

Decision No. 88445 JAN 31 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)	
of: NEWMAN BLACK, an individual)	
doing business as WESTERN CEMENT)	Application No. 57662
TRANSPORT, to sell and transfer a)	(Filed November 1, 1977)
Certificate of Public Convenience)	
and Necessity authorizing the)	
transportation of cement to RYEL,)	
INC., a California Corporation.)	

O P I N I O N

Newman Black, (seller) an individual doing business as Western Cement Transport, requests authority to sell and transfer and Ryel, Inc., (purchaser) a California corporation, seeks authority to purchase and acquire a cement carrier certificate of public convenience and necessity authorizing operations to and within all points and places in the Counties of Fresno, Kern, Kings, Madera, Mariposa, Merced and Tulare. The certificate was granted by Decision 85977, dated June 22, 1976, in Applications 56324 and 56358. Purchaser presently holds a highway carrier permit issued by this Commission.

Pursuant to the Sales Agreement of September 30, 1977, as amended, between the parties, the sale price of the certificate is \$4,500. The transaction also includes certain highway equipment for \$63,000 and seller's covenant not to compete for a period of five years for a consideration of \$22,000. The total amount due will be paid in cash upon the Commission's approval of the application.

Seller is a party to tariffs published by the Western Motor Tariff Bureau, Inc., Agent, which purchaser proposes to adopt. Applicant seller has submitted copies of his shipping documents evidencing cement operations performed during the last year under the authority proposed to be transferred.

Purchaser's balance sheet of August 24, 1977 shows net worth of \$56,349 and the purchaser has notified the Commission by letter dated November 17, 1977 that its stockholders will contribute an additional \$100,000 to the corporation.

Purchaser is affiliated through ownership with a number of other entities. An appropriate "alter ego" restriction will be included in the certificate to reflect such affiliations.

A copy of the application has been sent to the California Trucking Association and to the principal cement producers in the State. Notice of the filing of the application was made in the Commission's Daily Calendar of November 2, 1977. No protests to the application have been received.

The Commission finds that a deviation from its Rules of Practice and Procedure, which require wide dissemination of the application, should be authorized; that the proposed sale and transfer of the certificate and highway equipment would not be adverse to the public interest; and concludes that the application should be granted. 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 Newman Black, an individual, and the issuance of a certificate in appendix form to Ryel, Inc., a corporation. The authorization granted shall not be construed as a finding of the value of the rights and equipment authorized to be transferred.

Purchaser 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 canceled 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 July 1, 1978, Newman Black, an individual, may sell and transfer the operative rights and equipment referred to in the application to Ryel, Inc., a California corporation.

2. Within thirty days after the transfer, 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 cement carrier operations transferred to show that it has adopted or established, as its 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 date of transfer. The tariff filings shall comply with 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 Ryel, Inc., a California corporation, 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 the seller by Decision 85977 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 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. Purchaser 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, it shall make the appropriate tariff filings as required by the General Order.

9. Applicants are granted a deviation from the Commission's Rules of Practice and Procedure as referred to in the findings herein.

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

Dated at San Diego, California, this 31st day of JANUARY, 1978.

Robert Bateman
President

William Swann, Jr.

Robert D. Localio

Clair T. Smith
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Ryel, 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 any and all points within the Counties of Fresno, Kern, Kings, Madera, Mariposa, Merced and Tulare, subject to the following restrictions:

1. Whenever Ryel, Inc. engages other carriers for the transportation of property of Ryel, Inc., or Sequoia Rock Co., or Vicon, subsidiaries or affiliates thereof, or customers or suppliers of said corporations and/or companies, subsidiaries or affiliates thereof, Ryel, Inc. shall not pay such carriers less than 100% of the rates and charges published in Ryel, Inc.'s tariffs on file with the Commission for the transportation actually performed by such other carriers.
2. 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 88446, Application 57662.