

ORIGINAL

Decision No. ~~88169~~ NOV 29 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of: )  
 (a) L. G. KITCHENS TRANSPORTATION, )  
 INC., a California corporation, to )  
 purchase from DANIEL LOHNES TRUCK- )  
 ING CO., INC., a California corpora- )  
 tion, a cement carrier certificate )  
 authorizing service to and within )  
 the Counties of Fresno, Imperial, )  
 Inyo, Kern, Los Angeles, Merced, )  
 Orange, Riverside, Sacramento, San )  
 Bernardino, San Diego, San Luis )  
 Obispo, Santa Barbara, Tulare and )  
 Ventura, in the State of California. )  
 (b) L. G. KITCHENS TRANSPORTATION, )  
 INC., a California corporation, to )  
 issue shares of its common capital )  
 stock. )

Application No. 57512  
(Filed August 12, 1977)

O P I N I O N

L. G. Kitchens Transportation, Inc., a new California corporation (purchaser), seeks authority (1) to purchase the cement carrier certificate now held by Daniel Lohnes Trucking Co., Inc., a bankrupt California corporation (LOHNES); and (2) to issue 43,000 shares of its 1,000,000 authorized shares of common, no par, capital stock to L. G. Kitchens, its president and sole stockholder.

A review of Application 57512 discloses that:

(a) Purchaser was incorporated on June 24, 1977. The corporation currently has neither assets nor liabilities; has not conducted any business transactions; does not hold any transportation operating authority; and has not engaged in any motor carrier operations;

(b) LOHNES, declared a bankrupt by the U. S. District Court (Central District of California) in its Bankruptcy No. BK-76-08703 (RO), is the holder of a cement carrier certificate granted by Decision 78949 dated July 27, 1971 in Application 52666. The certificate

authorizes transportation of cement to and within the following counties:

Fresno	Merced	San Diego
Imperial	Orange	San Luis Obispo
Inyo	Riverside	Santa Barbara
Kern	Sacramento	Tulare
Los Angeles	San Bernardino	Ventura

The proposed purchase of LOHNES' fifteen-county cement certificate by purchaser is directly contingent upon the related sale and transfer of a four-county cement certificate by L. G. Kitchens, an individual, doing business as L. G. Kitchens Transportation Co., to Monty J. Richardson, an individual doing business as Ryben Trucking. Both transfer transactions, according to the applicants in each proceeding, are intended to be consummated concurrently following approval of each matter by this Commission.

According to the aforesaid Bankruptcy Court's Order Confirming Sale, the Trustee in Bankruptcy of LOHNES has arranged to sell the latter's cement certificate to L. G. Kitchens, for the sum of \$12,000 in cash, payable in full upon consummation of the transaction. L. G. Kitchens then undertook to assign all of his right, title and interest in said certificate to the purchasing corporation, as evidenced by the "Assignment" (Exhibit "D") attached to the application.

In addition to its seeking authority to purchase LOHNES' certificate, the purchaser corporation proposes to acquire from L. G. Kitchens, the individual, all of his assets, with the exception of his four-county cement certificate which is proposed to be transferred to Monty J. Richardson, certain land, and a small amount of cash. In return for assigning all of these assets to the corporation, which assets had a book value of \$63,018 as of June 30, 1977, less liabilities in amount of \$20,018, L. G. Kitchens is to receive 43,000 shares of the new corporation's common stock. The effect of these transactions are shown by the corporation's pro forma

balance sheet as of June 30, 1977, a copy of which is attached to Application 57512 as Exhibit "E". Exhibit "F" of the application contains L. G. Kitchens' balance sheet as of June 30, 1977 which shows total assets of \$76,707, liabilities of \$29,202 and capital of \$47,505.

Applicants allege that the proposals set forth herein will be in the public interest for the following reasons:

(a) The purchaser corporation will be able to perform the cement carrier operations formerly conducted by L. G. Kitchens, but within an expanded area of fifteen counties, including four of the same counties involved in the certificate to be sold as proposed in Application 57511;

(b) All of L. G. Kitchens' motor vehicle equipment, as described in Exhibit "G" of this application, along with certain other assets, will be used to serve the needs of the shipping public;

(c) L. G. Kitchens, as the president, chief executive officer and sole shareholder of the new corporation, will continue to take an active part in the management of the company's cement carrier business - all to the benefit of the public which now utilizes the existing service provided by L. G. Kitchens; and

(d) The concurrent sale and transfer of L. G. Kitchens' certificate as proposed in Application 57511, for the sum of \$9,500 cash, will permit the corporation, as proposed herein, to acquire the larger, fifteen-county, LOHNES cement certificate at a price of \$12,000, or a net difference in cost of only \$2,500 for the right to serve eleven additional counties.

