

ORIGINAL

Decision No. 86456

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of North Bay Transport, Inc., a corporation, and Pyramid Commodities, a corporation, for the sale, purchase, and transfer of portion of cement common carrier certificate.

Application No. 56291  
(Filed February 23, 1976)

Karl K. Roos, Attorney at Law, for North Bay Transport, Inc., and Pyramid Commodities, applicants.  
Leland E. Butler, Attorney at Law, for The Atchison, Topeka and Santa Fe Railway Company, protestant.

O P I N I O N

North Bay Transport, Inc. (North Bay) is a cement carrier pursuant to Decision No. 71451 dated October 25, 1966 in Application No. 46369. That authority includes the right to conduct cement carrier operations to and within San Joaquin County, among other places. Pyramid Commodities (Pyramid) is a cement carrier pursuant to Decision No. 78782 dated June 15, 1971 in Application No. 52485.

By this application, North Bay seeks to sell and transfer, and Pyramid seeks to purchase and acquire that portion of the cement carrier certificate authorizing operations to and within San Joaquin County. The purchase price is \$1,500.

Public hearing was held June 10, 1976 before Examiner Tanner in San Francisco. The matter was submitted upon the filing of concurrent briefs which were received July 22, 1976.

According to Pyramid, the acquisition of authority to transport cement to San Joaquin County would assist in balancing its present north-south operations. Pyramid's president testified that a considerable variety of commodities is handled southbound to the

Los Angeles Basin, but most northbound units are empty. He estimated that the sought authority should permit at least two loads northbound each week out of the five that are now traveling empty in that direction.

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) protested the granting of the application on the grounds that:

1. The certificate has lapsed and terminated by operation of law, pursuant to Section 1065.2 of the Public Utilities Code.
2. The transfer will not be in the public interest in that:
  - a. There will be an adverse effect on the operations of another common carrier;
  - b. There will be an increase in traffic congestion, and resultant wear and tear on the public highways; and
  - c. There will be an adverse effect on the environment.
3. The application is defective in that it does not comply with Rules 17.1 and 37 of the Commission's Rules of Practice and Procedure.

Santa Fe cites the annual report of North Bay, filed March 30, 1974, in support of its allegation that the authority in issue had lapsed and terminated. That report covered the period of June 1964 to and including March 30, 1974. Schedule C-1, Operating Statistics, Intercity Services, was not completed. In the space where one would expect to find the totals for the various categories the word "None" appears. This, according to Santa Fe, establishes the fact no intercity operations were performed; therefore, the certificate no longer exists by operation of Section 1065.2 of the Public Utilities Code. That Code section provides, among other things "...that any such certificate not exercised for a period of one year shall lapse and terminate."

The income statement (Schedule B) of that same annual report shows \$76,519.17 as freight revenue, intercity common carrier. \$16,106.69 is recorded as the expense of drivers and helpers in Schedule B-1, and \$953.79 is in Schedule B-2 as the cost of equipment rents with drivers. When viewed as a whole, the annual report clearly indicates that North Bay received revenue from common carrier operations and incurred expenses in doing so. The report also clearly shows that not a great deal of care went into its preparation, and that the information contained therein cannot be depended upon as the basis for any conclusion without verification.

Appended to the application are freight bills covering transportation of cement from Davenport to Petaluma during October and December 1975. The freight bills establish, prima facie, that cement carrier operations were conducted in 1975. The evidence of record, including the annual reports, of which official notice is taken, indicates revenues were generated from carrier operations. The Commission's records indicate the active status of the operative authority, and include North Bay's tariff, which constitutes an offering to perform the service. This evidence persuades us that the certificate is and has been continuously active. Santa Fe's reliance on a single schedule of North Bay's annual report will not overcome this evidence. Furthermore, Rule 37 of the Commission's Rules of Practice and Procedure provides:

"(c) In an application to transfer a cement carrier certificate, evidence such as a freight bill or bill of lading showing that the authority to be transferred has been exercised within the twelve months immediately preceding the date of filing. (See P.U. Code Section 1065.2)"

This provision demonstrates our intent that proof of operations within the twelve months is adequate to establish, prima facie, active status.

