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Decision No. 81605

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
PHILIP A. RIVERA, an individual,  
doing business as P.A.R. TRUCKING,  
to acquire, and L. A. SHIREY, an  
individual, to transfer a Cement  
Carrier Certificate of Public Con-  
venience and Necessity and certain  
property pursuant to Sections 851,  
et seq., of the California Public  
Utilities Code.

Application No. 54016  
(Filed May 4, 1973)

O P I N I O N

Applicant Rivera seeks an order authorizing him to acquire the cement carrier certificate heretofore issued to applicant Shirey.

L. A. Shirey's (seller) principal place of business is in Saugus. He transports cement by motor vehicle in intrastate commerce under and by virtue of a certificate of public convenience and necessity issued by this Commission by Resolution No. 13823, Sub. 7, dated June 23, 1964 in Application No. 46394.

Philip A. Rivera (purchaser) is presently engaged in transportation by motor vehicle under radial highway common carrier and dump truck carrier permits.

The parties allege that the purchaser proposes to acquire the certificate and certain equipment for \$60,000, of which \$8,000 is for the operating rights and \$52,000 is for the revenue equipment; that \$6,000 has been deposited in escrow and \$54,000 is to be paid at the time transfer is approved; that the revenue equipment is to be delivered to purchaser free and clear of all encumbrances; and that the escrow agent will pay out of escrow any balance owing on that equipment at the time of transfer and remit the balance to seller. A copy of the agreement of sale is attached to the application as Exhibit "A".

The purchaser will acquire from the seller eight pieces of equipment which will be used in the performance of service.

The applicants allege that seller participates in the rates set forth in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17, Cal. P.U.C. No. 21; that the purchaser proposes to adopt such tariff; and that seller is not a party to through rates or joint rates with any other carrier.

The applicants allege that the proposal herein made is consistent with the public interest and will promote the same for the following reasons: The purchaser is adequately financed, possesses the necessary experience, and will have the equipment to carry on and conduct the common carrier activities heretofore carried on by the seller; that there will be no adverse effect upon any other carrier nor upon the shipping public resulting from the transfer; that the purchaser has now, and will continue to employ experienced and trained personnel with full knowledge of the technicalities of the physical transportation of the commodities described in the certificate to be transferred; and that the purchaser has full knowledge of the Commission's rules and regulations and its other requirements respecting for-hire transportation of cement, in bulk, or in sacks.

The applicants allege that the granting of this application will have no significant effect upon the quality of the human environment and that no Environmental Data Statement is therefore required under the provisions of Rule 17.1 of the Commission's Rules of Practice and Procedure.

Findings

1. The purchaser has the experience, equipment, and finances to continue the service it is to acquire from the seller.
2. The proposed transfer is not adverse to the public interest.
3. The parties should be authorized to execute the sales agreement in the form attached to the application as Exhibit A.

4. The Commission finds with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

5. The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

Conclusion

The Commission concludes that the transfer 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 L. A. Shirey and the issuance of a certificate in appendix form to Philip A. Rivera, an individual, doing business as P.A.R. Trucking.

Philip A. Rivera 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 October 31, 1973 L. A. Shirey may sell and transfer, and Philip A. Rivera may purchase and acquire, the operating rights and property 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 he has adopted or established, as his 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 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 Philip A. Rivera, doing business as P.A.R. Trucking, authorizing him 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. 13823,



PHILIP A. RIVERA  
(An Individual)  
doing business as  
P.A.R. TRUCKING

Philip A. Rivera, doing business as P.A.R. TRUCKING, 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:

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

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. 81605, Application No. 54016.