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ORIGINAL

Decision No. 85029

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of GRANZOTTO TRUCKING CO., a corporation to sell and transfer a certificate of public convenience and necessity authorizing the transportation of cement to B.C.B.M. Transport Inc., a corporation.	Application No. 55459 (Filed January 29, 1975)
In the Matter of the Application of ALLAN L. WENGER, to sell and transfer a certificate of public convenience and necessity authorizing the transportation of cement to B.C.B.M. Transport Inc., a corporation.	Application No. 55460 (Filed January 29, 1975)

Granville T. Harper, Attorney at Law, for Granzotto Trucking Co., applicant-seller.
Yale H. Smulyan, Attorney at Law, for Allan L. Wenger, applicant-seller, and B.C.B.M. Transport Inc., applicant-buyer.
Raymond A. Greene, Jr., Attorney at Law, for Les Calkins Trucking, Inc., Earl W. Hudson, and Universal Transport System, Inc., protestants.
James Diani, for the Commission staff.

O P I N I O N

Statement of Facts

Granzotto Trucking Co. Inc. holds cement carrier certification, together with other authorities not relevant or material here, authorizing cement transportation to and within the counties of Alameda, Contra Costa, Fresno, Nevada, Sacramento, San Francisco, Santa Clara, Solano, and Yolo, from any and all points of origin pursuant to Commission Resolution No. 13821, and Decision No. 68109

dated October 27, 1964 in Application No. 46408. By Application No. 55459 filed January 29, 1975, Granzotto seeks to sell, and B.C.B.M. Transport Inc., a California corporation, seeks to buy that cement transportation operating authority.

Allan L. Wenger holds cement carrier certification authorizing cement transportation to and within the county of San Mateo from any and all points of origin pursuant to Decision No. 78403 dated March 9, 1971 in Application No. 51839. The Wenger certificate has not been used.[1/] By Application No. 55460 filed January 29, 1975, Wenger seeks to sell, and B.C.B.M. Transport Inc., a California corporation, seeks to buy that cement transportation operating authority.

The cash consideration for the certificate held by Granzotto is $7,500, and $1,500 for the certificate held by Wenger.

By Decision No. 84252 dated March 25, 1975 the Commission approved the sale and transfer of the cement certificated authorities hereinabove referred to without a public hearing, there having been no protest filed.

1/ Wenger accepted the authority granted by Decision No. 78403 dated March 9, 1971, but for various reasons was unable to fully comply with the provisions of that decision and requested additional time. By Decision No. 79624 dated January 18, 1972 the Commission extended time to June 1, 1972. On August 27, 1972 the authority was suspended under General Order No. 100-G for failure to maintain liability insurance on file. Subsequently Wenger requested further suspension and By Decision No. 80819 dated December 12, 1972 the Commission suspended the authority to December 8, 1973. By Decision No. 82307 dated January 8, 1974 the suspension was extended until July 1, 1974. By Decision No. 83435 dated September 11, 1974 the suspension was extended until January 1, 1975 with the proviso that Wenger must, on or before January 1, 1975, resume operations and meet all requirements. On December 24, 1974 Wenger contracted with B.C.B.M. to sell the authority and the resultant application, No. 55460, was filed January 29, 1975.

It should be noted that both applications contained certification of service of the applications on nine cement companies, and the California Trucking Association.

On or about March 27, 1975, Les Calkins Trucking Inc., a holder of certificated cement carrier authority, filed a protest letter which subsequently matured into a Petition for Reconsideration and for Rehearing filed April 25, 1975, by protestant Les Calkins joined by Earl W. Hudson, and Universal Transportation System (the latter two also holders of certificated cement carrier authority).

