

ORIGINAL

Decision No. 86615

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Belt Cement Lines, )  
Inc., a corporation, and Preston )  
B. Dungan, an individual, doing )  
business as Dungan Trucking, for )  
the sale, purchase, and transfer )  
of portion of cement carrier cer- )  
tificate. )

Application No. 56593  
(Filed June 30, 1976)

OPINION AND ORDER DISMISSING APPLICATION  
TO TRANSFER CEMENT CARRIER CERTIFICATE  
AND REVOKING SAID CERTIFICATE

By this application, Belt Cement Lines, Inc., a California corporation (seller), requests authority to sell and transfer a cement carrier certificate of public convenience and necessity authorizing transportation to and within the counties of Inyo, Merced, Mono, Santa Barbara and Ventura to Preston B. Dungan, an individual.

The seller originally acquired a cement carrier certificate in 1964 authorizing service to and within 11 counties but by splitting off and transferring six counties to three purchasers it now has authority to serve the five counties which are the subject of this application.

The records of the Commission show that the seller had exercised its cement carrier certificate up to and including the first quarter of 1975 but the quarterly gross operating revenue reports filed by the seller for the second, third and fourth quarters of 1975 indicate that it did not conduct any for-hire operation during those periods. Moreover, the operating authority held by the seller was suspended on December 7, 1975 and it is still in suspension for failure to maintain on deposit evidence of adequate liability insurance protection.

We previously authorized the seller to sell and transfer six of the original 11 counties to three buyers, the last authorization occurring on January 6, 1976, since the one year non-exercise period provided in Section 1065.2 of the Public Utilities Code had not run. It appears that the one year period has now expired.

The failure of the seller to report any gross operating revenue for three consecutive quarters raises a presumption of non-exercise of the certificate for a period of nine months. In addition the seller did not report any revenue after its authority was placed in suspension. We held in Decision 86024 dated June 29, 1976 in Application 56416 that the operating effect of Section 1065.2, supra, was not tolled when a carrier's operating authority was involuntarily suspended for failure to comply with statutory and Commission insurance requirements. Belt Cement Lines, Inc., was given an opportunity to rebut the presumption of non-exercise and was requested to submit evidence of operation as required by Rule 37(c) of the Commission's Rules of Practice and Procedure; it has failed to do so.

After consideration the Commission finds:

1. The Quarterly Reports of Gross Operating Revenue for the second, third and fourth Quarters of 1975 filed by the seller did not disclose any revenue from for-hire carrier operation during those periods.
2. The operating authority held by the seller was suspended on December 7, 1975 pursuant to Commission General Order 100-Series for failure to maintain on file evidence of adequate liability insurance coverage.
3. The involuntary suspension of an operating authority by the Commission for failure to meet statutory and Commission insurance requirements does not toll the operating effect of Section 1065.2 of the Public Utilities Code.

4. The seller has failed to submit evidence that the certificate was exercised during the twelve-months immediately preceding the date the application was filed, as required by the Commission Rules of Practice and Procedure.

5. Section 1065.2 of the Public Utilities Code provides for the lapse and termination and mandatory revocation of a cement carrier certificate of public convenience and necessity not exercised for a period of one year.

6. The certificate of public convenience and necessity held by Belt Cement Lines, Inc., has not been exercised since April 1, 1975 and has lapsed and terminated.

7. Purchaser has remitted the sum of \$150.00 to the Commission in filing fees in connection with the application in this proceeding.

The Commission concludes:

1. The certificate of public convenience and necessity granted by Decision 85315 in Application 56002 has lapsed and terminated by operation of law.

2. The application filed in this proceeding is moot and should be dismissed.

3. All monies paid by the purchaser to the Commission in connection with the application should be refunded.

IT IS ORDERED that:

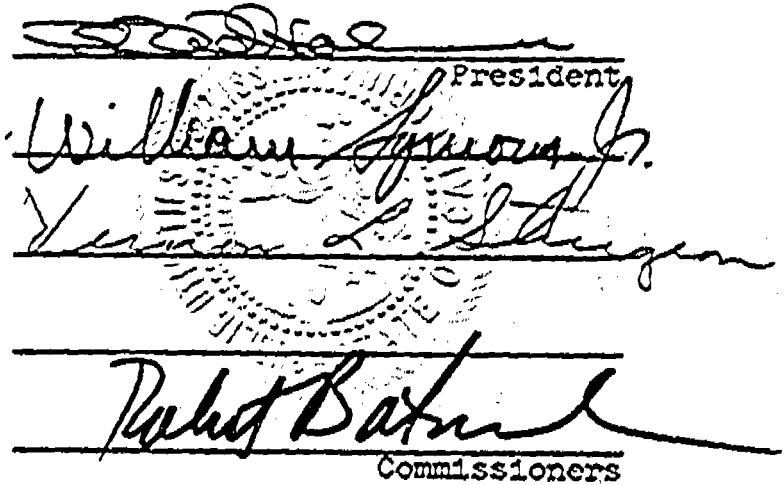
1. Application 56593 is hereby dismissed.

2. The sum of \$150.00 is hereby ordered to be refunded to Preston B. Dungan, an individual, doing business as Dungan Trucking.

3. The certificate of public convenience and necessity granted by Decision 85315 dated January 6, 1976 in Application 56002 is hereby revoked.

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

Dated at San Francisco, California, this 9<sup>th</sup> day of November, 1976.

  
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President  
William Lyman Jr.  
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Verano L. Sturgeon  
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\_\_\_\_\_  
Rahel Batoni  
Commissioners

Commissioner Leonard Ross, being necessarily absent, did not participate in the disposition of this proceeding.