

Decision 84 10 020 OCT 3 1984**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
MANAGEMENT IV (a California)	
corporation) for authority to control)	Application 84-08-090
APEX BULK COMMODITIES, to enter into)	(Filed August 24, 1984)
an Agreement of Merger, and to)	
transfer all operating authorities.)	

O P I N I O N

In this application Management IV (Management) seeks authority to control Apex Bulk Commodities (Apex), to enter into an agreement of merger, and to transfer all operating authorities.

Apex is a California corporation operating as a highway common carrier and as a cement carrier under certificates of public convenience and necessity issued in Application GC-6868 and in Decision 87295, respectively. Decision 87295 authorized the transportation of cement within 10 California counties. Apex also holds operating authorities as a highway contract carrier, tank truck carrier, vacuum truck carrier, dump truck carrier, and as an agricultural carrier under permits issued to it under File No. T-86,687.

Management is a noncarrier California corporation organized in 1971. All of its outstanding shares are issued to Randal C. Gale and Steven L. Gale. Management has been engaged in real estate development and in the leasing of truck and trailing equipment to operating companies. More than 95% of its trucking equipment has been leased to Apex on a long-term basis.

Management requests authority to control Apex as a result of the purchase of all of its outstanding stock, issued to Glenn E. Walker. A copy of the stock purchase agreement attached to the application as Exhibit B indicates that the purchase price is \$225,000, of which \$75,000 is payable immediately and \$150,000 is

payable over a five-year period. The closing date of the agreement is 30 days after approval of the transaction by this Commission.

Immediately upon completion of the acquisition of the capital stock of Apex, Management will merge Apex into Management, as provided in the agreement of merger attached to the application as Exhibit C.

Applicants assert that the acquisition of control and merger for which authority is sought herein is in the public interest as Walker, the sole owner of Apex, wishes to relinquish active control and to transfer ownership of Apex for health reasons. The Gales have been employed by Apex since 1970, and have been vice presidents and directors of Apex since 1981. The change in ownership will permit continuation of the operations of Apex in an orderly manner by persons familiar with its operations and now exercising management authority.

The application contains balance sheets and operating statements of Apex, a balance sheet of Management, and a pro forma balance sheet giving effect to the proposed merger.

A copy of the application was served on California Trucking Association. Notice of the filing of the application appeared in the Commission's Daily Transportation Calendar of August 30, 1984. There are no protests or requests for public hearing.

Findings of Fact

1. The proposed acquisition of control of Apex by Management and the subsequent merger of Apex into Management (the surviving corporation) are not adverse to the public interest.

2. The transfer of Apex's highway common carrier and cement carrier certificates to Management is in the public interest.

3. The transfer of Apex's highway contract, tank truck, vacuum truck, dump truck, and agricultural carrier permits from Apex to Management requires a separate application to be filed with the Transportation Division and should be accomplished by separate Commission action.

4. A public hearing is not necessary.

Conclusion of Law

The application should be granted.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. Management IV (Management), a California corporation, may acquire control of Apex Bulk Commodities (Apex), a California corporation, a highway common carrier and cement carrier, substantially in accordance with the agreement set forth in Appendix B to the application.
2. Management and Apex may merge in accordance with the agreement set forth in Appendix C to the application.
3. The certificate of public convenience and necessity to operate as a highway common carrier as defined in Public Utilities (PU) Code § 213, originally granted to Apex under Application GC-6868 is transferred to Management, a California corporation. This certificate is shown as Appendix A.
4. A certificate of public convenience and necessity to operate as a cement carrier as defined in PU Code § 214.1 originally granted to Apex under Decision 72954 and extended under Decision 87295 is transferred to Management, a California corporation, authorizing it to operate between the points set forth in Appendix B.
5. The certificates of public convenience and necessity granted in paragraphs 3 and 4 shall supersede those granted by Application GC-6868 (File T-86,687) and Decision 87295 in Application 55835. Those certificates will be revoked on the effective date of tariff filings required by Ordering Paragraph 6.b.
6. Management shall:
 - a. File with the Transportation Division written acceptances of the certificates granted herein.

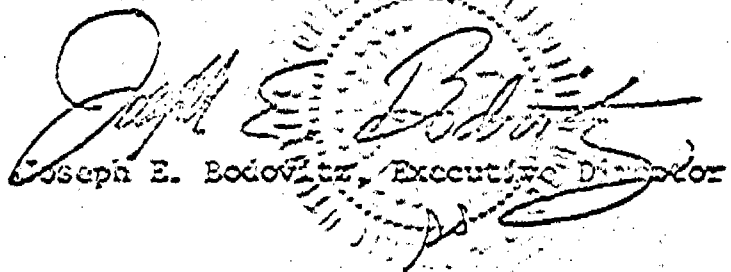
- b. Amend or reissue Apex's tariffs, state in them when the service of Management will start and make them effective 10 or more days after this order is effective, and allow at least 10 days' notice to the Commission.
- c. Comply with General Orders 80, 100, 123, 147, and 150 series, and the California Highway Patrol safety rules.
- d. File an annual report of Apex's operations for the period from the first day of the current year to the date the merger is accomplished (which shall also be the effective date of the tariff filings required by subparagraph b of this ordering paragraph).
- e. Maintain accounting records in accordance with the Uniform System of Accounts.

This order becomes effective 30 days from today.

Dated OCT 3 1984 , at San Francisco, California.

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

Management IV, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, for the transportation of general commodities as follows:

Between all points and places in the State of California.

Except that under the authority granted, carrier shall not transport any shipments of:

1. Used household goods and personal effects, office, store, and institution furniture and fixtures.
2. Ordinary livestock.
3. Petroleum or petroleum products in tank trucks or tank trailers.
4. Mining, building, paving, and construction materials, except cement or liquids, in bulk in dump truck equipment.
5. Portland or similar cements, either alone or in combination with lime or powdered limestone, in bulk or in packages, when loaded substantially to capacity.

In performing the service authorized, carrier may make use of any and all streets, roads, highways, and bridges necessary or convenient for the performance of this service.

(END OF APPENDIX A)

Transferred from T-86,687: Certificate GC 6868 originally granted July 19, 1979 and issued January 31, 1980.

Issued by California Public Utilities Commission.

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Management IV, by the certificate of public convenience and necessity granted in 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 (see Restriction):

Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Joaquin, Santa Barbara, Stanislaus and Ventura.

RESTRICTION:

Whenever Management IV, a California corporation, engages other carriers for the transportation of property of Management IV or customers or suppliers of said corporation, Management IV shall not pay such other carriers rates and charges less than the rates and charges published in the carrier's tariffs on file with this Commission.

(END OF APPENDIX B)

Issued by California Public Utilities Commission.

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