Petitioners alleged that the transfers authorized by Decision No. 84252 were not legally valid in that the subject certificates of both Granzotto and Wenger had lapsed and terminated as a consequence of nonuser pursuant to Public Utilities Code, Section No. 1065.2.[2/] Protestants assert that in this type of case the Commission has no discretion; that the legislative mandate is clear and unequivocal to the point that if an operating authority is not exercised for any reason whatsoever during the course of any one or more calendar years it shall, according to the express provisions of Public Utilities Code Section No. 1065.2 "...lapse and terminate." The termination occurs as a matter of law without any action by the Commission. Protestants contend that inasmuch as there was no user under either certificate during the three-year period 1972, 1973, 1974 before the sale, both certificates had already lapsed and terminated as a matter of law before the sale, and therefore there could be no transfer and sale.

2/ Public Utilities Code, Section 1065.2:
"A certificate of public convenience and necessity to operate as a cement carrier shall remain in effect until it is suspended or terminated by the commission, except that any such certificate not exercised for a period of one year shall lapse and terminate."

Finding good cause, the Commission as an alternative to granting rehearing, proceeded under Public Utilities Code, Section 1708,[3] and by Decision No. 84412 dated May 6, 1975, ordered reopening of Applications Nos. 55459 and 55460 for the limited purpose of determining whether the authority to transfer as granted by Decision No. 84252 was invalid because of the provisions of Public Utilities Code, Section 1065.2, and stayed the order set forth in Decision No. 84252.

On May 8, 1975 applicant B.C.B.M. filed a verified Response to Petition for Reconsideration and/or Rehearing, to which were attached and incorporated by specific reference, two freight bills of Granzotto indicating cement hauling in November 1974. Applicant B.C.B.M. also protested that protestants Calkins, Hudson, and Universal had not filed their protest or petition until after the effective date of the order contained in Decision No. 84252, and alleged violation by protestants of Rule No. 85.[4]

A duly noticed public hearing was held July 8 and 24, 1975 before Examiner Weiss in San Francisco. In his prefatory comments

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3/ Public Utilities Code, Section 1708:
"The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision."

4/ Public Utilities Commission Rule No. 85 PETITIONS FOR REHEARING:
"Petitions for rehearing of an order or a decision shall be served upon all parties and should be filed before the effective date thereof, or, if the Commission has fixed a date earlier than the 10th day after issuance as the effective date of the order or decision, than before the 10th day after the date of issuance. Petitions shall set forth specifically the grounds on which petitioner considers the order to be unlawful or erroneous."

the Examiner stated he would require protestants, as protestants, to carry the initial burden of going forward with the burden of proof. Protestants objected, contending that under the facts presented by these cases it should be applicants' burden to prove user.

At onset of the hearing, B.C.B.M. attempted to introduce an affidavit of Mrs. Carlotta Granzotto sworn July 3, 1975. Mrs. Granzotto is president and sole owner of Granzotto. The five-page affidavit, among other evidentiary matters, contained an admission that the two freight bills submitted by B.C.B.M. in its May 8, 1975 verified Response to Protestants' Petition for Reconsideration and/or Rehearing, as proof of its contention of "user" during 1974, were "...not strictly legal and do not constitute movements for Granzotto as Royal had this authority."[5/] The attorney for B.C.B.M. admitted knowing that the freight bills were spurious for at least two weeks prior to the hearing date but had not advised the Examiner or protestants because, as he stated, he had been attempting to secure the signature of the affiant so that he could submit the affidavit which, among other things, admitted that the freight bills were "...not strictly legal...." Protestants objected to admission of the affidavit without notice as prejudicial. The affiant, Mrs. Granzotto, was not present nor did applicants have a single witness present. With acquiescence of the parties, the Examiner continued the case to a later date.

When the hearing was resumed July 24, 1975 the Examiner, after reviewing the problems created by the affidavit developments, offered applicants opportunity to resubmit the Granzotto affidavit, or to amend B.C.B.M.'s verified Response. B.C.B.M. amended paragraph VIII of its verified Response by offering Mrs. Granzotto's affidavit, as modified by her direct testimony (she being present at the Examiner's suggestion for the second day of hearing), and by a Granzotto-B.C.B.M. stipulation that during 1972, 1973 and 1974 Granzotto transported no cement at all.