The parties declare that the proposal of the purchaser corporation to issue 43,000 shares of its corporate stock to L. G. Kitchens in return for title to the LOHNES certificate along with certain other assets, all at book value, will result in a financially-sound corporation which, under its present management, can operate a permanent, efficient and profitable highway carrier service.

The application shows that LOENES, while operating as a cement carrier, participated in a tariff of rates published on its behalf by Western Motor Tariff Bureau, Inc., Agent. The purchaser corporation proposes to adopt the same tariff.

Applicants point out that LOENES' certificate has been inactive since April 9, 1976, first due to the voluntary suspension thereof and, subsequently, due to the bankruptcy proceeding referred to above. Such circumstances toll the effect of the statute which provides for lapse and termination of the operating rights for nonexercise.

The applicants request a waiver from the provisions of the Commission's Rules of Practice and Procedure which require a wide dissemination of such applications. A copy thereof was served by applicants on each of the principal cement mills in California and on 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:

1. The proposed sale, assignment and transfer of the certificate would not be adverse to the public interest.
2. The proposed issuance of stock to L. G. Kitchens is for a proper purpose.
3. The money, property or labor to be procured or paid for by the issuance of stock 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 Daniel Lohnes Trucking Co., Inc. and the issuance of an in-lieu cement carrier certificate, in

appendix form, to L. G. Kitchens Transportation, Inc.

L. G. Kitchens Transportation, 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, the Trustee in Bankruptcy for Daniel Lohnes Trucking Co., Inc., a California corporation, may sell the operating rights referred to in the application to L. G. Kitchens, an individual, who shall simultaneously assign and transfer said operating rights to L. G. Kitchens Transportation, Inc., a California corporation, the ultimate purchaser of said rights.
2. Within thirty days after the transfer, L. G. Kitchens Transportation, 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. L. G. Kitchens Transportation, 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. 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 L. G. Kitchens Transportation, 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.

5. The certificate of public convenience and necessity granted to DANIEL LOHNES TRUCKING CO., INC. by Decision 78949 is revoked effective concurrently with the effective date of the tariff filings required by Paragraph 3.

6. L. G. Kitchens Transportation, 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.

7. L. G. Kitchens Transportation, 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.

8. L. G. Kitchens Transportation, 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

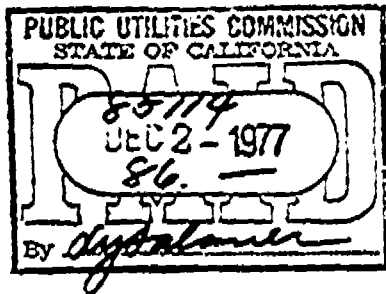
shall make the appropriate tariff filings as required by the General Order.

9. L. G. Kitchens Transportation, Inc., on or after the effective date of this order and on or before April 1, 1978, may issue not exceeding 43,000 shares of its no par value common stock to L. G. Kitchens, its president, in exchange for assets with a net value of \$43,000 as of June 30, 1977.

10. The issuer of the securities authorized by this order shall file with the Commission a report, or reports, as required by General Order No. 24-Series.

11. The authority granted by this order to issue stock will become effective when L. G. Kitchens Transportation, Inc. has paid the fee prescribed by Section 1904.1 of the Public Utilities Code, which fee is \$86. In all other respects, 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 J. Grooms  
Vernon L. Sturgeon  
Robert D. Hovell  
Clare T. Smith  
Commissioners

L. G. Kitchens Transportation, 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 following counties: (See Restriction)

Fresno  
Imperial  
Inyo  
Kern  
Los Angeles

Merced  
Orange  
Riverside  
Sacramento  
San Bernardino

San Diego  
San Luis Obispo  
Santa Barbara  
Tulare  
Ventura

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 " 88169, Application 57512.