

Decision No. 80442

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of)
HERCULES DRAYAGE CO., INC., a)
corporation, to sell and transfer,)
and CAL-WESTERN SAND & ROCK, INC.,)
a corporation, to buy and acquire)
a Portion of a Certificate of Public)
Convenience and Necessity as a)
Cement Carrier Pursuant to Sections)
851-853 of the California Public)
Utilities Code.)

Application No. 53443
(Filed July 10, 1972)

O P I N I O N

Hercules Drayage Co., Inc. requests authority to sell and transfer, and Cal-Western Sand & Rock, Inc. requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a cement carrier from any and all points of origin to any and all points in the County of Imperial.

The original certificate was granted by Decision No. 78780, dated June 15, 1971, in Application No. 52320, as amended by Decision No. 78824, dated August 10, 1971, and authorizes the transportation of cement from any and all points of origin to any and all points in the Counties of Imperial, San Bernardino and San Diego. The transfer relates to the County of Imperial only. The agreed consideration is the transfer of a 40-foot Pike Flatbed Trailer and a set of Fruehauf Pneumatic Hopper Dump Trailers valued at \$4,200.

Applicant purchaser is presently engaged in the bulk sale and distribution of transit-mix cement, sand, rock and gravel. It also conducts operations as a dump truck carrier and as a radial highway common carrier. As of December 31, 1971, it indicated a net worth in the amount of \$28,883.

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 certificate presently held by Hercules Drayage Co., Inc. and the issuance of certificates in appendix form to Cal-Western Sand & Rock, Inc. and to Hercules Drayage Co., Inc.

Cal-Western Sand & Rock, Inc. and Hercules Drayage Co., Inc. 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, 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 May 1, 1973, Hercules Drayage Co., Inc. may sell and transfer, and Cal-Western Sand & Rock, 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. 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-Series. Failure to comply with and observe the provisions of General Order No. 117-Series may result in 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 Cal-Western Sand & Rock, Inc. and Hercules Drayage Co., 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 certificate of public convenience and necessity granted by Decision No. 78780, as amended by Decision No. 79024, which certificate is 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 a written acceptance of the certificate 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 31st
day of AUGUST, 1972.

Vernon L. Ferguson
President
William Agnew
Mark W. ...
...
Commissioners

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Hercules Drayage Co., 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 any and all points in the counties of 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.

Decision No. 80442, Application No. 53443.

CAL-Western Sand & Rock, 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 any and all points in the County of Imperial, subject to the following restrictions:

1. Whenever CAL-Western Sand & Rock, Inc. engages other carriers for the transportation of property of V. Clair Merrill and/or George Anderson and/or C. F. Sturdevant, Jr. and/or Ed Mealey and/or Anderson Ditch Liners and/or Merrill Construction Co. and/or Merrill Ditch-Liners, Inc. and/or CAL-Western Sand & Rock, Inc. or customers or suppliers of said individuals, partnerships, companies or corporations, CAL-Western Sand & Rock, Inc. shall not pay such other carriers rates and charges less than the rates and charges published in CAL-Western Sand & Rock, Inc.'s tariffs on file with this Commission.
2. This certificate of public convenience and necessity shall lapse and terminate if not exercised for one year.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

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