ANV

Decision No. 85223

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of BROWN COMPANY, a corporation, doing business as LIVINGSTON-GRAHAM, TRI-CITY CONCRETE, to transfer and L-T TRANSPORT, INC. a California corporation to acquire a Cement Carrier Certificate and Property.	Application No. 55980 (Filed October 3, 1975)

OPINION

Brown Company, a Delaware corporation, doing business as Livingston-Graham, Tri-City Concrete (seller) requests authority to sell and transfer and L-T Transport, Inc., a California corporation, (purchaser) requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier to and within all points and places in the Counties of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura. The certificate was granted by Decision No. 79740, dated February 23, 1972, as amended by Decision No. 81500, dated June 19, 1973, both in Application No. 52713. Applicant purchaser is a wholly owned subsidiary of applicant seller and does not presently hold operating authority issued by this Commission. Applicant seller has submitted copies of freight bills indicating that it has exercised its cement authority within the last year. Applicants alleged that the granting of the application will not result in a change in beneficial ownership of the authority sought to be transferred. No monetary consideration will flow from transferee to transferor by virtue of the transfer. It is further alleged that the proposed transfer will not have an adverse effect on the public or on other carriers.

L-T Transport, Inc.'s, financial statement submitted with the application (Exhibit B) shows assets of $101,000 in cash and no liabilities. It will operate nine combination highway units which will be obtained from its parent corporation. The transfer of the equipment will require the Commission's approval under Section 851 of the Public Utilities Code.

Seller participates in Western Motor Tariff Bureau, Inc., Agent, Local Freight Tariff No. 17 which the purchaser proposes to adopt. Applicants have requested relief from the provisions of the Commission's Rules of Practice and Procedure which require copies of the application to be widely disseminated. It is alleged that copies of the application were mailed to the California Trucking Association and the principal cement mills in this State. Notice of the filing of the application was made in the Commission's Daily Calendar of October 6, 1975. It is further alleged that the deviation is justified to secure speedy, economical and efficient relief. No protests to the application have been received.

After consideration the Commission finds that the requested deviation from its Rules of Practice and Procedure should be authorized, that the highway equipment proposed to be obtained from applicant seller will no longer be necessary or useful in the performance of seller's duty to the public as a public utility, and that the proposed transfer of the equipment and the certificate would not be adverse to the public interest. The Commission concludes that the application should be granted. 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 the Brown Company, a corporation, doing business as Livingston-Graham, Tri-City Concrete and the issuance of a certificate in appendix form to L-T Transport, Inc.

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

Applicant purchaser 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.

In recognition of the affiliation of applicants with each other and with other business organizations, an appropriate alter-ego restriction will be placed in the certificate to be issued to L-T Transport, Inc.

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1976, Brown Company, a Delaware corporation, doing business as Livingston-Graham, Tri-City Concrete, may transfer the operative rights and the highway equipment referred to in the application to L-T Transport, Inc., a California corporation.

2. Within thirty days after the transfer, purchaser 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. Purchaser 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 ten days after the effective date of this order on not less than ten 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. 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 L-T 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 attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Decision No. 79740, as amended, is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser shall comply with the safety rules administered by the California Highway Patrol and insurance requirements of the Commission's General Order No. 100-Series.

7. Purchaser 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.

8. Purchaser shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If purchaser elects not to transport collect

on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

9. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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

Dated at San Francisco, California, this 9th day of December, 1975.

President

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

L-T Transport, 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 all points and places within the following Counties: Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara and Ventura, subject to the following restrictions:

RESTRICTIONS:

1. Whenever L-T Transport, Inc., engages other carriers for the transportation of property of L-T Transport, Inc., Brown Company, a Delaware corporation, doing business as Livingston-Graham, Tri-City Concrete and/or Gulf and Western Industries, Inc., or customers or suppliers of said corporations, L-T Transport, Inc., shall not pay such other carriers rates and charges less than the rates and charges published in the tariffs filed with this Commission by L-T Transport, Inc.

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

(END OF APPENDIX A)