

ORIGINAL

Decision No. 77650

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of RAY DEZEMBER, as Executor of )  
the Estate of MARTIN ERRECA, De- )  
ceased, doing business as SERVICE )  
TRANSPORT, to transfer and RAYBURN )  
S. DEZEMBER, an individual, doing )  
business as SERVICE TRANSPORT, to )  
acquire a Cement Carrier Certificate.)

Application No. 51928  
(Filed May 27, 1970)

O P I N I O N

Ray Dezember, executor of the estate of Martin Erreca, deceased, doing business as Service Transport requests authority to transfer and Rayburn S. Dezember, an individual, doing business as Service Transport, requests authority to acquire certificated rights authorizing operation as a cement carrier in the County of Kern.

The transferor's certificate of public convenience and necessity was issued by the Public Utilities Commission of the State of California by Decision No. 62293 dated November 30, 1964, in Application No. 46399, and authorized Martin Erreca, an individual, doing business as Bakersfield Ready-Mix Company to operate as a cement carrier as defined in Section 214.1 of the Public Utilities Code from any and all points of origin to all points in the County of Kern, subject to the restriction set forth in Appendix A attached to said decision.

Applicants allege that on June 24, 1966, in the City of Bakersfield, California, Martin C. Erreca died testate, thereafter, on July 14, 1966, Ray Dezember was appointed executor of the decedent's will and qualified as such executor and ever since has been and now is the executor of the estate of Martin C. Erreca, deceased.

That on February 3, 1970 a Decree of Final Distribution was entered in the estate of said Martin C. Erreca, deceased. Exhibit A attached to the application is a photocopy of Letters Testamentary and Exhibit B is Decree of Final Distribution in the Estate of Martin C. Erreca also known as Martin Erreca, deceased.

Rayburn S. Dezember also known as Ray Dezember is an individual doing business as Service Transport, maintaining his principal place of business at 1201 Olive Drive, Bakersfield, California 93302. Transferee is engaged in the transportation of general commodities, with the usual exceptions, pursuant to Highway Contract Carrier Permit No. T-74,694, issued January 21, 1970; that pursuant to the Decree of Distribution transferee and his wife, Joan Lee Dezember succeeded to all the assets of the business owned and operated by the decedent under the name of Bakersfield Ready-Mix Co., a part of which assets included the authority herein sought to be transferred.

Joan Lee Dezember has waived any right, title and interest in and to the said authority herein sought to be transferred and consents, subject to approval of the Public Utilities Commission, to the transfer of said authority directly in the name of transferee.

Transferor alleges that he has been conducting operations continuously as successor in interest to the said cement certificated authority; has complied, at all times, with the provisions of Section 1065.2 of the Public Utilities Code of the State of California; and said rights are valid and subsisting as of the date hereof.

The transferee alleges that he plans and proposes to adopt the tariffs of the transferor and participate in the rates set forth in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17 (Cal.P.U.C. No. 21), and not to be a party to through routes or joint rates with any other carrier.

Exhibit C attached to the application is a statement of financial position of transferee showing assets of \$33,860. Exhibit E attached to the application is an equipment list of transferee as of January 2, 1970 showing ten tractors and trailers held by the transferee to be used in performance of the service under the certificate.

The applicant certified that copies of the application were forwarded to the California Trucking Association and certain cement companies in San Francisco, Los Angeles and Oakland. The Commission staff has reviewed the application and reports that a survey of the transferor's operations shows that the carrier did transport cement into the County of Kern as late as July 9, 1969.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest. A public hearing is not necessary.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by Ray Dezember, as executor of the Estate of Martin Erreca, deceased, doing business as Service Transport and the issuance of a certificate as a cement carrier in appendix form to Rayburn S. Dezember, an individual, doing business as Service Transport.

Rayburn S. Dezember 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, 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 October 1, 1970, Ray Dezember, as executor of the estate of Martin Erreca, deceased, doing business as Service Transport may transfer, and Rayburn S. Dezember, an individual, doing business as Service Transport may acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, transferee 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. Transferee 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 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. On or before the end of the third month after the consummation of the transfer as herein authorized, transferee 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 Rayburn S. Dezember, 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. 68293 dated November 30, 1964 in Application No. 46399, 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 transfer herein authorized is consummated, transferee shall file a written acceptance of the certificate herein granted. Transferee 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 insurance requirements of the Commission's General Order No. 100-F.

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

10. If this certificate of public convenience and necessity 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 25<sup>th</sup> day of AUGUST, 1970.

[Signature]  
Chairman  
[Signature]  
[Signature]  
[Signature]  
Commissioners

Rayburn S. Dezember, doing business as Service Transport, 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 as defined in Section 214.1 of the Public Utilities Code from any and all points of origin to any and all points in the County of Kern, subject to the following restrictions:

1. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.
2. Whenever Rayburn S. Dezember, an individual, engages other carriers for the transportation of property of Rayburn S. Dezember or Service Transport or Bakersfield Ready-Mix Company or customers or suppliers of said individual or companies, Rayburn S. Dezember shall not pay such other carriers rates and charges less than the rates and charges published in Rayburn S. Dezember's tariffs on file with the Commission for the transportation actually performed by such other carriers.

END OF APPENDIX A

Issued by California Public Utilities Commission.

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