

ORIGINAL

Decision No. 87789 AUG 30 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of MARIE E. KENYON, an individual)
doing business as M. E. KENYON,)
to sell and transfer a certifi-)
cate of public convenience and)
necessity to transport cement to)
points in Lake, Napa, Solano and)
Sonoma Counties, California, to)
GARY BODKIN and HENRY MORSE,)
partners, doing business as a)
partnership under the name of)
G & H TRUCKING SERVICE.)

Application No. 57368
(Filed June 7, 1977)

O P I N I O N

Marie E. Kenyon, an individual, doing business as M. E. Kenyon (seller), requests authority to sell and transfer, and Gary Bodkin and Henry Morse, co-partners, doing business as G & H Trucking Service (purchasers), seek authority to purchase and acquire a cement carrier certificate of public convenience and necessity and certain highway equipment.

The certificate was granted by Resolution 13821, dated June 23, 1964, in Application 46561 and authorizes transportation to and within the counties of Lake, Napa, Solano and Sonoma.

Pursuant to the Agreement of May 13, 1977, between the applicants, the purchase price for the certificate is \$4,000 and the equipment consisting of a tractor and two trailers will be sold for a total of \$10,000.

At the time of the consummation of the agreement, purchasers shall issue to seller an installment note in the amount of \$14,000 with interest only, at the rate of ten percent per annum, payable monthly during the first year; and the principal plus interest to be paid off in the succeeding four years in equal monthly installments. A security agreement will be issued by purchasers to seller to cover the transaction.

Purchasers do not presently hold operating authority from this Commission. They have been engaged in the transportation of cement, being employed as truck drivers by existing carriers, including seller, and they will continue to serve those members of the public having been previously served by seller.

The balance sheets of purchasers, as of April 19, 1977, show net worth of \$25,019 for Gary Bodkin and \$40,602 for Henry Morse.

Seller participates in tariffs published by Western Motor Tariff Bureau, Inc., Agent, for rates and rules governing operations under the certificate which purchasers will be required to adopt.

Seller has submitted a copy of a shipping document evidencing operations during the past year under the certificate to be transferred.

A copy of the application has been served on the California Trucking Association and the applicants have requested that the Commission's order herein be made effective on the date hereof. Notice of the filing of the application was made in the Commission's Daily Calendar of June 9, 1977. No protests to the application have been received.

After consideration, the Commission finds that:

1. The proposed sale and transfer of the certificate and highway equipment would not be adverse to the public interest.
2. The proposed note is for a proper purpose.
3. The money, property or labor to be procured or paid for by the note herein authorized is reasonably required for the purpose specified herein, which purpose is not, in whole or in part, reasonably chargeable to operating expenses or to income.
4. There is no known opposition and there is no reason to delay granting the relief requested.

On the basis of the foregoing findings, we conclude that the application should be granted, and that the effective date of the order should be the date on which the order is signed. A public hearing is not necessary. The action taken herein shall not be construed as a finding of value of the certificate and highway equipment to be sold and transferred. The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Marie E. Kenyon and the issuance of a certificate, in appendix form, to Gary Bodkin and Henry Morse, co-partners.

Purchasers 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 cancelled 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 November 1, 1977, Marie E. Kenyon may sell and transfer the operative rights referred to in the application to Gary Bodkin and Henry Morse, co-partners.
2. Within thirty days after the transfer, purchasers shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Purchasers shall amend or reissue the tariffs on file with the Commission, naming rates and rules governing the common carrier operations transferred, 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 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. 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 Gary Bodkin and Henry Morse, co-partners, authorizing them 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, attached hereto and made a part hereof.

5. The certificate of public convenience and necessity granted by Resolution 13821 in Application 46561 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

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

7. Purchasers 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. Purchasers shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If purchasers elect not to transport collect on delivery shipments, they shall make the appropriate tariff filings as required by the General Order.

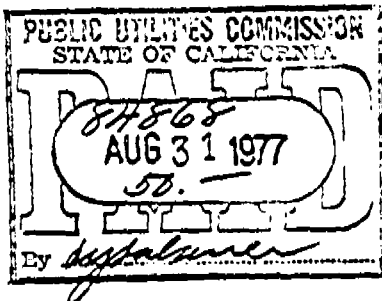
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9. Purchasers may execute and deliver a note and security agreement in substantially the same form referred to and for the purposes set forth in the application.

10. The issuers of the note authorized by this order shall file with the Commission a report, or reports, as required by General Order 24-Series.

11. The authority granted by this order to execute and deliver an encumbering document will become effective when the issuers have paid the minimum fee prescribed by Section 1904(b) of the Public Utilities Code, which fee is \$50. In all other respects, the effective date of this order is the date hereof.

Dated at San Francisco, California, this 30th day of AUGUST, 1977.



President
William Sproule
Virginia L. Sturgeon
Richard D. Howell

Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.

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

Gary Bodkin and Henry Morse, co-partners, by the certificate of public convenience and necessity granted in the decision noted in the margin, are authorized to operate as a cement carrier, as defined in Section 214.1 of the Public Utilities Code, to all points and places within the counties of Lake, Napa, Solano and Sonoma from any and all points of origin, 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 87739, Application 57368.