

Decision No. 78780**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ROY V. DAVIS, an individual doing)
 business as DAVIS & SON TRUCKING,)
 to transfer operating authority and)
 HERCULES DRAYAGE CO., INC., a)
 California corporation, for authority)
 to acquire and to operate a Cement)
 Carrier Certificate. }

Application No. 52320
 (Filed November 24, 1970)

C. R. Nickerson, for applicants.
Kenneth K. Henderson, for the Commission
 staff.

O P I N I O N

By Decision No. 78360 dated March 2, 1971, the Commission denied the requested authority of Roy V. Davis (Davis) to transfer a certificate of public convenience and necessity authorizing operations as a cement carrier within the Counties of Imperial and San Bernardino because a review of his quarterly and annual reports for the twelve-month period prior to the filing of the application indicated that he conducted no cement transportation during said period.^{1/} Also, upon request applicant was unable to provide documentary evidence of conducting such operations. The order was to be effective in twenty days unless, before that time, Davis filed

^{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." (Section 1065.2 of the California Public Utilities Code.)

a request for a public hearing. Such a request was filed on March 19, 1971, and a public hearing was held before Examiner Daly on April 30, 1971, at San Francisco.

The record indicates that Davis conducted operations as a radial highway common carrier, a highway contract carrier and as a certificated cement carrier from a terminal located in Imperial, California, for many years; that his operations primarily consisted in the transportation of general commodities into the Los Angeles area; that the transportation of cement consisted of a back-haul for the Imperial Irrigation District and the Imperial Valley Lumber Company; that the cement movement was sporadic consisting of approximately 16 shipments a year; that in 1969 Davis moved the major portion of his operations and equipment to Arizona; that operations were continued in California through the use of 3 tractors and trailers and an office manager was placed in charge of the Imperial terminal; that the California operations were continued to May 1970; that during the first part of 1970 Davis transported 4 shipments of cement, but the shipping documents relating to these shipments were either lost or misplaced during the move from California to Arizona in May 1970; that Davis was unable to produce, at the request of the staff, any evidence of such transportation; that the transportation of cement was substantially reduced during the early part of 1970 as the result of a strike; and that Lois G. Moreno, as the Imperial office manager of Davis, contacted all lumber companies within the area at least once a week during the period February 1969 to May 1970 in the solicitation of cement hauling.

After consideration the Commission finds that:

1. The instant application was filed on November 24, 1970.
2. Davis transported 4 shipments of cement during 1970, prior to May of that year.
3. The cement certificate heretofore issued to Davis did not lapse and terminate within the meaning of Section 1065.2 of the Public Utilities Code and the proposed transfer of said certificate to Hercules Drayage Co., Inc. for a cash consideration of \$2,400 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 applicants seller and purchaser and the issuance of a certificate in appendix form to applicant purchaser.

Hercules Drayage Co., 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 December 1, 1971, Roy V. Davis may sell and transfer; and Hercules Drayage Co., Inc. may purchase and acquire, the operative rights 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.

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 Hercules Drayage Co., 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 the certificate of public convenience and necessity granted by Resolution No. 13821, Sub. 13, dated June 23, 1964, in Application No. 46554, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof.

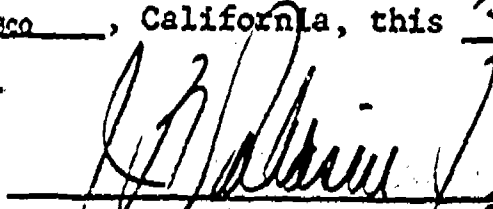
7. Within thirty days after the transfer herein authorized is consummated, purchaser shall file a written acceptance of the certificate herein granted. Purchaser is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other 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.

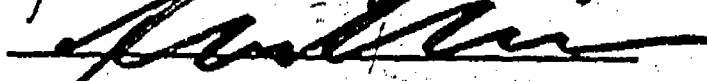
9. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect on delivery shipments, it shall make the appropriate filings as required by the General Order.

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


Dated at San Francisco, California, this 15th day of JUNE, 1971.



Chairman




Vernon L. Sturgeon



Commissioners

Hercules Drayage Co., 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 from any and all points of origin to any and all points in the Counties of Imperial, San Bernardino and San Diego subject to the following restrictions:

1. Whenever Hercules Drayage Co., Inc. engages other carriers for the transportation of property of Marvin H. Finch or R.C.P. Company or Hercules Drayage Co., Inc. or customers or suppliers of said individual, company or corporation, Hercules Drayage Co., Inc. shall not pay such other carriers rates and charges less than the rates and charges published in Hercules Drayage Co., Inc.'s tariffs on file with the Commission.

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

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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