The record does not include evidence that North Bay has ever transported cement from southern California points to San Joaquin County points. Nevertheless, North Bay has the authority to do so. It is difficult to understand Santa Fe's rationale in its assertion that the proposed transfer will not be in the public interest. The fact is that the present owner of the authority could perform the same service Pyramid proposes and, in doing so, do nothing more than to carry out the authority granted by the certificate. Unless it can be shown that the authority to be transferred will be used for improper purposes, such as undue suppression of competition, or will, in some way, injure another party, we cannot hold that the transfer would not be in the public interest. The mere existence of the operative authority here in issue is prima facie proof that the authorities' existence is in the public interest, simply due to the nature of common carrier operating rights. A party who alleges that the transfer of such authority would not be in the public interest has the burden to introduce evidence which would sustain its position.

Rule 37 of the Commission's Rules of Practice and Procedure provides, in part:

"37. (Rule 37) 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."

Santa Fe contends that the application is defective in that it did not contain an outline of the territory or points served, the nature of the service, the effect of the transaction upon present operations or rights of the applicant, 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.

According to the 1975 Statistical Report, For-Hire Carriers of Property in California, prepared by the Commission's Transportation Division<sup>1/</sup> there are 185 cement carrier certificates outstanding. The authority of each carrier consists of a list of counties to and within which each may operate from any point in California. It is therefore impossible to determine the points between which any cement carrier operates. The application correctly stated the authority to be transferred by use of the same terms used by the Commission when the certificate was granted. Such constitutes full compliance with the Rule 37 requirement of "the territory or points served."

Regarding the nature of the service, a cement carrier certificate is by its very nature so limited that any elaboration would be redundant.

The application was served on eight producers of cement, and five other parties who have requested special notice of applications for transfer of cement carrier certificates. The latter

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<sup>1/</sup> Report 630-6, May 1976.

group includes the California Trucking Association and Western Motor Tariff Bureau, Inc., both of whom attempt to advise their members or clients of such applications. The application was noticed on the Commission's Daily Calendar. This has been the practice regarding service and notice of such applications for many years. Our staff, when questioned, will suggest to prospective applicants the procedure followed by the applicants here.

Rule 17.1 (2) of the Commission's Rules of Practice and Procedure provides:

"(2) The requirements of CEQA, the Guidelines, and this rule do not apply to any project where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

"(A) The proponent of any project, except as exempted in Sections (k), (l), or (m), shall include within its application an allegation that there is or is not a possibility that the activity may have a significant effect on the environment, accompanied by a brief statement of observable facts concerning the environmental effect of the proposed project.

"(B) When an application has been filed in which the proponent alleges that there is no possibility that the activity may have a significant effect on the environment, the Commission staff shall, as early as possible, conduct an initial review to determine whether there is or is not a possibility that the project may have a significant effect on the environment."

Paragraph VII(C) of the application contains the declaration required by subparagraph (A) that the proposed transfer will have no adverse effect on the environment.

A transfer of a certificate, per se, cannot possibly have any effect on the environment. The environmental effect can only be measured by the proposed exercise of the authority once the transfer is made. It is therefore necessary to make an estimate based on the proposals outlined in an application or any other supplemental source that may be at hand. In this matter neither the application nor the record of the hearing contains any indication that a significant effect on the environment can be expected if the application is granted. The record shows that two to three loads per week are expected, in place of the two to three units traveling empty. This is no more than the transferor could perform under the certificate. The transferee is given no more rights than the transferor has. The transfer changes nothing as far as the environment is concerned.

