

ORIGINAL

Decision No. 86371

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of:

THOMAS W. HAUBRICH and
 BERNARDINE A. HAUBRICK, (sic)
 co-partners, doing business as
 R. G. BROWN TRUCKING CO., to
 sell and TWH, INC., a California
 corporation, doing business as
 R. G. BROWN TRUCKING CO., to buy
 cement carrier certificate and
 to issue capital stock.

Application No. 56537
 (Filed June 7, 1976)

O P I N I O N

Thomas W. Haubrich and Bernardine A. Haubrich, co-partners, (sellers), request authority to sell and transfer, and TWH, Inc., a California corporation, (purchaser), requests authority to purchase and acquire a certificate of public convenience and necessity authorizing operations as a cement carrier and to issue capital stock.

The certificate was granted by Decision 70381, dated February 23, 1966, in Application 48118 and authorizes transportation from any and all points of origin to all points and places in the Counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Mono, Monterey, Orange, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Stanislaus, Tulare, and Ventura. Sellers also hold highway carrier permits which are the subject of separate applications to transfer to purchaser.

Sellers desire to transfer their business from a co-partnership to a newly formed corporation which they will wholly own and operate as the principal corporate officers.

Sellers desire to plan their estate and believe that incorporation of the business will facilitate that planning, assure continuity of operations, simplify accounting and the separation

of regulated carrier operations from their personal, non-carrier related obligations and investments.

Purchaser proposes to issue to Thomas W. Haubrich and Bernardine A. Haubrich jointly not to exceed 1,800 shares of its \$10 par value capital stock for a total purchase price of \$18,000. The purchase price will be \$10,000 for working capital and the balance to be represented by the operating authorities to be transferred and the value of certain equipment and operating property adjusted to depreciated book cost at the date of transfer.

Purchaser's unaudited pro forma balance sheet of June 1, 1976, shows net worth of \$18,000. Sellers' highway equipment consisting of five tractors and thirteen trailers will be leased by purchaser and operated under the operating authorities to be transferred.

Sellers participate in Western Motor Tariff Bureau, Inc., Agent, freight tariffs which purchaser proposes to adopt. Applicants have submitted copies of shipping documents evidencing operations during the last year under the certificate to be transferred.

Applicants request relief from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of the application. Copies of the application were served on various cement manufacturers and trucking companies in this State and upon the California Trucking Association. Notice of the filing of the application was made in the Commission's Daily Calendar of June 9, 1976. No protests to the application have been received.

The Commission finds that:

1. The proposed transfer would not be adverse to the public interest.
2. The proposed stock issuance by TWH, Inc., is for a proper purpose.

3. The money, property or labor to be procured or paid for by the stock herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.

4. Control of TWH, Inc., by Thomas W. Haubrich and Bernardine A. Haubrich would not be adverse to the public interest.

The Commission concludes that the application should be granted. A public hearing is not necessary. The action taken herein shall not be construed as a finding of the value of the capital stock of TWH, Inc., or the certificate of public convenience and necessity, equipment and operating property to be transferred. Such action shall also not be indicative of a conclusion by the Commission that the holding by one party of not more than 50% of the outstanding stock of a corporation constitutes control of the corporation.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Thomas W. Haubrich and Bernardine A. Haubrich and the issuance of a certificate in appendix form to TWH, Inc., a California corporation.

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 cancelled 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 February 1, 1977, Thomas W. Haubrich and Bernardine A. Haubrich, co-partners, may sell and transfer the operative rights and property referred to in the application to TWH, Inc., a California corporation.

2. Within thirty days after the transfer the 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 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 117-Series. Failure to comply with the provisions of General Order 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 TWH, Inc., a California corporation, 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 70381 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 the insurance requirements of the Commission's General Order 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 April 30 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 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. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

10. TWH, Inc., on or after the effective date hereof and on or before February 1, 1977, for the purpose specified in this proceeding, may issue not exceeding a total of 1,800 shares of its \$10 par value common stock at an issue price of \$10 per share to Thomas W. Haubrich and Bernardine A. Haubrich.

11. Thomas W. Haubrich and Bernardine A. Haubrich may control TWH, Inc.

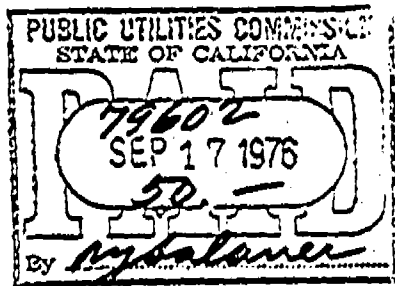
12. On or before February 1, 1977, Thomas W. Haubrich, Bernardine A. Haubrich and TWH, Inc., shall file reports informing the Commission whether or not the stock acquisition has been completed.

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13. TWH, Inc., shall file with the Commission a report, or reports, as required by General Order 24-B, which order, insofar as applicable, is hereby made a part of this order.

14. The authority granted by this order to issue stock will become effective when TWH, Inc., has paid the minimum fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$50. In other respects the effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of September, 1976.



William J. Lyons President
James L. Stanger
Robert Bateman Commissioners

TWH, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate 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 Counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Mono, Monterey, Orange, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Stanislaus, Tulare, and Ventura.

RESTRICTION:

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 86371, Application 56537.