

ORIGINAL

Decision No. 88168 NOV 29 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of: LOWELL G. KITCHENS, an indi-)
vidual doing business as L. G.)
KITCHENS TRANSPORTATION CO., to)
sell, and of MONTY J. RICHARDSON,)
an individual doing business as)
RYBEN TRUCKING, to purchase, a)
cement carrier certificate autho-)
rizing service to and within the)
Counties of Kern, Los Angeles,)
Orange and Ventura, in the State)
of California.)

Application No. 57511
(Filed August 12, 1977)

O P I N I O N

By this application, L. G. Kitchens, an individual doing business as L. G. Kitchens Transportation Co. (seller), seeks authority to sell and transfer and Monty J. Richardson, an individual doing business as Ryben Trucking (purchaser), requests authority to purchase and acquire a cement carrier certificate of public convenience and necessity. The certificate involved was granted by Decision 84435 dated May 13, 1975 in Application 55573 and authorizes the transportation of cement from any and all points of origin to all points and places located within the Counties of Kern, Los Angeles, Orange and Ventura.

Purchaser currently holds no operating authority from this Commission. He has been solely engaged in the leasing of his trucking equipment to regulated carriers.

The proposed sale and transfer of KITCHENS' four-county certificate to RICHARDSON, the subject of this application, is contingent upon the sale and transfer of a fifteen-county certificate from DANIEL LOHNES TRUCKING CO. INC., (T-99,187), a bankrupt corporation to L. G. KITCHENS TRANSPORTATION, INC., a new corporation, as proposed in a related but separate application. These transactions, according to the applicants in both proceedings, are intended to be

consummated concurrently following separate approval of each matter by this Commission.

In support of their proposal herein, applicants allege:

- (a) That purchaser is experienced in every aspect involved in the transportation of cement; and that he owns a tractor and one set of pneumatic trailer units with which to operate such a service;
- (b) that there will be no change in the rates and charges now assessed the shipping public;
- (c) that the "entry" by purchaser into the regulated cement transportation industry will be balanced by the "exit" of seller therefrom, and thus will only result in preserving the competitive relationships which heretofore existed; and
- (d) that the proposed transfer will be in the public interest.

Pursuant to the purchase agreement between the parties, the certificate will be sold for a total purchase price of \$9,500, which sum is payable in cash on the closing date of the transaction following Commission approval of the proposed sale and transfer. No other asset is involved in this sale. The application shows that purchaser has borrowed the \$9,500 from a member of his own family in order to finance the purchase of the certificate, which debt will be repaid as future operations and profits permit.

Purchaser's balance sheet dated June 30, 1977 shows total assets of \$50,700, liabilities totaling \$44,500 and a net worth of \$6,200, exclusive of the \$9,500 family loan to be used for the purchase of the certificate. Seller's profit and loss statement for the six-month period ending June 30, 1977 indicates a net profit of \$31,383.66 from cement operations under his certificate.

Seller participates in tariffs published by Western Motor Tariff Bureau, Inc., Agent, covering shipments transported under the certificate involved herein. Purchaser proposes to adopt the same tariffs. Seller has submitted a copy of a freight bill as evidence of operations performed under the certificate.

The applicants request a waiver from the provisions of the Commission's Rules of Practice and Procedure which require wide dissemination of such applications. A copy thereof was served on each of the principal cement mills in California as well as the California Trucking Association. Notice of the filing of this application appeared on the Commission's Daily Calendar of August 15, 1977. No protest to the application has 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 certificate presently held by L. G. Kitchens and the issuance of an in-lieu cement carrier certificate, in appendix form, to Monty J. Richardson.

Monty J. Richardson 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

1. On or before April 1, 1978, L. G. Kitchens, an individual, may sell and transfer the operating rights referred to in the application to Monty J. Richardson, an individual.
2. Within thirty days after the transfer, the purchaser 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. Purchaser shall amend or reissue the tariffs on file with the Commission naming rates and rules governing the common carrier operations transferred to shown 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. 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 Monty J. Richardson 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.

5. The certificate of public convenience and necessity granted by Decision 84435 is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

6. Purchaser 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. Purchaser 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.

8. Purchaser 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.

9. 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 29th day of NOVEMBER, 1977.

Robert Bateman

President

William S. Jones, Jr.

Verion L. Sturgeon

George P. Swartz

Paul J. Schick

Commissioners

MONTY J. RICHARDSON
(an individual)
doing business as
RYBEN TRUCKING

Monty J. Richardson, 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 Kern, Los Angeles, Orange and Ventura, 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 88168, Application 57511.