5/ See Exhibit No. 1.

The substance of Mrs. Granzotto's testimony was that business had been bad, and that Granzotto's cement transporting business, since its zenith in the early 1960s when it operated as many as 24 trucks, had progressively declined following the death of her husband in 1960 to the point where during the past three years applicant had no cement business at all, and very little other transport business either. Notwithstanding this adversity, Granzotto maintained its cement carrier tariffs, maintained insurance, advertised in the Central Contra Costa County yellow page directory until sometime in 1974, had arrangements for one standby driver, and maintained one tractor together with trailer equipment capable of handling cement in bulk or hopper loads. The last business conducted, under certification other than cement, was an aggregate hauling in October 1974. The yellow page advertising and the telephone service were discontinued sometime in 1974 because of the complete lack of any kind of business. Although Mrs. Granzotto was unable to relate any specifics, she asserted that until the sale agreement of January 28, 1975 Granzotto always held itself out to transport cement if and when needed. Mrs. Granzotto testified that her son Fary, Vice-President of the firm, conducted all business matters. Mr. Fary Granzotto did not appear and testify in the proceedings, leaving the record devoid of any evidence of active solicitation of business other than the directory advertising.

Mr. James Diani of the Commission staff testified that during his field investigation visit to the Granzotto residence pursuant to this application, on May 8, 1975 Mrs. Granzotto showed him a yellow page directory listing from the 1974 Central Contra Costa directory. The listing was a one-liner under the classification of "TRUCKING", and consisted solely of the name "GRANZOTTO TRUCKING, INC." and the telephone number. There was no indication of cement or any other commodity.

Applicants Wenger and B.C.B.M. at the hearing stipulated that there had been no user of the Wenger certificate during virtually all the 1972-1973-1974 period and that the Wenger certificate had been in suspension during most of that period.

Discussion

First, we consider the contention by B.C.B.M. in its Response to Petition for Reconsideration and/or Rehearing that protestants were untimely under Rule 85[6/] and Public Utilities Code Sections Nos. 1731 and 1733,[7/] and therefore should not have been

6/ Public Utilities Commission Rule No. 85, supra.

7/ Public Utilities Code, Section 1731:

"After any order or decision has been made by the commisaion, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in the action or proceeding and specified in the application for rehearing. The commission may grant and hold a rehearing on those matters, if in its judgment sufficient reason is made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless the corporation or person has filed application to the commission for a rehearing before the effective date of the order or decision, or, if the commission fixes a date earlier than the 10th day after issuance as the effective date of the order or decision, unless the corporation or person has filed such application for rehearing before the 10th day after the date of issuance."

Public Utilities Code, Section 1733:

"(a) Any application for a rehearing made ten days or more before the effective date of the order as to which a rehearing is sought, shall be either granted or denied before the effective date, or the order shall stand suspended until the application is granted or denied; but, absent further order of the commission, the order shall not stand so suspended for more than 60 days after the date of filing of the application, at which time the suspension shall lapse, the order shall become effective, and the application may be taken by the party making it to be denied.

"(b) Any application for a rehearing made within less than 10 days before the effective date of the order as to which a rehearing is sought and not granted within 60 days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of the pendency of the application."

granted hearing. We are not impressed with applicant's contention. It is axiomatic that one seeking equity should do equity. We note that in applications involving a certificated right, Commission Rule 37(a)[8/] requires a showing of "...the names of all common carriers with which the proposed service is likely to compete...," and certification that these have been served with or mailed copies of the application. Applicants made pro forma compliance with this requirement, but in their filed certificate of service listed not one cement carrier. Nine cement companies were named together with the California Trucking Association. Therefore it seems understandable that protestants belatedly and only indirectly learned of the applications, and necessarily filed the protest letter and their petition late.