Findings

1. Pyramid is a cement carrier and a highway permit carrier and as such conducts highway carrier operations between points in central and southern California.
2. Pyramid does not have authority to conduct cement carrier operations to and within San Joaquin County.
3. North Bay is a cement carrier and as such has authority to conduct cement carrier operations to and within San Joaquin County.
4. The certificate of public convenience and necessity as a cement carrier now held by North Bay has not lapsed and terminated due to operation of Section 1065.2 of the Public Utilities Code.
5. No significant adverse effect on the operations of another common carrier will result from the transfer of that portion of North Bay's cement carrier certificate authorizing such service to and within San Joaquin County to Pyramid.
6. No significant increase in traffic congestion will result from the transfer of the cement carrier authority here in issue.

7. It can be seen with certainty that there is no possibility that the transfer of that portion of the cement carrier certificate here in issue may have a significant effect on the environment.

8. Pyramid is financially able and has the necessary facilities and experience to perform the proposed operations.

9. The proposed transfer will not be adverse to the public interest.

The Commission concludes that the proposed transfer should be authorized. The order which follows will provide for the revocation of the certificates presently held by Pyramid and North Bay, and the issuance of certificates in appendix form, restating the authorities of each. The certificate to be issued to Pyramid should contain the following restriction:

Whenever Pyramid Commodities, a corporation, engages other carriers for the transportation of property of Pyramid Commodities or customers or suppliers of said corporation, Pyramid Commodities shall not pay such carriers less than 100 percent of the rates and charges contained in the tariffs of Pyramid Commodities on file with the Commission.

Applicants are 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 December 30, 1976, North Bay Transport, Inc. may sell and transfer the operative rights referred to in the application to Pyramid Commodities.
2. Within thirty days after the transfer applicants shall file with the Commission written acceptance of the certificates and the purchaser shall file with the Commission a true copy of the bill of sale or other instrument of transfer.
3. Applicants shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the authority granted by this decision to show that they have adopted or established, as their 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 shall comply with the Commission's General Order No. 117-Series. Failure to comply with the provisions of the General Order No. 117-Series may result in 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, certificates of public convenience and necessity are granted to North Bay Transport, Inc. and Pyramid Commodities, authorizing operations as cement carriers, as defined in Section 214.1 of the Public Utilities Code, between the points set forth in Appendices A and B of this decision.
5. The certificate of public convenience and necessity granted by Decisions Nos. 71451 and 78782 are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

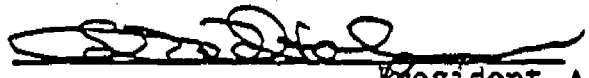

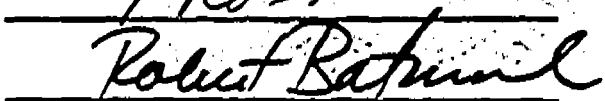
6. Applicants are placed on notice that if they accept the certificates they will be required, among other things, to comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order No. 100-Series.

7. Applicants shall maintain their 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 their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. Applicants shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicants elect not to transport collect on delivery shipments, they 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 5<sup>th</sup> day of OCTOBER, 1976.

 President  
William J. Aguirre  
  
Hon  
 Commissioners

North Bay 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 any and all places in the Counties of Lake, Marin, Mendocino and Sonoma.

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 **86456**, Application 56291.

Pyramid Commodities, by the certificate of public convenience and necessity granted in 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 Counties of:

Fresno  
Kern  
Los Angeles  
Orange  
Riverside

San Bernardino  
San Diego  
San Joaquin  
Santa Barbara  
Ventura

Restrictions:

1. This certificate of public convenience and necessity shall lapse and terminate if not exercised for a period of one year.
2. Whenever Pyramid Commodities, a corporation, engages other carriers for the transportation of property of Pyramid Commodities or customers or suppliers of said corporation, Pyramid Commodities shall not pay such carriers less than 100 percent of the rates and charges contained in the tariffs of Pyramid Commodities on file with the Commission.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

Decision 86456, Application 56291.