

Decision No. 81245**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 of A. W. HAYS TRUCKING INC., a
 corporation, to sell and transfer
 a Certificate of Public Convenience
 and Necessity as a cement carrier
 to TRANSMIX CORPORATION, a
 California corporation, doing
 business as FOOTHILL TRANSPORTATION
 COMPANY.

Application No. 53776
 (Filed December 29, 1972)

O P I N I O N

A. W. Hays Trucking, Inc. (Hays) requests authority to sell and transfer a portion of its certificate of public convenience and necessity authorizing operations as a cement carrier to Transmix Corporation, doing business as Foothill Transportation Company (Transmix). There are no protests.

Hays holds a certificate of public convenience and necessity issued to it by this Commission in Decision No. 80652 dated October 25, 1972 in Application No. 53569 authorizing the transportation of cement as a cement carrier (as defined in Section 214.1 of the Public Utilities Code) from any and all points of origin in California to all points and places within the counties of Alameda, Butte, Colusa, Contra Costa, Del Norte, Fresno, Glenn, Humboldt, Imperial, Kings, Lake, Los Angeles, Madera, Marin, Mendocino, Merced, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Ventura, Yolo, and Yuba.

On November 17, 1972 Transmix entered into an agreement with Hays whereby it agreed to purchase that portion of the cement carrier operating authority of Hays authorizing service to the counties of Los Angeles, Santa Barbara, San Bernardino, Orange, Riverside, Imperial, San Diego, and Ventura for a total purchase price of \$13,000.

Applicants herein request permission pursuant to Section 851 of the Public Utilities Code for Hays to sell that portion of its certificate of public convenience and necessity authorizing the transportation of cement from all points of origin in California to points and places in the counties set forth above, subject to the following restriction: Whenever Transmix engages other carriers for the transportation of property of Transmix, or customers or suppliers of said corporation, Transmix shall not pay such other carriers rates and charges less than the rates and charges published in Transmix' tariffs on file with the Commission.

Transmix owns the following equipment: six 1969 Peterbilt Tractors, two 1972 Kenworth Tractors, and eight 1969 Freuhauf Bottom-Dump Pull Trailers. This equipment will be utilized to conduct the proposed operations under the authority sought to be purchased herein.

Applicants allege that the proposed transfer of that portion of the certificate herein described will be in the public interest for the reason that there will be no adverse effect on the shipping public, or on any other carrier, nor will there be any change in the competitive relationships between carriers as a result of the proposed transfer.

The application states that Transmix will be staffed by trained personnel having full knowledge of the technicalities of the transportation of the commodities described in the certificate to be transferred and who will have full knowledge of the Commission's rules and regulations.

The application further states that Hays has not generated sufficient volume to warrant continuation of its service to the points and places in the specified area of operations and that Hays desires to be relieved of its obligation to continue performance of service to points in said counties. Transmix will provide all the service and facilities necessary to meet the requirements of the shipping public with respect to such shipments involving said counties.

If the application is approved, Transmix will adopt the tariff of Hays with respect to the involved counties and will observe the tariff publication regulations of the Commission.

Exhibit D attached to the application contains copies of Transmix' balance sheet as of October 31, 1972 and income statement for the seven months ended October 31, 1972. The balance sheet discloses total assets of \$4,832,747 and total liabilities of \$2,263,857. The income statement discloses a net profit of \$94,884.

The Commission takes official notice of the following:

1. On March 21, 1962 Transit Mixer Company filed an application for radial highway common carrier and city carrier permits which disclosed that Transit Mixer Company is a wholly owned subsidiary of Transmix.^{1/}

2. Decision No. 75823 dated June 29, 1969 in Application No. 51011 discloses that Foothill Industries is a wholly owned subsidiary of Transmix.

^{1/} The City Carriers' Act was repealed in 1968.

Findings

1. Transit Mixer Company and Foothill Industries are wholly owned subsidiaries of Transmix Corporation.

2. The proposed transfer would not be adverse to the public interest, providing the following restriction is made a part of the authority being transferred: "Whenever Transmix Corporation engages other carriers for the transportation of property of Transmix Corporation and/or Foothill Industries and/or Transit Mixer Company or customers or suppliers of said corporations, Transmix Corporation shall not pay such other carriers rates and charges less than the rates and charges published in Transmix Corporation's tariffs on file with this Commission."

3. A public hearing is not necessary.

The Commission concludes the application should be granted as set forth in the ensuing order.

The order which follows will provide for, in the event the transfer is consummated, the revocation of the certificate presently held by A. W. Hays Trucking, Inc. and the issuance of certificates in appendix form to Transmix Corporation and A. W. Hays Trucking, 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, 1973, A. W. Hays Trucking, Inc. may sell and transfer, and Transmix Corporation 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 and seller shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations, pursuant to authorities granted herein. 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 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 Transmix Corporation and A. W. Hays Trucking, Inc., authorizing them to operate as cement carriers, as defined in Section 214.1 of the Public Utilities Code, between the points 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. 80652, 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 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 the 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 10th day of APRIL, 1973.

Vernon L. Sturgen
President
William J. Quinn
[Signature]
[Signature]
Commissioners

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

TRANSMIX CORPORATION
(a corporation)
doing business as
Foothill Transportation Company

Transmix Corporation, doing business as Foothill Transportation Company, 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:

Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura.

RESTRICTION: Whenever Transmix Corporation engages other carriers for the transportation of property of Transmix Corporation and/or Foothill Industries and/or Transit Mixer Company or customers or suppliers of said corporations, Transmix Corporation, shall not pay such other carriers rates and charges less than the rates and charges published in Transmix Corporation's tariffs on file with this Commission.

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. **81245**, Application No. 53776.

A. W. Hays Trucking, 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:

Alameda, Butte, Colusa, Contra Costa, Del Norte,
Fresno, Glenn, Humboldt, Kings, Lake, Madera,
Marin, Mendocino, Merced, Monterey, Napa, Nevada,
Placer, Plumas, Sacramento, San Benito, San Francisco,
San Joaquin, San Mateo, Santa Clara, Santa Cruz,
Shasta, Siskiyou, Solano, Sonoma, Stanislaus, Sutter,
Tehama, Trinity, Tulare, Yolo and Yuba.

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. 81245, Application No. 53776.