Furthermore, Commission Rule 85 in its own language contemplates exceptions. Rule 85 states that petitions for rehearing "...should be filed before the effective date thereof,...", and does not use the mandatory "shall" (emphasis added). Certainly under these circumstances, and when read pari materia with the admonition in Rule 87 that "these rules shall be liberally construed to secure just, speedy, and inexpensive determinations of the issues presented", equity demands acceptance of protestants' late-filed protest letter and petition, and a hearing.

8/ Public Utilities Commission Rule No. 37(a) ADDITIONAL REQUIREMENTS FOR CARRIERS: "In addition to the above requirements, if the transaction involves a certificate or operative right under Sections 1005-1010, 1031-1036, or 1061-1067 of the Public Utilities Code, the application shall show the following data:

"(a) The territory or points served, the nature of the service, the effect of the transaction upon present operation or rights of the applicant carrier, the names of all common carriers with which the proposed service is likely to compete, and a certification that a copy of the application has been served upon or mailed to each such carrier named. Applications shall also name all other parties to whom copies of the application will be mailed. Applicants shall promptly notify the Commission of such mailing. Applicants shall also mail copies to such additional parties and within such times as may be designated by the Commission."

Applicants' assertions as to applicability of Public Utilities Code Sections Nos. 1731 and 1733 are even less meritorious. In Decision No. 84412 the Commission, as an alternative to granting rehearing, elected to proceed under authority of Section No. 1708.[9/]

In view of these considerations, and noting that the protest letter and petition raised an issue of law veiled from the Commission when it issued Decision No. 84252, the Commission in the interest of full disclosure of all material and relevant facts, including those here belatedly asserted, reopened the applications to clarify the pivotal matter of user (Edward T. Molitor (1965) 64 CPUC 109, 110).

Second, in his prefatory instructions, the Examiner properly charged protestants with the burden of going forward with the evidence. It was protestants who were the moving party. It was they who sought reconsideration before the Commission. It was they who were granted a hearing under Section No. 1708 of the Code to produce evidence to demonstrate in what manner the Commission had erred in Decision No. 84252, and in what respect the Commission should rescind, alter, or amend its decision.[10/]

Resolution of these applications depends squarely upon interpretation of Public Utilities Code Section 1065.2. Applicants urge Reynolds v State Board of Equalization[11/] upon us as the proper

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9/ See footnote No. 3, supra.

10/ Where protestants are granted a rehearing where applicant has been granted that which he requested and has no quarrel with what he has been granted, because the protestants are the moving parties, the burden is upon them to go forward. If such burden is not met, applicant has no burden to go forward or present affirmative evidence. (Lincoln A. Richmond (1965) 64 CPUC 383, 384.)

11/ 29 C 2d 137.

construction of law to be applied to Granzotto, seeking to avoid the automatic lapse and terminate provisions of Section 1065.2. Unhappily for their position, Reynolds is readily differentiated factually from Granzotto. But more crucially, the applicable law in Reynolds included no provision comparable to Section 1065.2. The principal question in Reynolds was merely whether the State Board of Equalization had power to suspend as well as to revoke a license in a situation where a licensee was not providing food where alcoholic beverages were sold. In Reynolds, the Supreme Court found there was nothing in the law which supported petitioner's contention that a liquor license automatically becomes void whenever a licensee failed to sell food on the premises, and the Court held that the language of Section 22 of Article Twenty of the California Constitution indicated that some action by the State Board of Equalization was necessary before a license can be terminated. In the matter before us there is something in the law; that "something" being Section 1065.2.

Applicants urge that Section 1070[12/] provides the sole authority vesting in the Commission power to revoke, suspend, or terminate a cement carrier certificate. With this assertion we have no serious argument. But Section 1065.2 does not merely vest

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12/ Public Utilities Code, Section 1070:

"The Commission may at any time for a good cause suspend, and upon notice to the holder of an operating right acquired by virtue of operations conducted on July 26, 1917, or to the grantee of any certificate, and upon opportunity to be heard, revoke, alter, or amend any such operative right or certificate.

