

ORIGINAL

Decision No. 79832

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of BARKLEY and GIBBONS, INC., a
California Corporation, to Sell
and Transfer That Portion of Its
Certificate of Public Convenience
and Necessity as a Cement Carrier
Authorizing Transportation to and
within the Counties of Yolo,
Monterey, Stanislaus, Santa Clara,
and San Benito to COMMERCIAL
TRANSFER, INC., a California
Corporation.

Application No. 53070
(Filed December 27, 1971)

O P I N I O N

Barkley and Gibbons, Inc. (hereinafter referred to as seller) requests authority to sell and transfer, and Commercial Transfer, Inc. (hereinafter referred to as buyer) requests authority to purchase and acquire, a portion of a certificate of public convenience and necessity authorizing operations as a cement carrier.

The certificate was granted by Resolution No. 13821, dated June 23, 1964, and authorized transportation to and within the Counties of Fresno, Merced, Monterey, San Benito, San Mateo, Santa Clara, Santa Cruz, Stanislaus, and Yolo. The certificate was suspended by Decision No. 78502, dated April 2, 1971, in Application No. 46413 and is still in suspension. No operations are being conducted under the said operating authority. The transfer relates to the Counties of Yolo, Monterey, Stanislaus, Santa Clara, and San Benito. The consideration for the transfer is \$5,000 in cash and seller will retain the authority to serve the Counties of Fresno, Merced, San Mateo, and Santa Cruz.

Buyer is a corporation organized and existing under and by virtue of the laws of the State of California. It operates as a radial highway common carrier, a dump truck carrier, a petroleum contract carrier, and as a cement carrier pursuant to Resolution No. 13821, dated June 23, 1964. Buyer is authorized to transport cement to and within the Counties of Fresno, Kern, Kings, Madera, Merced, Sacramento, San Joaquin and Tulare. It is alleged that seller's officers and directors have reached retirement age and desire to retire permanently from the trucking business. It is further alleged that buyer is actively engaged in transporting cement and is seeking to expand its service area. Buyer's balance sheet and profit and loss statement for the nine-month period ending September 30, 1971, shows total assets of \$337,406, current liabilities of \$134,233, total freight revenue of \$382,409 and operating expenses totaling \$356,645.

A copy of the application was mailed to the California Trucking Association office in Burlingame and the application was published in the Commission Calendar. No protests have been received.

After consideration the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificates presently held by Barkley and Gibbons, Inc., and Commercial Transfer, Inc., and the issuance of new certificates in appendix form to Barkley and Gibbons, Inc., and Commercial Transfer, Inc.

Applicants are 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 September 1, 1972, Barkley and Gibbons, Inc., may sell and transfer, and Commercial Transfer, 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, buyer 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 the tariffs on file with the Commission, naming rates and rules governing the common carrier operations herein to show that they have adopted or established, as their 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 authorities 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 Barkley and Gibbons, Inc., and Commercial Transfer, Inc., 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, 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 to Barkley and Gibbons, Inc., and Commercial Transfer, Inc., by Resolution No. 13821, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3 hereof. The certificate granted to Barkley and Gibbons, Inc. shall remain in suspension as set forth in Decision No. 78502 and said carrier shall comply with all conditions of the suspension and with all requirements set forth in Decision No. 78502 before resuming operations.

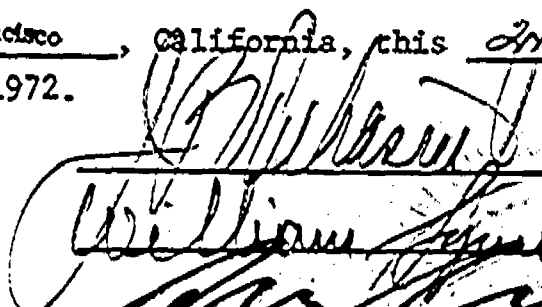
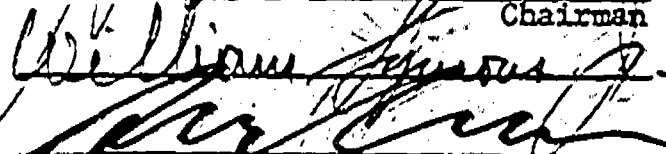


6. Within thirty days after the transfer herein authorized is consummated, applicants shall file written acceptances of the certificates herein granted. Applicants are placed on notice that, if they accept the certificates of public convenience and necessity herein granted, they will be required, among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

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 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 24th
day of MARCH, 1972.


Chairman



Commissioners

Barkley and Gibbons, 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 any and all points in the counties of:

Fresno - Merced - San Mateo - Santa Cruz

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. 79832, Application No. 53070.

Commercial Transfer, 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 any and all points in the counties of:

Fresno
Kern
Kings
Madera

Merced
Monterey
Sacramento
San Benito

San Joaquin
Santa Clara
Stanislaus
Tulare
Yolo

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.

Decision No. 79832, Application No. 53070.