

ORIGINAL

Decision No. 79713

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
JOHN W. and FLORENCE V. EZZELL,
LAWRENCE E. EZZELL and ROBERT W.
EZZELL, doing business as EZZELL
INVESTMENT COMPANY, a co-partnership,
to transfer, and DOWNEY BUILDING
MATERIALS INC., a corporation, doing
business as EZZELL INVESTMENT COMPANY,
to acquire a Cement Carrier Certificate
of Public Convenience and Necessity.

Application No. 53058

(Filed December 14, 1971)

O P I N I O N

John W. and Florence V. Ezzell, Lawrence E. Ezzell and Robert W. Ezzell, doing business as Ezzell Investment Company, a co-partnership (transferor), seeks an order of the Commission authorizing them to transfer their cement carrier certificate of public convenience and necessity to Downey Building Materials, Inc.

Transferor is engaged in the transportation of cement by motor vehicle in intrastate commerce as a cement carrier pursuant to a cement carrier certificate of public convenience and necessity issued by this Commission by Resolution No. 13823, Sub No. 35, dated June 23, 1964, in Application No. 46419.

Downey Building Materials, Inc., is a corporation organized under the laws of California whose principal place of business is Downey, California. Transferor and Downey have entered into an agreement by which transferor proposes to sell and Downey proposes to acquire the aforementioned cement carrier certificate for a total purchase price of \$500.

Transferor participates in the rates set forth in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17 (Cal. P.U.C. No. 21). Downey will adopt said tariff.

After consideration the Commission finds that the proposed transfer will not be adverse to the public interest. A public hearing is not necessary. The application should be granted.

The action taken herein shall not be construed as a finding of the value of the certificate to be transferred. In the event the transfer is consummated, the order which follows will provide for the revocation of the certificate presently held by transferor and the issuance of a certificate in appendix form to Downey Building Materials, Inc.

Downey Building Materials, 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, these 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 April 30, 1972, John W. and Florence V. Ezzell, Lawrence E. Ezzell and Robert W. Ezzell, doing business as Ezzell Investment Company, a co-partnership, may sell and transfer, and Downey Building Materials, Inc., may purchase and acquire, the cement carrier certificate of public convenience and necessity referred to in the application.
2. Within thirty days after the consummation of the transfer herein authorized, Downey Building Materials, Inc., 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 to effect the transfer.
3. Downey Building Materials, Inc., shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the cement 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. Downey Building Materials, Inc., in adopting the tariffs now on file with the Commission in compliance with Ordering Paragraph No. 3 hereof, may depart from the provisions of Section 460 of the Public Utilities Code.

5. In the event the transfer authorized in Paragraph 1 hereof is consummated, a certificate of public convenience and necessity is granted to Downey Building Materials, 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. This certificate shall lapse and terminate if not exercised for a period of one year.

6. The certificate of public convenience and necessity granted in the preceding paragraph shall supersede the certificate of public convenience and necessity granted to John W. and Florence V. Ezzell, Lawrence E. Ezzell and Robert W. Ezzell, doing business as Ezzell Investment Company, a co-partnership, by Resolution No. 13823, Sub No. 35, dated June 23, 1964, in Application No. 46419, 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, Downey Building Materials, Inc., shall file a written acceptance of the certificate herein granted. Downey Building Materials, Inc., 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 the insurance requirements of the Commission's General Order No. 100-Series.

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

10. Whenever Downey Building Materials, Inc., engages other carriers for the transportation of property of Downey Building Materials, Inc., or its customers or suppliers, Downey Building Materials, Inc., shall not pay such carriers less than the rates and charges published in the carriers' tariffs on file with the Commission.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California,
this 15th day of FEBRUARY, 1972.

William J. Lyons Chairman
Mark C. [unclear]
Vernon L. [unclear]
[unclear] Commissioners

Downey Building Materials, Inc., 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 Los Angeles and San Diego, subject to the restrictions shown below:

RESTRICTION:

1. Whenever Downey Building Materials, Inc., engages other carriers for the transportation of property of Downey Building Materials, Inc., or its customers or suppliers, Downey Building Materials, Inc., shall not pay such carriers less than the rates and charges published in the carriers' tariffs on file with the Commission.
2. 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. 79713, Application No. 53058.