"As an alternative to the suspension, revocation, alteration, or amendment of an operating right or certificate, the commission may impose upon the holder of such operating right or certificate a fine of not exceeding five thousand dollars ($5,000). The commission may assess interest upon any fine imposed, such interest to commence upon the day the payment of the fine is delinquent. All fines and interest collected shall be deposited at least once each month in the State Treasury to the credit of the General Fund."

authority, rather it addresses itself to the continuing nature of an existing certificate - barring some commission action under Section 1070 to suspend or terminate the certificate, and then in addition, Section 1065.2 provides another way a certificate terminates; one entirely apart from the authority vested by Section 1070.[13/]

Section 1065.2 is not ambiguous as to its intent. Rather it is sharp and clear. It is not unreconcilable or inconsistent with Section 1070. It simply means that there must be "exercise" of the authority each year - some user - or the certificate as a matter of law lapses and terminates automatically. Transportation of cement in our industrial society is a necessity, and the continuous existence of a readily available and viable source is essential to the construction industry, cement suppliers, and the public. The primary purpose of carrier regulation, whether it be cement or other commodity carrier, is to secure adequacy, regularity, and reliability of service, together with a reasonable charge for the service (Morel v. Railroad Commission (1938) 11 C 2d 488), and such regulation is for the benefit of the producing and consuming public (Franchise Motor Freight Association v. Seavey (1925) 196 C 77), not those regulated. It is inescapable that Section 1065.2 is obviously intended to purge the ranks of certificate holders of defunct and/or inoperative authorities.

13/ "And if the language used in a law plainly and unequivocally shows a certain and definite purpose to be accomplished thereby it is the duty of the courts to carry it into effect. Courts are no more at liberty to add provisions to what is declared in a law in definite language than they are to disregard existing express provisions of a law.
(Boca Mill Co. v. Curry, (1908) 154 C 326.)
(Ross v. City of Long Beach, (1944) 24 C 2d 258, 260.)
(People v. Campbell, (1902) 138 C 11, 15.)"

The granting of a certificate by the Commission in the first instance is conditioned upon existence of a public need to be met by the proposed service, and upon the continuing ability of the applicant to furnish the service at all times to meet that need. Certainly it is difficult to conclude that public convenience and necessity can continue to exist and require continued certification where a carrier has years past ceased to exercise its certificate. We are not unmindful of the ebb and flow of economic tides. But to "exercise" a certificate there must, at minimum, at all times be an active good faith holding out of available service in the certificated area, and at least some actual shipment of the certificated commodity somewhere in the certificated area each year. The practical facts of business are not here ignored. We recognize that at certain times the state of the general economy is such that a volume of business just does not exist to support exercise of an authority in every county of the certificated area. We recognize this economic fact in The Matter of A. W. Hays Trucking, Inc. (Decision No. 78029 dated December 8, 1970 in Application No. 51241), where we held that Section 1065.2 specifically applies to a cement carrier certificate as a whole, and not to segments thereof. Hays had some service to certain counties within his certificated area other than to the eight counties he sought to transfer in his application. At all times during the year in question Hays actually delivered cement and thus "exercised" his authority.

Part and parcel, aside from actual delivery, of "exercise" is an active good faith holding out of service. Indicia of this active good faith holding out includes a demonstrated intent to carry on and do business, a ready ability and willingness to serve the certificated points in one's authority, a published tariff circulated to current shippers in the certificated area, active solicitation of business through the certificated area, classified directory advertising in the certificated area so that the industry, shippers, and the public are aware of the availability of the

service and existence of the carrier, and a ready availability of terminal, equipment, and drivers. But, coupled with this active good faith holding out, there always must be some actual transportation of the certificated commodity within the certificated area. Section 1065.2 requires actual operation as distinguished from mere coloration of operation. Granting (and retention) of an authority confers a privilege upon the grantee which can only be retained by the grantee's fully meeting the obligations and responsibilities imposed by statutory law and the rules and regulations of the Commission (In re Operations and Practices of Boyle (1920) 19 CRC 433). To "exercise" an operative right necessarily means to actively place and keep it in use, and to carry on business. Actual operation is an essential ingredient of an operative right (Pacific Coast Terminal Warehouse Co. (1952) 52 CPUC 17).

