

Decision No. 78332

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MCKAY TRUCKING COMPANY, a California corporation, to sell and transfer a certificate of public convenience and necessity authorizing the transportation of cement to APPLGATE DRAYAGE COMPANY, a California corporation.

Application No. 52123
(Filed August 11, 1970)

SUPPLEMENTAL OPINION

By Decision No. 77852 dated October 20, 1970, McKay Trucking Company was authorized to sell and transfer and Applegate Drayage Company was authorized to acquire certificated authority to operate as a cement carrier to any and all points within the Counties of Los Angeles, Orange and Ventura. Determination of a transfer of San Luis Obispo County rights was withheld pending further order of the Commission because it did not appear from the record that seller had served said county for a period of a year. By Decision No. 78029 dated December 8, 1970, in Application No. 51241, the Commission found that Section 1065.2 of the Public Utilities Code applies to a cement carrier certificate as a whole and not to a segment thereof.

The Commission therefore finds that the transfer of the operating authority to serve the County of San Luis Obispo 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 certificates presently held by McKay Trucking Company and Applegate Drayage Company and the issuance of restated certificates in appendix form.

Applegate Drayage Company 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.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. On or before September 1, 1971, McKay Trucking Company may sell and transfer, and Applegate Drayage Company may purchase and acquire, the operative right to serve the County of San Luis Obispo as 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. Applicants shall amend or reissue their tariffs on file with the Commission to reflect the transfer herein authorized. 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

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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, certificates of public convenience and necessity are granted to Applegate Drayage Company and McKay Trucking Company, authorizing them to operate as cement carriers, as defined in Section 214.1 of the Public Utilities Code, between the points particularly set forth in Appendices A and B, respectively, attached hereto and made a part hereof.

5. The certificates of public convenience and necessity granted in paragraph 4 of this order shall supersede the certificates of public convenience and necessity granted by Decision No. 77852 dated October 20, 1970, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

6. Within thirty days after the transfer herein authorized is consummated, applicants shall file written acceptances of the certificates herein granted. Applicants are placed on notice that, if they accept the certificates of public convenience and necessity herein granted, they 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.

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

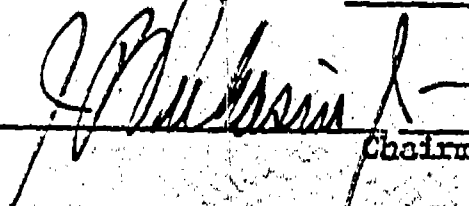
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March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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.

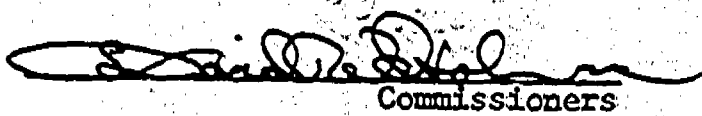
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 22nd day of FEBRUARY, 1971.



Chairman




Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Applegate Drayage Company, 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 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 following counties:

"Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Orange, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Ventura, Yolo and Yuba."

Subject to the following restriction:

"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.

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McKay Trucking Company, 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 as defined in Section 214.1 of the Public Utilities Code from any and all points of origin to any and all points within the Counties of Alameda, Contra Costa, Fresno, Kings, Merced, Monterey, Sacramento, San Benito, Santa Barbara, Santa Clara, Solano, Stanislaus and Yolo, subject to the following restriction:

"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 California Public Utilities Commission.

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