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Decision No. 78387

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of J & H TRANSPORTATION CO., a
corporation, to transfer, and
FLEETWAY CEMENT SERVICE INC.,
a corporation, to acquire a portion
of a Cement Carrier Certificate.

Application No. 51809
(Filed April 3, 1970)

O P I N I O N

J & H Transportation Co., a corporation, requests authority to sell and transfer and Fleetway Cement Service Inc., a corporation, requests authority to purchase and acquire certificated rights authorizing operation as a cement carrier.

The seller's certificate of public convenience and necessity was issued by the Public Utilities Commission of the State of California by Resolution No. 13821, Sub. No. 39, dated June 23, 1964, in Application No. 46416 and the portion to be transferred authorizes the transportation of cement from any and all points of origin in California to all points and places within the Counties of Alameda, Contra Costa, Fresno, Marin, Monterey, Napa, Orange, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Solano, Sonoma, Ventura and Yolo. Said authority is proposed to be transferred for the agreed cash consideration of \$4,000.00 pursuant to a written agreement entered into between the parties, attached to the application as Exhibit A.

Applicant Fleetway alleges that it is a California corporation adequately financed for the purpose of acquiring the cement certificate above described and that it is financially able to consummate the proposed transaction and conduct the operations authorized by the certificate.

The purchaser alleges that it plans and proposes to adopt the tariffs of the seller 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 B attached to the application is a statement of financial position of Fleetway showing assets of \$46,500.00. Exhibit C attached to the application is an equipment list of Fleetway as of January 1, 1970 showing three tractors and six trailers held by the purchaser to be used in performance of the service under the certificate.

The filing of the application was posted in the daily calendar of the Commission on April 7, 1970 and applicant certified that copies 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 filed a statement which is marked Exhibit No. 1, which states that seller has exercised its certificate.

A protest was filed by L. R. Denney, Inc., based upon a claimed lack of substantial service under these certificates by

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transferor. This objection was resolved by the Commission decision in the matter of A. W. Hays Trucking. Decision No. 78029 dated December 8, 1970, which among other things, finds that Section 1065.2 specifically applies to a cement carrier certificate as a whole and not to segments thereof.

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 that portion of the certificate authorized to be transferred herein, presently held by J & H Transportation Co. and the issuance of a certificate in appendix form to Fleetway Cement Service Inc.

Fleetway Cement Service 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 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 May 1, 1971, J & H Transportation Co. may sell and transfer, and Fleetway Cement Service Inc. may purchase and acquire, the operative rights and property 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 shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that it 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.

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4. On or before the end of the third month after the consummation of the transfer as herein authorized, purchaser 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 Fleetway Cement Service Inc., authorizing it 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 that portion herein authorized to be transferred, of the certificate of public convenience and necessity granted by Resolution No. 13821, Sub. No. 39, dated June 23, 1964, in Application No. 46416, which portion of the 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, 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-F.


8. Purchaser shall maintain its 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 its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.


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


10. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

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

Dated at San Francisco, California, this 2nd day of MARCH, 1971.



Chairman


Vernon L. Sturgeon


Commissioners

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

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Appendix A

FLEETWAY CEMENT SERVICE INC.
(a corporation)

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Fleetway Cement Service Inc., 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 all points and places within the Counties of Alameda, Contra Costa, Fresno, Marin, Monterey, Napa, Orange, San Diego, San Francisco, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Solano, Sonoma, Ventura 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 A

Issued by California Public Utilities Commission.

Decision No. 78387, Application No. 51809.