Granzotto contends there has been no intent of or actual abandonment of the business; that during the three years in question while shipping no cement it has never ceased to hold itself ready to operate and serve industry or the public. The primary manifestation of abandonment is cessation of service. Certainly where the record indicates that continuous and adequate service has been rendered, that there has been no intent to abandon, and that the commercial community regards the utility as a going concern, there is no abandonment (M. Lee Radio Paging (1966) 65 CPUC 636, 639). But applicant has delivered not a single load of cement in any one of of the nine counties in which it was certified. Applicant contended in both summation and on brief that it solicited business and advertised its availability as a cement carrier. The record just does not support these contentions. Despite ample notice that "exercise" of the certificate in all its aspects was the issue at bar applicant introduced not one iota of evidence - aside from the one-liner directory ad - that it solicited business in the three-year period in question. Its vice-president, who assertedly conducts all its

business, did not even appear to testify. Failure to produce the better evidence within a party's knowledge leads to an inference that the evidence would not favor that party (Westinghouse Credit Corp. v. Wolfer (1970) 10 CA 3d 63). Applicant maintained until sometime in 1974 a one-liner directory advertisement which did not even mention its availability as a cement carrier, and this advertisement was placed only in the central directory of one of the nine counties it was certified to serve. It discontinued its telephone service entirely. In the absence of active pursuit of business: active solicitation, appropriate advertising in the areas serviced, or even telephone service, how could the commercial community know the business continued to exist as it asserted? Insofar as its cement carrier authority was concerned, the business through force of circumstance had become dormant and terminated. It is particularly noteworthy that applicants themselves recognized this fact of the lapsed and terminated status of the cement authority, when they deliberately sought to create an impression of actual operation, so as to meet the "exercise" requirement of Section 1065.2, by preparing and submitting to the Commission two "...not strictly legal" freight bills. This was done when actually the two shipments were made under another's authority.[14/] Use of these "not strictly legal" freight bills is tantamount to a concession by applicants that Section 1065.2 is indeed applicable. If such were not the case, what other purpose would have been legitimately served through their submission of such documents?

In summary, it appears that in fact there has been no "exercise" of the cement carrier authority for years. It is also obvious that applicants were well aware of this situation, and filed their application well aware of the requirements of the Public Utilities Code. Notwithstanding, through the use of false

14/ See Exhibit No. 1.

freight bills they sought to give the Commission and the general public the impression that their operating authority was in actual use in 1974 when in fact it long since had ceased to be exercised. Therefore we must conclude, under the provisions of Public Utilities Code, Section 1065.2, that the certificate as a matter of law did indeed "lapse and terminate" through nonexercise for more than one year so that there was no longer a certificate in being available for Granzotto to sell and transfer.

As to the Wenger - B.C.B.M. applications, the issue differs. The Wenger certificate through almost all the period under consideration was in suspension.[15/] Thus its nonexercise during that period was in effect by Commission order. Even if ready and able, Wenger could not have operated legally during suspension. Therefore, the issue in Wenger is: Does a Commission ordered suspension toll the one-year period in Section 1065.2? We conclude it does.

Section 1070 grants authority to the Commission to suspend a certificate at any time for good cause.[16/] In Construction Transportation (Decision No. 76720 dated January 27, 1970 in Application No. 51487) the Commission held that the one-year period provided for in Section No. 3573 of the Public Utilities Code,[17/] a "lapse and terminate" provision in the operating permit division of the Public Utilities Code similar to Section 1065.2 in the certificated carriers' division of the Code, was tolled by suspension of a permit by the Commission. We see no reason to treat the two differently. The plain meaning of "suspend" is to stop temporarily, to hold in abeyance. It would be unreasonable if by suspending, the Commission were to set up an automatic termination. If we

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15/ See footnote No. 1, supra.

