

ORIGINAL

Decision No. 87951 OCT 4 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Appli-)	
cation of NORTH BAY TRANSPORT,)	
INC., to sell and transfer a)	Application No. 57499
certificate of public con-)	(Filed August 1, 1977)
venience and necessity authoriz-)	
ing the transportation of)	
cement to,)	
BAGALA-HANSEN ENTERPRISES, INC.)	

O P I N I O N

By their joint application, North Bay Transport, Inc., a California corporation (NORTH BAY), seeks authority to sell and transfer and BAGALA-HANSEN ENTERPRISES, INC., a California corporation (BAGALA-HANSEN), requests authority to purchase and acquire a cement carrier certificate of public convenience and necessity. The certificate involved was granted to NORTH BAY by Decision 86456 dated October 5, 1976 in Application 56291 and authorizes the transportation of cement from any and all points of origin to all points and places located within the Counties of Lake, Marin, Mendocino and Sonoma. NORTH BAY also possesses permits issued to it by this Commission under File T-69,630.

BAGALA-HANSEN is a newly-formed, non-carrier California corporation located in Santa Rosa and doing business in the Redwood Empire area. Its two principal corporate officers, Vincent W. Bagala, Jr. and Jerry E. Hansen, have each conducted trucking operations in California for many years under permits issued by this Commission to each of them in Files T-85,302 and T-103,615, respectively.

In justification of the proposal, NORTH BAY declares that it desires to terminate its cement hauling business in order to concentrate on operations in other fields of transportation, while BAGALA-HANSEN states that it wishes to enter the cement transportation

business by acquiring and continuing the cement carrier operations now conducted by NORTH BAY. BAGALA-HANSEN alleges that a continuing need exists for the transportation of cement to and within the aforementioned counties and that the shipping public will be benefited by the availability and continuance of NORTH BAY's cement operations.

According to the application, the purchase price to be paid by BAGALA-HANSEN to NORTH BAY for the latter's certificate, plus some of its equipment, is \$27,000 of which amount \$13,000 is payable in cash upon consummation of the sale and the balance of \$14,000, plus interest, is payable March 1, 1978 pursuant to a promissory note issued by the buyer to the seller.

No balance sheet was furnished by BAGALA-HANSEN, the buyer, since the company was only recently formed and was just incorporated on May 17, 1977. Instead, the latest balance sheets for the two principals of the company, Messrs. Vincent W. Bagala, Jr. and Jerry E. Hansen, were furnished to the Commission. Mr. Bagala, Jr.'s balance sheet shows total assets of \$687,612, liabilities of \$132,048 and a net worth of \$555,564, most of which amount represents his real estate holdings. The financial statement furnished by Mr. Hansen indicates his total assets as \$251,400, liabilities as \$112,408 and net worth as \$138,992.

BAGALA-HANSEN asserts that it has both the ability and financial resources to purchase and operate NORTH BAY's cement certificate. It plans to commence business with two cement trucks which it will purchase from a local dealer as soon as the sale and transfer of the certificate is completed.

NORTH BAY now participates in an agency tariff published on its behalf by the Pacific Coast Tariff Bureau, Agent, covering the cement carrier operations proposed to be transferred. Inasmuch as BAGALA-HANSEN proposes to adopt the same rates now published for the account of NORTH BAY, there will be no change in the tariff rates currently being assessed the shipping public for such transportation. BAGALA-HANSEN requests that it be authorized to publish and file the necessary tariff publications on five days' notice to the public.

NORTH BAY has submitted copies of a bill of lading and freight bill as evidence of cement 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 California Trucking Association. Notice of the filing of the application was made in the Commission's Daily Calendar of August 8, 1977. No protests to the application have been received.

After consideration, the Commission finds that:

1. The proposed sale and transfer of the certificate would not be adverse to the public interest.
2. The proposed promissory note is for a proper purpose.
3. The money, property or labor to be procured or paid for by the promissory 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.

On the basis of the foregoing findings, we conclude that the application should be granted. A public hearing is not necessary. The action taken herein shall not be construed as a finding of value of the certificate 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 NORTH BAY TRANSPORT, INC. and the issuance of a cement carrier certificate, in appendix form, to BAGALA-HANSEN ENTERPRISES, INC.

BAGALA-HANSEN ENTERPRISES, INC. 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 April 1, 1978, NORTH BAY TRANSPORT, INC., a California corporation, may sell and transfer the operating rights referred to in the application to BAGALA-HANSEN ENTERPRISES, INC., a California corporation.
2. Within thirty days after the transfer, BAGALA-HANSEN ENTERPRISES, INC. 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. BAGALA-HANSEN ENTERPRISES, INC. shall amend or reissue the tariffs on file with the Commission naming rates and rules governing the common carrier operations transferred to show that it has adopted or established, as its 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 BAGALA-HANSEN ENTERPRISES, INC. authorizing it 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 certificate of public convenience and necessity granted to NORTH BAY TRANSPORT, INC. by Decision 86456 is revoked effective concurrently with the effective date of the tariff filings required by Paragraph 3.

7. BAGALA-HANSEN ENTERPRISES, INC. 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. BAGALA-HANSEN ENTERPRISES, INC. shall maintain its 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 its operations in such form, content and number of copies as the Commission, from time to time, shall prescribe.

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

10. BAGALA-HANSEN ENTERPRISES, INC. may execute and deliver a promissory note in substantially the same form referred to and for the purpose specified in the application.

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

12. The authority granted by this order to execute and deliver an encumbering document will become effective when the issuer has 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 shall be twenty days after the date hereof.

Dated at San Francisco, California, this 5th day of OCTOBER, 1977.

Robert Bohm

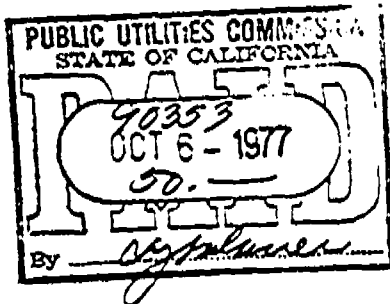
President

Vernon L. Sturgeon
Robert D. Howell

Commissioners

Commissioner William Swens, Jr., 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.



Bagala-Hansen Enterprises, Inc., 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 located within the Counties of Lake, Marin, Mendocino and Sonoma.

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 87951, Application 57499.