

Decision 89 11 027 NOV 3 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 James L Wright, doing business as)
 Wright Trucking, to transfer the)
 cement carrier certificate to)
 Clairence E. Daniels, doing business)
 as Conveyance by Clairence III.)

Application 89-08-016
 (Filed August 14, 1989)

OPINION

James L. Wright, doing business as Wright Trucking (Wright), is authorized to operate as a cement carrier from any and all points of origin to all points and places in the following counties, pursuant to a certificate of public convenience and necessity granted by Decision (D.) 84-10-091 in Application 83-04-056:

Alameda
 Contra Costa
 El Dorado
 Marin
 Napa
 Placer
 Sacramento
 San Francisco

San Joaquin
 San Mateo
 Santa Clara
 Santa Cruz
 Solano
 Sonoma
 Stanislaus
 Yolo

By this application Wright seeks to transfer the authority to a limited partnership composed of Clairence E. Daniels, III, general partner, and Wright, limited partner, doing business as Conveyance by Clairence III (Partnership).

A protest to the application was filed by Wright on August 14, 1989. By letter dated August 22, 1989 the protest was withdrawn.

General Requirements 1

Clairence Daniels, the general partner of transferee, has been a resident of the State of California for not less than 30 days prior to the filing of the application.

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General Requirements 1

Clairence Daniels, the general partner of transferee, has been a resident of the State of California for not less than 30 days prior to the filing of the application.

Partnership has certified that it will maintain its vehicles in a safe operating condition and in compliance with the Vehicle Code.

Partnership will not lease equipment from employees nor will it engage subhaulers; therefore, it will not be subject to General Order (GO) 102 Series.

Partnership will not transport hazardous materials and/or hazardous wastes.

Partnership will operate one tractor to pull one semi and one full trailer.

Partnership has certificate of insurance on file as required by GO 100 Series.

Partnership's balance sheet as of April 19, 1989, which is attached to the application, discloses total assets of \$56,500, including cash on hand of \$6,500, offset by liabilities of \$10,000, a resultant net worth of \$46,500. There is also attached to that application a projected profit and loss statement for a 90-day period which projects revenues of \$19,800 and expenses of \$7,820 (not including drivers' wages), a resultant profit of \$11,980.

Compliance With Public
Utilities (PU) Code § 1063.5

In 1988, the Legislature added §§ 460.5, 1063.5, and 3553 to the PU Code. These sections established new requirements which applicants must meet before the Commission may issue new authorities or allow transfers of existing authorities. Section 1063.5 is the section applicable to cement carrier authorities.

Section 1063.5 (a) contains eight subsections covering requirements which must be met as follows:

"1063.5. (a) The commission shall issue or authorize the transfer of no certificate under this article except upon a showing before the commission and a finding by the commission that the applicant or proposed transferee meets all of the following requirements:

"(1) Is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.

"(2) Is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subhaulers, operating vehicles in transportation for compensation under the certificate.

"(3) Has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.

"(4) Participates in a program to regularly check the driving records of all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation requiring a class 1 driver's license under the certificate.

"(5) Has a safety education and training program in effect for all persons, whether employees or subhaulers, operating vehicles used in transportation for compensation.

"(6) Will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.

"(7) Has filed with the commission a certificate of workers' compensation insurance coverage for its employees or a certificate of consent to self-insure issued by the Director of Industrial Relations.

"(8) Has provided the commission an address of an office or terminal where documents supporting the factual matters specified in the showing required by this section may be

inspected by the commission and the Department of the California Highway Patrol."

The information contained in the application discloses that applicant meets these requirements as follows:

1. The financial data contained in the application discloses that Partnership has demonstrated it meets this requirement.
2. and 6. Section 1063.5 (b) provides that the commission may base a finding with respect to these requirements on a certification by the Commission that applicant has filed a sworn declaration of ability to comply and intent to comply. The sworn declaration of the general partner is included as part of the application
- 3., 4., and, 5. The application discloses that Partnership meets these requirements.
7. Partnership does not intend to hire any employees.
8. Partnership's address is located at:

1155 30th Avenue
Santa Cruz, California.

Notice of the filing of the application appeared on the Commission's Daily Transportation Calendar of August 16, 1989. No protests, other than the one mentioned above which was withdrawn, have been received.

The Transportation Division has advised that:

"The Analyst Unit staff has reviewed the application and believes it is one which, in the absence of protest, may be granted by ex-parte order, provided that the applicants have complied fully with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety."

The limited partnership agreement attached to the application provides for dissolution of the Partnership on

April 19, 1991. Partnership is placed on notice that upon dissolution of the Partnership operations may no longer be conducted under this certificate unless a transfer to another entity has been authorized.

Findings of Fact

1. Partnership meets all requirements for financial responsibility, residency, type of transportation to be performed, expected results of operations, and need for service.

2. Transferee complies with § 1063.5.

Conclusions of Law

1. The application should be granted. A public hearing is not necessary.

2. The effective date of this decision should be today.

Only the amounts 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.

ORDER

IT IS ORDERED that:

1. James L. Wright, doing business as Wright Trucking, may sell and transfer the operative rights specified in D.84-10-091 to Clairence E. Daniels, III (general partner) and James L. Wright (limited partner), a limited partnership, doing business as Conveyance by Clairence III (Partnership). This authority shall expire if not exercised by December 29, 1989.

2. Partnership shall:

a. File with the Transportation Division written acceptance of the certificate and a copy of the bill of sale or other transfer documents within 30 days after transfer.

b. Amend or reissue seller's tariffs. The tariffs shall not be effective before the

date of transfer, nor before 5 days' notice is given to the Commission.

- c. Comply with GO Series 100, 117, and 123, and the California Highway Patrol safety rules.
- d. Maintain accounting records in conformity with the Uniform System of Accounts.
- e. File an annual report by April 30 of each year.
- f. Comply with GO Series 84 (collect-on-delivery shipments). If purchasers elect not to transport collect-on-delivery shipments, they shall file the tariff provisions required by that GO.

3. When the transfer is completed, and on the effective date of the tariffs, a certificate of public convenience and necessity is granted to Clairence E. Daniels, III and James L. Wright, a limited partnership, doing business as Conveyance by Clairence III, authorizing it to operate as a cement carrier, as defined in PU Code § 214.1 between the points set forth in Appendix A.

4. The certificate of public convenience and necessity held by James L. Wright, doing business as Wright Trucking, and granted by D.84-10-091 is revoked on the effective date of the tariffs.

This order is effective today.

Dated NOV 3 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

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

- 6 -

Wesley Franklin

PO WESLEY FRANKLIN, Acting Executive Director

Clairence E. Daniels, III
 General Partner of
 CONVEYANCE BY CLAIRENCE III, A LIMITED PARTNERSHIP

Clairence E. Daniels, III, general partner of Conveyance by Clairence III, a limited partnership, 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 in the following counties subject to the following restrictions:

Alameda	San Joaquin
Contra Costa	San Mateo
El Dorado	Santa Clara
Marin	Santa Cruz
Napa	Solano
Placer	Sonoma
Sacramento	Stanislaus
San Francisco	Yolo

RESTRICTIONS

1. Whenever a cement carrier engages other carriers for the transportation of its own property or the property of any affiliates or customers or suppliers of the cement carrier, said cement carrier shall not pay the carriers so engaged less than 100% of the rates and charges published in the cement carrier's tariffs on file with the Commission.
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)

Issued by California Public Utilities Commission.

Decision 89 11 027, Application 89-08-016.