butte, Colusa, Contra Costa, Del Norte, Fresno, Glenn, Humboldt, Imperial, Kern, Kings, Lake, Los Angeles, Madera, Marin, Mendocino, Merced, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Ventura, Yolo and Yuba.<sup>1/</sup> Under date of May 12, 1969, Transmix entered into an agreement with Hays whereby it agreed to purchase that portion of the cement carrier operating authority of Hays authorizing service to Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura for a total purchase price of \$13,000. Hays has not performed any service under that portion it wishes to sell to Transmix since the certificate was acquired in 1966.

Transmix presently holds a radial highway common carrier permit authorizing the transportation of gypsum. It also operates ready-mix plants located within Los Angeles County at Sun Valley, Hollywood, Los Angeles, Pasadena, Irwindale, Long Beach, and Inglewood. During the year April 1, 1968 to March 31, 1969, Transmix made purchases of cement totaling \$3,093,000. Transmix owns eight bottom dump cement hauling rigs which are utilized to haul cement to its ready-mix plants. If the application is granted the cement hauling rigs would be utilized for the cement carrier operations in addition to the proprietary operations. Additional

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<sup>1/</sup> Said certificate with the exception of authority to serve San Diego County was granted by Decision No. 70581 dated April 19, 1966, in Application No. 47448. The authority to serve to and within San Diego County was granted by Decision No. 72414, dated May 16, 1967, in Application No. 49179, said decision also restated the certificate granted by Decision No. 70581.

equipment would be acquired if the demand by customers for the cement carrier operations could not be met with the equipment presently operated. Transmix's balance sheet as of March 31, 1969 (Exhibit 3) discloses total assets of \$3,103,000 and total liabilities of \$1,836,000.

Eight witnesses from various cement producers were subpoenaed by protestants. Said witnesses' testimony can be summarized as follows: Cement is transported from the mills by truck in one of four methods: (1) By equipment owned by the cement producer, (2) By customer-owned equipment, (3) By a for-hire carrier selected by the consignee, or (4) By a for-hire carrier selected by the cement producer. The testimony of the witnesses discloses that the cement mills select a for-hire carrier in varying degrees ranging between 10% and 47.5%. In some instances the for-hire carrier selected by the cement producers is controlled by or is an affiliate of companies which purchased cement from these mills. Such carriers are selected pursuant to requests of the sales departments of the cement mills.

Other witnesses who testified on behalf of protestants testified that they are fearful that approval of this application will result in a diversion of traffic presently enjoyed by them to Transmix. Some of said witnesses testified that they have previously experienced diversion of traffic from their companies to motor carriers affiliated with ready-mix operators.

There are two questions raised in the instant application, namely, (1) Have the rights sought to be transferred lapsed and terminated? and (2) Would the transfer of the rights be adverse to the public interest? If the answer to either question is

affirmative the application must be denied; if the answer to both questions is negative the application should be granted.

With respect to the question, "Have the rights sought to be transferred lapsed and terminated?", the evidence discloses that although Hays has operated under the certificate during the past year it has never performed transportation under the authority sought to be transferred. Section 1065.2 of the Public Utilities Code states:

"A certificate of public convenience and necessity to operate as a cement carrier shall remain in effect until it is suspended or terminated by the commission, except that any such certificate not exercised for a period of one year shall lapse and terminate."

Although said section does not specifically provide for the lapse and termination of a portion of a cement carrier certificate, this Commission has previously held that it would not authorize the transfer of abandoned rights. In application of Lee B. Hawkins, to sell and Reader Truck Lines to purchase an automotive freight line, 43 C.R.C. 303 the Commission stated, "If total abandonment of service results in the loss of an operative right, then for the same reason, partial abandonment accomplishes an extinguishment of the right to the extent it has not been exercised. In this respect, the holder's privileges as a highway common carrier must be regarded as having been limited and curtailed."

We construe Section 1065.2 of the Public Utilities Code to provide for the lapse and termination of cement carrier certificates to and within specific counties since said certificates authorize transportation to and within specific counties; to hold otherwise would be to overturn the above long-standing position of this Commission in previous transfer proceedings involving highway common carrier certificates. We find nothing in the statutes or cases requiring such action.

In view of the foregoing, a discussion of the question concerning whether or not the transfer would be adverse to the public interest would not affect the order hereinafter entered and therefore is unnecessary.

Based on the evidence adduced, the Commission finds that:

1. A. W. Hays Trucking Inc. holds a certificate of public convenience and necessity authorizing operations as a cement carrier pursuant to Decision No. 72414 in Application No. 49179 dated May 16, 1967. ✓

2. The certificate set forth in finding 1 included authority to operate to and within the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.

3. Since the issuance of the certificate set forth in finding 1, A. W. Hays Trucking Inc. has not performed any operations to or within the counties set forth in finding 2.

Based on the above findings of fact the Commission concludes that:

1. That portion of the certificate of public convenience and necessity held by A. W. Hays Trucking Inc. set forth in Decision No. 72414 authorizing operations as a cement carrier to and within the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura has lapsed and terminated as provided in Section 1065.2 of the Public Utilities Code.

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2. The application should be denied.

O R D E R

IT IS ORDERED that Application No. 51241 is denied.

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

Dated at San Francisco, California, this 14<sup>TH</sup> day of APRIL, 1970.

William Lyman, Jr.  
President

August

John M.

Commissioners

*present but not participating*

*Vernon L. Sturgeon*

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.