

Decision No. 78029

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 TRANSPORTATION COMPANY.)

Application No. 51241
(Filed July 11, 1969)

- Frank Loughran, for A. W. Hays Trucking, Inc.,
applicant.
- Ray Greene, for Universal Transport System, Inc.,
and R. Y. Schureman, for L. R. Denney, Inc.,
protestants.
- E. J. Bertana, for Pacific Cement & Aggregates,
interested party.
- Stanley E. Garrett, for the Commission staff.

OPINION ON REHEARING

By Decision No. 77066, dated April 14, 1970, A. W. Hays Trucking, Inc. (Hays), was denied authority to sell a portion of its certificated rights as a cement carrier to Transmix Corporation, doing business as Foothill Transportation Company, on the ground that Hays had not performed any service to and within the counties covered by the agreement of sale for a period in excess of a year and that said portion of the certificate therefore "lapsed and terminated" in accordance with the provisions of Section 1065.2 of the Public Utilities Code.^{1/} On June 3, 1970, the Commission, by Decision No. 77282, granted rehearing, which was held before Examiner Daly on September 23, 1970, at San Francisco and the matter was again taken under submission.

1/ 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.

The record on rehearing discloses that the proposed sale has been rescinded by mutual agreement of the parties. However, Hays requests a finding by the Commission that its certificated authority to serve the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura as a cement carrier has not lapsed and terminated in accordance with the provisions of Section 1065.2 of the Public Utilities Code.

The president of Hays testified that the company has not transported any shipments of cement to or within the Counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura because it has not received any requests for service to or within said counties; applicant has never entertained an intent to discontinue service to any of its certificated points; at all times since being certificated applicant has been ready, willing and able to serve all points covered by its certificate; applicant publishes tariff rates covering all counties which it is authorized to serve and copies thereof have been circulated to all cement shippers; business is actively solicited to, from, and between all points; classified advertising is included in many telephone directories throughout the certificated area; applicant owns and operates approximately 400 units of equipment and as of June 30, 1970, it indicated a net worth in the amount of \$868,103; a large terminal is maintained at Woodland and applicant has an arrangement with a service station operator at Bakersfield whereby applicant's equipment, upon passing through Bakersfield, can be dispatched to southern counties; and drivers when in Los Angeles call the Woodland terminal to determine whether there are any pickups to be made in the southern counties.

The witness further testified that:

"During certain periods of time there is a great deal of construction work which requires cement. The call for our service is good during such a period. At other times construction falls off and cement hauling is curtailed and we get little chance to use our equipment. This is apparent from the traffic survey which I have attached hereto as Appendix G. It is evident that business is better in some years than in others. During the years when business is poor, I hold my equipment ready to perform service but I am offered little actual movement. I remain ready to serve in slack periods and when I am called to serve between any certificated points, I supply the equipment, facilities and men required to perform the service and I have on file the rates and insurance required to accommodate the traffic. I have not now, and I never have had, any intention of discontinuing service between any points where I am certificated to serve as a cement carrier."

No affirmative showing was presented in opposition to the requested finding by Hays.

After consideration the Commission finds that Section 1065.2 specifically applies to a cement carrier certificate as a whole and not to segments thereof and that at all times in the past Hays has exercised and is presently exercising its certificate to operate as a cement carrier. To the extent that the findings and conclusions in Decision No. 77066 are inconsistent with the findings herein, they are overruled.

ORDER ON REHEARING

IT IS ORDERED that the ordering portion of Decision No. 77066 is hereby rescinded and Application No. 51241 is dismissed.

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

Dated at San Francisco, California, this 8th day of DECEMBER, 1970.

Chairman
Alfred...

William...

Thomas...

James L. Sturgeon
Commissioners

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