

CAS

Decision No. 87658 JUL 26 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Appli-)
 cation of:)
)
 McKay Trucking Company, a)
 California Corporation, to sell)
 and of David P. Grimsley an)
 individual doing business as)
 Grimsley Trucking, to purchase)
 cement certificates authorizing)
 service to and within the County)
 of Fresno, San Benito, Santa)
 Barbara, Sacramento, and Solano.)
 State of California pursuant to)
 Sections 851-853 of the)
 California Public Utilities Code.)

Application No. 57321
(Filed May 17, 1977)

O P I N I O N

By their joint application, McKay Trucking Company, a California corporation (McKAY), seeks authority to sell and transfer and David P. Grimsley, an individual (GRIMSLEY), requests authority to purchase and acquire a cement carrier certificate. The certificate involved was granted to McKAY by Decision 78332 of February 22, 1971, as amended by Decisions 78531 and 78772, all issued in Application 52123, authorizing the transportation of cement from any and all points of origin to all points within the Counties of Fresno, Sacramento, San Benito, Santa Barbara and Solano. McKAY also possesses a petroleum irregular route carrier certificate and a radial highway common carrier permit, neither of which are involved herein.

GRIMSLEY also holds a cement carrier certificate granted to him by Decision 84309 of April 8, 1975 in Application 55503 which authorizes operations as a cement carrier from any and all points of origin to all points within the Counties of Merced, Monterey, San Luis Obispo, Santa Clara and Santa Cruz. He also operates as a dump truck carrier and as a radial highway common carrier under permits issued by this Commission in File T-98,057 which are not involved herein.

Attached to the application (Exhibit "A") is a copy of the Purchase Agreement between the parties involved which provides for the sale of the McKAY cement certificate to GRIMSLEY for a total price of \$2,500, payable in cash upon consummation. No other assets are involved

in this sale.

GRIMSLEY's Balance Sheet dated January 31, 1977 (Exhibit "B") shows total assets of \$324,500, liabilities totaling \$72,100 and a total net worth of \$252,400. His Profit and Loss Statement (Exhibit "B") for the 10-month period January 1 through October 31, 1976 indicates a net profit from operations of \$12,363. Also included is GRIMSLEY's Equipment List (Exhibit "C") which indicates that a total of 14 pieces of motor vehicle equipment will be utilized by him to perform service under the cement certificate he proposes to acquire from McKAY.

Both applicants allege that the proposed sale and transfer of McKAY's cement certificate to GRIMSLEY will be in the public interest because the purchasing carrier has had considerable experience in the transportation of bulk commodities, including cement, and presently owns adequate units of motor vehicle equipment specifically designed for bulk hauling; that GRIMSLEY has adequate financial resources to purchase and to perform under McKAY's certificate; and that the purchase price of \$2,500 is fair and reasonable and will be paid by GRIMSLEY to McKAY with cash funds presently being held aside for that purpose.

Applicants assert that the entry of GRIMSLEY as a cement carrier for transportation to and within the aforesaid five counties will be balanced by the withdrawal of McKAY therefrom, and thus will enable GRIMSLEY to provide an expanded and more efficient service to the shipping public at existing rate levels without changing the competitive relationships which now exist. Applicants ask that this matter be decided by ex parte order of the Commission since the proposed transfer will not have any adverse effect on either the general public or on other competing carriers.

Both McKAY and GRIMSLEY participate in agency tariffs published on their behalf by Western Motor Tariff Bureau, Inc., Agent, which cover the cement carrier operations performed under their respective certificates. Inasmuch as GRIMSLEY proposes to adopt the same tariff rates now published for the account of McKAY, there will be no change in the rates currently being assessed the shipping public for such transportation. McKAY has submitted

copies of its freight bills as evidence of operations performed under its certificated authority during the past year.

Copies of the application were served by applicants on the principal cement mills in California as well as the northern and southern offices of the California Trucking Association. Applicants request authority to deviate from the provisions of Rule 37 (a) of the Commission's Rules of Practice and Procedure which require wide dissemination of the application to all competing carriers. Notice of the filing of the application was made in the Commission's Daily Calendar of May 19, 1977. No protests to the application have been received.

After consideration, the Commission finds that the proposed transfer would not be adverse to the public interest and concludes that it should be authorized. A public hearing is not necessary. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificates presently held by McKay Trucking Company and David P. Grimsley and the issuance of an in-lieu cement carrier certificate, in appendix form, to the latter.

David P. Grimsley 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. The authorization granted shall not be construed as a finding of the value of the rights to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before November 30, 1977, McKay Trucking Company, a California corporation, may sell and transfer the operating rights referred to in the application to David P. Grimsley, an individual.
2. Within thirty days after the transfer, David P. Grimsley

shall file with the Commission a written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.

3. David P. Grimsley shall amend or reissue the tariffs on file with the Commission naming rates and rules governing the common carrier operations transferred to show that he has adopted or established, as his own, such 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 date of 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. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current calendar year to and including the effective date of the transfer.

5. 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 David P. Grimsley, authorizing him 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 of this decision.

6. The certificates of public convenience and necessity granted to McKay Trucking Company by Decision 78332, as amended by Decisions 78531 and 78772, and to David P. Grimsley by Decision 84309 are revoked effective concurrently with the effective date of the tariff filings required by Paragraph 3.

7. David P. Grimsley shall comply with the safety rules administered by the California Highway Patrol and the insurance requirements of the Commission's General Order 100-Series.

8. David P. Grimsley shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

9. David P. Grimsley shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If he elects not to transport collect on delivery shipments, then he shall make the appropriate tariff filings as required by the General Order.

10. The applicants are granted a deviation from the Commission's Rules of Practice and Procedure to the extent requested in the application.

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

Dated at San Francisco, California, this 26th day of JULY, 1977.

Robert B. ...
President
William ...
...
...

Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

DAVID P. GRIMSLEY
(an individual)
doing business as
GRIMSLEY TRUCKING

David P. Grimsley, 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 within the Counties of Fresno, Merced, Monterey, Sacramento, San Benito, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz and Solano, subject to the following:

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 87658, Application 57321.