16/ See footnote No. 12, supra.

17/ Public Utilities Code, Section 3573:
"Any operating permit not exercised for a period of one year shall lapse and terminate."

have reason to terminate a certificate, we can simply revoke it after hearing. For these reasons we conclude that a Commission ordered suspension tolls the running of the one-year period in Public Utilities Code, Section 1065.2. Accordingly the Wenger certificate did not "lapse and terminate" through nonexercise and was a certificate in being available for Wenger to sell and transfer.

Findings

1. Neither applicant Granzotto nor applicant Wenger transported cement during the years 1972, 1973 and 1974.

2. In 1974 applicant Granzotto did not operate as a cement carrier; therefore, it did not exercise its certificate.

3. Applicants Granzotto and B.C.B.M. initially sought to mislead the Commission and the public by filing "not strictly legal" freight bills in an attempt to induce belief that the Granzotto certificate had been exercised under provisions of Section 1065.2 of the Public Utilities Code.

4. The Wenger certificate was in suspension during virtually all the period 1972, 1973 and 1974.

Conclusions

1. "Exercise" of a cement carrier certificate requires actual transportation of some cement.

2. The Granzotto certificate, under the provisions of Public Utilities Code, Section 1065.2 as a matter of law did "lapse and terminate" through non "exercise" during the period 1972, 1973 and 1974.

3. Suspension of a cement carrier certificate serves to toll the time period in Section 1065.2.

4. The Wenger certificate, being under suspension by Commission order during virtually all the period 1972, 1973 and

1974, did not "lapse and terminate" as a consequence of nonexercise under provisions of Public Utilities Code, Section 1065.2.

O R D E R

IT IS ORDERED that:

1. The staying order in Decision No. 84412 dated May 6, 1975, is vacated.

2. There being, through operation of law, no Granzotto certificate to sell or transfer, the Commission's order contained in Decision No. 84252 dated March 25, 1975 in Application No. 55459, authorizing Granzotto to sell and transfer its operative rights to B.C.B.M. Transport, Inc., is vacated.

3. The order contained in Decision No. 84252 dated March 25, 1975 in Application No. 55460, authorizing Wenger to sell and transfer his operative right to B.C.B.M. Transport, Inc., is affirmed.

4. The relief requested in Application No. 55459 is denied.

5. Ordering Paragraphs 1, 2, 4, and 5 of Decision No. 84252 are modified as follows:

> 1. On or before January 1, 1976, Allan L. Wenger may sell and transfer the operative rights referred to in Application No. 55460 to B.C.B.M. Transport, Inc.
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> 2. Within thirty days after the transfer, the purchaser shall file with the Commission written acceptance of the certificate and true copies of the bill of sale or other instrument of transfer.
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> 4. 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 B.C.B.M. Transport, Inc., 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 of this decision.

5. The certificate of public convenience and necessity granted by Decision No. 78403 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21st day of OCTOBER, 1975.

President

Commissioners

I dissent
Robert Batinovich

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.

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Appendix A

B.C.B.M. Transport, Inc.
(a California corporation)

Original Page 1

B.C.B.M. Transport, 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, to and within the County of San Mateo from any and all points of origin subject to the following restrictions:

Restrictions:

This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.

Whenever B.C.B.M. Transport, Inc. engages other carriers for transportation of property of Bay Cities Building Materials Co., Inc., or customers or suppliers of said corporation, B.C.B.M. Transport, Inc. shall pay such other carriers not less than the rates and charges published in B.C.B.M. Transport, Inc. tariffs on file with this Commission.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision No. 85029, Applications Nos. 55459 and 55460.