

**ORIGINAL**

Decision No. 83895

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
CAL-WESTERN SAND & ROCK, INC., a )  
corporation, to sell, and of ELLIS )  
TRANSPORTATION CO., a corporation, )  
to purchase, a cement carrier cer- )  
tificate authorizing service to and )  
within the County of Imperial, in )  
the State of California, pursuant )  
to Sections 851-853 of the California )  
Public Utilities Code. )

Application No. 55138  
(Filed August 28, 1974;  
amended September 23, 1974)

O P I N I O N

This is a joint application of Cal-Western Sand & Rock, Inc., a California corporation (Cal-Western), and Ellis Transportation Co., a California corporation (Ellis), for authority for Cal-Western to sell its cement carrier certificate for \$250 cash to Ellis.

Cal-Western is the holder of a cement carrier certificate of public convenience and necessity issued as Appendix B in Decision No. 80442 dated August 31, 1972 in Application No. 53443, which certificate grants authority from any and all points in the State of California to any and all points within Imperial County, California.

Ellis is not presently engaged in any business subject to regulation by this Commission, and proposes to adopt the tariffs of Cal-Western, as set forth in the application.

This transfer of certificate is proposed by the parties pursuant to a contract dated July 15, 1974 between Cal-Western and Massey Sand & Rock Co. (Massey), a California corporation, (50 percent of whose stock is owned by Ellis) which agreement is attached to the amendment to application as Appendix 1. That agreement provides, inter alia, for the purchase by Massey Sand & Rock Co. of certain assets of Cal-Western, including the certificate, and upon

approval by this Commission, the certificate shall be issued to Ellis.

The parties further represent that:

- a. Ellis owns 13 tractors, one set of flatbed trailers, nine sets of pneumatic trailers, and four sets of bottom-dump hoppers, which combination of vehicles are suitable for the carriage of cement in bulk and in bags, and that the net worth of Ellis, as of April 30, 1974, was \$401,880.98.
- b. Ellis does not presently engage in for-hire carriage, but leases equipment without drivers to a cement carrier.
- c. Ellis has adequate equipment experience and financial resources to operate as a certificated cement carrier.
- d. That there will be no adverse effect upon competing carriers or the shipping public.
- e. The transfer of the certificate is in the public interest.

Copies of the application were served on the California Trucking Association and nine cement mills. There are no protests.

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 completed, the revocation of the certificate presently held by Cal-Western Sand & Rock, Inc., and the issuance of a certificate in appendix form to Ellis Transportation Co.

We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Ellis Transportation Co. is 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 May 31, 1975 Cal-Western Sand & Rock, Inc. may sell and transfer the operative rights referred to in the application to Ellis Transportation Co.
2. Within thirty days after the transfer Ellis Transportation Co. shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Transferee shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its own, the 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 transfer. 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 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 transfer, the transferee 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 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to Ellis Transportation Co., authorizing it to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendix A, attached hereto and made a part hereof.

6. The certificate of public convenience and necessity granted to Cal-Western Sand & Rock Inc. by Decision No. 80442 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. Ellis Transportation Co. shall comply with the safety rules administered by the California Highway Patrol, and insurance requirements of the Commission's General Order No. 100-Series.

8. Ellis Transportation Co. 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. Ellis Transportation Co. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If it elects not to transport collect on delivery shipments, it 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 30<sup>th</sup> day of DECEMBER, 1974.

Vernon L. Litzinger  
President  
William Symons Jr.  
Thomas Moran  
Robert E. McDavid  
Commissioners

Ellis Transportation Co., 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 Ellis Transportation Co., engages other carriers for the transportation of property of Wade G. Ellis and/or Ellis Transportation Co., and/or Massey Sand & Rock Co., or customers or suppliers of said individual and/or corporations, Ellis Transportation Co., shall not pay such other carriers rates and charges less than the rates and charges published in Ellis Transportation Co.'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 A)

Issued by California Public Utilities Commission.

Decision No. 83895, Application No. 55138.